

# Private client law in Portugal: overview

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## TAXATION

### Tax year and payment dates

#### 1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

For personal income tax (PIT) purposes, the tax year coincides with the calendar year. As a rule, PIT assessments must be submitted by taxpayers between 1 April and 30 June of the following year. PIT must be paid (or reimbursed), on the tax assessment made by the Portuguese tax authorities by 31 August of the same year.

Any taxes withheld on Portuguese source income derived by resident or non-resident taxpayers must be delivered to the Portuguese tax authorities within the first 20 days of the month following the payment date.

### Domicile and residence

#### 2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Nationality is irrelevant for tax liability purposes in Portugal. However, it remains one of the relevant criteria to be considered, whenever there is the need to solve tax residency conflicts between Portugal and another state with which a double tax treaty (DTT) has been signed.

### Domicile

Tax domicile and tax residence are the same under Portuguese tax law.

### Residence

In general terms an individual is deemed to be resident in Portugal if they can satisfy one of the following conditions:

- 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.
- Though remaining for less than 183 days, the individual has, in any 12-month period of the relevant year, accommodation under circumstances that indicate an intention to keep and occupy it as a habitual residence.
- On 31 December of any given year, the individual is a crew member of vessels or aircrafts operated by entities with residence, head office or place of effective management in Portuguese territory.
- The individual performs public duties for the Portuguese State abroad.

If a Portuguese national relocates their residence from Portugal to a blacklisted jurisdiction, they will be deemed to be tax residents during a five-year period, unless they can demonstrate that they relocated their residence by virtue of reasonable grounds (notably, temporary employment activities).

### Taxation on exit

#### 3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

Portugal does not impose an exit tax when a person leaves.

However, Portuguese tax residents who exchange shares or own shares in a company, which was subject to a merger or a division, and subsequently transfer their place of residence abroad, must include any capital gain or loss arising from the share exchange, merger or division in their taxable income for the year in which they cease to be resident in Portugal, and, consequently, be subject to tax (*Personal Income Tax Code*).

### Temporary residents

#### 4. Does your jurisdiction have any particular tax rules affecting temporary residents?

There are no specific tax rules applicable to temporary residents, holiday homes and secondary residences. However, taxpayers who have a secondary residence or holiday home in Portugal should be aware of the conditions listed in *Question 2* in order not to be considered resident in Portugal for tax purposes. In addition, typically the purchase of holiday or secondary homes is taxed, for the purposes of the municipal real estate transfer tax at higher rates.

### Taxes on the gains and income of foreign nationals

#### 5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Nationality is irrelevant for tax purposes in Portugal.

Capital gains realised by non-resident individuals in Portugal and resulting from the disposal of securities issued by local companies are exempt from taxation in Portugal, unless:

- The non-resident individuals are domiciled in a blacklisted jurisdiction.
- The capital gains obtained by the non-resident refer to the direct or indirect disposal of securities in a resident company, more than 50% of whose assets are comprised of real estate located in Portugal.



If one of the conditions listed above is verified, the general rules will be applicable and the annual positive difference between capital gains and losses will be taxed at a special tax rate of 28%. The tax rate can be reduced under an applicable DTT concluded between Portugal and the country of residence of the holder of the income.

Capital gains realised by non-resident tax payers on the disposal of real estate is subject to a flat tax rate of 28%. The income is assessed and calculated based on the difference between the sale value and the acquisition value or the property tax value (whichever is higher).

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#### **6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?**

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Generally, investment income (such as dividends and interest) received by non-resident individuals is subject to a final withholding tax at a rate of 28%. This tax rate can be reduced to rates ranging from 5% to 15% under an applicable DTT concluded between Portugal and the respective state (the rate is considered on a case-by-case basis).

Regarding capital gains, see *Question 5*.

A flat tax rate of 28% is applicable on rental income derived from investment in real property.

#### ***Inheritance tax and lifetime gifts***

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#### **7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?**

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There has been no inheritance and gift tax regime in Portugal since 1 January 2004. However, the transfer of assets by way of inheritance or gift may be subject to stamp duty, if the assets are located in Portugal.

