



RME LEGAL

D7 VISA OR D2 VISA:

Which is the most suitable for digital nomads?

Much has been said about visas for remote workers or digital nomads, visas for freelancers and visas for entrepreneurs. Considering that this is a field where subjectivity in concepts and rules prevails, we leave below a brief analysis of two types of visas potentially applicable to the situations described.

We begin by pointing out that there are residence visas for specific purposes provided for by law. However, a foreigner may, in principle, apply for a residence visa and a residence permit to develop any legal activity or even based on the possibility of living in the country with its own resources.

In the legislation previously in force, which helps us in the interpretation of the new rules currently applicable, we could find the following rules:

"1 — The application for a residence visa shall be accompanied by the applicant's declaration as to the purpose of the stay.

2 – Proof of means of subsistence may be carried out in the following terms:

(a) in the case of a retired foreign citizen, by means of a document proving the pension and its amount, as well as the guarantee of its payment in national territory;

(b) In the case of a foreign citizen living on income from movable or immovable property or intellectual property, through a document proving the existence and amount of such income, as well as the possibility of their availability in Portugal;

c) In the case of a foreign citizen who lives on income from financial investments, by means of a document proving the existence of the respective income;

(d) in the case of a foreign citizen wishing to establish himself to pursue an independent professional activity, by means of a document proving the registration of a foreign investment transaction and a document proving that he is entitled to perform it in Portugal and, where required, a declaration of his professional order that he fulfils his registration requirements, where this is required by the legal system Portuguese. (...)"



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Given these conditions laid down for proof of means of subsistence (not forgetting that there is a wide list of other applicable conditions) and leaving aside other types of visas, let us focus on Visa D2 and D7.

D2 VISA

The D2 Visa should be granted to applicants who:

(i) wish to start an independent activity, if they present, inter alia:

- a) Company Contract; or
- b) Contract or Proposal for a Service Contract.

(Where applicable, accompanied by a declaration attesting to the verification of the requirements of the practice of profession in Portugal.)

Aware that, for application for residence permit, applicants must prove the commencing of activity with the Tax and Social Security Authorities.

(ii) intend to invest in Portugal or have already done so, as entrepreneurs, as they present, namely:

- a) proof of investment transactions carried out; or
- b) Proof that they have financial means in Portugal to carry out the investment operation, to which must be joined the complete description and identification of the investment activity; or
- c) Declaration issued by "IAPMEI" proving the conclusion of an incubation contract with certified incubator.



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D7 VISA

The D7 Visa does not find such a legislative densification, being assigned to those who prove that they have their own means of subsistence, in legal terms, including the following situations:

- (i) retired foreign nationals;
- (ii) foreign citizens living on income from movable or immovable property or intellectual property;
- (iii) foreign citizens living on income from financial investments;
- (iv) foreign citizens with the status of ministers of worship, members of institute of consecrated life or who exercise professionally religious activity and who, as such, are certified by the church or religious community to which they belong, duly recognised in accordance with the Portuguese legal order.

It is easily understood that the D7 Visa is granted under rules that densify the proof of means of subsistence based on passive income situations, not related to active professional activity.

Here, we found that at the outset the D2 Visa would be more appropriate for applicants with an active professional life (independent or entrepreneurial) and that the D7 Visa would be more aligned with situations of professional inactivity and passive sources of income.



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“Consider the situation of an employee, with a work contract, who is allowed to work remotely from Portugal:

Certainly, D2 would not be the right option at the outset since an employment link will be maintained. At first glance also the D7 Visa would be misadjusted, considering that its source of income is active and not passive.

Given the growing number of requests in recent years and the new reality of international employees' mobility, remote work has been accepted by numerous Consulates (e.g., in the US and UK) as proof of own means of subsistence for the purposes of the D7 Visa.

The understanding that is the basis of this interpretation seems to be that this income is from a foreign source and as such can be understood as own resources not generated by work in Portugal (as if the professional activity were on the doorstep of the country, given that the employer would not be in Portugal).

Although the solution, in practice, allowed countless people to have a residence in Portugal, it should be noted that this understanding is not followed by all consulates and that it has generated some uncertainty regarding the tax perception of the source of income from dependent work developed from Portugal. This said we alert that according to the applicable tax rules, Portugal has the power to tax employment income from work provided in/from Portugal, regardless of the location of the paying entity.

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Let us now imagine the situation of an independent worker, who develops his professional activity for Clients based abroad:

Again, what was said above applies on the D7 Visa. Although under a wide degree of discretionary, here too we have seen the understanding that D7 would be applicable, based on the same assumptions and surrounded by the same criticisms that this solution may deserve.

We may question whether the D2 Visa would not be a viable and more adjusted alternative. It has been understood that the D2 Visa would be granted based on a contract for the provision of services in Portuguese (meaning a contract signed with a Portuguese based company/entity).

However, aware of the possibility (in fact, the requirement) of opening activity to provide services to a foreign entity, when the activity is carried out in Portugal/from Portugal, with taxes paid in Portugal, is D2 Visa not the appropriate visa for freelancers who settle in Portugal?

We have verified that all these situations have deserved different understandings depending on the Consulate where the application is submitted, as well as having been subject to different assessment from SEF at the time of conversion of the visa into a residence permit in Portugal. We warn of the need for prior analysis of each situation and consultation of the competent entities.