



# ICLG

The International Comparative Legal Guide to:

## Private Client 2016

**5th Edition**

A practical cross-border insight into private client work

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**Group Consulting Editor**

Alan Falach

**Group Publisher**

Richard Firth

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Global Legal Group Ltd.  
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London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
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## EDITORIAL

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Welcome to the fifth 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:

Eight 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 29 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.

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.co.uk](http://www.iclg.co.uk).

Alan Falach LL.M.  
Group Consulting Editor  
Global Legal Group  
[Alan.Falach@glgroup.co.uk](mailto:Alan.Falach@glgroup.co.uk)

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# Portugal

Tiago Marreiros Moreira



Frederico Antas



Vieira de Almeida & Associados

## 1 Pre-entry Tax Planning

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

There has not been a specific inheritance and gift tax in Portugal since 1 January, 2004. Nonetheless, the transfer of assets by way of inheritance or gift may be subject to Stamp Duty (“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 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.

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

According to the Portuguese Personal Income Tax (“PIT”) Code, individuals resident in Portugal are liable to tax on their worldwide income, including capital gains.

Since 2009, there is a special regime – Non-Habitual Residents’ Tax Regime (“NHTR”) – which grants certain tax benefits to qualified individuals who plan to take up tax residence in Portugal (please refer to our comments regarding question 3.2 below).

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).

### 1.3 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.

## 2 Connection Factors

### 2.1 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 PIT purposes (please refer to our comments regarding questions 2.2 and 2.4 below).

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

### 2.2 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 spends more than 183 days in Portuguese territory.

### 2.3 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).

### 2.4 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 aircrafts 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.

## 2.5 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, the 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.

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

Please refer to our comments in the above question.

## 2.7 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).

## 3 General Taxation Regime

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

As explained above, there is no specific gift or inheritance tax foreseen in the Portuguese tax law. However, 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 1.1).

### 3.2 How and to what extent are persons who become established in your jurisdiction liable to income tax?

#### A. Residents

As referred 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” of 3.5% on the annual aggregate income that exceeds the amount of the annual minimum wage (€ 7,070.00). If the taxable income exceeds € 80,000.00, another “solidarity surtax” applies, which has a rate of 2.5% (between € 80,000.00 and € 250,000.00) and of 5% (to the taxable income exceeding € 250,000.00).

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 movable assets 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 NHTR 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 23.5% (20% plus the “extraordinary surtax” of 3.5%). 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 double tax treaty provisions, or, if no double tax treaty 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 Convention, 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.

### 3.3 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 0.5% (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%.

Concerning urban real estate with a tax value equal or higher than € 1,000,000.00, SD will also be due at a rate of 1% over such amount.

### 3.4 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 alcohol beverages, tobacco, oil and energy products and vehicles.

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.

### 3.5 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 on blacklisted jurisdictions.

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 on 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, whenever the real estate's tax value is equal or higher than € 1,000,000.00, SD is due at 7.5%.

### 3.6 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.

## 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.

As a rule, the acquisition of share capital participation does not entail 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 also trigger RETT at the rates mentioned below on question 4.3.

As explained above (see question 1.1), 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 then 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 – 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 3.3.

#### 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 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 in a local company 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; or
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 are comprised of real estate property located in Portugal.

Capital gains obtained by residents on the disposal of real estate is subject to tax at the general PIT rates (which will be due over solely 50% of the respective amount), except if it refers to the sale of the taxpayer’s main residence case in which 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, it 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 regarding question 3.4.

#### 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 so, 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 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 Tax Convention on Income and on Capital (“OECD Model”), the 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 € 15,000.00 by small or medium enterprises (SME); and
2. a 21% tax rate applies to income higher than € 15,000.00 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.

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

Corporate taxpayers with a taxable income of more than € 1,500,000.00 are also subject to a State surcharge on the parts of its taxable profits that exceed such threshold, as follows:

1. taxable profits higher than € 1,500,000.00 up to € 7,500,000.00 are subject to a rate of 3%;
2. taxable profits higher than € 7,500,000.00 up to € 35,000,000.00 are subject to a rate of 5%; and
3. taxable profits in excess of € 35,000,000.00 are subject to a rate of 7%.

In general terms, a corporation may have to deal with VAT, custom and excise duties, RETT, RET and SD.

Certain sectors of the economy – financial, energy, telecoms and pharmaceutical industry sectors – may be 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 71 DTTs, 64 from 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 rates 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 namely 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.

