Portugal

International Estate Planning Guide

Individual Tax and Private Client Committee

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I. Wills and disability planning documents

The Portuguese legal framework for inheritance is complex, with stringent restrictions on the ability to freely distribute one's property after death. Specifically, Portuguese inheritance law enforces a forced heirship system to protect spouses, descendants and ascendants, allocating them between one-third and two-thirds of the deceased's entire estate.

Generally, the share of the estate reserved for legal heirs cannot be altered by a will, and in most instances, not even by gifts made prior to death. These assets can be restored to the estate to maintain the designated shares for the heirs. However, a recent legal change now allows a spouse to renounce his or her heirship rights through a prenuptial agreement, thereby safeguarding the inheritance for descendants outside the scope of the marriage.

Uniquely, Portuguese inheritance law applies only if Portuguese law governs the deceased's personal affairs either at the time of death or when the will was made, regardless of the physical location of the assets in question. Portuguese private international law dictates that a deceased person's 'personal law' is either the law of his or her nationality at the time of death or at the time the will was executed. Therefore, understanding one's personal law is crucial for determining the applicable succession law, asset distribution, estate administration and will interpretation.

For cross-border inheritances occurring after 17 August 2015, European Union Regulation No 650/2012 introduced a new set of rules. Practically, it established the European Certificate of Succession, issued in one EU Member State for use in another, to simplify the process of establishing the status, rights and powers of heirs, legatees, will executors or estate administrators across Member States.

Broadly speaking, the EU regulation stipulates that, unless the deceased leaves a will or makes a declaration concerning his or her estate, the governing law for the entire estate will be that of the state where the deceased had his or her habitual residence at the time of death. However, if it is 'clear from all circumstances' that the deceased had a stronger connection to another state at the time of death, the laws of that state will apply. This is particularly relevant for individuals who die without leaving a will (intestate).

Regulation 650/2012 further allows individuals to choose the governing law for their succession, selecting from the states of their nationality either at the time of the choice or at the time of death. This choice also extends to individuals with multiple nationalities.

It is also possible to establish agreements concerning succession for one or multiple persons.

Notably, Portugal does not impose succession tax on transfers between spouses, de facto partners or direct descendants and ascendants. Inheritances and gifts to other individuals, whether they are relatives, friends or unrelated parties, are subject to ten per cent stamp duty.

A. *Will formalities and enforceability of foreign wills*

In Portugal, the two most prevalent types of wills are the public will and private will. A public will is prepared and recorded by a notary in his or her official records, while still maintaining strict confidentiality. A private will, on the other hand, is handwritten by the testator and then verified by a notary, who issues a validation certificate. Either type of will can be freely revoked, although revoking a public will involves specific requirements and must be executed through a public (ie, non-confidential) deed.

According to Portuguese law, a will is considered valid in Portugal if it meets the material requirements set by Portuguese law; does not infringe on the guaranteed inheritance shares of legal heirs; and complies with the laws of at least one of the following jurisdictions:

- the jurisdiction where the will was executed;
- the testator's personal law at the time of creating the will or at the time of his or her death; or
- the jurisdiction indicated by the local conflict-of-law rules.

Additionally, if the testator's personal law at the time the will was made mandates a specific form under the penalty of nullity or ineffectiveness, that requirement must be fulfilled, even if the will is executed abroad.

B. *Foreign wills*

Portuguese domestic laws also acknowledge the validity of foreign wills, based on a general provision in the Portuguese Civil Code. This provision states that legal documents or transactions executed in other countries can be recognised in Portugal if they are considered lawful in the country where they were executed. However, the Portuguese Civil Code stipulates that foreign wills must adhere to a minimum standard of formality, such as being notarised. According to established Portuguese case law, if a will satisfies the formal requirements of the foreign country where it was executed (eg, it is notarised, witnessed and apostilled), it should generally be accepted as valid in Portugal.

II. Estate administration

A. *Overview of administration procedures*

While specific acts of disposition may require the involvement of all heirs, the majority of estate administration tasks are the responsibility of the estate administrator.

Under the Portuguese Civil Code, the role of estate administrator falls to one of the following individuals, in the listed order, regardless of whether any of them reside outside of Portugal:

- the surviving spouse (if not legally separated), provided he or she is either an heir or has a stake in the marital property;
- the executor, unless the testator specifies otherwise;
- blood relatives who are legal heirs, with preference given first to those most closely related by degree, then to those who lived with the deceased for at least a year prior to death and finally to the eldest heir; and
- testamentary heirs, prioritising those who lived with the deceased for at least a year at the time of death, followed by the oldest heir.

If the estate administrator either renounces the appointment or fails to fulfil his or her duties, a new estate administrator must be appointed by the court. This can be initiated at the request of any interested party or by the public prosecutor.

The distribution of the estate's assets is formalised through a public deed, which any heir can challenge through a judicial process. The estate administrator is responsible for managing the deceased's assets, including those shared with the surviving spouse, until the public deed confirming the asset distribution is finalised.

