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Challenges of structuring pre-migration planning for HNI and families

21-22 September 2023

Annual IBA The New Era of Taxation Conference

Rio de Janeiro, Brazil

Challenges of structuring pre-migration planning for HNI and families

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Roadmap for Discussion

Challenges of structuring pre-migration planning for HNI and families

I. Migration and Factors Driving Migration

II. Case Study: Business owner versus Passive income recipient

III. Exit.

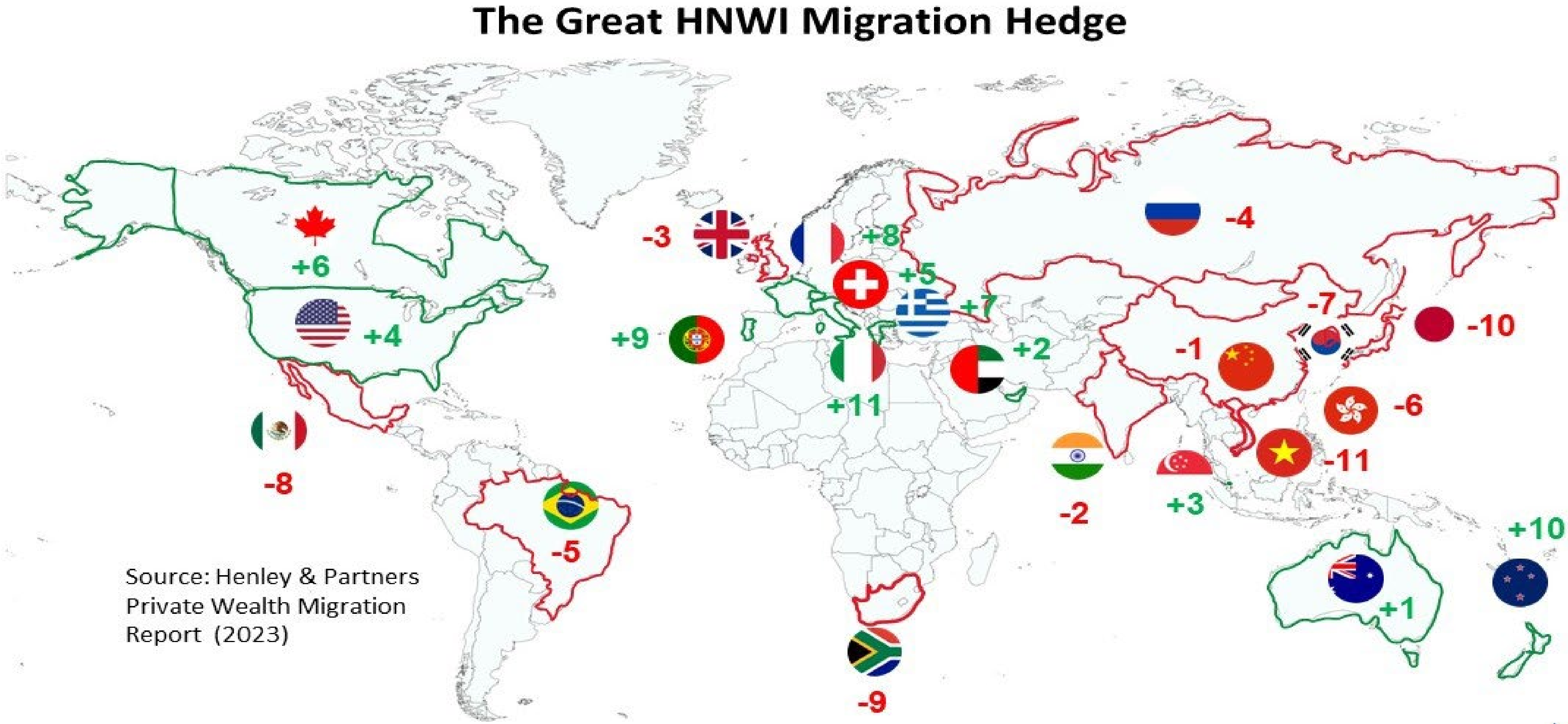
IV. Attractive Regimes.

