The Legal 500 Country Comparative Guides

Portugal: Private Client

This country-specific Q&A provides an overview to private client laws and regulations that may occur in Portugal.

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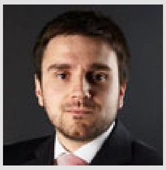
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1. **Which factors bring an individual within the scope of tax on income and capital gains?**

Tax residency in Portugal or Portuguese sourced income and capital gains obtained by Portuguese non-residents bring individuals within the scope of the Portuguese Personal Income Tax ("PIT").

Individuals deemed as tax resident in Portugal are taxed on their worldwide income and capital gains obtained. Portuguese non-resident individuals will only be subject to PIT on Portuguese sourced income.

In general, an individual is deemed to be tax-resident in Portugal if during the year to which the income relates: (i) has remained in the Portuguese territory for more than 183 calendar days (which need not be continuous), during any period of 12 months beginning or ending in the relevant year (in which case the individual is considered tax resident since the first day of the period of permanence in Portugal); or (ii) has a dwelling in Portugal that may be used as main place of residence on any given day of the period mentioned above (in which case the individual is considered tax-resident since the first day of the period of permanence in Portugal).

To be noted that Portugal adopts the concept of partial residency which is relevant in case the individual's residency status changes within the relevant tax period.

2. **What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?**

For tax residents, the Portuguese PIT has a 'dual' structure. In general, income from employment, business activities and pensions are subject to progressive tax rates up to 48% (plus and additional surcharge of 2.5% to 5%). Real estate income, financial income and capital gains are subject to a 28% flat tax rate (although the individual may opt to be subject to the general progressive tax rates). In addition, payments from entities located in blacklisted jurisdictions (listed in Ministerial Order No. 150/2004, as amended) are subject to a 35% tax rate.

Please see 9 below concerning the tax framework (including special tax rates) under the Portuguese Non-Habitual Tax Regime ("**NHTR**").

Income received from employment and business activities are subject to social security contributions. Said contributions are, in general, 23,75% on the gross amounts paid for employers and 11% for the employees. For individuals performing business activities the contributions vary between 21,4% and 25,2%.

As a general rule, the Portuguese tax year matches the calendar year (from 1 January to 31 December) and the corresponding PIT return must be submitted between 1 April to 30 June of the following year.

3. **Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?**

In general, withholding tax obligations apply to entities and not individuals (except for individuals operating a business activity). In general, the following withholding taxes apply on tax residents:

a) Employment income: up to 45,3%;
b) Pensions: up to 40%;
c) Business income: between 11,5% and 25%;
d) Real estate income: 25%;
e) Financial income: 28%;
f) Capital gains: no withholding tax applies.

For non-residents, the following withholding taxes generally apply:

a) Employment income, Business income and pensions: 25%;
b) Financial income and real estate income: 28%;
c) Payments to individuals who are tax resident in a black-listed jurisdictions: 35%.

Please note that withholding taxes may be reduced due to the applicability of the extensive double tax treaties network that Portugal entered into, particularly, in what concerns investment income (withholding taxes usually vary between 10% and 15%).

4. **Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?**

Portugal has no wealth tax.

5. **Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?**

Inheritances and gifts may be subject to a 10% Stamp Tax (plus 0,8% in case of Real Estate).

However, relevant exclusions apply:

- Inheritances and gifts between (a) spouses or members of unmarried couples living

under de facto relationships, (b) descendants and (c) ascendants are exempted.
  - Under the applicable territorial scope, gratuitous transmissions with no connection with the Portuguese territory are not be subject to Stamp Tax.
  - Under certain circumstances special exemptions may apply (e.g.: life insurance premium payments; payments from investment funds).

As a general rule, the individual's demise should be reported to the tax authorities within 3 months by the heirs' common representative (cabeça-de-casal). In case of gifts, beneficiaries should report the event to the Portuguese tax authorities within 3 months.

