Private Client Law in Portugal: Overview

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A Q&A guide to private client law in Portugal.

The Q&A gives a high level overview of tax; tax residence; inheritance tax; buying property; wills and estate management; succession regimes; intestacy; trusts; charities; co-ownership; familial relationships; minority and capacity, and proposals for reform.

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?

The personal income tax (PIT) tax year coincides with the calendar year. Taxpayers must submit PIT assessments between 1 April and 30 June of the following year. After the tax authorities' assessment, PIT must be paid (or reimbursed) by 31 August of the same year.

Any taxes withheld on Portuguese-sourced income received by resident or non-resident taxpayers must be paid 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 to tax liability. However, it remains one of the relevant criteria in resolving 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.

Residence

Residents are liable for PIT on their world-wide income, that is for Portuguese-sourced and foreign-sourced income.

Generally, an individual is resident in Portugal if he/she either:

- Remains in Portuguese territory for more than 183 days, consecutively or not, in any 12-month period beginning or ending in the relevant calendar year.
- Though remaining for less than 183 days, in any 12-month period of the relevant year, has accommodation in circumstances that indicate an intention to keep and occupy it as a habitual residence.
- On 31 December of any given year, is a crew member of vessels or aircrafts operated by entities with residence, head office or place of effective management in Portuguese territory.
- Performs public duties for the state abroad.

Any day, complete or partial, that includes an overnight stay is counted as a day's presence.

If a Portuguese national relocates their residence to a blacklisted jurisdiction, they are considered tax residents during a five-year period, unless they can demonstrate that they relocated because of reasonable grounds (particularly, temporary employment).

Taxation on Exit

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

There is no exit tax when an individual relocates and is tax resident abroad.

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

Giving up Portuguese citizenship does not have any tax impact as citizenship is not relevant to tax liability (*see Question 2*).

Temporary Residents

4.Does your jurisdiction have any particular tax rules affecting temporary or partial year residents?

There are no specific tax rules affecting temporary residents, holiday home and secondary residence owners. However, taxpayers who have a secondary residence or holiday home in Portugal should be aware of the tax residency criteria (*see Question 2*). In addition, typically the purchase of holiday or secondary homes is subject to 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 to tax liability (*see Question 2*).

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

- Is domiciled in a blacklisted jurisdiction.
- Obtains them from the direct or indirect disposal of securities in a resident company, more than 50% of whose assets are comprised of real estate in Portugal.

If one of the exceptions above applies, the annual positive difference between capital gains and losses are taxed at a special rate of 28%. The tax rate can be reduced under a DTT between Portugal and the income holders' country of residence.

Capital gains realised by non-resident taxpayers on the disposal of real estate are taxed at a flat rate of 28%. The gain is calculated based on the higher of the:

- Difference between the sale value and the acquisition value.

- Property tax value.

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

Generally, investment income (for example, 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 a DTT on a case-by-case basis.

For capital gains, see *Question 5*.

Rental income derived from investment in real property is taxed at 28%.

Tax at Death

7. What taxes are imposed on the death of an individual? What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

There has been no inheritance or gift tax regime since 1 January 2004. However, if the assets are in Portugal, the transfer of assets can be subject to stamp duty (*see Question 8*).

8. What are the rates of tax for each type of tax levied at death?

There is no inheritance or gift tax (*see Question 7*). However, the free transfer of assets (inheritance and gifts) located in Portugal is generally subject to a 10% stamp duty rate (if it is a real estate transfer 0.8% stamp duty is also due (*Stamp Duty Code*)). However, the free transfer of assets between spouses or unmarried partners, descendants and ascendants is exempt from tax.

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

See *Question 8*.

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

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

Taxes on Buying Real Estate and Other Assets

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

Purchase and Gift Taxes

Real estate acquisitions are subject to stamp duty at 0.8%. They can also lead to the municipal real estate transfer tax (MRETT) being levied on the buyer. Tax rates vary depending on the real estate's tax value and use:

- Rural properties are taxed at 5%.
- Urban properties, whether permanent or secondary residences, are taxed at up to 8%.

However, if the acquirer is:

- A corporate entity the tax rate is always 6.5%.
- Located in a blacklisted jurisdiction the tax rate is always 10%.

MRETT and stamp duty are levied over the higher of either the:

- Real estate's purchase price.
- Respective tax value.

