

# Rödl & Partner

# SUCCESSFUL TOGETHER

THE GERMAN-PORTUGUESE DOUBLE TAXATION AGREEMENT

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# AGENDA

- 1 Basic principles of the Double Taxation Agreement
- 2 Power of taxation
- 3 Permanent establishments
- 4 Summary
- 5 Contact



DTA

# 1.1 INTRODUCTION

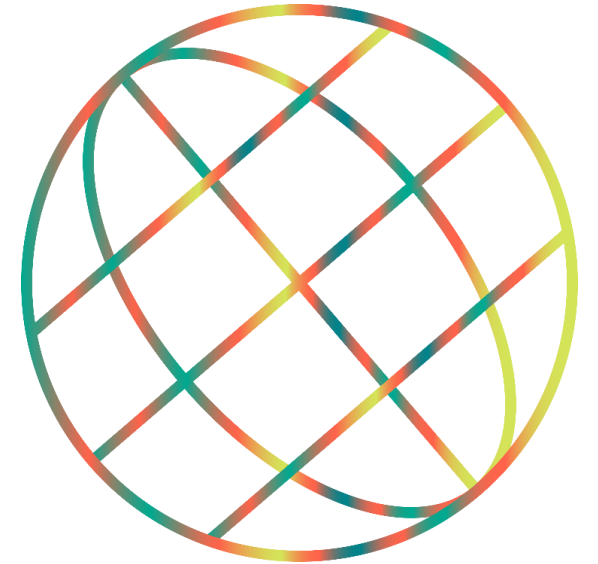
Convention of 15 July 1980 between the Federal Republic of Germany and the Portuguese Republic for the Avoidance of Double Taxation in respect to Taxes on Income and on Capital ("DTA")



- Regulation as to in which country taxes are payable
- Purpose of avoiding double taxation in the field of income and capital

## 1.2 BACKGROUND

- **Taxation in Germany according to the principle of “worldwide income”**
- Unlimited tax liability with worldwide income in Germany
- The place where income is earned in principle is not relevant
- Problem of double taxation in case a certain income is taxed for the same period in two countries simultaneously, usually both
  - taxation in the country where the income is generated (source principle) and
  - taxation in the country of residence of the taxable subject (principle of world income)



**In order to avoid double taxation, Double Taxation Agreements have been concluded between different countries**

# 1.3 PRINCIPLE

## Nature of Double Taxation Agreements

- Legal nature: international treaty
- Approach: The power of taxation of one country is restricted in favour of the other country



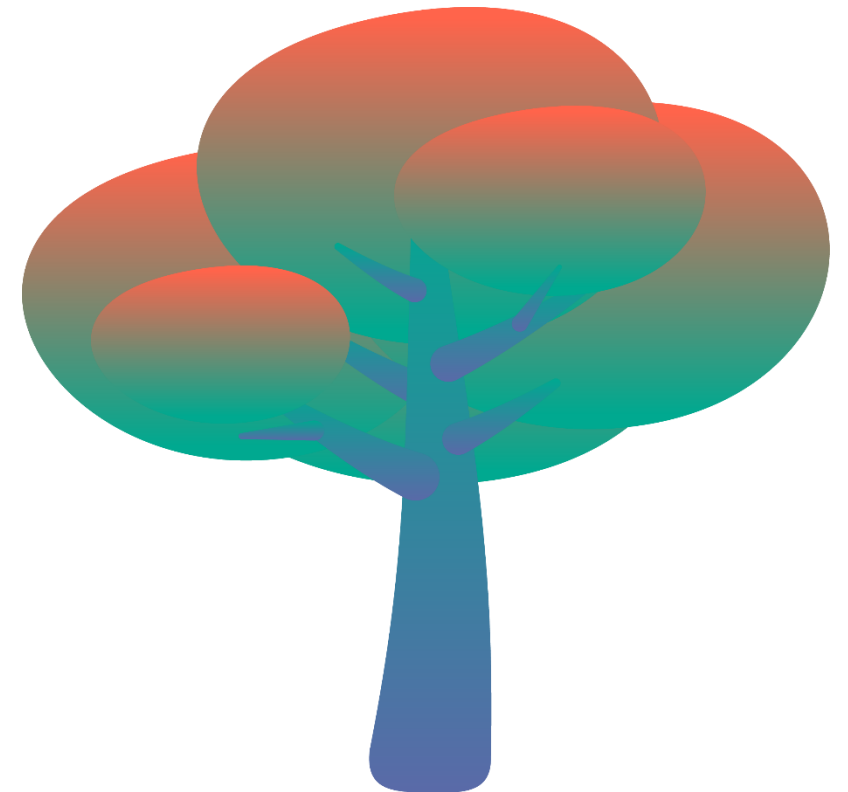
# 1.4 SCOPE OF APPLICATION

- **Scope of application DTA**

- Personal scope: for natural and legal persons who are residents in a contracting state or in both contracting states (Art. 1, 3 lit. d DTA)
- Material scope: all types of taxes covered by the agreement, see pages 10, 11

