



**COUNTRY
COMPARATIVE
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Portugal

PRIVATE CLIENT

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This country-specific Q&A provides an overview of private client laws and regulations applicable in Portugal.

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PORTUGAL PRIVATE CLIENT



1. Which factors bring an individual within the scope of tax on income and capital gains?

Tax residency in Portugal or Portuguese sourced income and capital gains obtained by Portuguese non-residents bring individuals within the scope of the Portuguese Personal Income Tax ("PIT").

Individuals deemed as tax resident in Portugal are taxed on their worldwide income and capital gains obtained. Portuguese non-resident individuals will only be subject to PIT on Portuguese sourced income.

In general, an individual is deemed to be tax-resident in Portugal if during the year to which the income relates: (i) has remained in the Portuguese territory for more than 183 calendar days (which need not be continuous), during any period of 12 months beginning or ending in the relevant year (in which case the individual is considered tax resident since the first day of the period of permanence in Portugal); or (ii) has a dwelling in Portugal that may be used as main place of residence on any given day of the period mentioned above (in which case the individual is considered tax-resident since the first day of the period of permanence in Portugal).

To be noted that Portugal adopts the concept of partial residency which is relevant in case the individual's residency status changes within the relevant tax period.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

For tax residents, the Portuguese PIT has a 'dual' structure.

In general, all relevant income is subject to progressive tax rates up to 48% (an additional surcharge of 2.5% to

5% may apply). Capital gains deriving from immovable property are only considered in 50% for PIT purposes.

The individual may choose to subject real estate income, financial income and capital gains from securities to a 28% flat tax rate (except for capital gains deriving from the sale of securities held for less than 365 days when the global taxable income exceeds EUR 78,834 which are mandatorily subject to the referred progressive tax rates).

Capital income paid and capital gains generated by entities located in blacklisted jurisdictions (listed in Ministerial Order No. 150/2004, as amended) are subject to a 35% tax rate.

Income received from employment and business activities are subject to social security contributions. Said contributions are, in general, 23,75% on the gross amounts paid for employers and 11% for the employees. For individuals performing business activities the contributions vary between 21,4% and 25,2%.

As a general rule, the Portuguese tax year matches the calendar year (from 1 January to 31 December) and the corresponding PIT return must be submitted between 1 April to 30 June of the following year.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

In general, withholding tax obligations apply to entities and not individuals (except for individuals operating a business activity). In general, the following withholding taxes apply on tax residents:

- a) Employment income: up to 47,17%;
- b) Pensions: up to 53%;
- c) Business income: between 11,5% and 25%;

- d) Real estate income: 25%;
- e) Financial income: 28%;
- f) Capital gains: no withholding tax applies.

For non-residents, the following withholding taxes generally apply:

- a) Employment income, Business income and pensions: 25%;
- b) Financial income and real estate income: 28%;
- c) Payments to individuals who are tax resident in a black-listed jurisdictions: 35%.

Please note that withholding taxes may be reduced due to the applicability of the extensive double tax treaties network that Portugal entered into, particularly, in what concerns investment income (withholding taxes usually vary between 10% and 15%).

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Portugal approved the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting on 14 November 2019. On 28 February 2020, Portugal deposited its instrument of ratification with the OECD and submitted the list of 79 tax treaties in which Portugal is part and has designated as Covered Tax Agreements, as well as the applicable reservations and notifications. The Multilateral Convention has entered into force on 1 June 2020.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

Portugal has no wealth tax.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

Inheritances and gifts may be subject to a 10% Stamp Tax (plus 0,8% in case of donations of real estate property). However, relevant tax reliefs apply (please refer to point (7) below).

As a general rule, the individual's demise should be reported to the tax authorities within 3 months by the heirs' common representative (cabeça-de-casal). In case of gifts, beneficiaries should report the event to the Portuguese tax authorities within 3 months.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

Although donations and inheritances are generally subject to a 10% tax rate, significant exclusions or exemptions apply:

- a) Inheritances and gifts between (a) spouses or members of unmarried couples living under de facto relationships, (b) descendants and (c) ascendants are exempted.
- b) Under the applicable territorial scope, gratuitous transmissions with no connection with the Portuguese territory are not subject to Stamp Tax.
- c) Under certain circumstances special exemptions may apply (e.g.: life insurance premium payments; payments from investment funds).

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

Tax benefits are available (specific deductions for PIT and Corporate Income Tax purposes) for donations to certain entities (e.g. scientific, cultural, social, charitable entities). The gifts obtained by such entities (non-profit entities benefiting from 'public utility' status, declared by the Council of Ministers) may benefit from a tax exemption.

