



Private Client Comparative Guide

TELLES

Private Client Comparative Guide

Article Author(s)

TELLES



João Luís Araújo



Sara Brito Cardoso

Portugal

Contributing Editor

LOYENS  LOEFF



Peter Adriaansen



Nelli Kluschin

Contributing Editor

1. Legislative framework

1. 1. Which legislative provisions govern private client matters in your jurisdiction?

Portugal
TELLES

Portugal private law matters are essentially governed by the Civil Code, supplemented by several laws dealing with specific matters.

The taxation of personal income is governed by the Personal Income Tax Code. Other relevant tax legislation includes:

- the Tax Incentives Statute, regarding certain tax benefits; and
- the Real Estate Tax Code, the Real Estate Transfer Tax Code and the Stamp Duty Codes, in relation to specific transactions.

1. 2. Do any special regimes apply to specific individuals (eg, foreign nationals; temporary residents)?

Portugal
TELLES

Portugal has a special tax regime – the non-habitual resident (NHR) regime – which aims to attract individuals who have not been resident in the country in the previous five years and who become resident in Portugal for tax purposes. Individuals registered under the NHR regime are tax resident in Portugal, but are subject to a special tax regime for a period of 10 years.

The NHR regime affords a full exemption from tax on certain income, depending on the type of income and the source – for example, dividends, interest, rental income and real estate capital gains are usually exempt from tax in Portugal, as long as they derive from a foreign source which is not located in a jurisdiction classed as a tax haven by the Portuguese government. The regime also provides for a 20% flat rate for employment income and income from the provision of services which is derived from a high-value added activity.

In order to legally reside in Portugal, non-EU citizens usually require a visa, which entitles them to obtain a residence permit. One of the most successful visa regimes in place in Portugal is the Golden Visa regime – a temporary residence permit for investment purposes granted to both the investor and his or her family. There are eight types of investments that qualify for Golden Visa purposes (eg, real estate acquisitions and investment in funds).

1. 3. Which bilateral, multilateral and supranational instruments in effect in your jurisdiction are of relevance in the private client sphere?

Portugal
TELLES

Portugal is a party to several EU private law multilateral instruments with relevance in the private client

sphere:

- EU Regulation 593/2008 (Rome I), which sets out the conflict of law provisions applicable to several contractual obligations;
- EU Regulation 864/2007 (Rome II), which sets out the conflict of law provisions applicable to non-contractual obligations in civil and commercial matters;
- EU Regulation 1259/2010 (Rome III), which sets out the conflict of law provisions applicable to divorce and legal separation; and
- EU Regulation 650/2012 (Rome IV), which sets out the conflict of law provisions applicable to succession matters.

Portugal has a large network of double tax treaties aimed at preventing double taxation which have a direct impact on the private client sphere, providing tax relief for several categories of income. The double tax treaties concluded by Portugal in essence follow the Organisation for Economic Co-operation and Development Model Tax Treaty.

Portugal has also signed the Multilateral Instrument, which introduced some changes to most of the double tax treaties already in force, especially in relation to the concept of a permanent establishment and the tax framework and capital gains linked to real estate.

Portugal has also entered into a considerable number of bilateral and multilateral treaties aimed at regulating social security issues in cross-border situations.

2. Taxation

2. 1. On what basis are individuals subject to tax in your jurisdiction (eg, residence/domicile/nationality)? How is this determined?

Portugal TELLES

Individuals residing in Portugal (as well as those who, while not residing in Portugal, derive income from a Portuguese source) are subject to personal income tax (PIT) in Portugal. Individuals who are resident in Portugal for tax purposes are subject to tax on a worldwide basis, meaning that all their income is subject to tax in Portugal, even if foreign sourced.

According to Portuguese law, there are two alternative criteria for obtaining and retaining tax residence in Portugal:

- The first is to spend more than 183 days in Portugal in any given 12-month period. More correctly, this should be 'nights', since what matters are overnight stays in the country, rather than merely arriving in the morning and leaving at the end of the day.
- The second is to have one's main and habitual abode in Portugal. This means, in practice, acquiring a property as one's main and permanent residence or having a registered rental agreement for permanent housing purposes.

