Portugal

International Estate Planning Guide

Individual Tax and Private Client Committee

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Table of Contents

I. Wills and disability planning documents

The Portuguese succession legal framework is complex and characterised by strong limits on the right of free disposition *mortis causa* of one's property. Effectively, Portuguese succession law stipulates a forced heirship regime to protect the spouse, descendants and ascendants, ensuring these inherit from one-third to two-thirds of the deceased's total assets.

The portion of the inheritance (deceased's estate) that is reserved for the legal heirs is generally safeguarded and cannot be affected by a will or even (in most cases) by donations prior to death, as the assets could be reintegrated into the inheritance.

Recently, however, an important change in the law occurred and it is now possible for a spouse to waive his or her capacity of heir in a prenuptial agreement.

A distinctive feature in Portuguese succession is that the Portuguese regime only applies if Portuguese law is considered to be the personal law of the deceased at the time of death or the will, independent of the location of the assets comprising the inheritance, both movable and immovable (universal succession).

For this purpose, Portuguese private international law stipulates that the deceased's personal law is considered to be the law of his or her nationality at the time of death or at the time of the celebration of the will. Hence, personal law is of utmost relevance for the determination of the law applicable to the succession and all its regulatory aspects of distribution and administration of the assets comprising the inheritance and for the determination of the capacity for, and the interpretation of, the will.

For cross-border inheritances after 17 August 2015, Regulation (EU) No 650/2012 (the 'Succession Regulation') created a whole new set of rules.

On the practical side, it created the European Certificate of Succession, to be issued in one Member State for use in another Member State, allowing the heirs, legatees, executors of the will or administrators of the estate to easily demonstrate their status and/or rights and powers in another Member State.

In broad terms, unless the deceased establishes a will or declaration of disposition upon death, the law applicable to the succession as a whole shall be the law of the state in which the deceased had his or her habitual residence at the time of death.

Exceptionally, when it is 'clear from all the circumstances' that, at the time of death, the deceased was manifestly more closely connected with a state other than the state where he or she resided at the time of death, the law applicable to the succession shall be the law of that other state. These apply to persons who die by intestacy (*ab intestato)*.

Regulation 650/2012 then allows a person to choose the law to govern his or her succession as a whole the law of the state whose nationality he or she possesses at the time of making the choice or at the time of death.

A person possessing multiple nationalities may choose the law of any of the states whose nationality he or she possesses at the time of making the choice or at the time of death.

It is also admissible to establish agreements as to the succession of one person or several persons.

It is noteworthy that Portugal does not have a succession tax between spouses, ascendants or descendants, and that donations and inheritances to other persons (family, friends or strangers) bear a stamp duty of just ten per cent.

A. *Will formalities and enforceability of foreign wills*

In Portugal, the most common forms of will are the public will (which is drawn up by a notary and archived in the notary's books, although remaining strictly confidential) and the private will (which is handwritten by the testator and its conformity with form requirements is then verified by a notary who issues the validation instrument). Any of the said wills are freely revoked, with special requirements applicable to the public will, which need to be done by a public (ie, not confidential) deed. Portuguese law states that any will would be valid in Portugal if the material requirements of Portuguese law are met, the disposition does not offend or limit the reserved portion of the legal heirs and if it is compliant with the laws of at least one of the following jurisdictions:

- the place where the will was concluded;
- the personal law of the testator at the moment of the declaration;
- the personal law of the testator at the moment of death; or
- the jurisdiction to which the local conflict of law rules refer.

B. *Foreign wills*

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

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

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

II. Estate administration

A. *Overview of administration procedures*

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

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

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

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

The distribution of assets is made by a public deed, which can be challenged by means of a judicial procedure by any of the heirs. The administrator is liable to manage the assets of the deceased, including those assets held in common with the surviving spouse, until the public deed confirming the distribution of the assets is created.

B. *Intestate succession and forced heirship*

In Portugal, there are three types of succession:

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

Under a mandatory legal succession, at least two-thirds of the inheritance (called the *legítima*) must be granted to the spouse and the direct descendants or ascendants.

The remaining assets can be disposed by means of testamentary succession or are granted to the following heirs entitled to the legal succession:

- spouse and descendants;
- spouse and ascendants;
- siblings and their descendants;
- other relatives; and
- the Portuguese state.

C. *Marital property*

Portuguese family law distinguishes between three marital property regimes:

- statutory marital property regime (ie, joint ownership of acquired assets – *comunhão de bens adquiridos*): under this regime, each spouse is the sole owner of assets acquired before marriage or by inheritance, and co-ownership of assets applies for all assets acquired by the spouses after the marriage;
- separation of assets (*separação de bens*): under this regime, each spouse holds his or her assets independently in separate ownership; management and disposal are not subject to any limitations deriving from the marital status; and
- total joint ownership of assets (*comunhão geral de bens*): under this regime, all goods and assets become joint property of the spouses (common property). Immediate joint ownership is also presumed for any asset acquired by any spouse during the marriage or the partnership while this property regime is in force. Goods and assets that cannot be transferred by legal transaction will not become common property. Within the pre-marriage contract, spouses can agree to exclude certain goods and assets from common property. Goods and assets acquired on inheritance at death or by gift are also excluded if so stipulated by the deceased or the donor.

The marital property regime is relevant to succession affairs because it will affect the amount of the inheritance to share. For example, in the case of community of property, half the property belongs to the surviving spouse so the inheritance will be only the other half of the assets.