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#### **8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?**

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##### **Tax rates**

There is no specific inheritance and gift tax in Portugal (see *Question 7*).

However, the free transfer of assets (inheritance and gifts) may be subject to a 10% tax rate (if the transfer refers to real estate, an additional stamp duty at 0.8% will also be due (*Stamp Duty Code*)). There is an exemption applicable to free transfer of assets made between spouses or unmarried partners, descendants and ascendants.

##### **Tax free allowance**

Not applicable.

##### **Exemptions**

Not applicable.

##### **Techniques to reduce liability**

Not applicable.

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#### **9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?**

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See *Question 8*.

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#### **10. Are there any other taxes on death or on lifetime gifts?**

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Apart from stamp duty (see *Question 8*), no other taxes arise from death or lifetime gifts.

#### ***Taxes on buying real estate and other assets***

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#### **11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?**

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##### **Purchase and gift taxes**

The acquisition of real estate in Portugal may lead to the municipal real estate transfer tax (MRETT) being levied on the buyer. Applicable tax rates vary according to the tax value and the use of the real estate. Rural property is subject to a 5% tax rate, while urban properties, for permanent or secondary residential purposes, can be subject to a rate of up to 8% (however, 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%). Stamp duty (SD) will also be due at 0.8%.

Both MRETT and SD are levied either over the real estate's purchase price or the respective tax value (whichever is higher).

The sale of real estate is generally exempt from VAT. However, in certain situations, this exemption can be waived, if certain conditions regarding the real estate and the parties are met, which must be assessed on a case-by-case basis (for example, when the purchaser uses purchased property to conduct activities subject to VAT).

##### **VAT**

In Portugal no VAT is applicable on the transfer of real estate assets.

##### **Wealth taxes**

In Portugal no wealth taxes apply.

##### **Other**

The holding of real estate will trigger municipal real estate tax, at rates ranging from 0.3% to 0.45% (for urban property) and 0.8% (for rural property). In specific cases, these rates may be increased, notably when the owner of the real estate is an entity located in a blacklisted jurisdiction, in which case the applicable tax rate will be 7.5%.

In addition, the State Budget for 2017 approved the additional real estate tax (ARET), whereby owners of urban properties for habitational purposes must annually pay 0.7% tax over the sum of the tax property value of the held urban properties for living purposes. The important aspects of this tax regime are as follows:

- Individuals can opt to submit an individual tax return, or, in the case of taxpayers who are married or living in a non-marital partnership, a joint tax return.
- The law applies a deduction of EUR600 to the taxable basis (EUR1,200 for married taxpayers or taxpayers under a civil union that elect to submit a joint tax return).
- The law applies a marginal rate of 1% to the ARET taxable amount of more than EUR1 million but equal or less than EUR2 million (EUR2 million but equal or less than EUR4 million for married taxpayers or taxpayers under a civil union that elect to submit a joint tax return), and a marginal rate of 1.5% to the ARET taxable amount of more than EUR2 million (EUR4 million for married taxpayers or taxpayers under a civil union that elect to submit a joint tax return).

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## 12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

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The Portuguese Tax Benefits Code provides an advantageous tax regime for real estate investment funds (REIFs), real estate investment companies (REICs) and real estate investment and asset management companies (REIAMCs). Investment income, rents and capital gains arising from the sale of real estate is not included in the REIF's, REIC's and REIAMC's taxable profits (that is, investment income, rents and capital gains are exempt from corporate tax). Capital gains realised with the sale of shares or participation units and distributions received by individual investors not resident in Portugal for tax purposes are subject to personal income tax in Portugal at a rate of 10%. This is provided they are not resident in a country, territory or region with a clearly more favourable tax regime.

### Taxes on overseas real estate and other assets

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## 13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

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Individuals resident in Portugal are liable to tax on their worldwide income. Therefore, any rents received resulting from the ownership of real estate overseas and capital gains realised with its sale, are subject to tax in Portugal (*Personal Income Tax Code*).