Portugal also has partial residence rules in force which mean that, apart from some exceptions aimed at preventing potentially abusive situations:

- if one of the requirements for qualification as a Portuguese tax resident is met, the individual becomes resident for tax purposes in Portugal from the first day of his or her stay in the Portuguese territory; and
- the loss of resident status generally occurs from the last day of the individual's stay in the Portuguese territory.

2. 2. When does the personal tax year start and end in your jurisdiction?

Portugal
TELLES

The Portuguese tax year corresponds to the civil year, running from 1 January to 31 December.

2. 3. With regard to income: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

Portugal
TELLES

(a) What taxes are levied and what are the applicable rates?

There is only one level of income tax. There are no local, cantonal or state income taxes in addition to the national tax. However, the applicable rates vary according to the type of income.

Income from employment, the provision of services, pensions and real estate capital gains (considered at half their value) are subject to general and progressive tax rates that range between 14.5% and 48%.

When the taxable income is higher than €80,000, a solidarity surcharge also applies:

- For taxable income from €80,000 to €250,000, the rate is 2.5%; and
- For taxable income higher than €250,000, the rate is 5%.

On the other hand, some categories of income are subject to fixed rates, such as:

- income from the investment of capital (dividends, interest and similar);
- rental income; and
- capital gains from the sale of shares and other securities.

As a general rule, the applicable rate is 28%, except for income originating from a tax haven, to which the aggravated rate of 35% usually applies.

For non-resident individuals who derive income from a Portuguese source, fixed rates usually apply:

- 25% for employment, services and pension income; and
- 28% for capital and rental income and capital gains.

(b) How is the taxable base determined?

The tax base is initially composed of all gross income received by the taxpayer on a worldwide basis.

This gross income is then divided into categories, each with different rules for determining the net income:

- Category A income: Employment income;
- Category B income: Self-employment income and income derived from intellectual property;
- Category E income: Interest income and all other income that is derived from the application of capital;
- Category F income: Income derived from property (real estate);
- Category G: Capital gains; and
- Category H: Pension income.

The net income thus obtained in each category is then subject to the respective rates – some are added up and subject to the progressive rates as a whole, while others are subject to fixed rates as outlined above.

For non-resident individuals, the taxable base is composed of only Portuguese-sourced income and each income category is subject to the applicable fixed rates, notwithstanding the possibility to opt for taxation as residents in some situations.

(c) What are the relevant tax return requirements?

Individuals who reside in Portugal for tax purposes must submit annual tax returns to the Portuguese tax authorities reporting all their worldwide income (even if, due to some applicable exemption, no taxes are ultimately due), along with the international bank account number and bank identifier code of personally held bank accounts held abroad.

Tax returns are typically submitted between April and June following the end of the tax year. Once the tax return is submitted and where taxes are due, any tax payments are due by the end of August each year.

For non-resident individuals, the tax due is usually withheld at source. However, this is not the case where the non-resident individual derives rental income or real estate capital gains in Portugal, in which case the individual must submit a tax return reporting that income.

(d) What exemptions, deductions and other forms of relief are available?

Each income category has its specific deductions, which turn the gross income into net income before the rates are applied.

In addition, where income is subject to the general and progressive tax rates, it is also possible to deduct some expenses from the tax result (all with limits and specific requirements), such as:

- health or educational expenses; and
- credits for international double taxation.

Under the non-habitual resident (NHR) regime, assuming that the income is from a foreign source in a jurisdiction which is not classed as a tax haven, dividends, interest, royalties, some distributions from funds, rental income and real estate capital gains are usually exempt from tax in Portugal. This is also the case for employment income which is effectively taxed at source and for self-employment income which derives from a high value-added activity and where the individual has a fixed base in the state of source.

This is the general NHR tax framework; each individual's situation must be carefully analysed on a

standalone basis for each type of income and asset.

2. 4. With regard to capital gains: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

Portugal
TELLES

(a) What taxes are levied and what are the applicable rates?

There is no specific tax on capital gains – like all other income, capital gains are subject to income tax.

Real estate capital gains are subject to the general and progressive rates of PIT (even if only half of their value is considered). Capital gains from the disposal of shares, securities and other financial instruments are subject to the flat rate of 28% (with the exception of some capital gains on securities sourced in a tax haven, which are subject to the aggravated rate of 35%).

For non-resident individuals, Portuguese-sourced capital gains (derived from either real estate or securities) are subject to the fixed rate of 28%.