New rules, from Council Regulation (EU) 2016/1103 of 24 June 2016, which apply in several European Union countries (Portugal included) as from 29 January 2019, aims to clarify the property rights for international couples, either married or in a registered partnership. These rules, which help international couples manage their property on a daily basis or divide it in the case of death, divorce or separation, bring an end to parallel, and possibly conflicting, proceedings, for example, on property or bank accounts, in different EU countries.

Such a development, which was introduced in the EU by Council Regulation (EU) No 1259/2010 of 20 December 2010, will now be extended to registered partnerships.

As recently as January 2019, the Portuguese Civil Code was amended, and it is now possible for a spouse to renounce his or her right to be a legitimate heir.

Portugal allowed for very limited use of prenuptial agreements, at least between Portuguese spouses or marriages entered into in Portugal, but this amendment to Article 1700 of the Civil Code broadens the scope of the prenuptial agreement, which in the authors' opinion can contain many more dispositions than merely the choice of marital property and status of legitimate heirs.

However, if the marriage is celebrated in Portugal, the registrar has to validate the prenuptial agreement prior to the certification of the marriage.

It is noteworthy that donations and other gifts between spouses are tax free.

III. Trusts

A. *Treatment of trusts*

1. LEGAL NATURE OF A TRUST UNDER PORTUGUESE LAW

Portuguese law does not recognise trusts as a separate or autonomous estate, with the notable exception of trusts operating in the Madeira International Business Centre. In Portugal, a trust is regarded as a mere contractual arrangement. Such a relationship is construed between the trust settlor and the trustee, and between the trustee and the trust beneficiaries in case the latter have the right to participate in the management of the trust (eg, being part of a committee of protectors) and\or entitled to the distribution of assets and\or income from the trust. The Portuguese Government announced its intention to draft a law regulating the use of trusts in Portugal. It was to be submitted to Parliament before the end of 2019, but that has not occurred yet.

One important issue regarding the use of a trust in Portugal is to ascertain whether a fiduciary relationship is established between the settlor and the trustee and\or between the latter and the trust beneficiaries. In the authors' view, and following most of the Portuguese doctrine, if the trust is set as irrevocable and discretionary, there is no fiduciary relationship between the settlor and the trustee, provided, however – and here we differ from several other authors – the settlor does not act by him or herself and/or through any third person appointed for such a purpose as the trust protector and the level of his or her instructions to the trustee are not tantamount to creating such a fiduciary relationship.

In relation to the beneficiaries of an irrevocable and discretionary trust, the fiduciary relationship occurs only upon the moment where there is any distribution of assets or income from the trust whether by means of liquidation, revocation or extinction of the trust or by means of any distribution of assets or income. As noted below, this is crucial to determine taxable events. However, if the beneficiaries also act as trust protectors and\or are entitled to provide letters of wishes to the trustee, the authors would conclude the existence of a fiduciary relationship between the beneficiaries and the trustee.

In the case of irrevocable and discretionary trusts, Portuguese law does recognise the transfer of assets from the settlor, but the assets are deemed to be transferred to the trustee and there is no ring-fencing between the trust assets and the assets of the trustee. This is the reason that it is advisable for a trust to acquire assets in Portugal only through a limited liability company.

B. *Taxation of trusts*

The 2015 reform of the personal income tax (PIT) (the 'PIT Reform') introduced some provisions on the taxation of income and gains arising from trusts, both during their existence or at their termination. The taxation of operations involving trusts was not ruled in the Portuguese tax law (before the PIT Reform), with the exception of the consideration of these structures for purposes of the application of the controlled foreign corporation (CFC) legislation, which is analysed below.

The new legislation refers specifically to fiduciary structures (*estruturas fiduciárias*). The reports produced by the PIT Reform Commission, which includes the reasoning for the proposed changes, makes it clear that this expression is intended to cover trusts, which are, in fact, the only type of 'fiduciary structure' mentioned in those reports.

Regarding the taxation of income from trusts, the new legislation provides rules to tax the following realities:

- amounts received by individuals from the liquidation, revocation or extinction of 'fiduciary structures'; and
- distributions made by 'fiduciary structures' other than as a result of any of the above operations.

According to the new rules, the amounts received as a result of liquidation, revocation or extinction of 'fiduciary structures' are:

- taxable as capital gains (Category G of the Portuguese PIT) whenever the recipients are settlors of the trust. Taxation arises either at 28 per cent or 35 per cent; in the latter case, if the structure is considered to be 'domiciled' in a jurisdiction that is on the 'blacklist' of tax havens published by the Portuguese authorities or in a jurisdiction of zero or low taxation in the latter case when taxation is levied at a rate lower than 60 per cent of Portuguese standard corporate income tax (CIT) rate (currently 12.6 per cent); and
- subject to stamp duty at a ten per cent rate (with some exemptions) whenever the recipients are not settlors of the trust.

Whenever the recipient is not a settlor, the amounts received as a result of liquidation, revocation or extinction are regarded as transfers for no consideration/gifts and, as such, subject to stamp duty. The liability of transfers for no consideration to stamp duty follows the territorial principle, meaning that only assets that are located or deemed to be located in Portugal are subject to taxation. Taxable transfers are subject to a ten per cent flat rate. Portuguese stamp duty applicable to gifts and inheritances foresees an exemption for gifts and inheritances between spouses, parents and children. However, because under Portuguese law trust assets are deemed as the property of the trustee, it is unclear whether this exemption can apply in the case of a trust unless assets could be deemed to have reverted to the trust settler before the extinction, liquidation or revocation of the trust.

