

NEW VISA in PORTUGAL: “Digital Nomad”

- its legal, fiscal and labour effects -

With the changes to the Law on Foreigners, which came into force on October 30, 2022, a new visa was created that allows citizens from outside the European Union and the European Economic Area to live and work remotely, from Portugal, under an employment contract or as self-employed workers, for a single employer or a company with domicile or head office outside the national territory.

Thus, the digital nomad visa can consist of a temporary stay visa or a residence visa for digital nomads. It can be granted for up to one year, renewable, as part of a temporary stay visa. Or, if you are interested in residing in Portugal for longer periods, remote workers must apply for a residence permit, granted at first for two years and upon renewal for another three, making up the five years.

In order to apply for this visa, workers must deliver to the competent consular entity, the documents applicable to any type of visa, as well as those attesting their professional and economic situation, for example:

a) evidence that average monthly earnings in the last three months were higher than four Portuguese minimum wages, ie, €3040 (gross), in 2023;

b) In situations of subordinate employment, one of the following documents:

- i) Employment contract;
- ii) Declaration from the employer attesting the employment relationship;

c) In situations self-employment (freelancer), one of the following documents:

- i) Company articles;
- ii) Contract for the provision of services;
- iii) Demonstrative document of services provided to one or more entities;

d) Document certifying your fiscal residence.

And after obtaining the visa, applicants have 120 days to enter Portugal and start the second phase of obtaining the residence permit. The two phases take place, currently, between six to eight months.

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It is also possible for the family members of the remote worker to also apply for a temporary stay or residence visa, requesting family reunion, which will allow the family to be reunited in national territory.

And it is also possible for these professionals to enter national territory, with a simple tourist visa and apply for a residence permit afterwards, based on the simplified procedure known as “expression of interest”, provided that the above-mentioned requirements are met, without leaving Portugal. Thus, applicants “skip” one of the previously mentioned stages in obtaining a visa, the one before the competent consular entity. After submitting the application, applicants must wait for an appointment scheduled by the competent foreign service. But what may seem like an advantage turns out to be a disadvantage, as the foreign services currently take between one to two years to make an appointment to obtain a residence permit. Therefore, for someone who wants or needs to travel in the Schengen Area, it becomes a problem, as the applicant will not have a residence permit recognized by the other states during that period of time.

It should also be remembered that residence in Portuguese territory for more than 183 days, an essential characteristic of a residence permit, presupposes the tax residence and consequently creates the tax duty to declare income, in Portugal, regardless of where it is received, and the inherent payment of taxes.

Of course, as new residents, they will be able to take advantage of existing tax benefits, such as the Non-Habitual Resident Regime or the “Regressar” Programme.

It should also not be forgotten that a digital nomad, who works remotely, from Portugal, where he resides, to other jurisdictions, regardless of being located in the territory of the European Union or in third countries, the rule is that social security will be due in Portugal, at normal rates (34.75%, in which 11% are borne by the worker and 23.75% are borne by the employer). It is true that it will be possible to eliminate double taxation within the countries that belong to the EU, provided that it is proven that social security is already paid in another member state. As for third countries, the possible exemption from social security payments will depend on the existence of bilateral agreements between Portugal and the country where the employer has his head office.

Finally, it should also be noted that the employment contract, in the absence of a specific stipulation on the applicable national labour law or in the absence of regulation of any matter, in terms of rights, duties and guarantees, will be subject to the labour law in Portugal.

Please feel free to contact, in case you wish to know more.

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