As regards Portuguese real estate capital gains of non-resident individuals, it is the Portuguese tax authorities' view that the entire capital gain is subject to tax (contrary to what happens in the case of residents, where only half of the capital gain is subject to the general and progressive rates). However, Portuguese case law, in line with European case law, has successively ruled in favour of the taxpayer and ordered the Portuguese tax authorities to refund the excess tax paid.

(b) How is the taxable base determined?

The capital gain subject to tax is the difference between the sale value and the acquisition value (updated by the currency devaluation coefficient in the case of real estate capital gains and capital gains from the sale of shares, if more than 24 months have elapsed between the purchase and sale), plus expenses from the sale, acquisition or valuation of the asset.

(c) What are the relevant tax return requirements?

Please see question 2.3(c) – no specific rules apply to capital gains, as the tax return is the same.

With regard to the reporting of real estate capital gains, the Portuguese tax authorities tend to ask for evidence of the reported values, so it is crucial to keep all relevant documents on file (eg, the deeds of purchase and sale, real estate commission invoice, invoices for expenses with the valuation of the property or invoices for notary fees).

(d) What exemptions, deductions and other forms of relief are available?

The Portuguese PIT Code provides for special real estate reinvestment relief, whereby capital gains arising from the sale of a person's habitual abode in Portugal are excluded from tax. The reinvestment relief applies as long as:

- the proceeds of sale are fully (or partially, although this would entitle the taxpayer to only partial relief) reinvested in the acquisition of a new habitual abode either in Portugal or in another member state of the European Union or the European Economic Area (provided that, in the latter case, there is an exchange of information on tax matters);
- this reinvestment is made in the 24 months prior to the date of sale or in the 36 months thereafter; and
- the relevant election is made in the tax return pertaining to the year of sale.

The reinvestment relief may also apply if the proceeds are fully (or partially, granting partial relief) invested in certain savings instruments or life insurance policies.

Also, if the capital gains are foreign sourced, a tax credit is given where the state of source has a taxing right.

Under the NHR regime, foreign real estate capital gains are usually exempt from tax in Portugal.

2. 5. With regard to inheritances: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

Portugal
TELLES

(a) What taxes are levied and what are the applicable rates?

Assets received through inheritance are subject to stamp duty in Portugal, as long as the territoriality principle is met – only assets deemed to be located in Portugal for stamp duty purposes are subject to this tax, such as:

- immovable property located in Portugal;
- movable property registered or subject to registration in Portugal;
- equity in companies with their registered office, effective management or permanent establishment in Portugal (provided that, in this case, the heir is domiciled in Portugal); and
- monetary amounts deposited in institutions with their registered office, effective management or permanent establishment in Portugal.

The applicable rate is 10%; and when the asset inherited relates to real estate in the Portuguese territory, the applicable rate is 10.8%.

(b) How is the taxable base determined?

The taxable base varies depending on the asset inherited.

For example, the value of real estate is the property's taxable value at the date of transfer – that is, the value of the property as registered with the Portuguese tax authorities. In turn, the value of shares and other assets subject to registration will tend to correspond to their fair market value, determined under the rules set out in the Stamp Duty Code if there is no official quotation.

(c) What are the relevant tax return requirements?

It is mandatory to report the deceased's death to the Portuguese tax authorities by the end of the third month following the date of death.

This report should identify:

- the deceased;
- the beneficiaries; and
- all assets subject to registration which the person whose estate is being administered owned.

The Portuguese tax authorities will then assess the assets' tax base and issue the corresponding tax assessment.

(d) What exemptions, deductions and other forms of relief are available?

Where the heirs are descendants or ascendants (eg, parents, children, grandchildren) or the spouse, an exemption from stamp duty applies.

However, where the inherited asset relates to real estate located in the Portuguese territory, the 0.8% stamp duty rate will nevertheless apply.

2. 6. With regard to investment income: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

Portugal
TELLES

(a) What taxes are levied and what are the applicable rates?

There is no specific tax on investment income – investment income, like all other income (including capital gains), is subject to income tax.

Investment income is usually subject to the 28% flat rate or the aggravated 35% flat rate (the latter when derived from a source located in a tax haven), for both resident and non-resident individuals.

(b) How is the taxable base determined?

With regard to capital income, gross income corresponds to net income – no deductions apply.

(c) What are the relevant tax return requirements?