The acquisition of real estate is generally exempt from value added tax (VAT). In certain situations this exemption can be waived, if certain conditions regarding the real estate and the parties are met. (For example, when the purchaser uses purchased property to conduct activities subject to VAT.) This is assessed on a case-by-case basis.

VAT

No VAT is applicable on the transfer of real estate assets.

Wealth Taxes

No wealth taxes apply.

Other

Holding real estate triggers municipal real estate tax, at rates ranging from 0.3% to 0.45% (for urban property) and 0.8% (for rural property). These rates can be increased, particularly when the real estate owner is an entity located in a blacklisted jurisdiction, in which case the applicable tax rate is 7.5%.

In addition, holding real estate can also trigger additional real estate tax (ARET). Owners of urban properties for habitation or building plots must pay a tax of 0.7% of the sum of the properties' taxable value (the same as the tax value for MRETT and SD purposes) annually and:

- Individuals can submit an individual tax return or a joint tax return if they are married or unmarried partners.
- Individuals can deduct EUR600,000 from the taxable basis (the sum of the properties' taxable value). Joint taxpayers can deduct EUR1.2 million.
- The ARET taxable amount is increased by:
    - 1% for individuals who own property worth more than EUR1 million and equal or less than EUR2 million or joint taxpayers who own property worth more than EUR2 million and equal or less than EUR4 million; and
    - 1.5% for individuals who own a property worth more than EUR2 million or joint taxpayers who own a property worth more than EUR4 million.

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

The Tax Benefits Code provides an advantageous tax regime for:

- Real estate investment funds (REIFs).
- Real estate investment companies (REICs).
- Real estate investment and asset management companies (REIAMCs).

Investment income, rents and capital gains from the sale of real estate are not included in the REIF's, REIC's and REIAMC's taxable profits (that is, they are exempt from corporate tax). Capital gains from the sale of shares or participation units and distributions received by individual investors who are not tax residents are subject to PIT 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

13. How are residents in your jurisdiction taxed on real estate or other assets owned outside of the jurisdiction?

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

International Tax Treaties

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

Double Tax Treaties

Portugal has concluded 79 DTTs, 78 of which are currently in force including those with:

- All EU member states except Finland.
- The UK.
- The US.

- Switzerland.
- China.
- Hong Kong.
- Macau.

In the most recent DTTs, there is an increased emphasis on promoting enhanced exchange of information procedures to prevent tax fraud and evasion.

Base Erosion and Profit Sharing

In addition, Portugal is committed to implementing base erosion and profit sharing (BEPS) and:

- Has implemented EU directives on mandatory exchange of information to prevent harmful tax practices, including Directive 2011/16/EU on administrative cooperation in the field of taxation through Decree Law no. 64/2016 of 11 October 2016. After applying due diligence rules, financial institutions established in Portugal must provide the tax authorities with information regarding the 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.

    The tax authorities exchange this information with the relevant state(s) of residence.
- Is a party to the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing 2017.
- Portugal has also implemented the DAC 6 Directive (*(EU) 2018/822*), regarding the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. In the Portuguese law, the reporting obligations are extended to domestic arrangements and cover VAT and property taxes. In addition, the Portuguese law, unlike the DAC 6 Directive, does not safeguard the right of professional secrecy.

Beneficial Owner Central Register

The Beneficial Owner Central Register (BOCR) database contains updated information on the natural person(s) who, directly or indirectly, or through a third party, own or control entities subject to registration. Certain entities, for example commercial companies and other legal persons, even if subject to foreign law, that are operating or engaging in a legal act or in a business in Portugal requiring a taxpayer number, must provide in electronic form:

- Sufficient, exact and up-to-date information on their beneficial owners.
- All relevant information on the beneficial interest that is held in these entities, including but not limited to the legal share capital's holders' identity.

Automatic Exchange of Tax Information

15. Has your jurisdiction implemented the Organisation for Economic Co-operation and Development's (OECD's) multilateral Common Reporting Standard (CRS) into its domestic law?

Portugal signed the Multilateral Competent Authority Agreement (MCAA) for the CRS in 2016.

Portugal has implemented into its domestic law both a mechanism for the reciprocal automatic exchange of information for CRS-participating jurisdictions and has transposed DAC 2 (*2014/107/EU*) with regards to mandatory automatic exchange of information in the field of taxation.

Wills and Estate Administration

Governing Law and Formalities

16. 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?