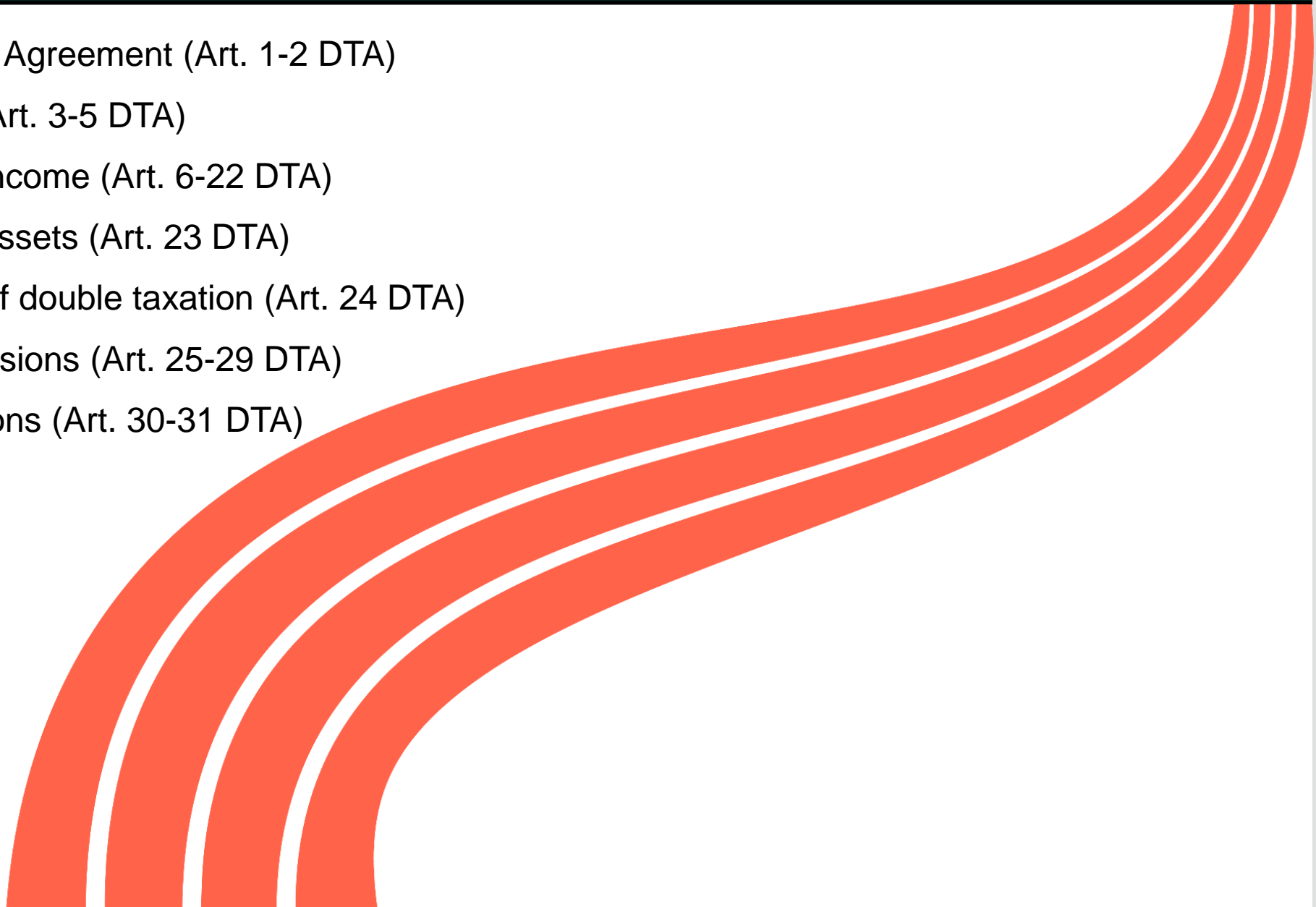
- **Concept of residency (Art. 4 DTA)**

- usually unlimited tax liability in the country of residence
- Residence due to
  - residence
  - permanent residence
  - place of management
  - similar characteristic
- If resident in both countries, application of criteria such as
  - permanent dwelling
  - habitual residence