Regarding the distributions paid by trusts, the amounts either paid or made available to a taxpayer from these 'fiduciary structures', other than those arising from a liquidation, revocation or extinction, are taxable as investment income (Category E) and subject to taxation at a flat rate of 28 per cent or 35 per cent (if the trust is considered to be domiciled on a 'blacklisted' jurisdiction, or zero or low-tax jurisdiction, as defined above), regardless of whether the recipients are settlors.

It should be noted that for a Portuguese resident for tax purposes, it is not advisable to use a trust based at the Madeira International Business Centre. Moreover, due to the lack of recognition of a trust as a legal entity, if a citizen applies to have non-habitual resident (NHR) status in Portugal, he or she should not use, at least directly, a trust to hold assets as it would risk losing the tax advantages related to the NHR status noted below.

C. *Controlled foreign corporation rules applicable to trusts*

Portuguese CFC rules are applicable when a Portuguese-resident taxpayer holds at least 25 per cent, or ten per cent in the case of individuals, of a corporation domiciled or with the registered office or effective place of management in a zero or low-tax jurisdiction ('blacklisted' or where taxation is (currently) levied at less than 12.6 per cent).

Holdings on the corporation mean share capital, voting rights and/or rights to the assets of the foreign corporation domiciled in the zero or low-tax jurisdiction.

If a trust holds a CFC in the above conditions, the persons in a fiduciary relationship with the trustee could see the undistributed profits of the foreign zero or low-tax corporation allocated to them and liable to Portuguese PIT at a 28 per cent rate. Upon the distribution of dividends, this tax is deducted from taxation on distributions made by the trust on such dividends, if any.

As mentioned above on the legal nature of a trust under Portuguese law, a settlor retaining powers of protection over the trust and/or beneficiaries in a similar situation could be deemed as establishing a fiduciary relationship with the trustee. Therefore, it is important to ascertain the position of any Portuguese-resident taxpayer settlor and/or beneficiary of a trust under these Portuguese CFC rules.

IV. Taxation

A. *Personal income tax*

PIT (*imposto sobre o rendimento das pessoas singulares* or IRS) is charged on the total income earned by an individual considered resident in Portugal for tax purposes, including income earned outside Portugal. In the case of an individual not resident in Portugal, PIT is charged solely on the income earned in Portugal or deemed as from a Portuguese source.

Tax residence is established on the basis of a direct connection between the period of actual residence in Portugal and the status of the tax resident in this country. An individual may have partial tax residence, as he or she may be resident for tax purposes in Portugal and in another state in the same calendar year.

According to the Portuguese tax law, an individual is deemed to be resident in Portugal when, in the relevant year:

- he or she has remained in Portugal more than 183 days, consecutive; or otherwise;
- even if having remained in Portugal for fewer days, he or she has, on 31 December of the relevant year, a house in such conditions that makes it his or her habitual residence.

Portuguese nationals who move their tax residence to a country, territory or region with a clearly more favourable tax system ('tax havens') are also deemed to be resident in Portugal in the year in which that change of tax residence takes place and in the four subsequent years, except if the person in question may prove that the change was justified. A change may be justified, for example, if a person is working in the location on a temporary basis for an employer domiciled in Portugal. These rules will cease to apply as soon as the taxable person becomes a tax resident in a country, territory or region that is not expressly listed in the above Ministerial Order.

1. General income and deductions

The income of individual persons is liable to PIT according to the following categories:

- Category A: employment income;
- Category B: entrepreneurial or business and professional income;
- Category E: capital or investment income;
- Category F: rental income;
- Category G: capital gains; and
- Category H: pensions.

Once the specific deductions are applied, the income from the various categories is aggregated, for the purpose of its joint taxation. Regarding Portuguese tax residents, the aggregation is levied on their global and worldwide income. Exceptions are foreseen for income subject to withholding tax (WHT) or special flat-tax rates, whenever the taxpayer does not opt for income aggregation, in the cases where this option is legally foreseen. As for non-Portuguese residents, the respective income is not usually aggregated, although there are some situations in which such taxpayers may also opt for their income aggregation.

2. Employment income

Employment income is specifically defined in the Portuguese PIT Code and covers all payments made by the employer, such as salary, bonuses, commissions, tax reimbursements, redundancy payments, pensions, allowances and benefits in kind, regardless of where the payment originates.

Domestic and foreign travel allowances, as well as mileage and lunch allowances in excess of those permitted to employees of state departments, are also taxable as employment income.

Each taxable person may deduct the following from their employment income, up to the total income and within the legal limits:

- a lump sum of €4,104;
- any compensation paid by the employee to their employer; and
- trade union fees.

The above lump sum deduction may be increased up to the amount of the mandatory contributions to social security schemes and to legal health sub-systems or up to 75 per cent of 12 times the value of the Social Support Index (SSI), as long as the difference results from dues paid to professional associations.

Taxable persons with disabilities that earn a salary from employment may consider only 85 per cent of its value for taxation purposes.

3. Business income

Business and professional income may be taxed either in accordance with a simplified regime or based on an organised accounting system.

The simplified regime applies only to taxpayers who, not having opted for organised accounts, have a gross annual income in the immediately preceding year, lower than €200,000 in this category. Under the simplified regime, the taxable income is determined by applying coefficients to the gross income.