B. *Intestate succession and forced heirship*

In Portugal, there are three primary forms of succession:

- mandatory legal succession;
- testamentary succession (via a will); and
- residual legal succession (applies when neither mandatory legal nor testamentary succession account for all the deceased's assets).

In the case of mandatory legal succession, a minimum of two-thirds of the estate, known as the *legítima*, must be allocated to the spouse and direct descendants or ascendants.

The remaining portion of the estate may be distributed through testamentary succession or granted to heirs according to the residual legal succession. These heirs are prioritised as follows:

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

C. *Marital property*

Portuguese family law identifies three types of marital property regimes:

- Statutory Marital Property Regime (also known as *comunhão de bens adquiridos*): In this regime, each spouse solely owns assets acquired before the marriage or through inheritance. Assets acquired after marriage are co-owned by both spouses;
- Separation of Assets (*separação de bens*): Each spouse maintains separate ownership of his or her individual assets. The management and disposal of these assets are not influenced by marital status; and
- Total Joint Ownership of Assets (*comunhão geral de bens*): Under this system, all assets and property become the joint property of the spouses. The pre-marital contract allows spouses to exclude specific assets from becoming joint property. Assets acquired through inheritance or gifts may also be excluded if specified by the deceased or donor.

The chosen marital property regime significantly influences succession matters. For instance, in a community property arrangement, half of the assets belong to the surviving spouse, leaving only the remaining half for inheritance.

New regulations, established by Council Regulation (EU) 2016/1103 as of 24 June 2016, and effective from 29 January 2019, aim to clarify property rights for international couples, either married or in registered partnerships. These rules simplify the management and division of property during events like death, divorce or separation, eliminating conflicting legal proceedings across different EU countries. This framework, initially introduced by Council Regulation (EU) No 1259/2010 on 20 December 2010, has now been expanded to include registered partnerships.

Additionally, an amendment to the Portuguese Civil Code in January 2019 now allows a spouse to renounce the right to be a legitimate heir. While prenuptial agreements were previously limited in scope, particularly for marriages contracted in Portugal, this change broadens the range of stipulations that can be included, such as the choice of the marital property regime and the status of legitimate heirs. However, if the marriage occurs in Portugal, the prenuptial agreement must be validated by the registrar before the marriage certificate is issued.

It's worth noting that gifts and donations between spouses are tax-exempt.

III. Trusts

A. *Treatment of trusts*

Portuguese law generally does not recognise trusts as distinct or autonomous estates, except for those operating within the Madeira International Business Centre. In Portugal, a trust is considered a contractual arrangement between the settler and the trustee, as well as between the trustee and beneficiaries, particularly if the beneficiaries have managerial rights in the trust (eg, serving on a committee of protectors) or are entitled to asset and/or income distribution. Although the Portuguese Government announced plans to introduce legislation regulating the use of trusts, the draft had not been submitted to Parliament as of the end of 2019.

A key issue in utilising trusts in Portugal involves determining whether a fiduciary relationship exists between the settler and trustee, and/or between the trustee and beneficiaries. According to prevailing Portuguese legal opinion, if a trust is both irrevocable and discretionary, no fiduciary relationship is established between the settler and trustee. This is true provided that the settler neither acts unilaterally nor instructs the trustee through a third party in a manner that effectively establishes a fiduciary relationship – a point on which we diverge from some other legal scholars.

As for the beneficiaries of an irrevocable and discretionary trust, a fiduciary relationship arises only at the moment when assets or income are distributed from the trust, whether through the liquidation, revocation or termination of the trust or any other form of distribution. This moment is crucial for determining taxable events. However, if beneficiaries also act as trust protectors or have the right to issue 'letters of wishes' to the trustee, a fiduciary relationship is deemed to exist between the beneficiaries and the trustee.

In the context of irrevocable and discretionary trusts, Portuguese law acknowledges the transfer of assets from the settler, but considers these assets transferred to the trustee, without any legal separation from the trustee's own assets. Consequently, it is advisable for trusts acquiring assets in Portugal to do so through a limited liability company.

B. *Taxation of trusts*

The 2015 reform of personal income tax (PIT), known as the 'PIT Reform', introduced specific provisions concerning the taxation of income and gains generated by trusts, both during their lifespan and upon termination. Prior to this reform, Portuguese tax law did not explicitly address the taxation of trust-related transactions, except in the context of controlled foreign corporation (CFC) legislation.

The new law specifically mentions 'fiduciary structures', a term intended to encompass trusts, according to reports by the PIT Reform Commission that elucidate the rationale behind the changes.

Regarding the taxation of trust income, the new legislation sets forth rules for taxing:

- amounts received by individuals from the liquidation, revocation or termination of 'fiduciary structures'; and
- distributions made by 'fiduciary structures' other than those resulting from any of the above actions.

Under the new regulations, amounts received from the liquidation, revocation or termination of 'fiduciary structures' are:

- taxable as capital gains (under Category G of the Portuguese PIT) if received by the trust's settlers; tax rates are either 28 per cent or 35 per cent – the latter applying if the trust is considered 'domiciled' in a jurisdiction featured on the Portuguese authorities' 'blacklist' of tax havens, or in a low-tax jurisdiction where the effective rate is less than 60 per cent of the standard Portuguese corporate income tax (CIT) rate (currently 12.6 per cent);

- subject to ten per cent stamp duty, with certain exceptions, if received by individuals who are not the trust's settlers.

