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The International Comparative Legal Guide to:

Private Client 2018

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A practical cross-border insight into private client work

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Private Client.*

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Nine general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 28 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance and STEP for their continued and valued participation in the guide.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Habitual residence is relevant to assess if an individual is resident in Portugal or not for Personal Income Tax ("PIT") purposes (please refer to our comments regarding questions 1.2 and 1.4 below).

For this same purpose, the notion of domicile is irrelevant.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

According to the PIT Code, there is habitual residence in Portugal if, on any given day of a 12-month period, an individual holds accommodation in conditions that indicate an intention to keep and occupy it, or if he/she spends more than 183 days, consecutive or not, in Portuguese territory.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Residence is relevant in Portugal as it determines if individuals are liable herein to PIT on their worldwide income (residents) or solely on income obtained from a Portuguese source (non-residents).

1.4 If residence is relevant, how is it defined for taxation purposes?

For PIT purposes, an individual is deemed to be resident in Portugal, provided that one of the following conditions is met:

1. the individual remains in Portuguese territory for more than 183 days, consecutive or not, in any 12-month period commencing or ending in the relevant calendar year;
2. though remaining for less than 183 days, the individual has, in any 12-month period of the relevant year, an accommodation in conditions that indicate an intention to keep and occupy it as an habitual residence;
3. on 31 December of any given year, the individual is a crew member of vessels or aircraft operated by entities with residence, head office or place of effective management in Portuguese territory; or
4. the individual performs public duties for the Portuguese State abroad.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

As a rule, nationality is irrelevant for tax liability purposes in Portugal (the main exception to this rule refers to the case where Portuguese nationals relocate their residence from Portugal to a blacklisted jurisdiction, in which case they may remain as tax residents during a five-year period).

Nonetheless, nationality remains as one of the relevant criteria to be considered whenever there is the need to solve double tax residency conflicts between Portugal and another State with whom a Double Tax Treaty ("DTT") has been signed.

1.6 If nationality is relevant, how is it defined for taxation purposes?

Please refer to our comments in the above question.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

A non-resident taxpayer will be liable to tax in Portugal as long as he obtains income from a Portuguese source (which is the sole connecting factor concerning the tax liability of a non-resident taxpayer).

2 General Taxation Regime

2.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

There is not a specific gift or inheritance tax foreseen in the Portuguese tax law since 1 January 2004. However, Stamp Duty ("SD") taxation may arise, regardless of a person becoming established in Portugal or not, over inheritance or gifts of assets considered to be located in Portugal (please refer to our comments in question 3.1 below).

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

A. Residents

As referred to above, Portuguese tax residents are subject to PIT on their worldwide income.

Progressive rates are applied and range from 14.5% to 48%. These rates are currently increased by a general "*extraordinary surtax*", which is due for the tax year of 2017 (this is the last year where this surtax will be due) at rates ranging from 0.88% up to 3.21% (depending on the income bracket) on the annual aggregate income that exceeds the amount of the annual minimum wage (€7,798). If the taxable income exceeds €80,000, another "*solidarity surtax*" applies, which has a rate of 2.5% (between €80,000 and €250,000) and of 5% (to the taxable income exceeding €250,000).

As a general rule, investment income, rental income and capital gains on the disposal of movable assets may be subject to PIT at a flat rate of 28% (with the option for aggregation).

The law contains certain provisions that allow a reduction or waiver on the taxation of certain sorts of income (e.g. capital gains on the disposal of the main residence of the taxpayer may be tax-exempt subject to the reinvestment of the proceeds; within certain conditions, solely 50% of the capital gains related to the sale of securities and real estate are considered for PIT assessment purposes).

B. Non-habitual residents

An individual interested in becoming established in Portugal may be eligible for the Non-Habitual Tax Regime ("NHTR") – a special regime in force since 2010 that grants tax benefits to qualified individuals who plan to take up residence in Portugal – as long as he has not been considered to be tax resident in Portugal in the preceding five years. Additionally, an individual interested in applying the NHTR will have to comply with the above-referred general rules of residence.

The NHTR, which remains applicable for a 10-year period, does not require the individual to be professionally active, nor does it require a minimum personal wealth or income thresholds.

Under the NHTR, employment income and income from self-employment referring to "*high-value added*" activities obtained in Portugal are subject to a flat rate of 20%, plus the "*extraordinary surtax*" of up to 3.21% (as referred above, this surtax will not be applied after 2017). There is a closed list of activities that qualify as "*high-value added*" such as, but not limited to, architects, engineers, software developers, tax advisors, doctors, lecturers and senior officers.

Furthermore, regarding foreign-sourced employment income, a tax exemption is granted in Portugal as long as such income is effectively taxed in the State of the source, either under the DTT provisions, or, if no DTT applies, insofar as under the Portuguese domestic rules, the item of income is not deemed as resulting from a Portuguese source (no "*minimum tax*" threshold is required).