The income 'deduction' arising from the application of some coefficients is partially conditioned by the verification of expenses and charges effectively incurred and related to the activity.

The standard regime is based on the net profit arising from the business or professional activity of self-employed individuals assessed on the basis of organised accounts.

4. Investment income

Dividends and interests are liable to taxation at a flat rate of 28 per cent. However, the taxpayer may opt to be liable to tax on dividends and interests received at the marginal rates varying between 14.50 per cent and 48 per cent by opting for the aggregation of dividends and interests with other categories of income taxed globally at the mentioned progressive rates.

A credit against the Portuguese tax liability is available for the lower of the tax paid in the foreign country on those dividends and interest or the amount of tax payable in Portugal on such income. For dividends and interest paid by countries with which Portugal has signed a double taxation treaty (DTT), the tax credit should not exceed the percentage established in the treaty corresponding to the maximum WHT allowed to be levied at the country of the source of such dividends or interest.

If the taxpayer opts to disclose the dividends on the tax return, only 50 per cent will be liable to taxation at the progressive rates in force if the paying company is tax resident in an EU country.

Interest income arising from current or saving accounts on Portuguese banks is taxed at 28 per cent for residents. Interest paid by non-resident entities to tax resident individuals is also taxed at a rate of 28 per cent.

Investment income paid or made available to recipients resident in the Portuguese territory by non-resident entities that also do not have a permanent establishment (PE) in the Portuguese territory, but which are domiciled in a blacklisted jurisdiction, are liable to a tax rate of 35 per cent, either by WHT or the application of a special rate.

Because of the passive nature of investment income, the law does not establish specific deductions for this category.

5. Income from immovable property

Rental income earned by tax residents and non-tax residents is liable to a special flat-tax rate of 28 per cent, but the option for the inclusion of such income in the global aggregated income subject to progressive rates is possible for tax residents.

However, the tax rate will decrease inversely to the duration of the rental contracts for permanent residence, as follows:

- duration equal to, or greater than, two years and less than five years: reduction of two percentage points of the special flat rate, that is, the rate is reduced to 26 per cent; for each renewal with an equal duration, an additional reduction of two percentage points, up to a limit of 14 percentage points;
- duration equal to, or greater than, five years and less than ten years: reduction of five percentage points of the special flat rate, that is, the rate is reduced to 23 per cent; for each renewal with an equal duration, an additional reduction of five percentage points, up to a limit of 14 percentage points;
- duration equal to, or greater than, ten years and less than 20 years: reduction of 14 percentage points of the special flat rate, that is, the rate is reduced to 14 per cent; and
- duration equal to, or more than 20 years: reduction of 18 percentage points of the special flat rate, that is, the rate is reduced to ten per cent.

The rental income that results from a consistent practice of the lease of properties, by option of the taxpayer, may be taxable as income from business and professional activities (self-employment (Category B)). However, to determine income subject to taxation, the same rules used for determination of rental income under 'Category F' are applicable.

All costs actually incurred and paid by the taxable person to obtain or guarantee rental income may be deducted from that income, subject to the exceptions of costs of a financial nature, depreciation costs and costs of furniture, domestic appliances and articles of comfort or decoration.

In the case of a self-contained unit in a property subject to horizontal ownership (eg, an apartment in a condominium), the deductions for each unit or part of a unit are other costs which, under the terms of the law, the condominium must incur, and which are actually paid by the taxable person.

Costs incurred and paid in the 24 months prior to the beginning of the lease that relate to conservation and maintenance of the property may also be deducted, if, in the meantime, the property has not been used for a purpose other than renting.

6. Capital gains

As a general rule, capital gains are subject to tax at a flat rate of 28 per cent but reduced to 14 per cent in the case of capital gains arising on the sale of shares held on micro and small companies not listed in the stock exchange.

Fifty per cent of capital gains arising from the sale of real estate by tax residents in Portugal are taxed at progressive rates varying between 14.50 per cent and 48 per cent. The gain may be wholly or partially exempt if the property being sold is the taxpayer's principal or main residence and the sale proceeds, reduced by the value of any outstanding loans relating to the purchase of the property being sold, are reinvested in the acquisition, improvement, or construction of another principal residence in Portugal or within the EU within 36 months from the sale or in the period of 24 months prior to the sale.

Capital gains (other than derived from real estate) earned by non-residents that are not borne by a PE in Portugal are fully taxable at a flat rate tax of 28 per cent.

The taxable gain is calculated on the difference between the purchase price of the property and the price at which it is subsequently sold. Certain expenditures are deducted from this taxable gain and an indexation coefficient is applied to the purchase price of real estate to account for inflation. Allowable expenditures include all purchase costs – notary and legal fees, conveyance tax (*imposto municipal sobre as transmissões onerosas de imóveis* or IMT) paid, broker's commissions – as well as the costs of any improvements made to the property, as long as properly documented.

7. Pensions

A total of €4,104 of pension income is tax exempt.

8. PIT rates

Taxable income (€)	*Tax rate (%)*	*Deductible amount (€)*
Up to 7,112	14.5	0
7,112–10,732	23	605
10,732–20,322	28.50	1.194,80
20,322–25,075	35	2,516
25,075–36,967	37	3,017
36,967–80,882	45	5,975
Above 80,882	48	8,401

Residents in Portugal for tax purposes are taxed on their worldwide income at progressive rates varying from 14.5 per cent to 48 per cent.