Please see question 2.3(c) – no specific rules apply to investment income, as the tax return is the same.

However, investment income is usually subject to withholding tax at source and this tax tends to be final, meaning that typically there is no obligation to report such items of income in the Portuguese tax return (for both resident and non-resident individuals).

(d) What exemptions, deductions and other forms of relief are available?

If the investment income is foreign sourced, a tax credit is given where the state of source has a taxing right.

Under the NHR regime, dividends and interest are usually exempt from tax in Portugal.

2. 7. With regard to real estate: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

Portugal
TELLES

(a) What taxes are levied and what are the applicable rates?

The acquisition of property in Portugal is subject to two distinct taxes: real estate transfer tax (RETT) and stamp duty. Both are levied on the price or on the tax value of the property, whichever is higher.

Acquiring at least 75% of the shares in a company which owns real estate in Portugal may also trigger RETT should the real estate in Portugal represent at least 50% of the assets of the company.

RETT rates range between 2% and 8%, depending on the acquisition value and the allocation of the property.

Stamp duty is levied at a rate of 0.8%.

Should the buyer be directly or indirectly resident in a tax haven jurisdiction, the RETT rate is aggravated to 10%.

The ownership of property in Portugal establishes an obligation to pay real estate tax (RET) and, in certain situations, RET add-on.

RET is an annual tax and is levied on the taxable value of the property. The RET rates vary between 0.3% and 0.45%, and are specifically determined by the municipality in which the property is located.

RET add-on is also an annual tax and is levied on the sum of the taxable values of the taxpayer's Portuguese based properties that are not allocated to commercial purposes. For individuals, the RET add-on is due only if the sum of such values is higher than €600,000 and progressive rates from 0.7% to 1.5% apply.

(b) How is the taxable base determined?

With regard to the acquisition, RETT and stamp duty are levied on the price or the taxable value of the property, whichever is higher.

In turn, RET and the RET add-on are always levied on the taxable value of the property.

(c) What are the relevant tax return requirements?

RETT and stamp duty are paid at the moment of acquisition – the public deed of purchase of the property cannot be concluded without this payment.

Regarding RET, the Portuguese tax authorities assess the tax on an annual basis, *ex officio*, taking into consideration the individual registered as the owner of the property on 31 December of the year to which the tax relates.

Regarding RET add-on, the Portuguese tax authorities also assess the tax annually, *ex officio*, but based on who is registered as the owner of the property on 1 January of the year to which the tax relates. However, married taxpayers may opt for joint taxation for the purposes of RET add-on (which means that tax will be due only if the total taxable value of the couple's properties exceeds €1.2 million), in which case a return to that effect must be filed between April and May.

(d) What exemptions, deductions and other forms of relief are available?

The Portuguese tax law provides an exemption of RET and RETT related to real estate rehabilitation works, as long as the acquired property is:

- more than 30 years old; or
- located in an urban rehabilitation area.

The property must be subject to rehabilitation and renovation works, which must improve at least two levels of the property's state of repair as compared to its state of repair before the works took place, achieving:

- a minimum classification of 'Good'; and
- compliance with energy efficiency and thermal quality requirements.

A RETT exemption also applies to the acquisition of buildings individually classified as of national, public or municipal interest under the terms of the applicable legislation.

In addition, the law provides for a RETT exemption where the purchase is for resale, provided that, among other requirements, the property acquired is resold within three years. In order to avoid an immediate tax assessment when acquiring the property (ie, for the exemption to take effect immediately), the purchaser must normally and habitually exercise the activities of a purchaser for resale.

Properties classified as national monuments and individually classified as of public or municipal interest under the terms of the applicable legislation are also exempt from RET. The law further provides a RET exemption for urban property constructed, extended, improved or acquired against payment, intended as the taxpayer's habitual abode, where the taxable value is less than €125,000.

2. 8. With regard to any other direct taxes levied in your jurisdiction: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

Portugal
TELLES

(a) What are they and what are the applicable rates?

Employment income and income from the provision of services are subject to social security contributions in Portugal. Even if such income is foreign sourced, social security contributions tend to be due in Portugal

where the activity is carried out in the Portuguese territory, notwithstanding the specific provisions resulting from international treaties on the matter.

In the case of employees, the total rate is 34.75% (11% to be borne by the employee plus 23.75% to be borne by the employer). For service providers, the total rate is usually 21.4%.