Rental income, investment income (e.g. dividends, interest), capital gains and the self-employment income related to "*high-value added*" activities when obtained abroad will be fully exempt in Portugal to the extent that such income may be taxed in the State of the source according to the provisions of:

1. the applicable DTT; or
2. the OECD Model Tax Convention on Income and on Capital ("OECD Model"), in the absence of a DTT in force between Portugal and the relevant State of the source. In this case, the tax exemption applies insofar as the State of the source is not a blacklisted jurisdiction and that, under the Portuguese domestic rules, the item of income is not deemed as resulting from a Portuguese source.

Pension income derived outside Portugal is also tax exempt provided that:

1. pensions are taxed in the State of the source pursuant to the applicable DTT rules; or alternatively
2. pensions are not deemed to be sourced in Portuguese territory under the domestic rules.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

There are no other taxes which may derive solely from the establishment of an individual in Portugal.

In any case, following establishment in Portugal, the acquisition of real estate herein is common; such acquisition may imply Municipal Real Estate Transfer Tax ("RETT") and SD taxation (please refer to our comments regarding question 4.3).

Real estate holding triggers taxation at Municipal Real Estate Tax ("RET") level, at rates ranging from 0.3% to 0.45 (for urban property) to 0.8% (for rural property). In certain situations, these rates may be increased, namely when the owner of the real estate is an entity located in a blacklisted jurisdiction, in which case the applicable tax rate will ascend to 7.5%.

Following the approval and entrance into force of the Budget State Law for 2017, a new tax has been introduced on real estate holdings above €600,000, at the rates of 0.4% (for legal entities) and 0.7% (private individuals and undivided legacies). In general terms, the taxable value over which this tax on real estate holdings will be assessed corresponds to the sum of the tax value of all the urban property (except the ones qualified as "*commercial, industrial or for services*" or "*others*" and urban property that was exempt from RET in the previous year) that exceeds €600,000 (in certain cases, this threshold is not applicable, meaning that the whole urban property holding will be taxed) owned by the taxpayer (a private individual, a legal person, inheritances and the controlling company of a group's special taxation scheme) as of 1 January of any given year. This new tax on real estate holdings replaced the SD taxation, at a rate of 1% (7.5% if the owner is a blacklisted entity), that was due over urban real estate with a tax value equal or higher than €1,000,000.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

VAT is applied to those who develop an activity that implies onerous transfers of goods, services or imports performed by a VAT taxpayer, acting as such, in Portuguese territory.

Current tax rates foreseen for VAT in Portugal mainland are 6% (intended for basic products, such as some food products, medical services and pharmaceutical products), 13% (applicable namely to other food products and wine), and 23% (the general rate).

Excise duties (at several different rates) are established for alcohol and alcoholic beverages, tobacco, oil and energy products and vehicles.

The Budget State Law for 2017 introduced a "*Fat Tax*", applicable to certain non-alcoholic beverages with added sugar or other sweetening matter.

Regarding custom duties, they are due on the import of goods from outside the European Union, which are computed on an *ad valorem* basis and according to the European Union legislation. Note that a beneficial regime may be applied for goods that belong to the importer's personal luggage.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

Portuguese tax legislation establishes several anti-abuse rules related to entities located on blacklisted jurisdictions, which are defined in a list approved by a Ministerial Order of the Ministry of Finance.

Among others, national taxpayers continue to be considered resident in Portugal, for tax purposes, over a five-year period whenever they move their residence to a blacklisted jurisdiction, unless the existence of valid reasons is proven (e.g. temporary job on the account of a Portuguese employer).

Another example refers to the application of the Portuguese controlled foreign company ("CFC") rules.

Investment income (e.g. dividends, interests) received by a Portuguese tax resident with origin in a blacklisted jurisdiction, as well as capital gains from debt securities and fund units and capital derived from the liquidation of fiduciary structures located therein, are subject to an aggravated tax rate of 35%. The same aggravated tax rate is applied, as an autonomous taxation, over the payments made to a non-resident entity, located in a blacklisted jurisdiction.

Other limitations regarding PIT may also be imposed, such as the non-consideration for tax assessment purposes of capital losses in operations involving, as a counterpart, an entity located in a blacklisted jurisdiction.

Moreover, the acquisition and holding of real estate by an entity located in a blacklisted jurisdiction triggers, respectively, a RETT at a 10% rate, RET at a rate of 7.5% and, following the approval and entrance into force of the Budget State Law for 2017, the new tax on real estate holdings is applicable to an entity located in a blacklisted jurisdiction over the whole urban property holding (and not solely over the real estate holdings that exceed €600,000).

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Portuguese General Tax Law foresees the possibility of disregarding an artificial or fraudulent operation, wholly or mainly aimed at the reduction, elimination or postponement of taxes that otherwise would be due.