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 deceased's last residence (Succession Regulation *(650/2012)*). However, resident individuals can choose to use their national law. When the Succession Regulation is not applicable, the domestic conflict rule states the deceased's personal law is applied (usually their national law).

If Portuguese law applies, the will, as a formal act, must use one of the typical testamentary civil law forms to be valid (*see Question 17*).

17. 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?

The formalities for making a will are:

- Public wills must be written by a notary (that is, made by the testator before a notary). Two witnesses are required.
- Private wills are either:
  - written and signed by the testator;
  - written by the testator and signed by another person at the testator's request; or
  - written by another person at the testator's request, signed by the testator, and approved by a notary.

Other forms of will are also legal when it is not possible to go to a notary's office and it is a special type of will or situation for example, a:

- Military will.
- Maritime testament.
- Will made during a public calamity.

Electronic Wills

18. Is it possible for a will to be made electronically? What are the formalities for making and executing an electronic will remotely?

It is not possible for a will to be made electronically, under Portuguese law.

Redirecting Entitlements

19. What rules apply if beneficiaries redirect their entitlements?

A person's status as heir only becomes definitive when their 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 of their share unless, for example, the deceased has imposed some conditions in the will.

Validity of Foreign wills and Foreign Grants of Probate

20. 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, it must comply with:

- The law of the state in which the disposition was made or the succession agreement was concluded.
- The testator's national law or the national law of at least one of the heirs in the succession agreement, either at the time when the disposition was made, the agreement concluded or the time of death.
- The law of the testator's domicile or the domicile of at least one of the heirs in the succession agreement, either at the time when the disposition was made, the agreement concluded or the time of death.
- The law of the testator's habitual residence or the habitual residence at least one of the heirs in the succession agreement, either at the time when the disposition was made, the agreement concluded or the time of death.
- If it is a transfer of immovable property, the law of the state in which that property is located.

(*Succession Regulation*.)

Foreign wills are recognised, under the general rule that states that legal documents or transactions taking place in other countries are recognisable if they are legal in that country (*Civil Code*). Case law also confirms that if the will complies with the formal rules in force in the country in which it was made (for example, before a notary, with witnesses and apostilled), in principle it should be accepted. However, foreign wills must have a minimum solemn form, for example, be made before a notary (*Civil Code*).

Validity of Foreign Grants of Probate

Succession law does not include a probate procedure. If the heirs do not agree on the division of assets, a judicial procedure must be initiated to determine each heir's share of the estate.

Death of Foreign Nationals

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

A succession is treated coherently, under a single law and by a single authority (Succession Regulation).

In principle, courts have the jurisdiction to deal with succession, and Portuguese law is applicable if the deceased was last habitually resident in Portugal. However, an individual can choose their national or state law instead.

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

Administering the Estate

22. 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 estate's administrator is responsible for general administrative acts.

The position of the estate's administrator is vested in the following order, with no formal acceptance required, irrespective of whether the person is resident in Portugal:

- Surviving spouse (not legally separated).
- Executor, unless otherwise stated by the testator.
- Relatives who are legal heirs, preferring consecutively 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.

- Testamentary heirs, preferring consecutively those who lived with the deceased for at least a year at the time of death and the oldest heir.

(*Civil Code*.)

If the estate's administrator renounces their appointment or violates any of their duties, a new estate's administrator 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 that any heir can challenge through a judicial procedure.

The administrator is liable to manage the deceased's assets, 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*.

23. 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 the necessary taxes and distributing the estate?

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 to the heirs) is not mandatory. However, it is mandatory if one of the heirs requires it for inheritance acceptance purposes, notably to ensure that the assets to be distributed are clearly identified and this list of assets is validated by a court of law.

Procedure for Paying Taxes

The estate's administrator must declare the deceased's assets at any tax office within three months of their death, by submitting the stamp duty Model 1 form (*Declaração Modelo 1*).

If the transfer relates to real estate, it can be subject to a real estate tax at a rate of 10% and an additional stamp duty tax at 0.8%. However, if the heir or legatee was a spouse or unmarried partner, descendant or ascendant of the deceased no stamp duty is payable.

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, the estate is only distributed when an agreement is achieved (or if not, after a bidding process).

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

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

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

The distribution of assets is made by a public deed that any heir can challenge through a judicial procedure.