(b) How is the taxable base determined?

On one hand, the taxable base for employment income is the monthly gross income as received by the employee.

On the other hand, for service providers, there is a certain presumption of costs when determining the taxable base for social security purposes:

- The relevant income must first be determined, which will correspond to 70% of the income earned in a three-month period (not taking into consideration the sale of goods); and
- The monthly taxable base (ie, the amount on which the rate of 21.4% will be applied monthly) will then correspond to one-third of this relevant income.

(c) What are the relevant tax return requirements?

Social security contributions are withheld by the employer and the employee need not submit a return.

In turn, services providers must submit quarterly returns by the last day of April, July, October and January in respect of income obtained in the three immediately preceding months.

(d) What exemptions, deductions and other forms of relief are available?

As regards social security contributions due by employees, not all employment income earned (and classed as such for PIT purposes) is subject to social security contributions – for example, stock options plans and some bonuses awarded on an irregular basis do not fall within this scope.

In the case of service providers, some social security contributions exemptions are foreseen, such as where there is a cumulation of said activity with an employment agreement (as long as certain requirements are met). Furthermore, there is no obligation to contribute during the first year of activity.

2. 9. With regard to any indirect taxes levied in your jurisdiction: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

Portugal
TELLES

(a) What are they and what are the applicable rates?

As in the rest of the European Union, Portugal has rules on value added tax (VAT), which is a tax on consumption, to be borne by the final consumer.

In Portugal, VAT is charged at the following rates:

- Standard rate: 23%
- Intermediate rate: 13% (eg, applicable to the supply of electricity for consumption); and
- Reduced rate: 6% (eg, applicable to a range of foodstuffs, shows, sporting and other public events and entertainment, accommodation in hotel-type establishments and real estate rehabilitation works).

There is also a single road tax in force in Portugal, which is levied annually on vehicles registered or enrolled in Portugal and is due by the respective owner. The amount of tax due – which is predetermined by brackets – varies according to the vehicle and its characteristics, such as:

- cylinder capacity;
- voltage;
- age of registration; and
- fuel in the case of passenger cars.

Also related to vehicles, the law provides for a vehicle tax, which is usually due at the moment of registration in Portugal. The applicable vehicle tax rates are fixed annually and also take into consideration a number of components, such as cylinder capacity and the environmental features of the vehicle.

In addition, there are a number of excise duties, such as:

- the tax on petroleum products; and
- the tax on tobacco-related products.

(b) How is the taxable base determined?

For VAT purposes, the taxable amount of a supply of goods or services is generally the value of the consideration obtained or to be obtained from the purchaser, the customer or a third party, as usually provided for in the respective invoice.

For single road tax purposes, the taxable base is calculated according to the vehicle characteristics mentioned above, to which the amount of tax due annually corresponds.

For vehicle tax purposes, the taxable base is also calculated according to the vehicle features, to which the amount of tax due corresponds.

(c) What are the relevant tax return requirements?

There are no VAT reporting obligations for the final consumer – the tax is incurred at the moment of consumption and it is the seller or supplier's responsibility to remit it to the Portuguese tax authorities. Nevertheless, the individual should validate the invoices issued under his or her name on the Portuguese tax authorities' website, as they relate to the deductions that will then be allowed for PIT purposes.

Economic operators are subject to a series of VAT reporting obligations – they are required to submit monthly or quarterly (depending on their annual turnover) periodic VAT returns, in which the total value of the sale of goods or provision of services, the tax assessed and the tax deductible are identified. In the event of intra-EU transactions, recapitulative VAT returns are also due.

Although a tax return need not be submitted for single road tax purposes, it is up to the taxpayer to issue the

tax assessment through its reserved area on the Portuguese tax authorities' website.

In relation to vehicle tax, when the tax is due on the purchase of a vehicle, the tax is usually included in the price and it is up to the seller to remit it to the Portuguese tax authorities. When the tax is due by a direct registration of the vehicle in Portugal by the individual (eg, when the individual changes his or her tax residence to Portugal and brings a vehicle), it is up to the individual to deliver the supporting documents to the Portuguese tax authorities, to enable them to calculate the tax due.

(d) What exemptions, deductions and other forms of relief are available?