If the Portuguese Tax Authorities determine the application of this clause, they will focus on the economic substance of the underlying transaction and will apply the tax rules that would be applied in the absence of the abusive operations.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

Portugal does not have an official guidance regarding the distinction between legitimate tax planning mechanisms and abusive or aggressive tax avoidance.

In any case, in 2008 a Decree Law was enacted establishing that financial institutions, lawyers and chartered accountants have duties of communication, information and clarification to the Portuguese Tax Authorities of any scheme or action that determines, or is expected to determine, exclusively or predominantly, the attainment of a tax advantage per taxable person.

The Portuguese Tax Authorities have also issued a list of 13 transactions that they qualify as abusive (https://info.portaldasfinancas.gov.pt/NR/rdonlyres/BC481FC3-FD05-4960-BB58-D7D2D96790DC/0/DivulgacaoDL_2908PFA.pdf).

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

As explained above, there has not been a specific inheritance or gift tax in Portugal since 1 January 2004. Nonetheless, the transfer of assets by way of inheritance or gift may be subject to SD in Portugal, provided those assets are located within Portuguese territory.

According to the SD Code, the free transfer of assets (inheritance and gifts) may be subject to a 10% tax rate (if such transfer refers to real estate, then an additional SD at 0.8% will also be due).

Note, however, that there is a SD exemption applicable to free transfer of assets made between spouses or unmarried partners, descendants and ascendants.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

According to the PIT Code, individuals resident in Portugal are liable to tax on their worldwide income, including capital gains, except if they are under the NHTR (case in which they may benefit from the tax benefits better described in our comments to question 2.2 above).

A prior asset structuring may be required in order to enhance the enjoyment of all the tax benefits foreseen in NHTR by an individual interested in moving to Portugal (case-by-case analysis would be required).

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

It depends on the reasons underlying a potential move to Portugal. For instance, if such move is due to professional reasons, it is possible to waive (under certain conditions and for a limited period of time) the Social Security contributions that are usually due by either the employers or the employees.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

A. Acquisition

Regarding the onerous acquisition of real estate, please refer to our comments regarding question 4.3.

Usually, the acquisition of share capital participations does not entail the payment of any sort of taxes for the acquirer. However, the direct acquisition of at least 75% of the corporate rights or shares in a collective name company ("*sociedades em nome coletivo*"), in a limited partnership ("*sociedades em comandita simples*") or in a limited liability company ("*sociedade por quotas*") that own real estate property may trigger RETT at the rates mentioned below in question 4.3.

Following the approval and entrance into force of the Budget State Law for 2017, taxpayers performing eligible investments in start-up companies in an amount up to €100,000, under the Seed Program (a special programme that was foreseen in the Budget State Law for 2017), may benefit from a PIT deduction corresponding to 25% of the investment sum in any given year, up to 40% of the tax collection (any amount not deducted in the year of the investment may be carried forward to the next two fiscal years).

As explained above (see question 3.1), the free acquisition of assets may imply SD taxation at a 10% tax rate (an additional 0.8% may be added in case of acquisition of real estate).

B. Holding

As a general rule, dividends distributed by resident entities to resident or non-resident individuals are subject to a final withholding tax at a rate of 28%. Dividends paid by non-resident entities to resident individuals are also subject to a flat rate of 28% (a tax credit to avoid or waive international double taxation is usually available).

In case such payments are made to master accounts (opened in the name of one or more account holders acting on behalf of one or more unidentified third parties), a withholding tax at a rate of 35% may be applicable, except if the beneficiary is disclosed when the general rate is applicable. This aggravated withholding tax rate of 35% will also be applied in the investment income payments made to resident individuals by non-resident entities domiciled in a blacklisted jurisdiction (through a resident paying agent).

If the resident shareholder opts to include the dividends on his taxable amount, only 50% of such amount will be subject to a personal income progressive tax rate of up to 48% (increased by the extraordinary surtax and eventually by the solidarity surtax). In this case, the withholding tax rate of 28% will be on account of the final tax bill. Dividends are subject to taxation at the time they are made available to the taxpayer.

Regarding dividends paid to non-resident individuals, the above referred domestic withholding tax can be reduced to rates ranging from 5% to 15% under the applicable DTT concluded between Portugal and the respective State of residence, but the applicable rules should be confirmed on a case-by-case basis. To apply for the reduced withholding tax rates foreseen in the DTT, some formalities must be complied with no later than the tax due date (e.g., the presentation of tax forms – Model 21-RFI, available at http://info.portaldasfinancas.gov.pt/pt/apoio_contribuinte/modelos_formularios/convencoes_dupla_trib_internacional/ – duly certified by the recipient's tax authorities and/or a certificate of residence issued by the recipient's tax authorities) in order to confirm that the requirements to apply such tax saving are met.