Non-residents are liable to income tax only on Portuguese-sourced income, which includes not only that portion of remuneration that can be allocated to the activity carried out in Portugal but also remuneration that is borne by a Portuguese company or PE.

Non-residents are taxed at a flat rate of 25 per cent on their taxable remuneration with some exceptions.

In addition to the general rates, the following surcharges apply progressively:

- 2.5 per cent to the part of the taxable income above €80,000 and up to €250,000; and
- five per cent to the part of the taxable income above €250,000.

9. Gift and inheritance tax and wealth tax

There is no gift and inheritance tax between spouses, ascendants and descendants (up to grandsons or great-grandsons or grandfathers or great-grandfathers).

Other members of the family, friends or strangers are levied at a ten per cent stamp tax.

In Portugal, there is no wealth tax or any tax on large estates or fortunes, except *adicional ao imposto municipal de imóveis* (AIMI) referred below in point C.2.b. However, the identification number of bank accounts held abroad must be disclosed in the annual income tax return.

10. Tax on the sale of second-hand valuable goods

In Portugal, there is no capital gains on the sale of second-hand valuable goods: art, cars and other collectibles.

B. *Double taxation agreements*

- Portugal has entered into a number of double taxation treaties (currently, 80 agreements are already signed) with various countries to prevent double taxation.
- Under these treaties, WHT rates on outbound dividends, interests and royalties' payments are reduced wherever the beneficial owner of the income derived from Portugal is a tax resident of the other contracting state. Typically, these rates are 15 per cent, ten per cent and five per cent, respectively.

- Portugal is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, the implementation of which may impact on the application of the existing double taxation treaties.

C. *Real estate taxes*

1. Property Transfer Tax (IMT)

- Property transfer tax (IMT) is a municipal tax levied on transfers for consideration of real estate located in Portuguese territory.
- For residential property, a progressive rate is charged on the higher of the value appearing in the contract or on the official value for taxation purposes registered at the local tax office (*valor patrimonial tributário*) assessed by the tax authorities on the basis of certain official indexes and by tax evaluations of the property. There is a single rate of six per cent for transactions above €574,323 but below €1m and a single rate of 7.5 per cent for transactions above €1m if the property is for use as the buyer's personal and permanent residence. If the buyer has their tax residence in certain countries with a more favourable taxation regime, this may give rise to the application of a higher rate of ten per cent. The rate for commercial property is 6.5 per cent.

2. Property tax

a. Property tax (IMI)

Property tax (*imposto municipal sobre imóveis* or IMI) is computed on the tax registration value of urban and rural properties located in Portuguese territory. It is due by whoever is the registered owner of the property as of 31 December of the year to which the tax concerns.

The IMI rate for urban properties varies between 0.3 per cent and 0.45 per cent of its official value recorded for tax purposes at the local tax office and is 0.8 per cent for rural properties.

b. Additional to the IMI (AIMI)

Additional to the IMI (AIMI) is a tax that is levied on the sum of the assets of residential real estate, owned by individuals and companies, with a value of more than €600,000, and which is added to the IMI.

The taxable basis corresponds to the sum of the official value of all urban properties as recorded at the local tax offices for tax purposes held by each taxpayer reported as of 1 January of each tax year.

In the case of individuals and undivided inheritances, a deduction of €600,000 to the taxable basis is foreseen. Married or living in non-marital partnership taxpayers, who opt to submit a joint tax return, have the right to deduct €1.2m to the sum of the tax registration value of all their urban properties.

Properties that benefited from IMI exemption in the previous year are excluded from the taxable basis.

The tax rate is 0.4 per cent, 0.7 per cent, one per cent or 1.5 per cent depending on several legal requirements. A rate of 7.5 per cent is applicable in the case of urban properties owned by entities resident or domiciled in tax havens.

3. Stamp duty (IS)

Stamp duty (*imposto do selo* or IS) is due on acts, contracts, documents, titles, books, papers and other facts as foreseen in the General Table attached to the Stamp Duty Code whenever such contracts and/or legal acts are deemed to occur in Portugal and are not subject to, nor exempt from, VAT.

Stamp Duty is charged at 0.8 per cent of the value of the transaction and is added to the value that serves as the basis of assessment for the IMT.

4. Real estate investment funds (REIFs)

Real estate investment funds (REIFs – *fundos de investimento imobiliários* or FII) are mutual investment funds that belong, under a special joint property regime, to the majority of the members and their shares are represented by fund units.

REIFs may be:

- open funds made up of a variable number of fund units in accordance with market demand;
- closed-ended funds made up of a fixed number of fund units set at the moment of issue, but which may later be increased or reduced in accordance with applicable legislation and the fund's rules; in closed funds, subscription may be public or private; or
- mixed funds made up of two categories of fund units, one of a fixed number and the other of a variable number open for subscription in the market.

REIFs may also be classified in accordance with two forms of remuneration of holders of fund units:

- distribution funds that distribute the income generated to holders of fund units in full or in part on a regular basis; or
- capitalisation funds that automatically reinvest the income generated by the respective portfolios and do not distribute income.

There are also special REIFs, which may be open or closed. The difference lies in the fact that they are destined for 'specific segments of investors defined in the fund rules' and that it is possible for them to include mixed-use and rural property, simple rights to operate a property as a business and derivative financial instrument. The legal framework for Portuguese REIFs, specifically in respect of creation and sale of their fund units, is supervised by the Portuguese Securities and Exchange Commission (Comissao do Mercado de Valores Mobiliarios or CMVM), which is responsible for authorising the creation of REIFs and ensuring compliance with the rules imposed by law and any applicable regulations, without prejudice to the powers of the Bank of Portugal in respect of supervision of credit institutions and financial companies.