9. How is real property situated in the jurisdiction taxed, in particular where it is

owned by an individual who has no connection with the jurisdiction other than ownership of property there?

The transfer for consideration of real estate property located in Portugal is subject to Real Estate Property Transfer Tax (up to 6.5%) and Stamp Tax (0.8%).

The holding of real estate property is subject to the Real Estate Municipal Property Tax, between 0.3% and 0.8%, levied annually on the tax value of the property.

Individuals owning real estate property in Portugal, with a global tax value higher than EUR 600,000.00 are liable to an additional tax of up to 1.5%. If the property owner is an entity located in a blacklisted jurisdiction the additional tax is 7.5%.

10. Does your jurisdiction have any specific rules in relation to the taxation of digital assets?

In 1 January 2023, a new regime regarding the taxation of crypto-transactions has entered into force.

A) Capital Gains

Only capital gains deriving from fungible crypto-assets are subject to PIT. Thus, gains from Non-Fungible crypto-assets are excluded.

(i) Fungible crypto-assets that qualify as securities

In general, subject to a 28% rate on the gains (although taxpayers may opt to be subject to progressive tax rates). However, if the holding period is less than 365 days, for taxpayers whose gross income (including such capital gains) is above EUR 78,834, gains are subject to PIT rates up to 48% (plus the additional solidarity tax up to 5%). Losses resulting from crypto-assets located in a blacklisted jurisdiction are not relevant for PIT purposes.

(ii) Fungible crypto-assets that do not qualify as securities

If due by an entity resident in the EU, EEA, or in a jurisdiction with which Portugal has a Tax Convention that includes the exchange of information for tax purposes, these capital gains are not subject to tax if the crypto-asset is held for more than 365 days. If the crypto-asset is held for less than 365 days, such gain will be subject to a 28% PIT rate (although taxpayers may opt to be subject to progressive tax rates).

Crypto for crypto transactions where the initial crypto-asset was held by less than 365 days, are not subject to

tax. However, for tax purposes, the acquisition value of the obtained cryptoasset is the acquisition value of the cryptoasset exchanged. In this context the transfer of tax residency abroad may be a tax event (exit tax).

If due by an entity located in jurisdictions other than the jurisdictions referred above or located in a blacklisted jurisdiction are in general subject to a 28% rate on the gains (although taxpayers may opt to be subject to progressive tax rates). Losses deriving from crypto-assets due by an entity located in a blacklisted jurisdiction are not considered for capital gains purposes.

B) Investment Income

Taxation of income deriving from crypto-assets depends on the nature of the remuneration. Remuneration in fungible tokens is taxed as capital gains in the terms explained above. Remuneration in non-fungible crypto-assets or other assets or rights is taxed at 28% PIT rate (or 35% if paid by entities located in blacklist jurisdictions).

C) Business Income

Transactions related with crypto-assets in connection with business activities, including mining or validation of crypto assets transactions through consensus mechanisms are considered as business and professional activities and subject to personal income tax.

If taxpayers have not exceeded in the previous year EUR 200,000 of gross amount of business income, the simplified regime applies. In this case, 15% of the crypto asset transactions gross income is considered taxable. In the case of crypto asset mining 95% of the gross income is considered taxable.

If taxpayers have exceeded EUR 200,000 of gross amount in the previous year, the taxable income is determined according to the accounting records and proof of expenses actually incurred.

Business income is subject to general progressive rates which can go up to 48% plus additional solidarity rate of up to 5%.

D) Gratuitous transfer of crypto-assets

Gratuitous transfer of crypto-assets not deposited in institutions which have a place of business or permanent establishment in Portugal, are not subject to tax.

If the crypto-assets are deposited in an institution which has a place of business or permanent establishment in Portugal, a 10% stamp tax on the market value of the crypto-asset applies if (i) in inter-vivos donations, the

donee is domiciled in Portugal; (ii) in mortis causa transactions, the deceased was domiciled in Portugal. Gratuitous transactions between spouses or members of unmarried partners, descendants and ascendants are exempt.

11. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

Portugal does not impose any other relevant taxes on individuals (except for VAT and excise taxes on specific goods).

12. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

A) The Portuguese Non-Habitual Resident Regime (applicable to new tax residents who have not met any of the residency criteria in Portugal in the five preceding years) will terminate in 2024. Nevertheless, the regime is still applicable to the following individuals:

(i) Individuals who are already NHR registered (until end of the 10-year period).