A flat tax rate of 28% is applied on rental income derived from investment in real property, also with the option for aggregation concerning resident individuals.

Regarding the holding of real estate, please refer to our comments regarding question 2.3.

C. Disposal

Regarding capital gains, the annual positive difference between capital gains and losses concerning the disposal of shares is subject to a special tax rate of 28%, unless the resident individual opts to include the gains on his taxable income, subject to a personal income progressive tax rate of up to 48% (increased, in 2017, by the "*extraordinary surtax*" and eventually by the solidarity surtax). For micro and small companies' shares, only 50% of that positive difference between capital gains and losses arising on their sale will be subject to taxation.

According to a specific tax benefit, capital gains from the sale of shares, other securities, autonomous warrants issued by a Portuguese resident entities and financial derivatives negotiated on regulated stock markets that are obtained by a non-resident individual will be exempt from taxation in Portugal, unless:

1. the non-resident individual is domiciled in a blacklisted jurisdiction; and
2. the capital gains obtained by the non-resident refer to the direct or indirect disposal of shares in a resident company, more than 50% of whose assets comprise real estate property located in Portugal.

Following the approval and entrance into force of the Budget State Law for 2017, capital gains from the sale of shares concerning investments made under the Seed Program will not be subject to PIT if those shares are held for, at least, 48 months and the realisable value is fully reinvested in other eligible investments under this special programme.

Capital gains obtained by residents on the disposal of real estate are subject to tax at the general PIT rates (which will be due over solely 50% of the respective amount), except if they derive from the sale of the taxpayer's main residence, in which case such gain may be tax-exempt provided the respective proceeds are reinvested in another main residence. If such gains are obtained by a non-resident taxpayer, they will be subject to a flat tax rate of 28%.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Please refer to our comments above regarding question 2.4.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

The acquisition of residential properties is subject to RETT (to be borne by the acquirer).

Applicable tax rates vary according to the tax value and the use of the real estate. As such, rural property is subject to a 5% tax rate, while urban properties, for permanent or secondary residential purposes, can be subject to a rate that can ascend up to 8% (if the real estate is acquired through a corporate entity, the tax rate is always 6.5% and if the acquirer is located in a blacklisted jurisdiction, the tax rate is always 10%). SD will also be due at a rate of 0.8%.

Both RETT and SD are levied over the real estate's purchase price or over the respective tax value, whichever is higher.

Several tax benefits related to urban renewal foreseen on the Portuguese Tax Benefits Statute may mitigate the burden on real estate taxes.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

Similarly to the provisions established in the OECD Model, the Corporate Income Tax ("CIT") Code establishes that an incorporated corporation should be qualified as resident for tax purposes in Portugal as long as its head office or effective management are located in Portugal.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

Regarding CIT, corporations resident in Portugal are taxed on their worldwide income.

The taxable income is based on the accounting profits representing the algebraic sum of the net income for that period as well as some positive or negative variations in net equity during the same period which are not reflected in the accounting net profit or loss, and some adjustments in accordance to specific tax corrections foreseen in the CIT Code.

The CIT rate is applied at a graduated rate, as follows:

1. a 17% tax rate applies to income generated up to €15,000 by small or medium enterprises ("SME"); and

2. a 21% tax rate applies to income higher than €15,000 obtained by SME and to the totality of the income obtained by other companies (non-SME).

The above mentioned rates are lower if the incorporated company has its head office and place of effective management in the Madeira Free Trade Zone.

Following the approval and entrance into force of the Budget State Law for 2017, the 17% rate applicable to income generated up to €15,000 by SME may be reduced to 12.5% if these entities perform their agricultural, commercial, industrial or services activity in certain inland areas.

In most municipalities, a municipal surcharge is added to the CIT at a rate that may be up to 1.5% of the taxable income.

Corporate taxpayers with a taxable income of more than €1,500,000 are also subject to a State surcharge on the parts of their taxable profits that exceed such threshold, as follows:

1. taxable profits higher than €1,500,000 up to €7,500,000 are subject to a rate of 3%;
2. taxable profits higher than €7,500,000 up to €35,000,000 are subject to a rate of 5%; and
3. taxable profits in excess of €35,000,000 are subject to a rate of 7%.

In general terms, a corporation may have to deal with VAT, custom and excise duties, RETT, RET, SD and, following the approval and entrance into force of the Budget State Law for 2017, with the new tax on real estate holdings.

Certain sectors of the economy – financial, energy, telecoms and pharmaceutical industry sectors – may be also subject to special contributions.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

In general terms, the branches of foreign corporations are taxed on the same basis as resident companies.

Nevertheless, the following differences in the tax regime applicable to a domestic branch of a foreign entity should be considered:

1. income remitted by a branch to its head office is exempt from tax withheld at source;
2. general administrative expenses incurred by the head office may, as a general rule, be allocated to the branch (following certain criteria); and
3. there may be certain restrictions concerning the deductibility of certain expenses charged by the head office to the branch (e.g. interests and royalties).