### International tax treaties

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## 14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

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Portugal has concluded 79 DTTs, 77 of which are currently in force (including with all EU member states, as well as with the US, Switzerland, China, Hong Kong and Macao). At least in the most recent DTTs, there is an increased interest in promoting enhanced exchange of information procedures to favour, namely, the prevention of tax fraud and evasion. In addition, Portugal has a firm commitment in implementing Base Erosion and Profit Sharing (BEPS) and with the aim of preventing harmful tax practices has transposed various EU directives on mandatory exchange of information and has signed the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing 2017 (MLI).

For instance, in 2016, Portugal transposed Directive 2011/16/EU on administrative cooperation in the field of taxation through Decree-Law no. 64/2016 of 11 October.

Following this transposition, financial institutions established in Portugal are required to report to the Portuguese tax authorities (for the exchange of information with the state of residence) information regarding bank accounts including custodial accounts, held by individuals residing in a different member state or entities which are controlled by one or more individuals residing in a different member state, after having applied the applicable due diligence rules.

Also, Portugal approved the legal regime of the Beneficial Owner Central Register (BOCR), a database which contains updated information on the natural person(s) who, directly or indirectly, or by means of a third party, own or control entities subject to registration.

Pursuant to this regime, certain entities, such as commercial companies and other legal persons, even if subject to foreign law, operating in Portugal or engaging in a legal act or in a business in

Portugal requiring a Portuguese taxpayer number, are subject to the BOCR and will have the duty to declare:

- Sufficient, exact and updated information regarding their beneficial owners through electronic form.
- All the circumstances indicative of such quality and the information related to the economic interest that is held in such entities, including but not limited to the identification of the holders of the share capital.

## WILLS AND ESTATE ADMINISTRATION

### Governing law and formalities

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## 15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

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In Portugal, a will is a free and personal act, a unilateral legal statement and revocable. Therefore, it is not mandatory and not necessary to initiate succession procedures.

Successions are governed by the law of the last residence of the deceased (*Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (Succession Regulation)*). However, resident individuals can choose to regulate their succession in accordance with the law of the state of where they are nationals.

When the Succession Regulation is not applicable, the Portuguese domestic conflict rule determines that the applicable law on succession matters is the personal law of the deceased (which is usually the nationality law).

If Portuguese law applies, the will, as a formal act, must have one of the typical testamentary forms provided for in Portuguese civil law to be valid (see *Question 16*).

## 16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

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The formalities for making a will are as follows:

- **Public will.** Written by a notary (that is, made by the testator before a notary). Under Portuguese notary law, two witnesses are required.
- **Private will.** Written and signed by the testator or another person at his or her request, or written by another person at the request of the testator and signed by him or her, subject to a notary approval.

Special forms of will are also allowed, but only when it is not possible to go to a notary's office and when it is a special type of will or situation (for example, a military will, maritime testament and in case of public calamity).

### Redirecting entitlements

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## 17. What rules apply if beneficiaries redirect their entitlements?

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In Portugal, a person's status as heir only becomes definitive when the share in the succession is formally accepted. Therefore, heirs can only redirect their entitlements once they have been formally accepted. After acceptance, beneficiaries can dispose their share

unless, for instance, the deceased has imposed some conditions in the will.

### **Validity of foreign wills and foreign grants of probate**

#### **18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?**

##### **Validity of foreign wills**

For a foreign will to be recognised in Portugal, it must comply with one of the following laws (*Succession Regulation*):

- The law of the state in which the disposition was made or the agreement as to succession concluded.
- The law of a state relating to the nationality of the testator or the nationality of at least one of the persons whose succession is concerned by an agreement as to succession, either at the time when the disposition was made, the agreement concluded, or at the time of death.
- The law of a state in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his or her domicile, either at the time when the disposition was made, the agreement concluded or at the time of death.
- The law of the state in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his or her habitual residence, either at the time when the disposition was made, the agreement concluded, or at the time of death.
- In so far as immovable property is concerned, the law of the state in which that property is located.