For non-settler recipients, amounts received from the liquidation, revocation or termination are treated as gratuitous transfers or gifts and are subject to ten per cent stamp duty. The tax is territorial, applying only to assets located or deemed to be located in Portugal. Portuguese law provides an exemption from stamp duty for transfers between spouses, parents and children, but its applicability in the context of trusts is uncertain due to trusts not being considered distinct legal entities under Portuguese law.

As for distributions made by trusts, amounts distributed or made available to a taxpayer, aside from those related to liquidation, revocation or termination, are taxable as investment income (under Category E). They are subject to a flat tax rate of either 28 per cent or 35 per cent, depending on whether the trust is domiciled in a 'blacklisted' or low-tax jurisdiction, irrespective of whether the recipients are settlers of the trust.

It's worth noting that for Portuguese tax residents, using a trust based in the Madeira International Business Centre is generally not advisable. Additionally, those applying for Non-Habitual Resident (NHR) status in Portugal should avoid directly holding assets in a trust, as doing so could jeopardise the tax benefits associated with NHR status.

C. *Controlled foreign corporation rules applicable to trusts*

Portuguese CFC rules apply when a taxpayer resident in Portugal owns at least 25 per cent of a corporation's share capital or ten per cent in the case of individuals. The corporation must be domiciled or have its registered office or primary place of management in a jurisdiction that is either 'blacklisted' or imposes a tax rate lower than 12.6 per cent.

In this context, 'holdings' in the corporation refer to ownership of share capital, voting rights and/or entitlements to the assets of the foreign corporation located in the low or zero-tax jurisdiction.

If a trust owns a CFC under these conditions, individuals in a fiduciary relationship with the trustee could have the undistributed profits of the foreign low or zero-tax corporation attributed to them. These profits would be subject to Portuguese PIT at a rate of 28 per cent. When dividends are distributed, this tax is offset against any taxes levied on trust distributions related to these dividends.

As previously discussed regarding the legal status of trusts under Portuguese law, a settler retaining protective powers over the trust, or beneficiaries in a similar position, may be considered to have a fiduciary relationship with the trustee. Therefore, it's crucial to clarify the standing of any Portuguese-resident taxpayer who is a settler and/or beneficiary of a trust in light of these Portuguese CFC regulations.

IV. Taxation

A. *Personal income tax*

PIT, also known as *imposto sobre o rendimento das pessoas singulares* ('IRS') in Portugal, is levied on the total income of individuals who are considered tax residents in Portugal. This includes income earned both domestically and internationally. For individuals who are not tax residents in Portugal, PIT is applied only to income earned within the country or considered to have originated from a Portuguese source.

Tax residency is determined based on the duration of actual residence in Portugal and one's tax status in the country. An individual could have a 'partial tax residence', meaning they could be considered a tax resident in both Portugal and another country within the same calendar year.

According to Portuguese tax law, an individual is classified as a tax resident in Portugal for a given year if:

- he or she has stayed in Portugal for more than 183 days, either consecutively or otherwise; or
- if the individual has stayed in Portugal for fewer days, he or she maintains a home in Portugal as of 31 December of that year in such a way that it can be considered the individual's habitual residence.

Furthermore, Portuguese nationals who relocate their tax residence to a jurisdiction with a significantly more favourable tax regime ('tax havens') are also considered tax residents of Portugal during the year the move occurs and for the subsequent four years. However, exceptions may apply if the individual can demonstrate that the move was justified, for example, if he or she is temporarily employed in the new location by a Portugal-domiciled employer. This designation will no longer apply once the individual establishes tax residency in a country, territory or region not explicitly designated as a tax haven in the relevant Ministerial Order.

1. General income and deductions

Income earned by individuals is subject to PIT and is categorised as follows:

- Category A: employment income;
- Category B: entrepreneurial, business and professional income;
- Category E: capital or investment income;
- Category F: rental income;

- Category G: capital gains; and
- Category H: pensions.

After specific deductions are applied, income from these various categories is consolidated for the purpose of collective taxation. For tax residents of Portugal, this consolidation includes their global and worldwide income. Exceptions exist for income that is subject to withholding tax (WHT) or special flat tax rates. In these instances, taxpayers may choose not to aggregate their income, provided that this option is legally available. Conversely, for non-residents of Portugal, income is generally not consolidated, although there are certain circumstances in which such taxpayers may also opt for income aggregation.

2. Employment income

Employment income is explicitly outlined in the Portuguese PIT Code and encompasses all payments from the employer. This includes salary, bonuses, commissions, tax reimbursements, redundancy payments, pensions, allowances and benefits in kind, irrespective of the payment's origin.

Allowances for domestic and international travel, as well as mileage and meal allowances exceeding the amounts permitted for state department employees, are also considered taxable employment income.

Taxpayers are allowed to deduct the following from their employment income, within the legal limits and up to their total income:

- a standard deduction of €4,104;
- any compensation paid by the employee to the employer; and
- trade union dues.