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Portugal has concluded 79 DTTs, 74 of which are currently in force.

DTTs have had (and continue to have) a huge impact in Portugal, allowing the elimination/mitigation of international double taxation and encouraging foreign direct investment herein.

Among the main tax benefits of the DTTs that could be herein referred is the application (in State of the source of the income) of a reduced withholding tax rate on investment income (e.g. dividends, interest, royalties) and, in certain cases, a waiver on the taxation of capital gains on the disposal of shares of companies.

From a residency perspective, the DTTs allow the resolution of any double residency conflicts that may arise if a person is deemed to be simultaneously resident in both contracting States.

It is also important to mention that, at least in the most recent DTTs signed by Portugal, there is an increased interest in promoting enhanced exchange of information procedures in order to favour, namely, the prevention of tax fraud and evasion.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

As a rule, Portuguese DTTs follow the OECD Model. However, it is important to note that some DTTs have provisions that depart from such model, following the features of other models such as the UN Model or US Model.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Portugal has only one Inheritance and Gift Tax Treaty. This tax treaty, which was concluded with France, only addresses the taxation of State, public institutions and municipalities of both Contracting States.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

The Inheritance and Gift Tax Treaty with France does not follow any particular model.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

According to the Portuguese rule of conflicts, the applicable law on succession matters is the personal law of the deceased which, under the Portuguese Civil Code, is the law of nationality. Note that, in accordance with the private international law provisions related to conflict of law, it is possible to remit the treatment of these matters in accordance with the Portuguese law as long as the deceased had its habitual residence in Portuguese territory or if the law of the country of such residence considers equally applicable the Portuguese domestic law to be equally applicable.

Following the entry into force of the European Union rules (Regulation 650/2012, of 4 July) regarding cross-border successions (which are applicable in Portugal to the opening of succession of those who die on or after 17 August 2015), it is established that a succession is treated coherently, under a single law and by one single authority.

In principle, the courts of the EU Member State in which the deceased had its last habitual residence will have jurisdiction to deal with the succession, and the law of this EU Member State will apply. However, an individual will have the option to choose that the law that should apply should be the law of its State of nationality.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

In general, no.

Note that solely from a tax perspective, and regardless of the eventual application of a SD exemption to the spouses or unmarried partner, descendants and ascendants of the deceased, a 0.8% rate over the tax value will always be due when any real estate is freely transferred due to inheritance.

Please note that, as explained above, following the approval and entrance into force of the Budget State Law for 2017, undivided legacies have to pay the new tax on real estate holdings.

8 Trusts and Foundations

8.1 Are trusts recognised in your jurisdiction?

As a general rule, trusts are not recognised for tax purposes in Portugal.

By way of exception, the Decree-Law (352-A/88, of 3 October), with effect in the Autonomous Region of Madeira, admits the possibility of incorporation of an offshore trust established under a foreign law that recognises this juridical institute, as long as the activity carried out by it is within the institutional framework of the Madeira Free Trade Zone (the trust becomes incorporated within this free trade zone). Offshore trusts incorporated under a foreign law are recognised for all purposes regarding the Madeira Free Trade Zone.

8.2 How are trusts taxed in your jurisdiction?

The Portuguese tax legislation does not foresee specific rules concerning the taxation of trusts. It is generally understood that trusts – and any other entities with a fiduciary nature – may, however, fall within the scope of anti-avoidance rules known as CFC rules.

The tax impacts arising in connection with a trust structure may vary according to the nature of the trust (e.g. revocable *vs.* irrevocable; discretionary *vs.* non-discretionary) and with the qualification of the taxpayer at stake (e.g. settlor and/or beneficiary).

Pursuant to CFC rules, any resident individual that is the economic beneficiary and/or exercises control over more than 25% of the trust or trust's assets should be taxed on its share of the annual income derived by the trust. This threshold is reduced to 10% if more than 50% of the economic beneficiaries of the trust are resident in Portugal for tax purposes.

The trust's income should be attributed to the individual taxpayer irrespective of an actual distribution and is, in principle, qualified as investment income which is subject to PIT at a flat rate of 28% (or an aggravated rate of 35% is income sourced in a blacklisted jurisdiction). As a way of exception, trust income attributed pursuant to CFC rules may be qualified as active income and subject to the general progressive tax rates.

If the conditions for the application of CFC rules are not complied with, taxation should occur only when an actual distribution is made by the trust. In this case, distributions made by trusts are qualified as investment income, except in case of a liquidation, revocation or termination of the trust. Investment income is subject to PIT at a flat rate of 28% (or an aggravated rate of 35% if income is sourced in a blacklisted jurisdiction).