(ii) Individuals who have requested the NHR regime until the end of 2023.

(iii) Individuals who become tax residents in Portugal until 31 December 2024 if they meet one of the following criteria (a) have an employment contract (or promise contract) until 31 December 2023; (b) have a lease or other contract (or promissory contract) granting the use or possession of a property in Portugal until 10 October 2023; (c) have their dependents enrolled in a school in Portugal until 10 October 2023; (d) have a residency permit or visa valid until 31 December 2023; (e) have an application for a Portuguese residency permit or residency visa initiated until 31 December 2023; (f) are a household member of an individual which meets one of the previous criteria.

B) The "Incentive to Scientific Research and Innovation" (also called "NHR 2.0") is a new regime which is applicable to new tax residents which have not been tax residents in Portugal in the previous five years and perform roles or jobs in the following sectors: (a) higher education teaching or scientific research, (b) Portuguese start-up companies, (c) entities that fall within the scope of contractual benefits to productive investment under the Portuguese Investment Code, (d) highly qualified

professions performed in certain type of companies (to be defined by Ministerial Decree), (e) activities recognized as relevant to the national economy, namely because they attract productive investment and reduce regional asymmetries (f) activities carried out by tax residents in the Autonomous Region of Madeira and the Autonomous Regions of Azores (to be defined by Regional Decree).

These individuals may benefit from exemptions or lower tax rates on income or capital gains, as follows:

(i) Portuguese employment and business income deriving from the activities listed above are taxed at a 20% PIT flat rate.

(ii) Foreign source income – employment income, business income, financial income, real estate income, capital gains – is exempt.

The regime applies for 10 years.

C) The "Return Home" programme applicable to individuals meeting the following requirements: (i) were not tax residents in Portugal in the previous five years; (ii) have been tax residents in Portugal before 31 December 2026; and (iii) do not have tax debts. Under said regime, a tax exclusion of 50% on employment and business income obtained applies for a five-year period, up to a maximum of EUR 250,000 annually.

13. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

Before becoming a tax resident in Portugal, the following should be considered:

Residency Permit: authorization to remain in the Portuguese territory may be obtained based on different grounds. In addition to the general framework applicable (applicable for instance to employment and business activities), authorization to reside in the Portuguese territory may be granted to individuals (including nuclear family) performing investment activities (Golden Visa programme), such as financial or cultural investments. For EU citizens, only a registration before the Municipality is required within a 90 days period.

Estate planning: the estate structure held by individuals should be properly analysed before becoming a Portuguese tax resident in order to if necessary be adapted to the Portuguese and EU tax legislation (considering in particular the NHT regime).

Family governance and succession planning.

14. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

Descendants and spouses (and ascendants, in the absence of descendants) are forced heirs. To be noted that grooms opting for the separation of property regime may enter into a prenuptial agreement waiving their right to inherit.

The proportion of the value of the assets the forced heirs are entitled to varies between 1/3 and 2/3.

15. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

The Portuguese civil code establishes three regimes to regulate marital property:

- a) community of property – all combined property is considered joint;
- b) accrual system – only property earned during the marriage is considered joint property (applicable by default);
- c) separate property.

The Portuguese civil partnership regime does not grant any special property regime between the couple. In addition, the surviving partner is not considered a forced heir. In the event of the demise of one member of the couple, the surviving member has the right to live in the family house for a period of five years and has the pre-emption right on the sale of the family house.

16. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

Pursuant to the EU Regulation 650/2012 (with universal application), the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death. However, a person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

17. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

Under the referred Regulation 650/2012, renvoi either to the law of a Member State or to the law of a third State which would apply its own law to the succession should be accepted. Renvoi should, however, be excluded in situations where the deceased had made a choice of law in favour of the law of a third State.

18. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

Notwithstanding the rules concerning forced heirs, in case of the inexistence of a Will, the heirs will be designated by the subsidiary rules applicable.

For successions regulated by another EU Member State, the European Certificate of Succession may suffice. Conversely, if the succession is expected to be regulated by a third state, a will elaborated in Portugal concerning estate located in the Portuguese territory may be relevant.

Wills may be “public” or “private” (in this case, the Will only needs to be certified by the Notary and retained by the testator himself, the Notary or a third party).

19. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

In general, the heir’s common representative is the person responsible for collecting in assets, paying debts and distributing to beneficiaries. The heir’s common representative may be designated by the following preference order: the spouse, the executor, the closest heir and the oldest heir.

20. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold,

administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

Except for Madeiran Trusts, trusts are not regulated under the Portuguese civil law. However, the use of foreign trusts particularly by international families is not incompatible with the Portuguese law.

It is common to see the Family estate structured by a family holding company. Families are advised to properly design the company's articles of association and to elaborate a Family Business Charter to regulate the relationships between the Family, the Family's estate and the Family's business.

Unit-linked life insurance policies are a particularly relevant succession and tax planning instrument for both domestic and international Families.

21. How are these structures constituted and what are the main rules that govern them?

General rules concerning the constitution and regulation of companies and insurances apply.

Regarding Madeiran Trusts, although settled in the Madeira International Business Centre, these are subject to foreign law and operate exclusively outside of Portugal.

22. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

Companies incorporated in Portugal, its articles of association and their shareholders and beneficial owners must be registered before the Commercial Registry and the Central Register of Beneficial Owners. At least part of the information therein may be acceded. Family Business Charters and other shareholders agreements are, in principle, not publicly disclosed.

Since 2017, several legislative measures were taken to transpose Directive (EU) 2015/849, regarding the central register of beneficial owners. Such regime applies to any Portuguese or foreign entity with a Portuguese tax number.

Reporting entities must comply with the imposed

reporting obligations to the central registry, filling an initial declaration (which must be updated whenever there is a variation in any of the declared data) and an annual declaration of confirmation of the information previously communicated.

In 2020, Portugal has also carried out the transposition of the so-called "DAC 6 Directive" (Directive 2018/222), regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

The intermediaries (and, subsidiarily, the relevant taxpayer) shall file to the tax authority information on reportable arrangements containing at least one of the hallmarks established in DAC 6.

The so-called "unshell directive" proposal concerning substance and reporting requirements of holding entities and the new amendment to the Administrative Cooperation Directive proposed by the EU Commission (DAC8) concerning report obligations in connection with cryptoassets are expected to increase reporting obligations for holding structures.

23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Tax treatment and compliance rules applicable may vary significantly in accordance with the structure chosen.

In general, the Family undertakings may be subject to CIT. In addition, distributions to Beneficial Owners may be subject to tax.

From a tax perspective, such entities are qualified as 'fiduciary structures'.

24. Are foreign trusts, private foundations, etc recognised?

Distributions from foreign trusts to Portuguese tax residents are subject to PIT. In addition, in case of dissolution of the trust, the amounts received by the settlor are taxed as capital gains (if the beneficiary is not the settlor, payments received may be subject to Stamp Tax, which may result in an exclusion of tax due to its territorial scope).

Non-discretionary trusts not subject to tax may trigger the application of CFC rules for beneficiaries' tax resident in Portugal.

25. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Legal autonomy concerning private foundations will, in principle, be respected. However, in certain circumstances, recent case-law accepts that such autonomy may be disregarded for foundations.

26. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

Legal autonomy concerning private foundations will, in principle, be respected. However, in certain circumstances, recent case-law accepts that such autonomy may be disregarded for foundations.

27. What provision can be made to hold and manage assets for minor children and grandchildren?

Several instruments may apply depending on the circumstances such as the designation of a fiduciary (*fideicomisso*).

In any case, please note that, in general, sale of relevant assets concerning minors depends on the court's authorization.

28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

The Portuguese vulnerable adult's protection law was profoundly revised in 2018. The law provides for the incapacity mandate which allows the individual to choose the person or persons who should oversee his or her personal and financial matters in case of future incapacity. Portuguese law also recognizes advance

health care directives or mandate which allows the determination of the medical actions to be taken in case of illness or incapacity.

29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

Philanthropic or charitable entities usually take the legal form of associations or foundations. Conversely to what occurs with associations, the creation of a foundation is subject to an authorization procedure.

Please refer to point (8) above.

30. What is the jurisdiction's approach to information sharing with other jurisdictions?

In 2014, Portugal signed the Multilateral Competent Authority Agreement on Common Reporting Standard for Automatic Exchange of Financial Account Information in Tax Matters, having started reporting in 2017. In October 2016, a mechanism for reciprocal automatic exchange of information for residents in other EU member states and other CRS signatories jurisdictions has been introduced in the Portuguese domestic legislation.

Portugal has also approved and implemented the Foreign Account Tax Compliance Act (FATCA) with US authorities.

In addition, the Portuguese legislator has extended the reporting regime to bank accounts above EUR 50.000,00 held by Portuguese tax residents.

31. What important legislative changes do you anticipate so far as they affect your advice to private clients?

The Portuguese tax framework applicable to individuals is expected to remain stable.

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