The standard deduction mentioned above can be increased by the amount of mandatory contributions to social security plans and lawful healthcare subsystems, or up to 75 per cent of 12 times the Social Support Index (SSI) value, provided the difference arises from fees paid to professional associations.

For taxpayers with disabilities who earn an employment income, only 85 per cent of that income is considered for taxation purposes.

3. Business income

Income from business and professional activities can be taxed under either a simplified regime or an organised accounting system.

The simplified regime is available only to taxpayers who have not opted for organised accounting and whose gross annual income from this category was less than €200,000 in the immediate preceding year. In the simplified regime, taxable income is calculated by applying specific coefficients to the gross income.

The income 'deduction' resulting from the application of these coefficients is partly contingent upon the verification of actual expenses and charges incurred that are related to the activity.

Conversely, the standard regime relies on the net profit generated from the business or professional activities of self-employed individuals. This profit is determined based on organised accounting records.

4. Investment income

Dividends and interest are subject to a flat tax rate of 28 per cent. However, taxpayers have the option to apply marginal tax rates ranging from 14.5 per cent to 48 per cent to dividends and interest by choosing to aggregate them with other categories of globally taxed income.

A credit against Portuguese tax liability is available, capped at the lesser of the foreign tax paid on those dividends and interest, or the tax amount due in Portugal on that income. For dividends and interest originating from countries with which Portugal has a double taxation treaty (DTT), the tax credit cannot exceed the maximum WHT rate specified in the treaty.

Interest income from current or savings accounts in Portuguese banks is taxed at a 28 per cent rate for residents. Similarly, interest paid by non-resident entities to individuals who are tax residents in Portugal is also subject to a 28 per cent rate.

Investment income disbursed or made accessible to residents in Portugal by non-resident entities lacking a permanent establishment (PE) in Portugal and domiciled in blacklisted jurisdictions is subject to a 35 per cent tax rate applied either through WHT or a special rate.

Due to the passive nature of investment income, the law does not provide for specific deductions in this category.

5. Income from immovable property

Rental income for both tax residents and non-tax residents is subject to a special flat tax rate of 28 per cent. However, there is an option to include this income in aggregate income, which would then be subject to progressive tax rates.

The tax rate is inversely related to the length of the rental contracts for permanent residence, as outlined below.

- For contracts lasting at least two years but less than five, the rate is reduced by two per cent to 26 per cent. Each renewal of equal duration grants an additional two per cent reduction, up to a limit of 14 per cent.
- For contracts lasting at least five years but less than ten, the rate is reduced by five per cent to 23 per cent. Each renewal of equal duration grants an additional five per cent reduction, up to a limit of 14 per cent.

- For contracts lasting at least ten years but less than 20, the rate is reduced by 14 per cent to 14 per cent.
- For contracts lasting 20 years or more, the rate is reduced by 18 per cent to ten per cent.

By choice, the taxpayer may treat rental income resulting from the regular leasing of properties as income from business and professional activities (self-employment, Category B). However, the rules for calculating taxable income are the same as those used for rental income under 'Category F'.

All actual costs incurred and paid by the taxpayer to secure or maintain rental income may be deducted from that income. Exceptions include costs of a financial nature, depreciation costs, and costs for furniture, appliances and decorative items.

For self-contained units in properties with horizontal ownership (eg, an apartment in a condominium), the deductible costs for each unit or portion of a unit include other costs that the condominium is legally required to incur and that are actually paid by the taxpayer.

Costs incurred and paid in the 24 months leading up to the start of the lease related to property maintenance and conservation are also deductible, provided the property hasn't been used for purposes other than renting during that time.

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 and non-residents in Portugal are taxed at progressive rates varying between 14.5 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 and broker's commissions, as well as the costs of any improvements made to the property, provided they are properly documented.

7. Pensions

Up to €4,104 of pension income is tax-exempt.

8. PIT rates

Taxable income (€)	Tax rate (%)	Deductible amount (€)
Up to 7,479	14.5	0
7,479–11,284	21	486,14
11,284–15,992	26.5	1,106.73
15,992–20,700	28.5	1,426.65
20,700–26,355	35	2,772.14
26,355–38,632	37	3,299.12
38,632–50,483	43.5	5,810.25
50,483–78,834	45	6,567.33
Above 78,834	48	8,932.68

Tax residents in Portugal are subject to progressive tax rates ranging from 14.5 per cent to 48 per cent on their global income. By contrast, non-residents are taxed only on income originating from Portuguese sources. This includes not just the portion of income related to activities performed in Portugal, but also any compensation paid by a Portuguese company or PE.

Non-residents face a flat tax rate of 25 per cent on their taxable income, although certain exceptions may apply.

Beyond these general tax rates, additional surcharges are progressively levied as follows:

- a 2.5 per cent surcharge applies to the portion of taxable income exceeding €80,000 but not surpassing €250,000; and
- a five per cent surcharge is imposed on the portion of taxable income that exceeds €250,000.