In the event of liquidation, revocation or termination of the trust, the Portuguese rules foresee a twofold regime. If the beneficiary of the trust (upon liquidation, revocation or termination) is the settlor, proceeds from liquidation qualify as capital gains and are subject to PIT at a flat rate of 28% (or an aggravated rate of 35% if income is sourced in a blacklisted jurisdiction). PIT will apply to the amount exceeding the capital contributions made by the settlor into the trust.

Alternatively, if the beneficiary is a person other than a settlor, liquidation proceeds are qualified as a gift and thus subject to SD rather than PIT. SD will apply at a 10% rate on the gross amount of the liquidation proceeds, however, since this tax has a territorial scope in principle, it should not apply to assets held by the trust outside Portuguese territory.

Payments made by companies and subsidiaries of offshore trusts, established in Madeira Free Trade Zone, benefit from PIT and CIT exemptions as long as the beneficiary of the income is an entity located in the Madeira Free Trade Zone or abroad.

According to a general instruction issued by the Portuguese Tax Authorities, trusts as such do not benefit from the provisions established in DTTs, except if such fiduciary structures are expressly foreseen in the applicable DTT (e.g. the United States and Canada) and as long as proper evidence is provided to show that the conditions set forth therein are met, including evidence that the trust is the beneficial owner of such income.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

Trusts do not benefit from a special regime on succession matters.

So, following Portuguese general rules on succession, only half or one third of the heritage may be available to other individuals/entities as trusts, since the remainder is reserved for the legal heirs of the deceased.

These rules that limit the free disposition of assets comprising the inheritance will also be applicable to foreign trusts incorporated by those settlors resident in Portugal at the time of their death (e.g. those who have not opted, under the Regulation 650/2012 provisions, for the law of nationality).

8.4 Are foundations recognised in your jurisdiction?

Foundations are recognised in the Portuguese Civil Code and in Law 24/2012, of 9 July ("*Lei-Quadro das Fundações*").

Their creation is admitted as long as the purposes and assets are specified on the incorporation act and it pursues a recognised social interest purpose.

Though it is not possible to create foundations with strict private interests, it is possible for the founder or his family to be a beneficiary of part of the generated income.

In case the activity developed by the private foundation is relevant for the community due to its social relevance, it can benefit from the status of "*collective person of public utility*" ("*pessoa coletiva de utilidade pública*") after three years from its creation.

Foreign foundations can also be recognised in Portugal, under the European Convention of the Recognition of Legal Personality of International Non-Governmental Organisations, in force in Portugal since 1991.

Law 24/2012 adds a new requirement to foreign foundations that are not covered by the above referred European Convention: the maintenance of a permanent office during the activity of the foundation in Portuguese territory, accompanied by the previous authorisation by the competent entity for the recognition of its legal status.

8.5 How are foundations taxed in your jurisdiction?

Typically, foundations are recognised as collective persons of public utility and, therefore, entitled to benefit from several tax benefits.

Among others, qualification as collective persons of public utility grants a CIT exemption, subject to recognition by the Minister of Finance. This tax exemption excludes business income, such as that deriving from commercial or industrial activities carried on outside the statutory object, or from bearer securities not registered or filed in accordance with applicable legislation, and it is also subject to compliance with certain requirements. The non-exempt income is subject to a 21% tax rate.

The above referred qualification granted to foundations allows the benefit of tax exemptions related to RETT, RET and SD; the donations granted to them within the context of the patronage regime established on the Portuguese Tax Benefits Statute may also benefit from a special regime which allows a special and increased deduction at the patron's level.

The activities performed by foundations are usually within a list of activities that the VAT Code qualifies as exempt (but always subject to case-by-case analysis).

Notwithstanding the above, we underline that Portuguese legislation concerning foundations refers essentially to philanthropic entities.

As a result, family foundations and similar types of foundations that have a fiduciary nature (comparable to a trust) may be subject to taxation similar to that applicable to a trust (see question 8.2 above).

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Please refer to our comments regarding question 8.3 above.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/ recognised in your jurisdiction?

Civil partnerships and marriages between people of the same sex are permitted by Portuguese law. Civil partnerships have been legal in Portugal since 2001 and same-sex marriage since 2010.

The Portuguese competent authority celebrates same-sex marriages even though both or one of the betrothed is a national of a country that does not allow this type of marriage, in respect of the fundamental principles of the Portuguese State.

9.2 What matrimonial property regimes are permitted/ recognised in your jurisdiction?

The default system is marriage in community of property ("*comunhão de adquiridos*").

The parties may opt for the other regimes regulated by law, namely the universal community of property regime ("*comunhão geral*") and the separation of property ("*separação de bens*").

In the **community of property regime**, only goods and property acquired after the marriage are communal. The individual property of each one of the spouses is constituted by the property they held at the time of the celebration of the matrimony, as well as the property obtained gratuitously after the celebration of the wedding and acquired based on previously vested own right. Common assets are constituted by the product of the labour performed by the spouses, and by what is acquired by onerous title during marriage.