Portuguese domestic laws also recognise foreign wills, under the general rule in the Portuguese Civil Code, which states that legal documents or transactions taking place in other countries may be recognised in Portugal if they are legal in the country in which occurred. However, the Portuguese Civil Code requires foreign wills to have a minimum solemn form (for example, if it is made before a notary). According to Portuguese case law, if the will complies with the formal rules in force in the foreign country in which it was made (for example, before a notary, with witnesses and apostilled), it should in principle be accepted in Portugal.

##### **Validity of foreign grants of probate**

The Portuguese succession law does not include a probate procedure. If the heirs do not agree to the division of the assets, a judicial procedure must be initiated to determine the share of the estate destined to each of the heirs.

### **Death of foreign nationals**

#### **19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?**

Under the Succession Regulation, a succession is treated coherently, under a single law and by one single authority.

In principle, Portuguese courts have jurisdiction to deal with the succession, and Portuguese law is applicable, if the deceased had his or her last habitual residence in Portugal. However, an individual can choose the law of its state or nationality instead.

European certificates of succession, enable heirs, legatees, executors and/or administrators of the estate to prove their status before any member states' authority, without further formalities.

### **Administering the estate**

#### **20. Who is responsible for administering the estate and in whom does it initially vest?**

##### **Responsibility for administering**

Although certain acts of disposition can only be carried out by all heirs, the generality of the acts of administration are the responsibility of the administrator of estate.

Under the Civil Code, the position of the administrator of estate is vested in one of the following persons (in the following order, with no formal acceptance required, irrespective of whether any of these persons are non-resident in Portugal):

- The surviving spouse (not legally separated).
- Executor, unless otherwise stated by the testator.
- Relatives who are legal heirs preferring, progressively, the nearest ones in degree or those who lived with the deceased for at least a year at the time of death and the older heir.
- The testamentary heirs, consecutively preferring those who lived with the deceased for at least a year at the time of death and the oldest heir.

If the administrator of estate renounces his or her appointment or violates any of his or her duties, a new administrator of estate must be appointed by the court, at the request of any interested party or the public prosecutor.

The distribution of assets is made by a public deed, which can be challenged by means of a judicial procedure by any of the heirs.

The administrator is liable to manage the assets of the deceased, including those assets held in common with the surviving spouse, until the public deed confirming the distribution of the assets is created.

##### **Vesting**

See above, *Responsibility for administering*.

#### **21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:**

- **Establishing title and gathering in assets (including any particular considerations for non-resident executors)?**
- **Paying taxes?**
- **Distributing?**

##### **Establishing title and gathering in assets**

If there is an agreement between the heirs regarding the estate distribution, the inventory process (that is, the judicial procedure of distributing the assets by the heirs) is not mandatory. However, it will be mandatory if one of the heirs requires it for inheritance acceptance purposes.

##### **Procedure for paying taxes**

The administrator of the estate must declare the assets of the deceased before any tax office within three months of his or her death.

If the transfer relates to real estate, it may be subject to a real estate tax at a rate of 10% and an additional stamp duty tax at 0.8%. However, a stamp duty exemption is applicable if the heir or legatee was a spouse or unmarried partner, descendant or ascendant of the deceaseds.



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## Distributing the estate

If all parties agree on the distribution of assets, the estate can be distributed without recourse to an inventory process. If there is an inventory process, estate will only be distributed when an agreement is achieved (or if not, after a bidding process).

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### 22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

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The same rules apply whether the estate is purely domestic or has elements in another jurisdiction.

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### 23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

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The distribution of assets is made by a public deed and it may be challenged by means of a judicial procedure by any of the heirs.

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## SUCCESSION REGIMES

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### 24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

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There are three types of succession:

- Mandatory legal succession.
- Testamentary succession (through a will).
- Legal succession (that is, a residual succession, which applies when there is no mandatory legal succession and the testamentary succession does not deal with all the assets of the deceased).