6. **Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?**

Tax benefits are available (specific deductions for PIT and Corporate Income Tax purposes) for donations to certain entities (e.g. scientific, cultural, social, charitable entities). The gifts obtained by such entities (non-profit entities benefiting from 'public utility' status, declared by the Council of Ministers) may benefit from a tax exemption.

7. **How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?**

The transfer for consideration of real estate property located in Portugal is subject to Real Estate Property Transfer Tax (up to 6.5%) and Stamp Tax (0.8%). Real Estate transferred through the sale of shares in public limited companies (sociedade anónima) does not trigger the aforementioned taxes.

The holding of real estate property is subject to the Real Estate Municipal Property Tax, between 0.3% and 0.8%, levied annually on the tax value of the property.

Individuals owning real estate property in Portugal, with a global tax value higher than EUR 600,000.00 are liable to an additional tax of up to 1.5%.

8. **Are taxes other than those described above imposed on individuals and, if so, how do they apply?**

Portugal does not impose any other relevant taxes on individuals (except for VAT and excise taxes on specific goods).

9. **Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?**

Portugal has the following advantageous tax regimes:

A) The NHTR, applicable to new tax residents who have not met any of the residency criteria in Portugal in the five preceding years. The regime applies for 10 years. Individuals who benefit from the NHTR regime may benefit from significant exemptions or lower tax rates on income or capital gains, as explained below:

(i) Portuguese source employment and business income deriving from high-value- added activities are taxed at a 20% PIT flat rate.

(ii) Foreign source income:

a) employment income is exempt if effectively taxed in the source state; otherwise, if employment income derives from high-value-added activities that do not qualify for the applicable exemptions then it will benefit from the 20% PIT flat rate;

b) business income deriving from high-value added activities is exempt if income could be taxable in the source state; otherwise, if professional income derives from high- value-added activities that do not qualify for the applicable exemptions then it will benefit from the 20% PIT flat;

c) pensions are exempt;

d) Other income is exempt if income could be taxable in the source state – the remaining income is subject to the general PIT rates (usually 28%).

B) The "Return Home" regime applicable to individuals meeting the following requirements: (i) were not tax residents in Portugal in the previous three years; (ii) have been tax residents in Portugal before 31 December 2015; and (iii) do not have tax debts. Under said regime a tax exclusion of 50% on employment and business income obtained applies for a five-year period.

10. **What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?**

Before becoming a tax resident in Portugal, the following should be considered:

Residency Permit: authorization to remain in the Portuguese territory may be obtained based on different grounds. In addition to the general framework applicable (applicable for instance to employment and business activities), authorization to reside in the Portuguese territory may be granted to individuals (including nuclear family) performing investment activities, such as financial, real estate or cultural investments. For EU citizens, only a registration before the Municipality is required within a 90 days period.

Estate planning: the estate structure held by individuals should be properly analyzed before becoming a Portuguese tax resident in order to if necessary be adapted to the Portuguese and EU tax legislation.

Family governance and succession planning.

11. **What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?**

Descendants and spouses (and ascendants, in the absence of descendants) are forced heirs. To be noted that grooms opting for the separation of property regime may enter into a prenuptial agreement waiving their right to inherit.

The proportion of the value of the assets the forced heirs are entitled to varies between 1/3 and 2/3.

12. **Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?**

The Portuguese civil code establishes three regimes to regulate marital property:

a) general community of estate – all combined property is considered joint;

b) estate subsequent to marriage – only property earned during the marriage is considered joint property (applicable by default);

c) separation of property between spouses.

The Portuguese civil partnership regime does not grant any special property regime between the couple. In addition, the surviving partner is not considered a forced heir. In the event of decease of one member of the couple, the surviving member has the right to live in the family house for a period of five years and has the pre-emption right on the sale of the family house.

13. **What factors cause succession laws to apply on the death of an individual?**

Pursuant to the EU Regulation 650/2012 (with universal application), the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death. However, a person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

14. **How does the jurisdiction deal with conflict between its succession laws and those**

of another jurisdiction with which the deceased was connected or in which the deceased owned property?