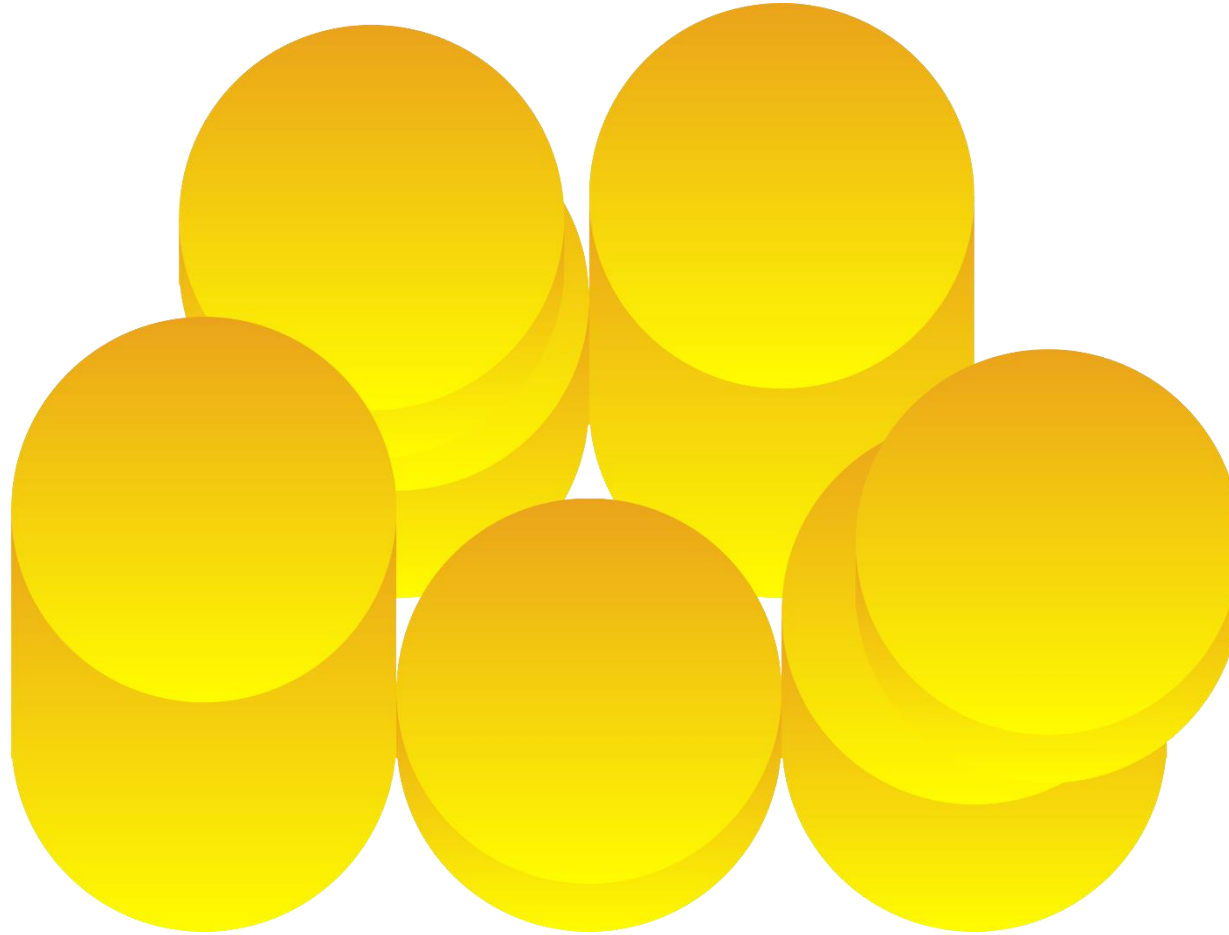
# 1.5 BASIC STRUCTURE DTA

<b>Section I</b>	Scope of the Agreement (Art. 1-2 DTA)
<b>Section II</b>	Definitions (Art. 3-5 DTA)
<b>Section III</b>	Taxation of income (Art. 6-22 DTA)
<b>Section IV</b>	Taxation of assets (Art. 23 DTA)
<b>Section V</b>	Elimination of double taxation (Art. 24 DTA)
<b>Section VI</b>	Special provisions (Art. 25-29 DTA)
<b>Section VII</b>	Final provisions (Art. 30-31 DTA)