Under a mandatory legal succession, at least two thirds of the inheritance must be granted to the spouse and the direct descendants and ascendants. The remaining assets can be disposed by means of testamentary succession or are granted to the following heirs entitled to the legal succession:

- Spouse and descendants.
- Spouse and ascendants.
- Siblings and their descendants.
- Other relatives.
- Portuguese State.

## Forced heirship regimes

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### 25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

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Under Portuguese general rules on succession, only half or one third of the estate can be available to other individuals/entities, since the remaining is reserved to the legal heirs of the deceased.

## Avoiding the regime

The heirs can renounce their heirship. If the assets to be inherited are real estate property, a public deed is required to proceed with the renouncement.

## Assets received by beneficiaries in other jurisdictions

As the Portuguese forced heirship regime is unitary, all the assets of the estate are considered for succession purposes, regardless of where they are located.

## Mandatory or variable

Forced heirship rights are mandatory. Therefore, they cannot be changed through any kind of act, including by a will.

## Real estate or other assets owned by foreign nationals

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### 26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

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The inheritance process in Portugal is generally governed by the laws of the deceased's nationality, thereby avoiding potential conflicts of law. However, if spouses have different nationalities, Portuguese law determines that the national law of the country where they both usually reside is applicable. In the absence of a usual place of residence, Portuguese law provides that the applicable law is the country where both spouses have a close family connection.

In certain circumstances, the law of the country where the property is located may become applicable. For example, if the deceased was an owner of property in Portugal, and the law of his or her nationality or residence prescribes that the law of the country where the deceased's property is located takes precedence.

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### 27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

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There are no special rules governing *renvoi* on the law applicable to immovable property. Portuguese succession law has always been subject to the principle of unity of the succession (that is, that the same applicable law governs a succession).

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## INTESTACY

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### 28. What different succession rules, if any, apply to the intestate?

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See Question 24.

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### 29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

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The beneficiaries can challenge the adequacy of their provision under intestacy rules by applying for an inventory procedure. Only the heirs legally entitled to a share on the assets of the deceased, or those representing them, can go through this procedure. The process is initiated at the notary after the legal heirs are identified.

If there are legal issues that should be brought to court, the notary suspends this judicial procedure and sends the inventory process to court. This procedure may be subject to an appeal to superior courts.

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## TRUSTS

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### 30. Are trusts (or an alternative structure) recognised in your jurisdiction? How are trusts recognised under civil/common law and under your national tax laws?

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#### Type of trust and taxation

Trusts are not legally recognised in mainland Portugal.

However, under Decree Law No. 352-A/88 of 3 October, which applies in Madeira, it is possible to incorporate offshore trusts established under a foreign law, if the activity carried out by the vehicle is within the institutional framework of the Madeira Free Trade Zone. Offshore trusts incorporated under a foreign law are recognised for all purposes in the Madeira Free Trade Zone.

Portuguese tax law does not foresee any specific rules concerning the taxation of trusts. In any case, there are certain legal references relates to trust, which must be considered.

For personal income tax purposes, payments made by trusts are considered to be investment income, if they are not related to its liquidation or revocation of extinction (in these cases, income is taxed as capital gains at the hands of the trustee and exempt at the hands of the beneficiary). Both investment income and capital gains are subject to taxation at a 28% tax rate.

Payments made by companies and subsidiaries of offshore trusts, established in the Madeira Free Trade Zone, benefit from personal income tax and corporate income tax exemptions, if 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 do not benefit from the provisions established in DTTs, except if both:

- The fiduciary structures are expressly foreseen in the applicable DTT.
- Proper evidence is provided to show that the conditions contained in the DTT are met, including evidence that the trust is the beneficial owner of the income.

#### Residence of trusts

See above, *Type of trust and taxation*.

### 31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

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Trusts are not recognised under Portuguese law (except for in the Madeira Free Trade Zone, see *Question 30*).

### 32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

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If the trustee is resident for tax purposes in Portugal, any income paid by the trust or distributed using a trust, is subject to income tax.

