



ICLG

The International Comparative Legal Guide to:

Private Client 2017

6th Edition

A practical cross-border insight into private client work

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EDITORIAL

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

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

It is divided into two main sections:

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

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

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

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance.

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.

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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 or 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 an additional SD at 0.8% will also be due).

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

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 2010, 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).

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

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 aircraft operated by entities with residence, head office or place of effective management in Portuguese territory; or
4. the individual performs public duties for the Portuguese State abroad.