4. VAT

As a rule, the transfer of property and shares in Portugal is exempt from VAT. Nonetheless, in the case of a transfer of property, a seller may waive the exemption if certain conditions have been met and the seller has complied with various formalities.

If the exemption is waived, VAT can be recovered in accordance with specific dispositions set out in the Portuguese VAT Code.

D. *New tax regime for urban rehabilitation: exemptions from real estate taxes*

As from 1 January 2018, a new tax regime was enacted to further promote urban rehabilitation and renewal which rendered even more attractive investments in real estate in Portugal.

Both individuals and corporations, including REIFs, may benefit from several types of exemptions from real estate taxes when investing in properties related to urban rehabilitation or urban renewal.

The tax benefits available for urban rehabilitation or renewal cover works for the rehabilitation of existing buildings in historical districts of Portuguese cities and also areas declared as critical for urban renewal.

Most of the areas of the cities of Lisbon and Porto have been declared as areas for critical urban renewal, as is the case for other cities offering interesting investment opportunities, such as Viseu, Guimarães, Braga, Évora and Aveiro, to name but a few.

1. Benefits under property transfer tax (IMT)

There is an exemption from IMT for the purchase by the promoter or developer of properties to be subject to an intervention of urban rehabilitation provided that the renewal or reconstruction works would have started no later than three years after such a purchase.

The promoter of an urban rehabilitation project must file a request for the refund of the IMT paid upon the purchase of each individual property to the competent tax authorities before the purchase.

Another specific exemption from IMT is available for investments in the purchase of buildings or fractions of buildings where historical shops, as listed by the municipal authorities, are installed and a project aimed at their renewal or rehabilitation is designed.

An exemption from IMT may also apply to the first sale made by the promoter or developer if the property is to be leased for permanent housing purposes or sold to any individual for his or her permanent residence.

2. Benefits under property tax (IMI)

Properties acquired for urban rehabilitation may be exempt from IMI for a three-year period from the year of conclusion of the rehabilitation works inclusive or for a five-year period at the request of the respective promoter or developer provided in this second case that the rehabilitated or renewed property will be used for lease for permanent housing purposes or sold for permanent residence of the purchaser.

3. Benefits under personal income tax (IRS)

The lease of real estate properties in any area of urban rehabilitation is subject to Portuguese PIT (IRS) at a flat reduced rate of five per cent. Most of the districts of Porto and Lisbon have been included in the listed areas of urban rehabilitation.

A similar flat reduced rate of five per cent of IRS is available for capital gains derived from the first sale of the properties located in areas of urban rehabilitation once the intervention is finished.

It should be noted that this is the lowest possible flat rate that any individual or corporate entity can find in the Portuguese tax system. However, it is in the nature of flat rates that no costs can be deducted.

4. Benefits under corporate income tax (IRC)

a. Urban rehabilitation close-ended investment funds

In accordance with the new tax regime of urban rehabilitation, REIFs aimed at urban rehabilitation created under Portuguese law between 1 January 2008 and 31 December 2013 are exempt from Portuguese CIT *(imposto sobre o rendimento das pessoas coletivas* or IRC).

b. Shareholders of urban rehabilitation close-ended investment funds

Shareholders or holders of participation units of investment funds are liable to IRS or IRC on any dividends or profits distributed by the fund, or any amounts received upon the redemption of the shares or participation units representing the capital of the fund as follows:

- Portuguese-resident taxpayers are liable to withholding of IRS at a flat rate of ten per cent;
- Portuguese-resident corporate entities are liable to a ten per cent withholding of IRC on account for the final CIT due; and
- non-Portuguese resident taxpayers are exempt from the withholding of IRS or IRC, except when corporate entities are located in a more favourable tax jurisdiction or more than 25 per cent is held by Portuguese-resident taxpayers.

5. Benefits under Portuguese VAT

a. VAT due on the purchase of property

The sale and purchase, and letting and sub-letting of properties are exempt from VAT. Upon the sale and purchase or letting of properties, or independent units within properties, it is possible, if certain conditions are met, to waive the VAT exemption and subject the operations to VAT at the rate of 23 per cent (22 per cent in Madeira and 18 per cent in the Azores). The exemption from VAT does not cover 'office centre' type contracts, which are subject to VAT under general terms. If properties are destined for a commercial use, such as shops, shopping centres, office spaces, and similar commercial and/or industrial operations, it is possible to waive VAT exemption. Then, VAT on all expenses incurred with the construction and/or reconstruction and renewal of the property can be deducted or reimbursed.

Waiving of the VAT exemption on the acquisition of real estate properties does not preclude liability to conveyance or property transfer tax (IMT), with the possible exemptions mentioned above for the acquisition of properties in urban rehabilitation areas.

b. VAT due for reconstruction, rehabilitation and adaptation works on properties

Construction and other provisions of services are subject to taxation at the general rate of VAT of 23 per cent (22 per cent in Madeira and 18 per cent in the Azores).