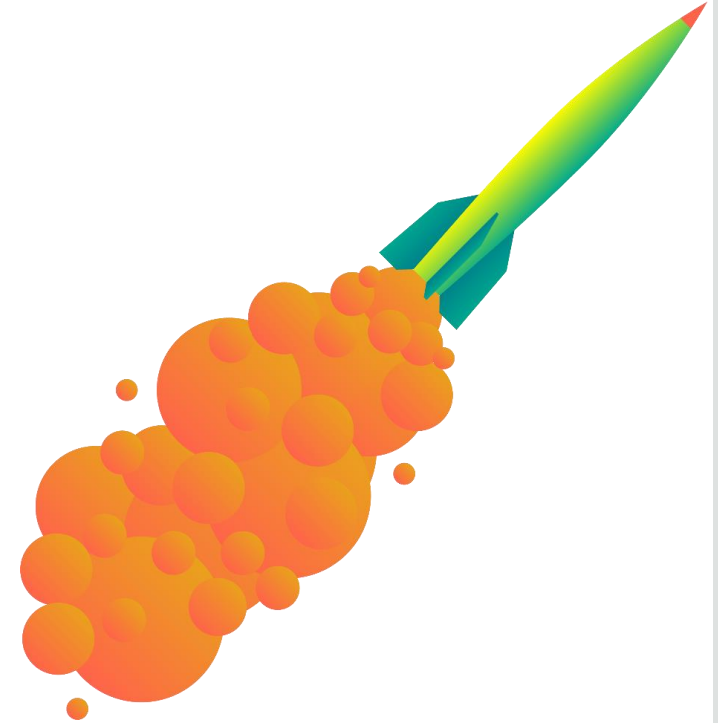
## 2 POWER OF TAXATION



## 2.1 TYPES OF TAXES

### **Portuguese taxes covered by the DTA (Art. 2 para. 1 lit. a DTA)**

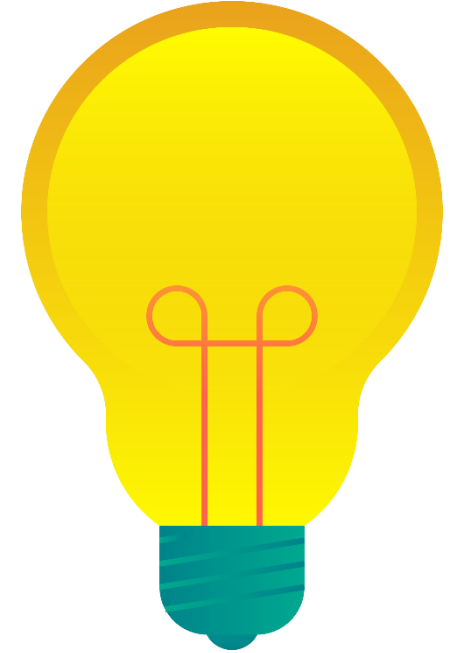
1. Real estate tax (contribuição predial);
2. Tax on agricultural income (imposto sobre a indústria agrícola);
3. Trade income tax (contribuição industrial);
4. Tax on income from movable property (imposto de capitais);
5. Professional income tax (imposto profissional);
6. Supplementary tax (imposto complementar);
7. Tax on capital gains (imposto de mais-valias);
8. Tax on income from mineral oil (imposto sobre o rendimento do petróleo);
9. Supplementary levies on the aforementioned taxes and
10. Other taxes levied in favour of local authorities on the basis of the abovementioned taxes and the corresponding additional levies.



## 2.1 TYPES OF TAXES

### **German taxes covered by the DTA (Art. 2 para. 1 lit. b DTA)**

1. Income tax;
2. Corporate income tax;
3. Wealth tax;
4. Property tax;
5. Trade tax and
6. Supplementary levies on the aforementioned taxes:



In addition: all taxes of the same or similar kind levied after the signing of the agreement in addition to or in place of the existing taxes (Art. 2 para. 2 DTA).

## 2.2 ALLOCATION OF TAX REVENUE

### **Income from employment**

- Activity state principle: Tax liability basically in the country in which the work is carried out (Art. 15 DTA)
- Exception: 183-day rule: Taxation in the state of residence if
  - The employee does not stay longer than 183 days in the state in which the work is carried out;
  - the remuneration is paid by or on behalf of an employer who is not resident in the state in which the work is carried out;
  - the remuneration is not paid by a permanent establishment or fixed establishment of the employer in the host member state.