Succession Regimes

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

There are three types of succession:

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

Under a mandatory legal succession, a part of inheritance must be granted to the spouse and the direct descendants and ascendants, namely:

- One-half, if the deceased is married and does not have any descendants, if the deceased is not married and has one descendant or if the deceased is not married and has no descendants, only ascendants.
- Two-thirds, if the deceased is married and has descendants or if the deceased is not married and has more than one descendant.

The remaining assets can be disposed by 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.
- The state.

Forced Heirship Regimes

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

Only one-half or one-third of the estate is available to other individuals/entities, since the remaining part is reserved to the deceased's legal heirs.

Avoiding the Regime

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

Assets Received by Beneficiaries in other Jurisdictions

As the 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

28. 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?

The inheritance process is generally governed by the deceased's national laws thereby avoiding potential conflicts of law. However, if spouses have different nationalities, the national law of the country where they both usually reside is applicable. In the absence of a usual place of residence, 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 is applicable. For example, if the deceased owned property in Portugal, and the law of their nationality or residence states that the law of the country where the deceased's property is located takes precedence.

For information about the EU Succession Regulation on Practical Law Private Client, see *Practice note, EU Succession Regulation (Brussels IV)*.

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

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

Intestacy

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

See *Question 26*.

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

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 of the deceased's assets, or those representing them, can go through this procedure. The process is initiated at the notary's office after the legal heirs are identified.

If there are legal issues to bring to court, the notary suspends this judicial procedure and sends the inventory process to court. This procedure can be appealed in superior courts.

Trusts

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

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.

There are no specific rules concerning the taxation of trusts. Payments made by trusts are 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 trustee's hands and exempt at the beneficiary's hands). Both investment income and capital gains are taxed at a rate of 28%.

Payments made by companies and subsidiaries of offshore trusts, established in the Madeira Free Trade Zone, benefit from PIT and corporate income tax exemptions, if the income's beneficiary is an entity located in the Madeira Free Trade Zone or abroad.

Trusts do not benefit from 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.

(*General Instruction no. 6/2009 of 6 April 2009, Portuguese Tax Authorities.*)

33. Does your jurisdiction maintain a central register of trusts?

Portugal does not maintain a central register of trusts.

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

Trusts are not legally recognised (except for in the Madeira Free Trade Zone, *see Question 32*).

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

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

36. 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?

There is no specific trust legislation.

37.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?

Trusts are not legally recognised (*see Question 32*).

38. 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?

Trusts are not legally recognised (*see Question 32*).

Charities

39. Are charities recognised in your jurisdiction?

Charities are legally recognised. However, there is no specific legal definition, as the statutory concept of charity is different to the definition under common law. Generally, the legal statutory concept of charity requires both:

- An entity with legal personality (for example, a foundation or an association).
- Special status, which permits the entity 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 Civil Code and in Law 24/2012 of 9 July (*Lei Quadro das Fundações*). Foundations can be admitted as a charity if both:

- The purpose and assets of the foundation are specified in the incorporation act (including any purposes in addition to charity, for example education, innovation and research or sports).
- It pursues a recognised social interest purpose.

Although it is not possible to create foundations with strict private interests, the founder or their 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, under the European Convention of the Recognition of Legal Personality of International Non-Governmental Organizations.

Associations have different applicable regimes, depending on their purpose.

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

An individual donor can set up a charity by transferring a certain amount of money or asset to the charity and there is no additional procedure. However, if the donor seeks to obtain a tax benefit, they should know in advance whether the charity has a framework that is recognised 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 (PIT) 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 their professional activity.

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

41. What are the main regulatory authorities for charitable organisations? What are their powers of investigation/audit/sanctions?

The Presidency of the Council of Ministers (*Presidência do Conselho de Ministros*) is tasked with ensuring foundations are correctly incorporated and registered as well as monitoring foundations to ensure that they are carrying out their charitable purpose. In particular, the following should be communicated to the Presidency (among other things):

- Any amendments to the foundation's bye-laws or governing body.
- Any change to the foundation's corporate purpose.
- Any decision regarding a merger or decision to wind up the foundation.

In terms of powers, the Presidency of the Council of Ministers is authorised to apply sanctions on the foundation and can also determine that a foundation will not be permitted to conduct its activities within Portuguese territory.

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

For details of the benefits applicable to donors, particularly for tax purposes, *see* *Question 40*.