V. Taxation in Each Jurisdiction.

VI. Conclusion. Which countries are best for the Brazilian Nationals referenced in Case Study?

I. Migration – Trends, Outflows, and Inflows

Challenges of structuring pre-migration planning for HNI and families



I. Migration – Trends, Outflows, and Inflows

Challenges of structuring pre-migration planning for HNI and families

Global wealth rise by 38% next five years (reaching USD 629 trillion by 2027)

HNWIs to reach 86 million and UHNWIs to reach 372,000

Great Wealth Transition (USD 84 trillion) expected to change hands over next decades (Gen Xers and Millennials set to command)

Increase existential anxiety as climate change, disease, financial crises, and technology disruptions will manifest more frequently and intensely

Deepening inequality and polarization

I. Migration – Factors Driving Migration?

Taxation is not the only reason for considering to migrate (or not) out of Brazil:

- employment level;
- security;
- political instability;
- development stage of the country.

But… **it is a very important reason**:

PROS

- Tax burden on income of 27.5%
- Capital gains taxation from 15% to 22.5%
- Tax free dividends / Interest on Net Equity
- No exit tax
- Some tax incentives (taxation on cash basis)
- No taxation on wealth
- Low donation/inheritance tax (4% to 8%)

CONS

- Possible implementation of CFC rules for individuals
- Foreign tax credit allowed only for tax treaties countries
- Relatively few number of tax treaties (37)
- Taxation of transactions involving Brazilian assets even between non-residents
- Complex tax rules
- Culture of tax litigation

I. Migration – Factors Driving Migration?

HNI and families moving to Italy: increasing phenomenon thanks to

1. Italian life quality and lifestyle (weather, education, art, fashion, food…)
2. financial, political and legislative **stability**
3. improving administrative **simplification**
4. immigration and tax **incentives** also due to low birth-rate
5. **business** and real estate **investment opportunities**
6. **DTC coverage** (100+ tax treaties)

I. Migration – Factors Driving Migration?

FRANCE IS AN ATTRACTIVE COUNTRY FOR HNI AND FAMILIES…

- **Lifestyle / tourism / healthcare / education etc.**
- **Top economic attractiveness in EU**
  - 1st place for foreign investments in Europe for the 4th consecutive year (before UK and Germany)
  - Specific focus on R&D activities + industry

Choose France™

… BUT IT IS LESS ATTRACTIVE THAN OTHER EU COUNTRIES FROM AN INDIVIDUAL TAX PERSPECTIVE

- Significant **tax wedge** on individuals

II. Case Study: Business Owner versus Passive Income Recipient

A: Business Owner Perspective

Planning exit and expecting a large capital gain

B: Passive Income Perspective

Earning Portfolio Interest and Dividend Income

II. Case Study: Business Owner versus Passive Income Recipient

A: Business Owner Perspective

- **Capital gain**: from 15% (up to 5MM) to 22.5% (above 30MM)
- **IOF tax**: 0.38% if the funds come from abroad
- No **exit tax** (e.g.: to tax future earn-outs)

B: Passive Income Perspective

- **Dividends**: tax free income (local company) / 27.5% (foreign company)
- **Interest**: vary according to the nature of the interest and the source (15% to 27.5%)
- **Brazilian portfolio:** usually subject to taxation (15% to 22.5%) – anticipations on a semi-annual basis

OTHER RELEVANT ASPECTS:

- Tax residence ceases as from the communication of the definitive departures to the Brazilian tax authorities (payment of income tax only on triggering events happened up to the date of the communication)

- Migration to "black listed" countries (or "tax privileged regimes"): special conditions apply – minimum actual residence period (*France, Portugal and Italy <u>are not</u> "black listed" countries*).

III. Consequences of Exit: France

Exit tax regime in France

- Scope:
  - individual taxpayers who have been **resident in France for at least 6 years** over the last 10 years
  - with **substantial shareholdings** (min. 50% financial rights in a company) **or global shareholding value exceeding 800k€**
- Exit tax base:
  - unrealized capital gains and deferred capital gains on shareholdings
  - pending earn-outs
- Exit tax rate = **30%** *(possibility to get a lower tax rate under certain conditions)*
- **Payment deferral mechanism** until the realization of the gain (automatic for individuals moving to another EU State or a "qualifying" tax treaty country / subject to FTA approval otherwise)
- **Exit tax relief** after 2 years or 5 years if portfolio value exceeds 2.57M€ (or in case of return to France or donation/succession)
- **Advance tax planning** generally consisting in the interposition of a holding company in case of short-term sale plan

III. Consequences of Exit: Portugal

Outflows:

