Portugal

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1. Types of tax

1.1 Inheritance and gift tax

Historically, inheritance and gifts were subject to Inheritance and Gift Tax (Imposto sobre Sucessões e Doações). However, as a result of a tax reform, effective from 1 January 2004, inheritance and gift tax was revoked and inheritance and gifts became subject to stamp tax (ST) (Imposto do Selo) hereinafter ST. The ST Code was adjusted to accommodate the rules previously applicable under the Inheritance and Gift Tax but also to introduce several changes to the taxation of gratuitous transfers (including inheritance and gifts).

With regards to incidence, the ST Code expressly indicates which goods and rights are not subject to tax, eliminating taxation on personal or domestic goods as well as the assumption of their existence.

Gratuitous transfers in favor of taxpayers subject to corporate income tax (CIT) (Imposto sobre o Rendimento das Pessoas Colectivas) became also excluded from ST. Only individuals became subject to ST.

With regards to territoriality, ST continues to apply to transfers of goods and assets located in Portuguese territory.

The rules to determine the taxable amount of a gratuitous transfer are simplified and aligned with other taxes, e.g. personal income tax or (PIT) (Imposto sobre o Rendimento das Pessoas Singulares) and property tax (Imposto Municipal sobre Imóveis).

The Portuguese Tax Administration assesses the tax due on a gratuitous transfer.

The most important innovation in this regard is that the tax basis on transmissions by death ceased to be the hereditary share of each heir, becoming the global hereditary mass for the person who was the head of the household. Thus, the tax assessment does not require the prior sharing process of the inheritance — although ideal — that constituted an important factor of simplification and efficiency.

The tax rate applicable on gratuitous transfers suffered a significant reduction to 10%.

1.2 CIT

Gratuitous transfers in favor of taxpayers subject to CIT are excluded from ST; instead, they are subject to CIT.

A gratuitous transfer would represent a positive net worth variation, taxable at the applicable standard tax rate (currently 23%) plus any additional municipal and estate surcharges that are applicable.

For the purposes of determining the taxable income for CIT purposes, the acquisition cost of a gratuitous transfer is the fair market value (FMV), which shall not be lower than the value that would result from the rules foreseen in the ST Code.

1.3 Real estate transfer tax (RETT)

RETT is levied on the transfer for consideration (i.e., onerous transfers) of ownership rights or parts thereof on real estate (immovable property) situated in the Portuguese territory, regardless of how such transfer is carried out.

1.4 Registration fee

Transfers of ownership of real estate or real estate rights are subject to a registration fee of relatively low amounts.

1.5 Net wealth tax

Portugal does not impose net wealth tax.

2. Who is liable?

2.1 Liability and territoriality rules applicable to inheritance and gifts

Gratuitous transfers can refer to:

- Ownership rights or partial rights on immovable property, including acquisition by adverse possession/by prescription
- Movable property subject to registration, license or number plate
- Corporate rights, securities and debt claims associated thereto, even if autonomously transferred; government bonds as well as monetary amounts, even when deposited in bank accounts
- Commercial, industrial and agricultural establishments
- Industrial property rights, copyrights and other rights connected thereto
- Debt claims of shareholders on noncommercial pecuniary payments connected with their participation, regardless of the name, nature or form of the incorporation or modification deed, namely shareholder loans, loans, supplementary capital contributions, ancillary capital contributions, as well as any other advance payments granted to the company
- Acquisition resulting from voidness or nullity, dissolution, waiver or desistance, dissolution or revocation of a gift *inter vivos*, with or without a usufruct reservation, except in those cases provided for under Articles 970 and 1765 of the Civil Code, in relation to goods and assets and rights referred to under the preceding paragraphs

The following will not qualify as gratuitous transfers for ST purposes:

- Family allowance in debt upon death of the beneficiary, credits arising from life insurance, and pensions and subsidies paid by social security systems, even if paid as a death allowance
- Amounts invested in retirement-savings funds, education-savings funds, retirement-education-savings funds, stock-savings funds, pension funds, or movable and immovable investment funds
- Gifts granted under the provisions of the Patronage Law (Lei do Mecenato)
- Gifts of goods or values not listed above, according to the common use, up to €500
- Transfers on behalf of taxable persons subject to CIT, even when exempted from it
- Goods of a personal or domestic use