9. Gift, inheritance and wealth tax

In Portugal, there is no gift or inheritance tax for transfers between spouses, parents, children and grandparents or their respective descendants and ancestors. However, for other family members, friends or unrelated individuals, a ten per cent stamp tax is applicable.

There is no wealth tax or special taxation on large estates or significant assets, except for the *adicional ao imposto municipal de imóveis* (AIMI), as further detailed in section C.2.b.

Additionally, the identification numbers of foreign bank accounts must be disclosed in the annual income tax return.

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

In Portugal, there are no capital gains taxes on the sale of second-hand valuable items, such as art, cars and other collectibles.

B. *Double taxation agreements*

Portugal has established numerous DTTs, currently having around 80 such agreements in place, to prevent double taxation with various countries.

Under these agreements, WHT rates on outbound payments for dividends, interest and royalties are reduced when the beneficial owner of the income is a tax resident in the other treaty country. The typical rates for these categories are 15 per cent, ten per cent and five per cent, respectively.

Portugal is also a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The implementation of this convention could affect the application of existing DTTs.

C. *Real estate taxes*

1. Property transfer tax (IMT)

IMT is a municipal tax applied to the transfer of real estate situated within Portuguese territory. For residential properties, a progressive rate is applied based either on the value stated in the contract or the official taxable value (*valor patrimonial tributário*) registered at the local tax office. This official taxable value is determined by the tax authorities using specific official indexes and property assessments. Transactions valued above €603,289 but below €1,050,400 are taxed at a flat rate of six per cent, while transactions exceeding €1,050,400 incur a 7.5 per cent tax rate if the property serves as the buyer's primary and permanent residence. However, if the buyer is a tax resident in certain countries with more favourable tax regimes, a higher rate of ten per cent may be applied. For commercial properties, a flat rate of 6.5 per cent is applied.

2. Property tax

a. Property tax (IMI)

Property tax, also known as *imposto municipal sobre imóveis* (IMI), is calculated based on the tax registration value of urban and rural properties situated within Portuguese territory. The tax is payable by the registered owner of the property as of 31 December of the tax year in question.

The IMI rate for urban properties ranges from 0.3 per cent to 0.45 per cent of its official tax value, which is recorded at the local tax office. For rural properties, the rate is set at 0.8 per cent. If the property is owned by entities that are either resident or domiciled in tax havens, a higher IMI rate of 7.5 per cent is applied.

b. Additional to the IMI (AIMI)

In addition to the standard IMI, there is an additional property tax (AIMI) that is applied to the total value of residential real estate assets, owned by both individuals and companies exceeding €600,000. This additional tax is levied on top of the IMI.

The taxable base for AIMI is calculated as the total official value of all urban properties, as recorded at local tax offices for tax purposes, held by each taxpayer as of 1 January of each tax year.

For individual taxpayers and undivided estates, a deduction of €600,000 from the taxable base is allowed. For married couples or those in a non-marital partnership who choose to file a joint tax return, a deduction of €1.2m from the combined official value of all their urban properties is permitted.

Properties that received an IMI exemption in the previous year are not included in the AIMI taxable base.

The AIMI tax rate varies – 0.4 per cent, 0.7 per cent, one per cent or 1.5 per cent – depending on specific legal criteria. A higher rate of 7.5 per cent is applied to urban properties owned by entities that are resident or domiciled in tax havens.

3. Stamp duty (IS)

Stamp duty, also known as *imposto do selo* (IS), is applicable to a range of activities, including acts, contracts, documents, titles, books, papers and other specified occurrences as outlined in the General Table attached to the Stamp Duty Code. This tax is applicable when such contracts or legal activities are considered to take place in Portugal and are neither subject to nor exempt from VAT.

The stamp duty rate is set at 0.8 per cent of the transaction value and is added to the base value used for assessing IMT.

4. REAL ESTATE INVESTMENT FUNDS (REIFS)

REIFs, also known as *fundos de investimento imobiliários* (FII), are mutual funds governed by a special joint ownership structure. The ownership primarily resides with a majority of the members and their stakes are represented by fund units.

REIFs can be categorised into three types:

1. open funds, which consist of a variable number of fund units based on market demand;
2. closed-ended funds, which have a fixed number of fund units determined at the time of issuance; however, this number may later be increased or decreased in accordance with applicable laws and the fund's regulations; subscriptions to these funds may be either public or private; and
3. mixed funds, which comprise two categories of fund units: one with a fixed number and another with a variable number available for market subscription.

Additionally, REIFs can be sorted into two forms based on how they remunerate unit holders:

1. distribution funds, which partially or fully disburse the generated income to unit holders on a regular basis; and
2. capitalisation funds, which automatically reinvest the generated income back into their respective portfolios without distributing it to unit holders.

Special REIFs also exist and may be either open or closed. These are tailored to specific investor segments as defined in the fund rules. Special REIFs can include mixed-use and rural properties, simple rights to operate a property as a business and derivative financial instruments.

The legal framework for Portuguese REIFs is overseen by the Portuguese Securities and Exchange Commission (Comissão do Mercado de Valores Mobiliários or CMVM). The CMVM is responsible for authorising the creation of REIFs and ensuring compliance with legal requirements and any applicable regulations. This oversight is conducted without affecting the regulatory powers of the Bank of Portugal, which supervises credit institutions and financial companies.