- No Formal Exit Tax in Portugal
- Limited Impacts to (i) tax neutral transactions made as resident (claw-back rule); (ii) Stock Options not yet realized (deemed sale); (ii) crypto holdings not held for 1 year (deemed sale)
- Trailing tax for nationals moving to blacklisted jurisdictions (5 years)

Inflows:

- No step-up on valuation on entry into Portugal (historical cost maintained)
- Exit Tax at source – exemption or credit for inward NHR in Portugal (tax treaty qualification)
- Certain tax treaties provide for trailing tax (e.g. Canada, Ireland, Netherlands)

III. Consequences of exit/entry: Italy

Outflows

- **No exit tax on individuals**
  - **except for entrepreneurs**, subject to income tax (<43%) only on contingent capital gains relating to business assets
- Termination of individuals attractive tax incentives
  - e.g.: HNWIs 2-year residency requirement (recapture)

Inflows

- **No entry tax on individuals** (no step-up)
  - **except for entrepreneurs**: recognition of business assets fair market value for Italian tax purposes if coming from EU or extra-EU cooperative jurisdictions (Brazil)

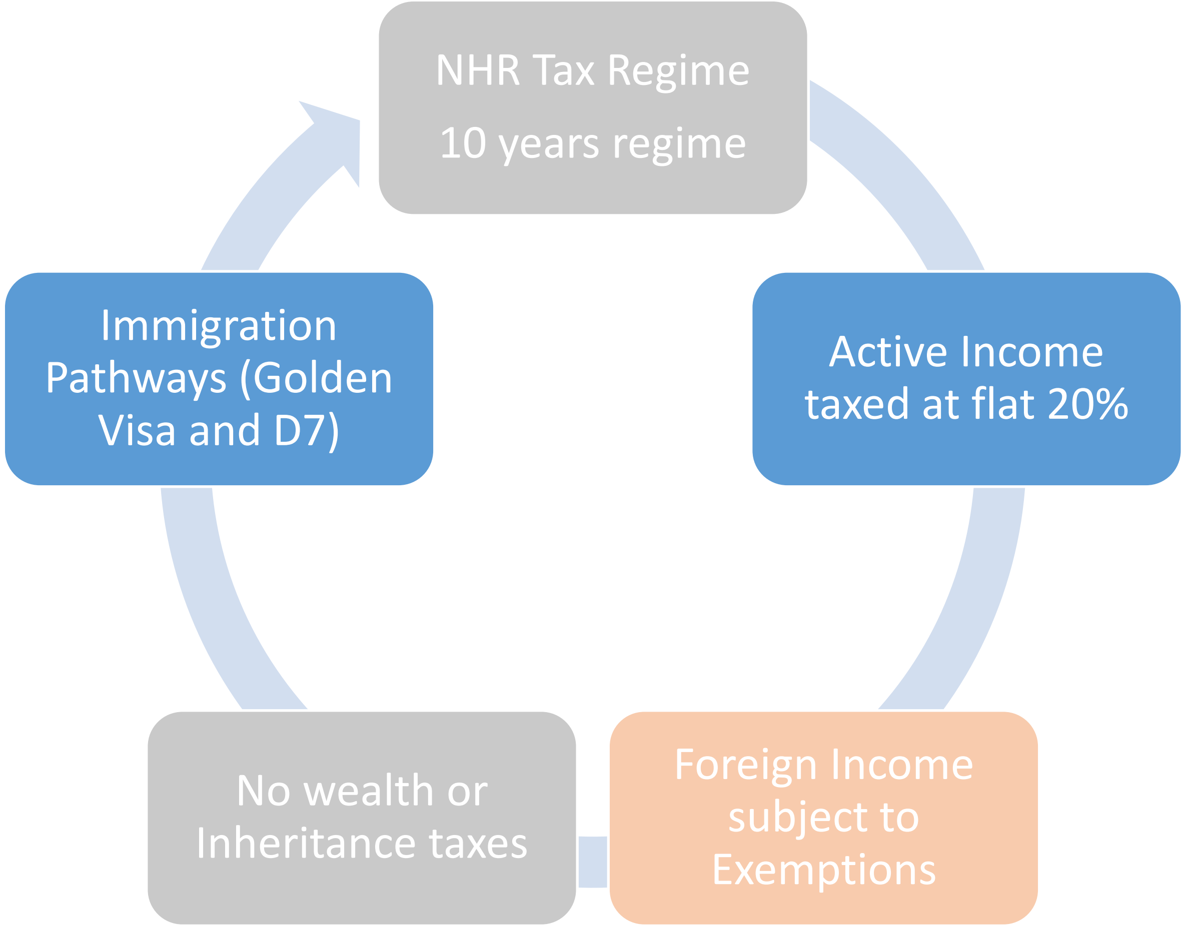
IV. Attractive Regime: France

Tax incentives for impatriates

French impatriate regime targeting “Business Owners” more than “Passive income recipients”