Exports are exempt from VAT from the outset. A number of domestic transactions also benefit from an exemption, such as:

- the provision of medical and similar services, and the negotiation and assignment of credit (as these operations are subject to stamp duty); and
- the rental and acquisition of real estate (because this is subject to RETT).

For the purposes of single road tax, the law provides some exemptions, as is the case of classic cars. In fact, vehicles certified as vehicles of historical interest that are more than 30 years old, are only occasionally used and do not travel more than 500 kilometres per year are exempt from tax.

In addition, there is a VAT and vehicle tax exemption linked with a change of residence to Portugal, provided that the following requirements are met:

- The vehicle had been registered under the individual's name for at least six months at the time residency ceased in the country of origin; and
- The request is presented to the Portuguese tax authorities to avail of this benefit in the 12 months following the transfer of residence to Portugal.

Similar rules apply to any other personal belongings that the individual wishes to bring into Portugal.

3. Succession

3. 1. What laws govern succession in your jurisdiction? Can succession be governed by the laws of another jurisdiction?

Portugal
TELLES

Under domestic law, succession is governed by the Civil Code.

Succession is also governed by the EU Succession Regulation, which states that the law which governs the succession is that of the state of habitual residence at the time of the deceased's death.

According to this regulation, however, one may choose the law of nationality over the law of the state of habitual residence at the time of death. If the individual has more than one nationality, he or she may choose the law of any one of these countries. This choice of law must be made in a document that has the same formalities as a will. That is, if the document is executed in Portugal, it must be executed before a notary. If signed overseas, the signatures to the choice of law document must be authenticated and apostilled or notarised before the Portuguese consulate of the country in which the document is signed.

3. 2. How is any conflict of laws resolved?

Portugal
TELLES

Any conflict of laws is resolved according to the EU Succession Regulation. The risk of such conflict is minimised, as the regulation points to connecting factors – place of habitual residence or nationality – where the testator opts for one of these.

The Succession Regulation unifies the conflict of laws rules to determine the applicable law in international issues. Under the regulation, the courts apply the same substantive law, whether the applicable law is that of a member state or not.

The Succession Regulation makes a reference to *renvoi* in Article 34, accepting *renvoi* under only a few circumstances. First, *renvoi* applies only where the law of a state that is not bound by the regulation is determined to be applicable by the regulation, and only insofar as those rules refer to the law of a member state or the law of another third state which would apply its own law. *Renvoi* is excluded when it comes to the formal validity of wills, overriding mandatory provisions, choice of law and the escape clause of Article 21(2).

The identity of the private international law rules in states that are bound by the Succession Regulation ensures that the law applicable in those states will always point to the same law to be applied to the situation at hand.

3. 3. Do rules of forced heirship apply in your jurisdiction?

Portugal
TELLES

Under Portuguese succession law, forced heirship rules apply. The forced heirs are the spouse, descendants and ascendants:

- If only a spouse remains and there are no descendants or ascendants, the spouse is entitled to one-half of the inheritance ('spouse' in this context means only a legally married spouse and not an unmarried partner, irrespective of how long the partners have been together);
- If a spouse and children remain, they are entitled to two-thirds of the inheritance;
- If only children remain, they are entitled to one-half or two-thirds of the inheritance, depending on whether there is only one child or there are two or more;
- If a spouse and ascendants remain, they are entitled to two-thirds of the inheritance; and
- If only ascendants remain, they are entitled to one-half or two-thirds of the inheritance, depending on whether they are the parents of the deceased or ascendants in second degree.

The deceased can dispose of one-third or one-half (see scenarios above) of the assets, which is called the 'available share'. The remaining two-thirds or one-half of the assets are assigned by law to the forced heirs, as per the situations described above.

Before the marriage, the spouses may reciprocally renounce their forced heir status through a pre-nuptial convention, provided that the regime chosen to govern the assets is the separation of assets regime.

3. 4. Do the rules of succession rules apply if the deceased is intestate?

Portugal
TELLES

If the deceased is intestate, legitimate succession takes place under the law.

In this case, the deceased's legitimate heirs are designated as successors. Legitimate succession concerns the portion of the assets that the deceased did not dispose of, as allowed by the abovementioned available quota rules.

The legitimate heirs are the spouse, relatives and the state, in the following order:

- spouse and descendants;
- spouse and relatives in the ascending line;
- siblings and their descendants;
- other collateral relatives up to and including the fourth degree; and
- the state.