5. VAT

In general, the transfer of property and shares in Portugal is exempt from VAT. However, a seller can choose to waive this exemption if specific conditions are met and certain formalities are followed. If the exemption is waived, VAT can be reclaimed in line with the provisions outlined in the Portuguese VAT Code.

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

Starting from 1 January 2018, a new tax regime was introduced to further enhance urban rehabilitation and renewal, making investments in Portuguese real estate even more appealing.

Both individual and corporate investors, including REIFs, can avail of various real estate tax exemptions when investing in properties associated with urban rehabilitation or renewal. These tax incentives pertain to the restoration of buildings situated in Portuguese cities' historical districts and regions designated as critical for urban renewal.

Significant portions of Lisbon and Porto, as well as other cities like Viseu, Guimarães, Braga, Évora and Aveiro have been identified as critical urban renewal areas, presenting intriguing investment opportunities.

1. Benefits under IMT

An exemption from IMT is available for property developers or promoters who purchase properties slated for urban rehabilitation, provided that renewal or reconstruction work commences within three years of the purchase. Before finalising the purchase, the promoter must submit a request to the appropriate tax authorities for a refund of IMT paid for each individual property.

Another specific IMT exemption exists for investments in buildings or portions of buildings that house historical shops, as identified by municipal authorities, provided there is a project aimed at their renewal or rehabilitation.

Additionally, an IMT exemption may apply to the first sale made by the developer or promoter if the property is intended to be leased for permanent residence or sold to an individual for their permanent dwelling.

2. Benefits under property tax (IMI)

Properties purchased for urban rehabilitation may qualify for an IMI exemption for three years, starting from the year when the rehabilitation work is completed. Alternatively, a five-year exemption is available at the request of the promoter or developer, provided that the rehabilitated property will either be leased for permanent housing or sold as the permanent residence of the buyer.

3. Benefits under PIT (IRS)

Leasing real estate properties in designated areas of urban rehabilitation is subject to a flat, reduced IRS rate of five per cent. Most districts in Porto and Lisbon are included in these designated areas for urban rehabilitation.

A similar flat, reduced IRS rate of five per cent is also available for capital gains earned from the first sale of properties located in urban rehabilitation areas, once the improvements are completed.

It's worth noting that this five per cent rate is the lowest flat rate available to any individual or corporate entity in the Portuguese tax system. However, the nature of flat tax rates means that no costs can be deducted.

4. Benefits under corporate income tax (IRC)

a. Urban rehabilitation close-ended investment funds

Under the new tax regime for urban rehabilitation, REIFs focused on urban rehabilitation and established under Portuguese law between 1 January 2008 and 31 December 2013 are exempt from Portuguese CIT, also known as *imposto sobre o rendimento das pessoas coletivas* ('IRC').

b. Shareholders of urban rehabilitation close-ended investment funds

Holders of shares or participation units in investment funds are subject to IRS or IRC on dividends, profits distributed by the fund, or any amounts received from the redemption of the shares or participation units that represent the fund's capital. The specifics are:

- Portuguese residents are subject to a ten per cent IRS withholding rate;
- Portuguese corporate entities have a ten per cent IRC withholding as an advance against the final CIT due; and
- non-resident taxpayers in Portugal are exempt from IRS or IRC withholding, unless the corporate entities are situated in a tax-favoured jurisdiction or if more than 25 per cent is owned by Portuguese residents.

5. Benefits under Portuguese VAT

a. VAT due on the purchase of property

The sale, purchase, leasing and subleasing of property are generally exempt from VAT. However, if certain conditions are met, this VAT exemption can be waived, making the transactions subject to a VAT rate of 23 per cent (22 per cent in Madeira and 18 per cent in the Azores). This exemption does not apply to 'office centre' type contracts, which are subject to standard VAT rates. If the property is intended for commercial purposes – like shops, shopping centres or office spaces – waiving the VAT exemption is possible. In such cases, VAT associated with the construction, reconstruction or renovation of the property can be deducted or reimbursed.

Choosing to waive the VAT exemption for property acquisition does not eliminate the obligation to pay IMT. Any applicable exemptions, such as those for property in areas designated for urban rehabilitation, still apply.

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

Construction and other related services are generally subject to a standard VAT rate of 23 per cent (22 per cent in Madeira and 18 per cent in the Azores). However, a reduced VAT rate of six per cent (five per cent in Madeira and four per cent in the Azores) can be applied in specific cases:

- contracts for urban rehabilitation work on property or public spaces located in legally defined areas for urban rehabilitation, or within reclassification and rehabilitation projects of nationally recognised public interest;
- works contracted directly by the Institute of Housing and Urban Rehabilitation (Instituto da Habitação e da Reabilitação Urbana or IHRU) or those carried out under programmes supported by the institute; and
- contracts for the enhancement, transformation, renovation, restoration, repair, or preservation of properties or separate units within properties that are used for residential purposes. This does not include cleaning services, maintenance of green spaces or work on facilities such as swimming pools, saunas, tennis courts, golf courses or mini-golf courses. In these latter cases, the reduced VAT rate does not apply to incorporated materials unless their value constitutes no more than 20 per cent of the total service provision cost.