- For employees, managers and corporate officers moving to France for **business reasons** => Individual income tax exemptions applicable **until the end of the 8th year** following the arrival
  - **100% exemption** of the **surplus remunerations** related to the impatriation and remunerations related to **work performed abroad**
  - **50% exemption** of **foreign passive income** (dividend, interest, **capital gains**)
- For all “new” French tax residents
  - **100% exemption of inheritance and gift tax on non-French assets** received from foreign tax residents for individuals who have been tax residents for less than 6 years over the last 10 years
  - **100% exemption of wealth tax on non-French real estate assets** during the first 5 years of arrival

IV. Attractive Regime: Portugal



IV. Attractive Regime: Italy

a. What makes Italy attractive to immigrants:

- immigration incentives (*investor* or *elective* visa)
- employment and start-up companies bonuses and financial facilities
- cooperative approach by administrative authorities in welcoming “quality migrants” (*i.e.* highly skilled workers, HNIs, athletes and sportsmen…)

b. Tax incentives for individuals:

- Newly resident HNWIs (€100k flat tax on foreign incomes for 15 years)
- *impatriate* workers (70%-90% tax exemption on employment income 5/10y)
- *professional athletes and sportsmen* (50% sport income tax exemption)
- Newly resident pensioners (7% personal tax rate on foreign incomes for 10y)
- inheritance/gift tax exemption on businesses/majority shareholdings generational handovers (foreign enterprises or companies included)

V. Taxation: France

Income tax on worldwide income up to 45%*

** 12.8% flat tax for interest, dividend, capital gains*

Social contributions up to 17,2% on all income (active + passive)

Surtax for high income and gains (>250k€) up to 4%

Wealth tax on real estate assets up to 1.5% of the actual value

Inheritance and gift tax up to 45% in direct line (60% otherwise)

CFC rules for individuals holding foreign investments

- Under impatriate regime, **foreign passive income and capital gains** are taxed at 6,4% flat tax (50% discount) + 17,2% social contributions + 4% surtax = **max 27,6%**
- Immediate **access to tax treaties** signed by France irrespective of the "impatriate" status

<u>Planning opportunities when moving to France</u>

- Particularly important for passive income owners who are excluded from the impatriate regime but also for business owners expecting a large capital gain (considering the 27,6% tax burden)
- Usual structuring involving the interposition of a French or foreign holding company to limit the French tax liability (subject to CFC rules if foreign company is used)

V. Taxation: Portugal (non-habitual tax resident regime - NHR)

- NHR as Portuguese resident under the domestic tax criteria (permanent home **or** 183-days)
- NHR as resident for domestic and tax treaty purposes (tax treaty certificate available)
- NHR regime establishes:
    1. Special tax rate of 20% applicable to employment and self-employment income from a Portuguese source derived from “high value-added activities” (published list); and
    2. Tax exemption for foreign-sourced income (employment, self-employment, rental, capital gains, interest, dividends, etc.), provided income was taxed or may be taxed at source
    3. Special tax rate of 10% for taxation of foreign pension income (regular or lump-sum)
- Portuguese income tax on cash basis but Controlled Foreign Company (CFC) may apply
- Cryptoassets held 1 year, art/collector items not taxed unless within business activity
- No tax reporting obligations on financial assets (except reporting of foreign bank accounts)
- Possibility to pass wealth or estate without inheritance or gift taxes in most cases
- No wealth tax or general exit tax in Portugal

V. Taxation: Portugal (Typical Pre-immigration issues from Brazil)

- Addressing the CFCs held in offshore jurisdictions with financial income (tainted income for Portugal NHR regime)
- Evaluating options: (i) winding-up; (ii) redomiciliation; (iii) restructuring; (iv) life insurance wrappers; (v) investment funds and family office structures
- Addressing US real estate assets held indirectly (co-mingled or isolated of financial portfolio)
- Evaluating Brazilian source assets held individually, companies or funds to secure the exemption method for the NHR in Portugal
- Timing the relocation with the potential for restructuring (split tax year in Portugal)
- Addressing the marital regimes, donations in life and inheritance status (need of will)