A reduced VAT rate of six per cent (five per cent in Madeira and four per cent in Azores) may be applied to:

- urban rehabilitation works contracts on properties or public spaces located in areas of urban rehabilitation defined in legal terms, or in the context of reclassification and rehabilitation in projects of recognised national public interest;
- works contracts for the rehabilitation of properties contracted directly by the Institute of Housing and Urban Rehabilitation (Instituto da Habitação e da Reabilitação Urbana or HRU) or carried out under programmes supported by it; and
- works contracts for the improvement, conversion, renovation, restoration, repair, or conservation of properties or independent units in properties used for housing, with the exception of cleaning works, maintenance of green spaces and works contracts for properties that cover the whole or part of the elements that make up swimming pools, saunas, tennis courts, golf or mini-golf or similar installations (in the latter case the reduced VAT rate does not cover the materials incorporated, except if the respective value does not exceed 20 per cent of the total value of the provision of services).

c. Procedure for the application of the reduced six per cent VAT rate

Promoters of urban rehabilitation projects may benefit from the application of the lower six per cent VAT rate on all materials and equipment used for, or in connection with, the reconstruction and rehabilitation works to be carried out in the rehabilitation of the property and, if it would be the case, on any other property or properties of any adjacent buildings used for the rehabilitation and/or renewal works.

This tax incentive is granted under the regime of urban rehabilitation and renewal applicable, most notably, on historical districts, and in critical urban renewal and reconversion areas.

In order to benefit from this lower six per cent VAT rate on the above eligible purchase of civil construction goods and materials, promoters of urban rehabilitation projects only need to exhibit and keep in their records a construction licence or permit and a declaration issued by the competent municipal authority confirming that the works are indeed of a reconstruction and rehabilitation nature and inserted in an historical district and/or in a critical urban recovery or reconversion area of the city concerned.

E. *Opportunities for residency, tax benefits, investments and citizenship in Portugal*

1. NON-HABITUAL RESIDENT TAX REGIME

Taxable persons who meet the conditions to qualify as residents under Portuguese law, who have not been taxed as tax residents in Portugal in the five preceding years, may benefit from the NHR scheme for a period of ten years.

To benefit from the scheme, the taxable person must register as a tax resident in Portugal and make an application for NHR status with the Portuguese tax authorities by 31 March of the year following the year in which he or she became a tax resident in Portugal.

Under the NHR rules, NHR income is taxed as follows:

a. Portuguese source income

Employment and self-employment income can be liable to a special 20 per cent flat tax rate if derived from any of the high value-added activities of a scientific, artistic or technical nature performed in Portugal listed in a Ministerial Order.

It should be noted that the list of high value-added activities in scientific, artistic or technical sectors covers various branches of activities, such as architects, doctors, engineers, artists, actors, musicians, auditors and tax advisors, university teachers, other liberal professions, investors, directors and managers under certain conditions. If this is the case, the taxable person must also present documentation to the Portuguese tax authorities that demonstrates that he or she is engaged in a high value-added activity.

Other types of domestic income earned by NHRs are liable to PIT according to the rules applicable to Portuguese tax residents.

b. Foreign source income

Employment income is exempt from Portuguese tax, provided that it is taxed in the source country according to the applicable tax treaty entered into by Portugal and that country.

Self-employment income from a high value-added activity is not subject to taxation in Portugal provided that the income may be taxed in the source country under a tax treaty signed between Portugal and that country.

Since 2020, pensions obtained abroad by NHRs have been taxed at a rate of ten per cent.

Interest, dividends and royalties sourced outside Portugal may be tax exempt in Portugal under the DTT, and if taxed in the source countries, the tax so charged shall not exceed the reduced rates established in the tax treaties signed with Portugal, usually of ten per cent,15 per cent or five per cent, respectively.

However, there is no exoneration in the case of capital gains arising from any source but immovable property, which is paid in the country where the property is located.

Capital gains from any other source, namely shares and comparable interest sourced anywhere in the world, are taxed in Portugal at a flat rate of 28 per cent.

However, certain exempt income will be considered for the purposes of applying the general progressive PIT rates in relation to the remaining global income of the taxpayer that is not exempt from PIT.

2. GOLDEN VISA: VISA THROUGH INVESTMENT WITHOUT HAVING TO RESIDE IN PORTUGAL

a. What is the Portuguese Golden Visa?

The Portuguese Authorisation of Residency for Investment Activity (Autorização de Residência para Actividade de Investimento (ARI) or Golden Visa) is a special residence permit for investment activity, accessible to non-EU or European Economic Area (EEA) citizens and their immediate family members who are willing to engage in qualified investment in Portugal. Among many other features, holders of the Portuguese Golden Visa are able to move freely throughout the Schengen Area and, later, apply for a permanent residency and citizenship.

b. Possible investment activities

The law allows the applicants to choose between investing in their own name or through a sole shareholder company based in Portugal or another EU Member State.

i. *Transfer of capital in an amount equal to or higher than €1m*:

- bank deposits: transfer to a Portuguese bank account a minimum amount of €1m;
- public debt securities: acquisition of government bonds, savings certificates and treasury bills in the minimum amount of €1m; and
- securities and shares in commercial companies: acquisition of securities, either listed in the Lisbon Euronext or private companies and shares in a limited liability company for an amount equal to or higher than €1m.

ii. *Employment:* creation of ten employment posts. Job creation is reduced to a minimum of eight posts in low-density areas.

iii. *Real estate in the minimum amount of €500,000 or €400,000:* acquisition or promise to acquire real estate property in the minimum amount of €500.000, or €400,000 (in a low-density area). Property can be for housing, commercial, services and so on.