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

Developers of urban rehabilitation projects can take advantage of a reduced six per cent VAT rate on all materials and equipment utilised in the reconstruction and rehabilitation work. This applies not only to the property in question but also any adjacent buildings involved in the rehabilitation and/or renewal efforts.

This tax incentive is available under the urban rehabilitation and renewal framework, notably in historical districts and areas designated for critical urban renewal and redevelopment.

To qualify for this lower six per cent VAT rate on eligible construction materials and goods, project developers simply need to maintain in their records a valid construction licence or permit. Additionally, they must have a declaration from the relevant municipal authority confirming that the work is indeed focused on reconstruction and rehabilitation, and is situated in either a historical district or a critical urban recovery or redevelopment zone within the concerned city.

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

1. Non-habitual resident (NHR) tax regime

Individuals who meet the criteria for tax residency under Portuguese law and who have not been taxed as residents in Portugal for the preceding five years may take advantage of the NHR scheme for a duration of ten years.

To qualify for this scheme, the individual must register as a tax resident in Portugal and submit an application for NHR status to the Portuguese tax authorities by 31 March of the year following the year in which they established tax residency in Portugal.

Under the NHR regulations, income for NHRs is taxed in the following manner:

a. Portuguese source income

Income from employment and self-employment may be subject to a special flat tax rate of 20 per cent if it originates from high value-added activities in the scientific, artistic or technical fields performed in Portugal, as specified in a Ministerial Order.

It's worth noting that the list of high value-added activities spans various sectors, including architecture, medicine, engineering, art, acting, music, auditing, tax advising, university teaching, other specialised professions, investing and certain types of managerial roles. Individuals who fall into these categories must also provide documentation to the Portuguese tax authorities to demonstrate their engagement in a high value-added activity.

Other forms of domestic income earned by NHRs are subject to PIT according to the regulations applicable to Portuguese tax residents.

b. Foreign source income

Employment income is exempt from taxation in Portugal as long as it is taxed in the source country in accordance with the relevant tax treaty between Portugal and that country. Income from self-employment in high value-added activities is also exempt from Portuguese taxation, provided that such income is taxable in the source country under an existing tax treaty between Portugal and that country.

Starting from 2020, pensions received from abroad by NHRs are subject to a ten per cent tax rate in Portugal. Interest, dividends and royalties originating outside of Portugal may be tax-exempt in Portugal under DTTs. If these types of income are taxed in their source countries, the tax imposed should not exceed the reduced rates stipulated in tax treaties with Portugal, generally set at ten per cent, 15 per cent or five per cent, respectively.

However, there is no exemption for capital gains except those arising from immovable property, which are taxable in the country where the property is located. Capital gains from other sources, such as shares or similar interests from anywhere in the world (with a few exceptions), are taxed in Portugal at a flat rate of 28 per cent.

It should be noted that certain exempt income will be taken into account for the purpose of applying the general progressive PIT rates to the taxpayer's remaining global income that is not exempt from PIT.

2. Portuguese tax residence options for non-EU citizens

Portugal provides a variety of residency options tailored to diverse needs and preferences. Of these, the Golden Visa stands out as the sole programme that doesn't mandate effective residency. Holders of the Golden Visa are only obligated to reside in Portugal for a cumulative 14 days within every two-year interval, amounting to a total visa duration of six years.

Alternative residency programmes fall under the category of D residence visas. While the reasons for applying to each programme might vary, a consistent set of rules applies across the board, namely:

- who can apply? Non-EU/European Economic Area (EEA)/Swiss citizens who carry out a dependent or independent professional activity provided at a distance outside national territory can apply;
- residency requirements: Citizens holding a temporary permit risk non-renewal if they are absent from Portuguese territory for over six consecutive months or a cumulative eight non-consecutive months within the permit's validity period. However, even if these durations are exceeded, their residence permit may still be upheld if they can substantiate that their prolonged absence was due to professional, business, social or cultural commitments;
- validity: Upon final approval and receipt of the residence cards, applicants are granted temporary residency for an initial span of two years. This is succeeded by renewals lasting three years each. The temporary residency can be renewed indefinitely, provided the residency criteria are consistently met;
- path to permanent residency and citizenship: Post the completion of five years on a temporary residency status, one can petition for both permanent residency and Portuguese citizenship. For permanent residency, applicants must clear a Portuguese A2 level language test. Similarly, citizenship applicants need to pass the A2 language test and additionally demonstrate ties or affiliations with the Portuguese community;
- access to public services: This encompasses public healthcare, education and a variety of other community services; and
- family reunification: Applicants are entitled to add their immediate family members to their residence, namely, spouse, children and parents.

3. Golden visa: visa through investment without having to reside in Portugal

a. What is the Portuguese Golden Visa?

