Portugal is a favourable option for South Africans wishing to obtain a residence outside the country:

- An agreeable climate
- A low incidence of crime
- A welcoming people
- Well developed leisure facilities (beaches, golfing, nautical sports, etc.)
- The country is readily accessible to other European countries and South Africa with extensive airlinks.
- Portugal has a rich cultural, historical and gastronomic heritage.
- Currently a very favourable property market for buyers.
- Portugal is a member of the European Union
- In the 2000 WHO Health Report study of the world's public health sytems, Portugal was ranked 12^{th}.

Golden Visa

In order to attract more immigrants to Portugal, a scheme commonly known as the Golden Visa Scheme has been introduced. This is a program which allows for ease of obtaining a residence visa in Portugal with the resulting ease of travel in the Schengen visa group (most of the European Union countries, as well as Iceland, Switzerland and Norway, see Appendix A for complete list). *The golden visa is an expedited method of obtaining a resident's visa in Portugal, but South Africans may also apply through the normal channels should they not qualify under the Golden Visa scheme*.

The essential requirements for the Golden Visa are:

- A qualifying investment which may be the aquisition of fixed property to the value of 500 000 euros (may comprise of more than one property making up this).

  or
- Capital investments to the value of 1 million euros (may comprise of government bonds or shares in public or private companies).

  or
- Alternatively a business venture creating a minimum of ten jobs.

In the case of property investments, there must be at least a net investment in the properties (i.e. net of mortgages) of the minimum requirement as above. There are further requirements in that there are minimum stays in Portugal required (at least seven days in the first year and fourteen days in each two year cycle thereafter).

Lower investment limits apply for older properties (+30 years) rquiring restoration work, and such restoration work is carried out, and investments in the country.

Non Habitual Resident's Scheme

Should residence be obtained under normal immigration procedure or through the Golden Visa Scheme, the new resident, should he stay more that 183 days in Portugal or Portugal is his main residence, is subject to Portuguese taxation as is any other Portuguese resident. The Portuguese system taxes residents on the basis of world wide income.

Under a previous government a favourable tax scheme, commonly known as the **non habitual resident's scheme** was introduced, to incentivise immigration. The original legislation however, was not very clear as to the incentives applying to pensioners and retirees. Due to these difficulties, the legislation was subsequently clarified as to its applicability to this group of residents.

The scheme offers a 10 year tax holiday to new residents in Portugal. However, planning is required to ensure a smooth accessibility into the scheme. The scheme operates in conjunction with the tax treaties signed between Portugal and many other countries, the South African / Portuguese tax treaty being one of these. The objective of the tax treaty is to reduce the incidence of double taxation between the two countries. The non habitual resident's scheme further modifies the position of those wishing to move to Portugal allowing for either tax exemption of some types of income which previously were taxable in Portugal (private pensions from a foreign source) and a favourable tax ceiling (20% - currently a tax surcharge is also in effect) in the case of income earned from professional activies as enumerated in the law.

Requirements of the Scheme

One of the requirements, is that the taxpayer was not a Portuguese resident taxpayer in the five years immediately preceeding the application. Although this requirement seems simple enough, at times applicants unwittingly take steps which make the application difficult. Under the Portuguese tax system, an applicant who spends more than 183 days in a tax year in Portugal or has a property which maybe considered his permanent home, is considered a Portuguese tax resident. Under the Portuguese / South African tax treaty, however, it is the centre of vital interests which determines residence, that is, in the case of conflict, other factors besides the number of days spent in the country will be considered.

Private Pensions from a foreign source under the non habitual tax regime

According to the tax treaty between Portugal and South Africa, private pensions from South Africa are deemed to be taxable in Portugal for Portuguese residents (Article 18). However under the non habitual resident's scheme, these pensions are **tax-exempt**. Therefore this type of income is enjoyed **completely tax free** under the non habitual resident's scheme.