iv. *Real estate in the minimum amount of €350,000 or €280,000*: acquisition or promise to acquire real estate property that was constructed more than 30 years ago or located in an area of urban rehabilitation and in need of refurbishment. The sum for the property and rehabilitation of the latter must reach the minimum amount of €350,000 or €280,000 (in low density areas).

v. *A total of €350,000 in research activities:* transfer of at least €350,000 to be applied in research activities carried out by public or private scientific research institutions, integrated in the national scientific and technological system. The value will be reduced to €280,000 if the area is of low density.

vi. *A total of €250,000 in investment or support of artistic production:* transfer of at least €250,000 to be applied in investment or support of artistic production, rehabilitation or preservation of national cultural heritage. The eligible institutions are either public or private non-profit associations and foundations. The value will be reduced to €200,000 if the area is of low density.

vii. *A total of €350,000 or more for the acquisition of units in investment funds or venture capital funds:* the applicant shall invest at least €350,000, for the acquisition of units of investment funds or venture capital funds for the capitalisation of companies, which are set up under Portuguese law, whose maturity, at the time of the investment, is at least five years and if at least 60 per cent of the value of the investments is made in commercial companies based in the national territory.

viii. *Portuguese company with a capital of €350,000 together with the creation of employment; incorporation of a Portuguese company or injection of capital in an existing one of at least €350,000:* this investment also requires the creation of at least five full-time employment posts for a minimum period of three years.

3. D2 VISA: IMMIGRANT ENTREPRENEURS

b. What is the D2 Visa?

The D2 Visa is a gateway to residence in Portugal through one of these three entrepreneurial type of investments:

i. *Investing in a business in Portugal:* applicants must prove one of the following:

- to have carried out investment operations in Portugal;
- to have financial resources available in Portugal (including financing obtained from a financial institution in Portugal); in this case, applicants must also demonstrate the intention to use this financing to invest in operations in Portuguese territory; or
- to have developed an entrepreneurial project, including the creation of an innovative base company, integrated in a certified incubator under the terms defined by order of the government members responsible for the areas of internal administration and the economy.

ii. *Building a company in Portugal:* applicants must prove both:

- to have incorporated a company in Portuguese territory; and
- to have registered the company at the Social Security and Tax Authorities.

At renewal, they must show proof of company activity (payments received, invoices etc).

iii. *Working as a freelancer in Portugal:* applicants must prove one of the two:

- to have signed a services contract to operate a liberal profession, and a statement from the professional organisation, with evidence of its registration (whenever applicable); or
- to have been registered before the Tax Authorities as self-employed.

At renewal, they must prove that they are performing a professional activity either through a services contract or green receipts.

4. D7 VISA: PASSIVE INCOME AND DIGITAL NOMADS

a. What is the D7 Visa?

The D7 Visa is an alternative route to obtain Portuguese residency with lower governmental fees and a quicker approval rate, for those who intend to actually live in Portugal.

The application starts at the Portuguese Consulate of the country where the applicant has a habitual residence.

b. Who can apply?

Non-EU/EEA/Swiss citizens who desire to relocate to Portugal and can carry out a professional activity remotely and anywhere; are retired and entitled to a pension; and/or are living from personal revenue, such as bank account savings, rents, dividends and interest.

F. *Portuguese corporate income tax (IRC)*

Companies with their seat or centre of effective management in Portugal are subject to CIT (IRC) on their worldwide income.

Non-resident companies are taxed only on Portuguese-source income. In addition, any income imputable to a PE located in Portugal of a non-resident entity is also subject to CIT.

The tax is calculated on the basis of the company's accounting result, and this may be adjusted in accordance with the rules set out in the CIT Code. Expenses are deductible to the extent they are necessary for the purpose of generating taxable income and are properly documented.

A standard CIT rate of 21 per cent applies on the global amount of taxable income realised by companies' resident for tax purposes in the Portugal mainland (also applicable to Portuguese PEs of foreign entities).

A reduced CIT rate of 17 per cent (16 per cent in the case of the Autonomous Region of Madeira) applies to small and medium enterprises (SMEs) on the first €15,000 of taxable income (the standard CIT rate shall apply on the excess). Additionally, SMEs that are located in Portuguese inland regions benefit from a rate of 12.5 per cent on the first €15,000 of the taxable amount, also being subject to the standard CIT rate on the excess.

Entities that do not carry out a commercial, industrial or agricultural activity as their main activity are subject to a 21 per cent CIT rate on the global amount of their taxable income.

A lower CIT rate of 16.8 per cent applies to companies that are tax resident in the Autonomous Region of the Azores, including PEs of foreign entities registered therein.

A municipal surtax is levied on taxable income, prior to the deduction of any available carry forward tax losses, at rates up to 1.5 per cent, depending on the municipality.

A state surtax is levied (prior to the deduction of any available carry-forward tax losses) at the following rates:

- three per cent applicable to the taxable profit exceeding €1.5m and up to €7.5m;
- five per cent applicable to the taxable profit exceeding €7.5m and up to €35m; and
- nine per cent applicable to the taxable profit exceeding €35m.

The state surtax is levied on resident taxpayers carrying on commercial, industrial or agricultural activity and by non-residents with a PE in Portugal.

A regional surtax applies in the Autonomous Region of Madeira on the same terms as the state surtax. In the Autonomous Region of the Azores, a reduction of 20 per cent on the above rates applies.