If the trustee ceases to be a resident of Portugal, there is no longer any element of connection with Portuguese territory for tax purposes (in respect of income arising from a trust).

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### 33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
  - Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
  - Can the trust document restrict the beneficiaries' rights to information about the trust?
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#### Purpose trusts

There is no specific legislation on trusts.

#### Perpetuities and accumulations

See above, *Purpose trusts*.

#### Beneficiaries' rights to information

See above, *Purpose trusts*.

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### 34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

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Trusts are not recognised in Portugal (see *Question 30*).

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### 35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

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Trusts are not recognised in Portugal (see *Question 30*).

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## CHARITIES

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### 36. Are charities recognised in your jurisdiction?

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Charities are recognised under Portuguese law. However, there is no specific legal definition, as the concept of charity in Portugal is different to the definition under common law.

Generally, the concept of charity in Portuguese law requires both:

- An entity with legal personality (such as a foundation or an association).
- Special status, which permits the above entities to be included in the tax regime of patronage (specifically, the collective person of public utility and private institution of social solidarity).

Foundations are recognised in the Portuguese Civil Code and in Law 24/2012 of 9 July (*Lei Quadro das Fundações*). Foundations can be admitted as a charity if the purpose and assets of the foundation are specified on the incorporation act (that is, the foundation may have different purposes other than charity, such as education, innovation and research, sports and so on) and it pursues a recognised social interest purpose.

Although it is not possible to create foundations with strict private interests, the founder or his or her family can be a beneficiary of part of the generated income. If the activity developed by the private foundation is relevant and has a social purpose (that is, it conducts a valuable activity helping the community), it can benefit from being a collective person of public utility (*Pessoa Coletiva de Utilidade Pública*) three years after being created.

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

Associations have different applicable regimes, depending on their purpose.

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### 37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

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An individual donor can set up a charity by attributing a certain amount of money or asset to the charity and there is no additional procedure. However, if the donor has an interest in being able to obtain a tax benefit, it should seek to know in advance whether the charity has a framework within the tax regime for patronage.

Typically, donations to charities under the collective person of public utility and private institution of social solidarity statutes allow the donor to consider the donation as an expense for tax purposes (personal income tax) for an amount between 130% and 150% of the donation, if this is less than 8/1000 of the volume of sales or services provided by the donor in his or her professional activity.

There is no central register of charities. However, the two entities responsible for monitoring and regulating the application of two applicable statutes are:

- Collective person of public utility: General Secretariat of the Presidency of the Council of Ministers (*Secretaria Geral da Presidência do Conselho de Ministros*).
- Private institution of social solidarity: Social Security (*Segurança Social*) (that is, the state, with responsible guardianship of the Ministry of Social Security).

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### 38. What are the benefits for individuals when setting up charitable organisations?

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For details of the benefits applicable to donors, notably for tax purposes, see *Question 37*.

Once integrated into the Statute of Tax Benefits, the tax patronage regime is built on the principle of territoriality, so that only donations granted to resident charities for tax purposes become relevant.

The only relevant exception is the case of charities with the Non-Governmental Organisations for Development (NGDO) status, whereby a donation granted to the permanent representation of an NGDO in Portugal may still grant access to tax benefits under the tax patronage regime.

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## OWNERSHIP AND FAMILIAL RELATIONSHIPS

### Co-ownership

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### 39. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

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Co-ownership is regulated by the Civil Code. At the tax level, there are no particularities, and the co-owners are liable for taxes (for example, property tax) at a level corresponding with their respective share over the property.

For inheritance purposes, the co-ownership situation may require the intention of an "action for division of common asset" (*ação para divisão de coisa comum*). The actions of division of common asset must be tried by one or more co-owners against the others. In fact,

until heirs are shared, they are only entitled to an indivisible right over all assets inherited from inheritance and not to certain assets which form part of it.

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### Familial relationships

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### 40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other assets protected by law?

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For the purposes of trust law, see *Question 30*.