Private annuities

A South African purchased annuity by means of a lump sum received by a Portuguese resident is subject to tax in South Africa at a rate of 12% on the amount of the annuity exceeding US$10 000 equivalent. There will be no further taxes in Portugal on the annuity for a period of 10 years. If the annuity is not the result of a lump sum purchase, the annuity income will be fully tax free for a period of 10 years under the non habitual resident's scheme.

Whether or not registered under the non habitual residency scheme, under current legislation, only 15% of the annuity is taxable, the remaining 85% is considered a return of capital.

Government Pensions

Government and public authority pensions are taxable by the South African authorities according to the Portuguese / South African double taxation treaty (article 19) and therefore fall outside the ambit of this scheme. Although this appears to limit the benefits of the non habitual residency scheme, it should not be forgotten that the taxpayer and his/her spouse (in Portugal tax returns are submitted per family unit), may still have other income (**private annuities, income from professional services)** tax free or taxed at a reduced rate under the scheme. Should the taxpayers not be registered under this scheme, they would be subject to Portuguese taxation under the normal rules, with the consequence that should they earn any of the above types of income, they will be taxed at the marginal rate (highest rate) for other income, though the government pension itself will be tax free in Portugal.

Lump sum payments from pension funds

Should a South African taxpayer be in expectation of a lump sum payment from a pension fund, under the South African general law, he will be subject to tax thereon (a portion may be tax free). Should such a person be resident and registered in Portugal under the non habitual resident's scheme, and he has taken the necessary steps not to be a South African resident taxpayer, then the pension lump sum would be totally tax free. However, should the taxpayer not be registered under the non habitual resident's scheme, this lump sum would be taxable in Portugal – the tax free portion (in South Africa) would be irrelevant for Portuguese tax purposes and be subject to tax in Portugal.

Income from independent services from South Africa

Under the South African / Portugal tax treaty this type of income will be taxable in Portugal if performed by Portuguese residents (within the limitations of the treaty). The non habitual resident's scheme however provides for a ceiling of 20% tax rate (Currently a tax surcharge is in effect), on work performed according to a list of approved high-value added professions.

Directors' Fees

Under the Portuguese / South African double taxation treaty, directors' fees receivable by a resident in Portugal are subject to tax in South Africa. If the director is resident in Portugal and registered under the non habitual resident's scheme, then such fees would not be subject to further taxation in Portugal.

Rental income from South Africa

Should a Portuguese resident obtain / earn rental income in South Africa, South Africa has the taxing rights under the Portugal / South Africa tax treaty (i.e. where the property is situated). However, the rental income is reportable and taxable in Portugal, with credit being given up to the limit of Portuguese taxation due to the inclusion of such income. Due to some of the income being excluded for taxpayers registered under the non habitual resident's scheme, in some circumstances the tax liability, if any, could be residual on the inclusion of such income.

Other Issues

Succession issues

There are no inheritance taxes on assets left to spouses and children and in their absence to parents and grandchildren. Assets left outside this group, is subject to a stamp duty of 10%

Foreigners, may leave their property by means of a will drawn up in accordance with their personal law, as opposed to Portuguese citizens where a portion of their assets must be left to the spouse and children / grandchildren, and in their absence to parents.

As of the 17 August 2015, should a resident foreigner die in Portugal, the estate will be settled under Portuguese inheritance laws, unless a will or similar document stating that he wished that his estate is governed by own personal law.

Contacts: Tony Jesus t : +351 291 794 367 email: antonino.jesus@gmail.com
m: +351 924 204 878 web: www.expatconsultportugal.com

Appendix A

The Schengen Visa Group

There are currently 26 Schengen countries, which includes 22 EU countries and four non-EU countries.

- Austria
- Belgium
- Czech Republic
- Denmark
- Estonia
- Finland
- France and Monaco
- Germany
- Greece
- Hungary
- Iceland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Slovakia
- Slovenia
- Spain
- Sweden
- Switzerland