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## 2.2 ALLOCATION OF TAX REVENUE

- Income from capital assets

Power of taxation basically in the source state (Art. 23 DTA)

- Retirement pensions

Power of taxation basically in the source state (Art. 18 DTA)

- Special regulations

for Supervisory Board and Board of Directors remuneration (Art. 16 DBA), artists and athletes (Art. 17 DTA), public service (Art. 19 DTA), university lecturers (Art. 20 DTA), students (Art. 21 DTA)

## 2.3 MODIFICATION BY THE NHR STATUS

### Non-Habitual Resident

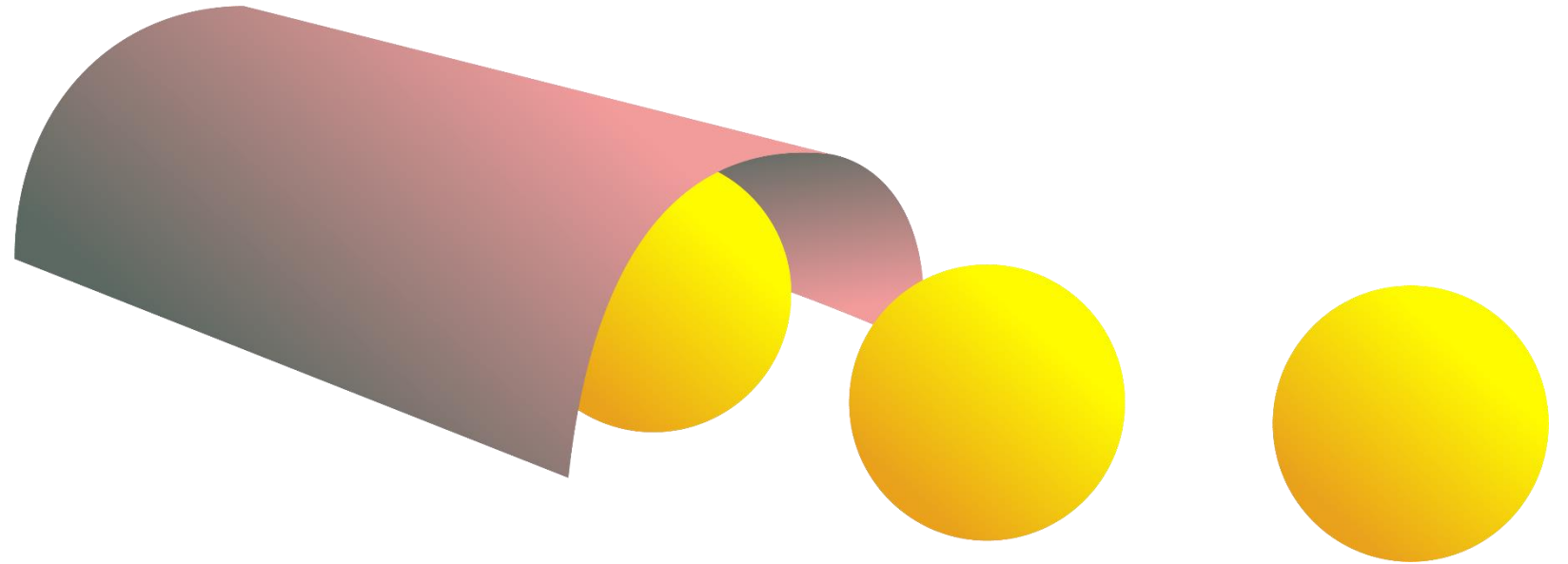
In conjunction with the status of Portuguese Non-Habitual Resident, certain income may be exempt from tax.

For details see information on the topic „The Portuguese Non-Habitual Resident (“NHR”) tax regime“

<https://www.roedl.com/insights/portuguese-non-habitual-resident-nhr-tax-regime>



### 3 PERMANENT ESTABLISHMENTS





# 3 PERMANENT ESTABLISHMENTS

## General information

- Definition in Art. 5 DTA: fixed business establishments through which the activities of an enterprise are wholly or partly carried out
- Power of taxation for permanent establishments in principle in the source state (Art. 7 DTA)

For detailed information on the topic see article „Begründung einer Betriebsstätte in Portugal“

<https://www.roedl.de/themen/portugal-gruendung-betriebsstaette-investition-steuer>

## 4 SUMMARY



## 4 SUMMARY

- The double taxation agreement between Germany and Portugal regulates the extent to which the respective states are entitled to the right of taxation.
- In order to examine the specific tax liability, it is necessary to examine the individual case.
- The Non-Habitual Resident Status may result in modifications with regard to a tax exemption of foreign income in certain constellations.

## 5 CONTACT



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