Universal property regime presumes only one group of assets: the common assets. The common assets are constituted by all the present and future assets that are not included in the exceptions established by law.

The only personal property is constituted by a group of residual assets that the law classifies as incommunicable.

Under the **separation of property regime**, each spouse retains control over and entitlement to all of his/her present and future property, which he/she may freely dispose of. There is a total separation between the properties held by each spouse individually; there are no common assets.

However, there may be property belonging to both spouses in joint ownership. Each spouse preserves control and fruition of the property taken to the matrimony, as well as of the one acquired during marriage.

Finally, Portuguese law allows couples to choose their own marital regime or combine certain characteristics of the three above (please refer to our comments on question 9.3).

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

The Portuguese system is ruled by the principle of freedom regarding the matrimonial property regime.

According to this principle, the betrothed parties may prepare a pre-nuptial agreement through which they can determine their property regime, either by choosing one of the regimes typified in the law or by forming, within the legal limits, their own regime.

Pre-nuptial agreements are only valid if celebrated through a statement made before a Civil Office's official or through a public deed.

Those aged 60 or older, as well as those whose marriage was celebrated without the preliminary wedding process must follow, by imposition, the regime of separation of property, without the benefit of freely preparing a pre-nuptial agreement.

The betrothed parties who have adult or minor children are also restricted by not being allowed to choose the universal community of property regime.

On the subject of property relationship between spouses, the general rule is that of the principle of immutability of property regimes. The property regime chosen by the betrothed through a legally established pre-nuptial agreement cannot be altered by them after the celebration of the matrimony.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

The main principles related to divorce are:

1. termination of the patrimonial relations between spouses and the consequent division of common property;
2. if a spouse is injured by the other spouse, he/she can seek compensation for any damages;
3. the court may rent the marital home to either of the spouses, at their request, whether it is jointly owned or owned by the other spouse, taking into particular account the needs of each spouse and the interests of the children of the marriage. This rental is subject to the rules of the renting-out of accommodation but the court may define the conditions of the agreement, having heard the spouses, and may terminate

the rental, at the request of the landlord, when supervening circumstances justify this; and
4. spouses must be capable of meeting their own needs.

In some cases, there is the obligation to pay the maintenance of the other spouse ("*direito a alimentos*").

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

People who enter into national territory or exit from it will be subject to border control, whenever they come from States that are not parties to the Schengen Convention.

Portugal applies the European rules (Schengen Convention) on entry and stay of foreign nationals in the country. Non-EU/EEA/Swiss nationals have to apply for an entry visa before travelling to Portugal for stays of up to 90 days.

If they intended to visit or to establish their residence in Portugal, the nationals of third States are subject to a visa requirement for entry into Portugal. For instance, visas may be requested for the following purposes: investment; work (employed or independent); study; professional training; research; highly skilled work or teaching; religious training; and medical recovery and treatment.

Nevertheless, foreign citizens holding a valid residence permit, and citizens who are entitled to do so within the terms of International Conventions subscribed by Portugal, can enter into Portugal without holding a visa.

After entering Portugal with a Residence Visa, the foreign citizen may request a Residence Permit, which is initially granted for a period of one year and may be renewed twice for a period of two years each, for a total of five years. After this initial five-year period, the resident permit is granted a permanent residence permit which does not have an expiration date but must be renewed every five years.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

Portugal has, since 2012, a Residency Permit for Investment Activity (also commonly designated by "*Golden Visa*"), which allows non-EU/EEA/Swiss nationals to circulate freely within the Schengen Area.

The Residency Permit for Investment Activity ("RPIA") is granted to non-EU nationals carrying out in Portugal an eligible investment for a minimum period of five years represented by:

1. transfer of capital worth €1,000,000 or more;
2. the creation of, at least, 10 job positions;
3. the purchase of real estate property with a value equal or higher than €500,000;
4. the purchase of real estate property, with construction dating back at least 30 years or located in urban regeneration areas, for refurbishing, for a total value equal to or above €350,000;
5. the transfer of capital with a value equal or higher than €350,000 for investing in research activities conducted by public or private scientific research institutions involved in the national scientific or technologic system;
6. the transfer of capital with a value equal or higher than €250,000 for investing in artistic output or supporting the arts, for reconstruction or refurbishment of the national heritage, through the local and central authorities, public institutions, public corporate sector, public foundations, private foundations of public interest, networked local authorities, local corporate sector organisations, local associations and public cultural associations, pursuing activities of artistic output, and reconstruction or maintenance of the national heritage; and
7. the transfer of capital with a value equal or higher than €500,000, for purchasing participation units in investment funds or in venture capital geared to capitalise SME that present, for this purpose, a feasible capitalisation plan.