Depends on source (treaty protected?) ← Expecting a large capital gain

Earning portfolio income → **Depends on source (tainted income?)**

V. Taxation: Italy

1. **Newly resident HNIs** (no Italian residency in at least 9 out of the 10 previous years):
   - ✓ Annual €100k flat tax on all foreign incomes (regardless the amount)
   - ❖ ordinary <43% taxation on Italian-sourced incomes (except for portfolio incomes, generally subject to substitutive tax/WHT 26%)
   - ✓ 15year regime
   - ❖ 2year residency requirement (recapture)
   - ❖ 5year lockup for shareholdings capital gains (if realized before: 26% ordinary tax)
   - ✓ cherry picking admitted: possibility to exclude certain States from the option (DTC regime coordination)
   - ✓ possibility to join the regime for close relatives: reduced substitutive tax €25k each
   - ✓ no inheritance/gift tax on foreign held assets
   - ✓ no tax disclosure duties on foreign assets
   - ✓ no property/wealth tax on foreign assets

2. **Impatriate workers** (no Italian residency in the last 2 previous years):
   - ✓ 70% employment income exempt (90% if residency in southern Italy Regions); 50% professional athletes
   - ❖ 5year regime. Extension to 10 years in case of real estate purchase in Italy or minor children

V. Taxation: Italy

Pre-migration planning issues:

- Self inspection of any direct or indirect
    - personal
    - family or
    - economic

  link with the Italian territory (strict individual residency criteria)
- Anti-avoidance rules:
    - residency of “controlled” legal entities in blacklisted jurisdictions (fictitious interposition, CFC)
    - abuse of right (inconstant Italian case law and administrative practice)
- Asset protection measures for either real estate or enterprises or businesses by means of trusts, family offices, limited companies, foundations or similar

V. Taxation: Brazil (main changes being discussed/implemented in 2023)

Already approved:

- Transfer price rules (following OECD models)

Under discussing in the Congress:

- CFC rules for individuals
- VAT tax reform
- End of Interest on Net Equity (JCP) deduction as of 2024

Yet to be discussed:

- Broad corporate income tax reform
- Taxation on dividends paid by local companies

VI. Conclusion: Optimal Tax Treatment

	Brazil	France	Portugal	Italy
Business Owner: Planning Exit	15% (up to 5MM) to 22.5% (above 30MM)	27.6% for impatriates (34% otherwise)	May require structuring for NHR exemption (if not 28%)	€100k flat tax on foreign incomes for 15 years (income tax exemption) <43% on Italian incomes
Portfolio Income: Dividends, Interest	Dividends: tax free Interest: 15% to 27.5% (depending on nature and source) Brazilian portfolio: (15% to 22.5%)	27.6% for impatriates (34% otherwise)	Exempt income (unless tainted income)	Included in the €100k flat tax (5year lockup for capital gains) 26% on Italian incomes
Minimum Presence	Permanent home or more than 183 days in a 12-month period	Permanent home or more than 183 days per civil year	Permanent Home criteria or Habitual Abode	Permanent home or more than 183 days per civil year
Exit	No exit tax	Exit tax after 6 years of tax residency in France	No general exit tax	No general exit tax
Tax Regime	No special regime for new tax residents	Impatriate regime for business movements only and for max 9 years	10-year regime available for new tax residents	15year flat tax regime available for new tax residents

VI. Conclusion: Optimal Tax Treatment

	United States	Singapore
Business Owner: Planning Exit	Capital gains tax is 23.8%	No exit tax, no exchange controls, no capital gains tax, no expatriation tax
Portfolio Income: Dividends, Interest	Dividends: 23.8% (qualified dividend) or a maximum of 40.8% Interest: 40.8%	Tax exemption schemes for specified income from designated investments, dividends paid by SG resident companies and certain foreign dividends are exempt
Minimum Presence	183 days in a single year or a formula which will add: 1/6 of days in 2021, 1/3 of days in 2022, and 100% of dates in 2023	Tax residence if management and control of business exercised in Singapore. For individuals, determination based on qualitative & quantitative factors
Exit	If threshold is met, an Exit Tax will apply to renunciation of citizenship or long-term residency (8 yrs); Exit tax is mark-to-market regime, which generally means that all property is deemed sold for its fair market value on the day before the expatriation date.	No exit tax
Tax Regime	"Tax residents" are subject to taxation on worldwide income at progressive rates.	Territorial basis, various incentives for investors, foreign income of individuals is exempt

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