The default system is marriage in community of property (*comunhão de adquiridos*). Under the community of property regime, only goods and property acquired after marriage are considered to be communal property. The individual property of each spouse is the property they hold individually at the marriage ceremony and property obtained gratuitously after the celebration of the wedding and acquired based on a 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.

The parties can 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*).

The 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 property considered to be personal is a group of residual assets that the law classifies as incommunicable (that is, not considered in the division of assets in case of divorce).

Under the separation of property regime, each spouse retains control over and entitlement to all his or her present and future property, which he or 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, and property acquired during marriage.

Portuguese law allows couples to choose their own marital regime or combine certain characteristics of the three above.

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### 41. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

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Civil partnerships and marriages between people of the same sex are permitted by Portuguese law. Civil partnerships have been legal in Portugal since 2001 (see *Question 42, Civil Partnership*) and same-sex marriage since 2010.

The Portuguese competent authority celebrates same sex marriages, even if both or one of the spouses is a national of a country that does not allow this type of marriage. The applicable regime for tax and succession purposes, is the same as that applicable to couples of different sexes.

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### 42. How are the following terms defined in law:

- **Married?**
- **Divorced?**
- **Adopted?**

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- **Legitimate?**
  - **Civil partnership?**
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### Married

The Portuguese Civil Code does not provide a definition of marriage, as there are several applicable marriage regimes (see *Question 40*).

### Divorced

There is no legal definition of "divorced" under Portuguese law.

In Portugal, a divorce can be obtained by either:

- The agreement of both spouses to the dissolution of the marriage and, in principle, to the payment of maintenance to the spouse in need, the exercise of parental authority about minor children, and the disposal of the marital home.
- One of the spouses applying for a contested divorce against the other, based on legally established facts which, regardless of the blame attached to the spouses, prove the irretrievable breakdown of the marriage.

### Adopted

There is no legal definition of "adopted" under Portuguese law. There are two adoption regimes (full and restricted adoption), with the main difference being that in full adoption the adoptee acquires full rights to parents, including for inheritance purposes.

### Legitimate

This concept has no relevance in Portuguese Law, since all children are treated equally for legal purposes.

### Civil partnership

In Portugal, the equivalent of civil partnership is a form of civil union where a couple is legally recognised and granted similar rights as married couples, without having formally registered their relationship in a civil or religious marriage ceremony.

Under Law No. 7/2001 of 11 May, which governs the protection of the unmarried partners regime, unmarried partners are the legal status of two persons who, regardless of sex, have lived in conditions like those of the spouses for more than two years.

### Minority

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#### **43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?**

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According to Portuguese law, a minor does not have full legal capacity. Full legal capacity is only attained by reaching 18 years of

age or emancipation through marriage (it is possible to marry at the age of 16, but with parental or guardian authorisation).

A minor can own assets but the parental authority (usually exercised by the parents in common) will manage the assets of the minor on their behalf. In the absence of parental authority, a guardian must be appointed to manage the minor's estate until they reach full legal capacity.

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## **CAPACITY AND POWER OF ATTORNEY**

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#### **44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?**

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In Portugal, an individual that loses capacity can be declared either subject to interdiction (*interdição*) or incapacitation (*incapacidade*) according to the degree of incapacity.

If interdiction is granted, the individual will be considered incapable of making any personal, health, property or financial decision. The interdiction can be requested by any of the following:

- The spouse.
- The guardian (a minor who has no parents can have a guardian).
- The trustee (if someone was subjected to incapacitation, and the degree of the incompetence increases, the trustee can request the interdiction).
- By anyone in the family that can be an inheritor (*parente sucessível*).
- The public attorney.

If a person is suffering from a mental disorder that is not serious enough to warrant interdiction, but is incapable of managing his or her assets, he or she may be declared incapacitated.

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## **PROPOSALS FOR REFORM**

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#### **45. Are there any proposals to reform private client law in your jurisdiction?**

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Currently, there are no legislative proposals to amend the Civil Code and other relevant legislation for private client law in Portugal.



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## Practical Law Contributor profiles

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