After being granted a RPIA, the investor is free to circulate in any of the 26 European countries that comprise the Schengen Area, whilst being required to spend only seven days in Portugal in the first year, and 14 days per each of the following two-year periods.

The investment can be made through a company, as long as the investor's personal share in the company fulfils the minimum amount of investment.

Temporary permit is conceded for a one-year period, which can be extended twice for a two-year period.

The right to family reunification is granted to the citizen with a valid residency permit, regarding:

1. family members living outside the Portuguese territory who have lived with that citizen in another country;
2. family members who depend or cohabitate with the citizen; as well as
3. those who have legally entered in the Portuguese territory and are dependants or live together with that citizen.

The beneficiary of a RPIA may apply for Portuguese nationality, after the granting of a permanent residency authorisation.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Portuguese nationality is granted in several situations, namely to:

1. children born in Portuguese territory of a Portuguese mother or father;
2. children of a Portuguese mother or father born abroad if the Portuguese parent is there serving the Portuguese State;
3. children of a Portuguese mother or father born abroad if they have their birth registered at the Portuguese civil registry or if they declare that they want to be Portuguese;
4. persons born abroad with at least one ascendant of Portuguese nationality of the second degree in the straight line who has not lost that nationality, if they declare that they want to be Portuguese, have ties of effective connection to the national community (the verification of the existence of bonds of effective connection with the national community implies the recognition by the Government of the relevance of such ties, namely by having sufficient knowledge of the Portuguese language and by the existence of regular contacts with the Portuguese territory, and depends on non-conviction, with finality of the sentence, for the practice of a crime punishable by a maximum prison sentence of three years or more, according to Portuguese law) and, if such conditions are met, register birth in the Portuguese civil registry;
5. persons born in Portuguese territory with foreign parents if at least one of the parents was also born in Portugal and resides here, even if not legally resident, at the time of birth;
6. persons born in Portuguese territory with foreign parents who are not serving their respective State, if they declare that they want to be Portuguese and provided that one of the parents has legally resided in Portugal for at least five years at the time of birth;
7. persons born in Portuguese territory and with no other nationality;

8. descendants of Sephardic Jews who, through the evidence of belonging to a tradition of Sephardic community of Portuguese origin, based on objective requirements have proven an effective connection to the national community;
9. those married to a Portuguese citizen for more than three years (under the Civil Code, marriage in Portugal is catholic or civil) or by a foreigner who lives in a civil union with a Portuguese citizen for more than three years;
10. children fully adopted by a Portuguese citizen with an effective connection to the national community; and
11. foreign nationals who meet certain legal criteria such as being legally resident in Portuguese territory for a minimum of six consecutive years and having sufficient knowledge of Portuguese language.

Portugal allows dual nationality.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

No, there are not (the main exception to this refers to the eventual application of an anti-abuse rule related to the cases where Portuguese nationals relocate their residence from Portugal to a blacklisted jurisdiction, in which case they may remain as tax residents during a five-year period).

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

Please refer to our comments above on NHTR and RPIA.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Portugal has concluded automatic exchange of information agreements with 15 countries: Andorra; Antigua and Barbuda; Belize; Bermuda; British Virgin Islands; Cayman Islands; Dominica; Guernsey; Gibraltar; Isle of Man; Jersey; Liberia; Saint Kitts and Nevis; Saint Lucia; and Turks and Caicos.

Portugal has also concluded mutual administrative assistance agreements with Brazil, Cape Verde and Mozambique, according to which at the end of each year both contracting States may automatically exchange information regarding source income (e.g. salaries, dividends, royalties, interests) obtained by the residents of the another Contracting State.

Note that Portugal also approved the Financial Reporting Regime in the 2015 State's Budget Law, according to which Portuguese and US financial institutions must exchange information through their tax authorities. The Agreement between the United States of America and the Portuguese Republic to Improve International Tax Compliance and to Implement FATCA was signed on 6 August 2015 and entered into force on 10 August 2016.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

A regime designed to fight tax evasion was implemented in 2008, according to which entities as financial institutions, lawyers, chartered accountants are obliged to notify tax authorities of schemes exclusively or mainly aimed to obtain tax advantages (please refer to our comments to question 2.7).

Furthermore, Portuguese General Tax Law determines that credit institutions and finance companies are subject to automatic information mechanisms as regards the opening or keeping of accounts by taxpayers whose tax situation is not regularised and who are included in risk sectors.

The same institutions are also required to provide the tax authorities information regarding the transfer of funds to entities located in blacklisted countries or territories, on an annual basis.

Additionally, with the entrance into force of the Budget State Law for 2016, a new formal obligation was introduced, applicable for fiscal years starting in 2016, for multinational groups which became obliged to submit a declaration with financial and tax related information per country. This country-by-country reporting follows the guidelines recently issued by OECD concerning Action 13 of the Base Erosion Profit Shifting action plan.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

No, there are not.

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