In gratuitous transfers, ST taxpayers are those individuals to whom the goods are transferred, subject to the following rules:

- In successions *mortis causa,* tax is due on the estate, this being represented by the head of the household and the legatees
- In any other gratuitous transfer, including the acquisition by adverse possession, tax is due by the beneficial owners

In gratuitous transfers, tax is due whenever goods are located in national territory. The following are deemed to be considered goods/properties located in Portugal:

- The rights over movable and immovable property situated therein
- Movable property registered or subject to registration or number plate in national territory
- Credit or patrimonial rights over individuals or collective persons when the debtor has residency, registered office, effective management or permanent establishment in the national territory, and provided the beneficiary is domiciled therein
- Shareholdings when the company in question has its headquarters, effective management or permanent establishment in the national territory, provided that the beneficiary is domiciled in this territory
- Monetary values deposited in institutions with headquarters, effective management or permanent establishment in the national territory, or, if not monetary values deposited, the author of transmission has domicile, headquarters, effective management or permanent establishment in this territory
- Industrial property rights, copyrights and other rights connected thereto registered or subject to registration in national territory

ST Code defines domicile using the rules applicable for PIT purposes for assessing tax residency. Accordingly, the following individuals are resident in Portuguese territory:[1]

1. Those who have remained therein for more than 183 days, consecutive or otherwise
2. Those who have stayed for less time, but who have available therein, as of 31 December of the relevant year, a home in conditions that indicate an intention to keep and occupy it as an habitual residence
3. Those who, on 31 December, are crew members of vessels or aircraft, provided that they are in the service of entities with residence, head office or (place of) effective management in that territory
4. Those who discharge abroad an office or commission of a public nature, in the service of the Portuguese State
5. Individuals who constitute the household always regarded as resident in Portuguese territory when the head of household resides therein

[1] Individuals who become tax residents in Portugal under any of the criteria set for in (1) to (5) and that have not been considered as such in Portugal in the last five years may benefit from a PIT special tax regime, known as the non-habitual residents' law. See more in the Global Executive Guide.

6. Individuals of Portuguese nationality who relocate their tax residency to a country, territory or region subject to a clearly more favorable tax regime, as in the list approved by order of the Minister for Finance, shall continue to be regarded as resident in Portuguese territory in the year of relocation and in the four subsequent years, unless they prove that the change is for reasonable purposes, including a temporary assignment on behalf of an employer domiciled in Portuguese territory

Please note that rule (5) may be overcome. Indeed, as of 2006, Portuguese tax law states a special rule that prevents tax residence, in Portugal, for the spouse remaining abroad who would only be deemed tax resident because of the other spouse residing in Portugal. Accordingly, when one of the spouses stays abroad for most of the year (being for less than 183 days in Portugal), has his or her habitual place of residence abroad and mainly derives foreign sourced income (not connected with the Portuguese territory and proof of that can be made), on the one hand, the spouse staying most of the year abroad will be treated as nonresident and, on the other hand, the spouse residing in Portugal will be taxed as resident under rules applicable to split couples (separado de facto).

3. Rates

3.1 ST

ST on inheritance and gifts is levied at a fixed rate of 10%. An additional 0.8% applies to gifts of real estate (immovable property).

3.2 CIT

A gratuitous transfer would represent a positive net worth variation, taxable at the standard tax rate applicable (currently 23%) plus additional surcharges applicable (municipal and estate).

4. Exemptions and reliefs

4.1 ST

The following exemptions are available:

- Exemption of ST on inheritance for spouses, civil partners, descendents and ascendants.
- Exemption of ST on gifts for spouses, civil partners, descendents and ascendants, except for gifts of real estate (immovable property) where a 0.8% rate applies.
- Tax exemptions on transfers carried out free of charge as laid down in agreements between the Portuguese State and any person of public or private law.

5. Filing procedures, assessments and valuations

5.1 ST

Taxable amount

The taxable amount for ST purposes is defined in the General Stamp Tax Table. Under specific situations foreseen in the law, the taxable amount may be assessed by indirect methods.

ST on gratuitous transfers applies on the value. Value depends on the type of goods and assets or rights being transferred, for example:

- Real estate: taxable value (also cadastral value) for property tax purposes (Imposto Municipal sobre Imóveis).
- Motor vehicles, motorcycles, tourism aircrafts and recreational boats: higher between the market value and the amount determined according to the rules foreseen in the PIT.