As it is integrated into the Statute of Tax Benefits, the tax patronage regime is built on the principle of territoriality. Only donations granted to resident charities for tax purposes are relevant. The only exception is a charity with Non-Governmental Organisations for Development (NGDO) status. A donation granted to the permanent representation of an NGDO can still give access to tax benefits under the tax patronage regime.

43. What are the main disadvantages of setting up a charitable organisation?

A potential disadvantage may be the cost of incorporating a charitable organisation. For example, charitable foundations require an initial capital investment of EUR250,000 and in most cases, the incorporation cost is not deductible for tax purposes for donors making the initial capital investment.

In addition, social enterprises are not yet regulated in the Portuguese legal system, which can lead to a degree of legal uncertainty in relation to the rules applicable to non-profitable organisations, including charitable organisations.

44. What are the benefits to individual donors making donations to charitable organisations?

For details of the benefits applicable to donors, particularly for tax purposes, *see* *Question 40*.

Ownership and Familial Relationships

Co-ownership

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

Co-ownership is regulated by the Civil Code. There are no tax particularities, and the co-owners are liable to pay taxes (for example, property tax) on their respective shares of the property.

On inheritance, co-ownership can require an "action for division of a common asset" (*ação para divisão de coisa comum*). Actions for division of a common asset must be tried by one or more co-owners against the others. Until assets are shared, heirs are only entitled to an indivisible right over all the inherited assets and not to certain assets which form part of them.

Familial Relationships

46. 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?

For the purposes of trust law, *see* *Question 32*.

There are three legal regimes:

- Community of property (*comunhão de adquiridos*). This is the default system.
- Universal community of property regime (*comunhão geral*).
- Separation of property (*separação de bens*).

Couples can choose their own marital regime or combine certain characteristics of the three.

Community of Property

Only goods and property acquired after marriage are communal property. Each spouse retains as personal property that which they held 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 the product of both spouses' labor, and those acquired by onerous title during marriage.

Universal Property

There is only one group of assets, the common assets. The common assets are all the present and future assets that are not included in legal exceptions. The only personal property 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).

Separation of Property

Each spouse retains control over and entitlement to all their present and future property, which they can freely dispose of. There is a total legal separation between the properties each spouse holds individually. There are no common assets. However, there can be property belonging to both spouses in joint ownership.

These regimes do not apply to cohabitees and civil partners.

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

Same-sex civil partnerships and marriages are lawful. Same-sex civil partnerships have been legal since 2001 (*see Question 48, Civil Union*) and same-sex marriages since 2010.

The competent authority celebrates same-sex marriages, even if one or both of the spouses is a national of a country in which this type of relationship is unlawful. The applicable regime for tax and succession purposes is that for opposite-sex couples.

48. How are the following terms defined in law: married, divorced, adopted legitimate, civil partnership?

Married

The Civil Code does not provide a definition of marriage, as there are several applicable marriage regimes (*see Question 46*).

Divorced

There is no legal definition of "divorced". A divorce can be obtained by either:

- Both spouses' agreement to the marriage's dissolution and, in principle, to the payment of maintenance to the spouse in need, the exercise of parental authority over 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 marriage's irretrievable breakdown.

Adopted

There is no legal definition of "adopted". There are two adoption regimes, full and restricted adoption. The main difference is that in full adoption the adoptee acquires a full legal relationship to their parents, including inheritance rights.

Legitimate

This concept has no relevance, since legally all children are treated equally.

Civil Union

In a civil union 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. Unmarried partners have the legal status of two persons who, regardless of sex, have lived in conditions like those of the spouses for more than two years (*Law no. 7/2001 of 11 May*).

Minority

> 49. 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?

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 with parental or guardian authorisation).

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

Capacity and Power of Attorney

> 50.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?

An individual that loses capacity can be declared either subject to interdiction (*interdição*) or incapacitation (*incapacidade*) depending on the degree of incapacity.

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

- 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 their incompetence increases, the trustee can request interdiction).
- Anyone in the family capable of inheriting (*parente sucessível*).
- The public attorney.

If a person is suffering from a mental disorder that is not serious enough to warrant interdiction, however they are incapable of managing their assets, they can be declared incapacitated.

Proposals for Reform

51. Are there any proposals to reform private client law in your jurisdiction?

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

From a tax standpoint, proposals for tax reform are typically known in October, so it is presently unclear whether any changes will be introduced in the State Budget for 2022.

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