Autorização de Residência para Actividade de Investimento (ARI), commonly known as the Golden Visa, offers a unique residency pathway for non-EU and non-EEA nationals. By engaging in approved investments in Portugal, these individuals, along with their immediate family members, can secure this special residence permit. Notably, the Golden Visa does not mandate an extended stay in Portugal; it merely requires a minimal presence of 14 days over a two-year span, making it especially attractive for those who value flexibility. After five years of holding the Golden Visa, applicants can pursue either permanent residency or Portuguese citizenship, and by the end of six years, the cumulative stay requirement totals only 42 days. One of the standout benefits of the Portuguese Golden Visa is the freedom it grants its holders to travel across the Schengen Area, access to the Portuguese public health system, social security protection, and the right to live, work and study in Portugal.

b. Possible investment activities

Legislation provides applicants with the flexibility to invest either directly in their own name or via a sole shareholder company domiciled in Portugal or any other EU Member State:

- the creation of at least ten jobs;
- capital transfer in the minimum amount of €500,000, applied in research activities carried out by public or private institutions of scientific research, integrated in the national scientific and technological system;
- capital transfer in the minimum amount of €250,000, applied to investment and/or support for artistic production, recovery or maintenance of the national cultural heritage;
- transfer of capital in the minimum amount of €500,000 for the acquisition of shares in non-real estate collective investment schemes; these schemes should have a minimum maturity of five years, with at least 60 per cent of the investment directed towards companies based in Portugal; and
- transfer of capital in the minimum amount of €500,000 for the incorporation of a commercial company based in Portugal or to increase the share capital of an existing commercial company based in Portugal, along with the creation of at least five permanent jobs or maintenance of at least ten job positions, with a minimum of five permanent employees, and for a minimum period of three years.

4. D2 VISA: IMMIGRANT ENTREPRENEURS

a. What is the D2 Visa?

The D2 Visa is a gateway to residence in Portugal through one of these three entrepreneurial types 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 of the following:

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

At renewal, it is necessary to demonstrate that the company was active in the preceding years, as evidenced by received payments, issued invoices and other related documents.

(iii) Working as a freelancer in Portugal: applicants must prove one of the following:

- a signed 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 receipts.

5. D7 VISA: PASSIVE INCOME

a. What is the D7 Visa?

The Portuguese D7 Visa, commonly referred to as the 'Passive Income Visa' or 'Retiree Visa', is designed for non-EU citizens who wish to live in Portugal, and have a stable and regular source of income that can sustain them without needing to work there. This income can be derived from pensions and passive income, such as rentals, dividends or any other sources of regular passive revenue.

b. Requirements

Applicants must provide proof of their regular passive income, open a bank account in Portugal and ensure that the said income is deposited into this account.

6. D8 VISA: DIGITAL NOMAD

a. What is the D8 Visa?

The D8 Visa, also known as the digital nomad visa or remote worker visa, is an alternative route to obtaining Portuguese residency for those who can carry out a professional activity from Portugal.

b. Requirements

Applicants must provide evidence that they receive income equivalent to four times the minimum wage monthly and have the capability to carry out a professional activity remotely.

F. *IRC*

Companies headquartered or with their primary centre of effective management in Portugal are subject to CIT on their global income. By contrast, non-resident companies are taxed only on income originating in Portugal. Furthermore, income attributed to a Portuguese PE of a non-resident entity is also subject to CIT.

The tax is determined based on the company's accounting results, which may be adjusted in compliance with the guidelines established in the CIT Code. Expenses are deductible as long as they are essential for generating taxable income and are adequately documented.

A standard CIT rate of 21 per cent is applicable to the total amount of taxable income earned by companies that are tax residents in mainland Portugal; this rate also applies to Portuguese PEs of foreign entities. A reduced CIT rate of 14.7 per cent is applied to companies that are tax residents in Madeira and the Azores, including PEs of foreign entities registered in those regions.

Small and medium-sized enterprises (SMEs) enjoy a reduced CIT rate of 17 per cent on the first €50,000 of their taxable income; the standard CIT rate applies to income exceeding this threshold. Additionally, SMEs located in inland Portuguese regions benefit from an 11.9 per cent rate on the first €50,000 of taxable income, with the standard CIT rate applying to the excess.

Entities not primarily engaged in commercial, industrial or agricultural activities are taxed at the standard CIT rate of 21 per cent on their total taxable income.

A municipal surtax is imposed on taxable income before the deduction of any available carry-forward tax losses at rates up to 1.5 per cent, varying by municipality. A state surtax is levied before the deduction of any available carry-forward tax losses at the following tiered rates:

- three per cent (2.1 per cent in Madeira and the Azores) on taxable profits exceeding €1.5m and up to €7.5m;
- five per cent (3.5 per cent in Madeira and the Azores) on taxable profits exceeding €7.5m and up to €35m; and
- nine per cent (6.3 per cent in Madeira and the Azores) on taxable profits exceeding €35m.

The state surtax applies to resident taxpayers engaged in commercial, industrial or agricultural activities, as well as to non-residents with a PE in Portugal.

In the Autonomous Region of Madeira, a regional surtax is levied on the same terms as the state surtax. In the Autonomous Region of the Azores, there is a 20 per cent reduction on the aforementioned surtax rates.