- Quotas: value as per the last balance sheet or the amount assigned in the sharing process or liquidation of the company, except if, the company would not continue with the heir, legatee or donee of the deceased partner, the value of the quotas has been defined in the articles of incorporation.
- Shares: official quotation or nominal value up to €500 or amount resulting from a specific formula.

Responsibility for tax assessment

The following are the rules applicable:

1. The assessment of the tax payable as a result of a gratuitous transfer is a responsibility of the tax authorities' central services, being promoted by the competent local tax office where the author of the transfer or adverse possessor resides in national territory.

2. In the absence of residency in the national territory, the tax assessment is promoted by the tax office of the residence of the head-of-household or beneficiary.

3. If there are several beneficiaries for the same transfer, as provided for by the end of the preceding paragraph, the tax assessment is promoted by the tax office in which the older beneficiary resides, or, in the case the transfer refers to goods located in national territory, where the goods of a higher value are located.

4. In the case of several donors, all or some domiciled in national territory, the tax assessment is promoted by the tax office where the donor resident in this territory that donated the goods of higher value is domiciled and, if the goods are of equal value, the tax office where the older donor is domiciled.

5. In case all donors are domiciled outside national territory, rules (2) and (3) shall apply.

Filing obligations

The head of the household and the beneficiary of any gratuitous transfer subject to tax are required to notify the competent tax office on the gift, death of the *de cujus*, presumptive death or judicial justification of death, judicial justification, notarial or carried out under the terms laid down by Immovable Property Register Code (Código do Registo Predial) for the acquisition by way of adverse possession, or any other deed or contract involving a transfer of property. The notification must be lodged with the competent tax office for the purpose of tax assessment no later than the end of the third month following the event giving rise to tax liability.

Regardless of whether tax is due or not, there shall always be a requirement to present a statement and a list describing any goods and assets and rights, which, in case of tax exemption, shall only include those goods and rights referred to in Article 10 of the PIT Code, as well as any other goods subject to registration, license or number plate.

Payment

The total tax amount assessed on gratuitous transfers shall be paid until the end of the second month following the notification or during the month in which each installment is due. If tax is paid in a lump sum until the end of the second month following the notification, a deduction of 0.5% per month is available and shall be computed on the amount of each installment according to the circumstances described below, excluding the first mentioned one.

If the tax payable is higher than €1,000, it shall be divided into equal installments up to a maximum of 10 and a minimum of €200 per installment, the first being increased by the fractions resulting from the rounding sum of all the others, together with any compensatory interest and the real estate transfer tax that may be due. The first installment shall be paid in the second month following the notification and each one of the remaining installments six months after the maturity date of the previous one.

6. Trusts, foundations and private purpose funds

Trusts are not recognized figures in the Portuguese legal system or in the Portuguese tax system, with the exception of the specific regime for the Madeira Free Zone. Portugal has not ratified the Hague Convention on the Recognition of Trusts dated as of 20 October 1984.

The lack of recognition of this figure implies that the tax treatment of trusts is still a gray area in Portugal. Recently, though the Portuguese tax authorities issued a ruling indicating that trusts do not benefit from the application of the double tax treaties when they obtain income in Portugal, except, if so expressly stated in the treaties (as in the case of the treaties signed with the US and Canada), by requiring proof that the trust is the beneficial owner of such income (beyond other requirements foreseen in each of these two treaties).

On the other hand, foundations have a specific legal framework in Portugal. There is no specific tax regime for foundations. Even though, as a general rule, they are subject to several taxes, e.g., CIT and ST, some exemptions may be available, depending on the type of foundation.

There are several types of private funds in Portugal, such as, immovable property funds and movable property funds, pension funds, venture capital funds. Normally, each type has its own legal and tax regime (even though there might not be a specific tax regime, there may be specific rules applicable).

7. Life insurance

Premiums and commissions related to life insurance benefit from an exemption from ST.

8. Civil law on succession

8.1 Estate planning

As mentioned above, the Portuguese tax law provides for a very favorable tax regime for inheritance and gifts:

- Exemption of inheritance tax for spouses, descendents and ascendants.
- Exemption of gift tax for spouses, descendents and ascendants except for gifts or real estate where a 0.8% rate applies.