Following the entrance 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 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, if due to inheritance any real estate is freely transferred, a 0.8% rate over the tax value of the real estate will always be due.

## 8 Trusts and Foundations

### 8.1 Are trusts recognised in your jurisdiction?

Trusts are not legally recognised in mainland Portugal.

Note, however, that Decree-Law (352-A/88, of 3 October), with effect in the Autonomous Region of Madeira, admits the possibility of incorporation of offshore trusts 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 any specific rules concerning the taxation of trusts.

In any case, there are certain legal references related to trusts that should be duly referred herein.

For PIT purposes, payments made by trusts are considered investment income, provided that they are not related to its liquidation, revocation or extinction (in these cases, income is taxed as capital gains). 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 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 successions 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 remaining is reserved to the legal heirs of the deceased.

These rules that limit the free disposition of the 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 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 the 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 the one derived 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 the compliance of certain requirements. The non-exempt income is subject to a 21.5% tax rate.

The above referred qualification granted to foundations also allows the benefit of tax exemptions related to RETT, RET and SD, as well as the donations granted to them within the context of the patronage regime established on the Portuguese Tax Benefits Statute may 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).

#### 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 the ones 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 € 1,000,000.00 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 € 500,000.00;
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 € 350,000.00;
5. the transfer of capital with a value equal or higher than € 350,000.00 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 € 250,000.00 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 € 500,000.00, 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 30 European countries that are comprised in 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 fulfills the minimum amount of investment.

A 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. the family members living outside the Portuguese territory who have lived with that citizen in another country;
2. the family members that depend or cohabit with the citizen; as well as
3. those who have legally entered in the Portuguese territory and are dependant 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. the children born in Portuguese territory of a Portuguese mother or father;
2. the children of a Portuguese mother or father born abroad if the Portuguese parent is there serving the Portuguese State;
3. the 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. those born in another country of a Portuguese parent or grandparent, with sufficient knowledge of the Portuguese language and with an effective connection to the national community;
5. the persons born in Portuguese territory to 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. the persons born in Portuguese territory to 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. the persons born in Portuguese territory and with no other nationality;
8. descendants of Sephardic Jews, through the evidence of belonging to a tradition of Sephardic community of Portuguese origin, based on objective requirements 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. the children fully adopted by a Portuguese citizen with an effective connection to the national community; and
11. foreign nationals legally resident in Portuguese territory for a minimum of six consecutive years with sufficient knowledge of Portuguese.

Portugal allows dual nationality.

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

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No, there are not.

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

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Please refer to our comments above on NHTR and RPIA.

## **11 Reporting Requirements/Privacy**

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

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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 in 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 will 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.

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### **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?**

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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.

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.

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### **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?**

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No, there are not.

**Tiago Marreiros Moreira**

Vieira de Almeida & Associados  
Av. Duarte Pacheco, no. 26  
1070-110 Lisbon  
Portugal

Tel: +351 21 311 3485

Email: [tm@vda.pt](mailto:tm@vda.pt)

URL: [www.vda.pt](http://www.vda.pt)

Tiago Marreiros Moreira joined Vieira de Almeida & Associados in 2001 and is the partner in charge of the Tax practice (that includes a Group specially dedicated to Private Clients). In such capacity he has been involved in several transactions, in Portugal and abroad, mainly focused on the financing, acquisition and restructuring of national and multinational economic groups and corporations. He has also been actively providing domestic and international tax planning for major corporations, assisting groups in the definition of transfer pricing policies and documentation, resolving tax disputes with revenue authorities, providing advice in securitisation transactions and estate planning. Tiago has also been providing tax and legal assistance in numerous private wealth transactions and private client planning.

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**Frederico Antas**

Vieira de Almeida & Associados  
Av. da Boavista, 3433 - 8º  
4100-138 Oporto  
Portugal

Tel: +351 22 616 5400

Email: [fda@vda.pt](mailto:fda@vda.pt)

URL: [www.vda.pt](http://www.vda.pt)

Frederico Antas joined Vieira de Almeida & Associados in 2010. He is senior associate at the Tax practice where he has been actively involved in several transactions, namely in domestic and international tax planning and also provides regular tax advice to national, foreign and multinational economic groups.



**VIEIRA DE ALMEIDA**  
& Associados Sociedade de Advogados, R L

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59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)