3. 5. Can the rules of succession be challenged? If so, how?

Portugal
TELLES

No, they cannot be challenged.

4. Wills and probate

4. 1. What laws govern wills in your jurisdiction? Can a will be governed by the laws of another jurisdiction?

Portugal
TELLES

See question 3.1.

4. 2. How is any conflict of laws resolved?

Portugal
TELLES

See question 3.2.

4. 3. Are foreign wills recognised in your jurisdiction? If so, what process is followed in this regard?

Portugal
TELLES

Yes, foreign wills are accepted and recognised in Portugal.

To be recognised in Portugal, the will must have been drafted with full respect to the legislation and formal requirements of the country in which it was drafted. The will must be translated and an apostille will be required only if there are doubts regarding the will's authenticity.

4. 4. Beyond issues of succession discussed in question 3, are there any other limitations to testamentary freedom?

Portugal
TELLES

Dispositions in favour of the following parties are null and void:

- priests;
- tutors (with the exception of tutors who are descendants or ascendants);
- doctors;
- nurses;
- clergymen who assist the testator spiritually;
- anyone with whom the testator committed adultery; and
- anyone who intervenes in the execution of the will.

4. 5. What formal requirements must be observed when drafting a will?

Portugal
TELLES

Wills must be executed in person before a notary.

Wills must be made in the presence of two witnesses (family members of the testator, related to one another or beneficiaries of the will are not allowed). If the testator does not understand Portuguese, a translator must be present. Medical experts may be called to assess the mental capacity of the testator if the notary officer has doubts in this regard.

In Portugal, there are two types of wills: public wills and closed wills.

A public will is drawn up by a notary in his or her register and must be executed in the Portuguese language.

A closed will is a private document that must be handwritten. Closed wills must still be approved by a notary, who will issue an instrument of approval, which is subject to the requirements above – notably concerning witnesses and translation.

Although this must be verified on a case-by-case basis with the notary, in principle, a closed will may be written in a language other than Portuguese, as long as the notary understands that language.

4. 6. What best practices should be observed when drafting a will to ensure its validity?

Portugal

TELLES

See questions 4.4 and 4.5.

4. 7. Can a will be amended after the death of the testator?

Portugal
TELLES

No.

However, the testator may leave more than one will. If non-contradictory, all are valid. If the testator does not expressly revoke the previous will(s), a posterior will revokes previous wills only in respect of the contradictory parts.

4. 8. How are wills challenged in your jurisdiction?

Portugal
TELLES

Wills may be judicially challenged in court. The type of action will depend on the grounds on which the will is challenged (eg, forgery, incapacity or null dispositions).

4. 9. What intestacy rules apply in your jurisdiction? Can these rules be challenged?

Portugal
TELLES

See questions 3.4 and 3.5.

5. Trusts

5. 1. What laws govern trusts or equivalent instruments in your jurisdiction? Can trusts be governed by the laws of another jurisdiction?

Portugal
TELLES

Trusts are not regulated and are not legally recognised by Portuguese law (the exception being the Madeira Free Trade Zone, where offshore trusts are recognised to carry on an activity developed within the institutional framework of the Madeira Free Trade Zone).

5. 2. How is any conflict of laws resolved?

Portugal
TELLES

For Portuguese purposes, the trust will be ruled by the law specified in the trust deed as such, as there are no specific regulations on the matter in Portugal.

5. 3. What different types of structures are available and what are the advantages and disadvantages of each, from the private client perspective?

Portugal
TELLES

It is not possible to set up a Portuguese private fiduciary structure.

5. 4. Are foreign trusts recognised in your jurisdiction? If so, what process is followed in this regard?

Portugal
TELLES

Trusts are not regulated and are not legally recognised by Portuguese (the exception being the Madeira Free Trade Zone, where offshore trusts are recognised to carry on an activity developed within the institutional framework of the Madeira Free Trade Zone).

5. 5. How are trusts created and administered in your jurisdiction?

Portugal
TELLES

It is not possible to set up a Portuguese private fiduciary structure.

5. 6. What are the legal duties of trustees in your jurisdiction?

Portugal
TELLES

It is not possible to set up a Portuguese private fiduciary structure.

5. 7. What tax regime applies to trusts in your jurisdiction? What implications does this have for settlors, trustees and beneficiaries?