Under the referred Regulation 650/2012, *renvoi* either to the law of a Member State or to the law of a third State which would apply its own law to the succession should be accepted. *Renvoi* should, however, be excluded in situations where the deceased had made a choice of law in favor of the law of a third State.

15. **In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?**

Notwithstanding the rules concerning forced heirs, if the deceased individual does not make a will, the heirs will be designated by the subsidiary rules applicable.

For successions regulated by another EU Member State, the European Certificate of Succession may suffice. Conversely, if the succession is expected to be regulated by a third state, a will elaborated in Portugal concerning estate located in the Portuguese territory may be relevant.

Wills may be “public” or “private” (in this case, the Will only needs to be certified by the Notary and retained by the testator himself, the Notary or a third party).

16. **How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?**

In general, the heir’s common representative is the person responsible for collecting in assets, paying debts and distributing to beneficiaries. The heir’s common representative may be designated by the following preference order: the spouse, the executor, the closest heir and the oldest heir.

17. **Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?**

Except for Madeiran Trusts, trusts are not foreseen under the Portuguese civil law. However, the use of foreign trusts particularly by international families is not incompatible with the Portuguese law.

It is common to see the Family estate structured by a family holding company. Families are advised to properly design the company’s articles of association and to elaborate a Family Business Agreement to regulate the relationships between the Family, the Family’s estate and the Family's business.

Unit-linked life insurance policies are a particularly relevant succession and tax planning instrument for both domestic and international Families.

18. **How is any such structure constituted, what are the main rules that govern it, is there any requirement for registration with or disclosure to any authority or regulator, and what information about the structure is available to the public?**

Companies incorporated in Portugal, its articles of association and their shareholders and beneficial owners must be registered before the Commercial Registry or the Central Register of Beneficial Owners. Family Business Agreements and other shareholders agreements are, in principle, not publicly disclosed.

19. **How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?**

Tax treatment and compliance rules applicable may vary significantly in accordance with the structure chosen.

In general, the Family undertakings may be subject to CIT. In addition, distributions to Beneficial Owners may be subject to tax.

20. **Are foreign trusts, private foundations, etc recognised?**

From a tax perspective, such entities are qualified as 'fiduciary structures'.

21. **How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?**

Distributions from foreign trusts to Portuguese tax residents are subject to PIT. In addition, in case of dissolution of the trust, the amounts received by the settlor are taxed as capital gains (if the beneficiary is not the settlor, payments received may be subject to Stamp Tax, which may result in an exclusion of tax due to its territorial scope).

Non-discretionary trusts not subject to tax may trigger the application of CFC rules for beneficiaries' tax resident in Portugal.

22. **To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?**

Legal autonomy concerning private foundations will, in principle, be respected. However, in certain circumstances, recent case-law accepts that such autonomy may be disregarded for foundations.

23. **What provision can be made to hold and manage assets for minor children and grandchildren?**

Several instruments may apply depending on the circumstances such as the designation of a fiduciary (*fideicomisso*).

In any case, please note that, in general, sale of relevant assets concerning minors depends on the court's authorization.

24. **Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?**

The Portuguese vulnerable adult's protection law was profoundly revised in 2018. The law provides for the incapacity mandate which allows the individual to choose the person or persons who should oversee his or her personal and financial matters in case of future incapacity. Portuguese law also recognizes advance health care directives or mandate which allows the determination of the medical actions to be taken in case of illness or incapacity.

25. **What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?**

Philanthropic or charitable entities usually take the legal form of associations or foundations. Conversely to what occurs with associations, the creation of a foundation is subject to an authorization procedure.

Please refer to point 6 above.

26. **What important legislative changes do you anticipate so far as they affect your advice to private clients?**

The Portuguese tax framework applicable to individuals is expected to remain stable.