Portugal
TELLES

Although not recognised from a civil law perspective, there are tax rules covering the tax treatment of income from trusts for individuals residing in Portugal for tax purposes.

On the one hand, income obtained by the trust is potentially taxed at the level of the Portuguese tax resident individual, even if no distribution occurs, under the application of controlled foreign corporation rules, if the individual is vested with at least 25% of the economic interests of the trust. This individual may be the beneficiary – especially where the trust is not fully discretionary – or even the settlor, where he or she has the powers required to revoke the trust.

On the other hand, income arising from the trust (ie, distributions from the trust) is potentially subject to personal income tax (PIT) at the level of the beneficiary or the settlor:

- Payments made by trusts (ordinary distributions) to beneficiaries residing in Portugal for tax purposes are qualified as investment income and are subject to tax at a rate of 28% (unless arising from a tax haven, where a 35% tax rate will apply), regardless of whether the capital is remitted to Portugal.
- In the case of distributions resulting from the unwinding of the trust to individuals who are tax resident in Portugal, the tax impact will depend on the person receiving the income:
 - If distributed to the settlor, tax will be levied at a rate of 28% (or 35% if the trust is located in a blacklisted location) on any eventual capital gains arising from the distribution; and
 - If the distribution is made to a beneficiary who was not a settlor of the trust, the distribution will be deemed a donation and will thus be outside the scope of PIT, but will eventually be subject to stamp duty at a rate of 10% (10.8% in the case of real estate). However, no stamp duty will be due if the transaction falls outside the stamp duty territorial scope or if an exemption applies.

5. 8. What reporting requirements apply to trusts in your jurisdiction?

Portugal
TELLES

It is not possible to set up a Portuguese private fiduciary structure and foreign trusts need not be reported in Portugal.

5. 9. What best practices should be observed in relation to the creation and administration of trusts?

Portugal
TELLES

It is not possible to set up a Portuguese private fiduciary structure.

6. Trends and predictions

6. 1. How would you describe the current private client landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

Portugal
TELLES

In our experience, the Portuguese tax regime as it relates to private clients – especially with regard to personal income tax (PIT) – tends not to change significantly over the years, especially insofar as its general features are concerned.

The general and progressive PIT rates have changed gradually over the years (although no reduction is foreseen for higher income brackets). Regarding other taxes, those expenses considered as luxury expenses (eg, the acquisition of a property with a value greater than €1 million) have tended to be taxed more heavily

over the years, but the regime largely maintains its key features over time.

The non-habitual resident regime, which is particularly appealing to foreigners who have never resided in Portugal and intend to change their tax residence to Portugal, is quite stable and has hardly changed over the past 10 years (apart from the introduction of a 10% flat rate on foreign-sourced pension income, to avoid double non-taxation situations).

We anticipate that the following matters may be subject to regulation in the future:

- penalising the taxation of short-term capital gains on securities – that is, capital gains from the purchase and sale of securities within a 12-month period. A proposal on this matter was recently tabled and was actually approved, but ended up not coming into force; and
- potential regulation of the taxation of gains relating to crypto assets, which are currently almost entirely excluded from tax in Portugal (except in specific cases where the assets may be qualified as securities or where trading is the taxpayer's professional activity).

7. Tips and traps

7. 1. What are your top tips for effective private client wealth management in your jurisdiction and what potential sticking points would you highlight?

Portugal
TELLES

Before an individual decides to change his or her tax residence to Portugal, an in-depth analysis of the tax framework and his or her assets and income sources under Portuguese tax law should be carried out, in order to understand the practical tax impact of such a change and consider its feasibility.

If a visa is required, the ways of covering the legal residence part should also be carefully analysed.

Any individual who then becomes resident for tax purposes in Portugal should be made aware of all relevant tax deadlines, to ensure that no benefits or exemptions are lost due to non-compliance with mandatory deadlines (ie, any tax exemptions related to the change of residence).

Where foreign-sourced income is received by a resident in Portugal for tax purposes, the individual should always confirm that he or she is benefiting from the network of international double tax treaties that Portugal has in place, in order to guarantee that no more tax is being paid at source than is legally due.



mondaq

Connecting knowledge & people

Bristol | Essex | New York | Sydney

t: +44 (0) 20 8544 8300
e: enquiries@mondaq.com