8.2 Succession

The Portuguese Succession Law follows universal succession principles according to the law of the deceased's nationality.

Heirs have universal succession, and unless they refuse to accept the inheritance, they are personally liable for the deceased's debt plus the total taxes due. These obligations are placed upon all the heirs jointly. The heir succeeds to the decedent in all aspects. However, the heirs' liability is limited to the value of the inheritance received in case the heir accepts the inheritance with the benefit of inventory, in which case only the goods and assets included in the inventory respond toward the respective liability (as set for article 2071 of the Portuguese Civil Code). On the contrary, if the inheritance is accepted pure and simple (not accepted under the benefit of inventory), it is up to the heir to make proof that there are not enough values found in the inheritance to meet the respective liabilities.

A legatee under a will has only a personal claim against a compulsory heir (subjected to forced heirship laws) and is not liable for a deceased's debt although it is liable for the relevant taxes on any legacy.

The main connecting factor for succession purposes is the nationality of the deceased.

8.3 Forced heirship

In Portugal, a spouse, relatives[2] and the Portuguese State have automatic inheritance rights *(Heres necessarius)* irrespective of the provisions in a will. This compulsory share or forced heirship is called "legitima." Forced heirship applies to all of the deceased's goods and assets and to all of the inheritance rights.

If the deceased makes a disposition prejudicing the rights of any of these heirs, such disposition can be challenged before a Portuguese Court and the heirs can make a claim for the associated damages suffered. In the same way, lifetime gifts (donations) can be challenged before a Portuguese Court, even if performed in favor of other legitimate heirs.

In practice, forced heirship rules restrict the ability to decide how goods and assets should be distributed after death.

The following relatives are entitled to receive the minimum statutory quotas:

Relatives	Minimum statutory quotas
One child and no spouse	One-half of the inheritance goods and assets
Two or more children and no spouse	A total of two-thirds of the inheritance goods and assets
One or more ancestors (parents, no spouse and no children)	One-half of the inheritance goods and assets
Surviving spouse	One-half of the inheritance goods and assets
Surviving spouse and a child	One-third of the inheritance goods and assets to each
Surviving spouse and two or more children	Two-thirds of the inheritance goods and assets
Surviving spouse with no children and ancestors	Two-thirds of the inheritance goods and assets

8.4 Matrimonial regimes and civil partnerships

Portuguese family law distinguishes between three marital property regimes:

1. Statutory marital property regime (i.e., community of accrued gains — Comunhão de bens adquiridos). According to this regime, spouses and partners of registered same-sex partnerships hold their goods and assets as separate property during their marriage or partnership, although there are partial restraints on management and disposal. Upon divorce or death, the gains accrued on the property of the spouses or the partners of a registered same-sex partnership during the marriage or the partnership will be shared. Goods and assets inherited are considered own goods and assets, i.e., separate property.

   Upon formal agreement to be implemented by notarial deed by means of a pre-marriage contract (Convenção ante nupcial), spouses may elect one of two contractual matrimonial property regimes, which may be further modified (within certain limits) by contract as well.

2. Separation of property (Separação de bens): under this regime, each spouse holds his or her property independently in separate ownership. Management and disposal are not subject to any limitations deriving from the marital status.

[2] For the purposes of this law, "relatives" are defined to include children, parents, siblings, grandparents, grandchildren or corresponding in-law or "step" relation.

3. Community of property (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 decedent or the donor.

8.5 Intestacy

Under the Portuguese Law of Succession, a person may only dispose of its legally available quota of property or estate (Quota disponível) for the time after death by will (Testament).

When a person dies leaving a valid will concerning the disposable quota of its goods and assets or estate (in accordance with the quotas described in Section 8.3 above), the law will ascertain the validity of the will provided a set of formalities to be complied with and, in some cases, the taxes to be paid.

The Portuguese law of succession will also ensure that the immediate members of the deceased's family are not deprived of their minimum statutory quota of the estate (see Section 8.3).

Under the Portuguese rules of succession, there are two forms of making a valid will:

- Public will (Testamento público) this is a document drafted by a Portuguese notary upon the instructions of the testator (Testador) read by the Notary to ensure that it complies with the wishes of the testator and is signed by the testator in front of two witnesses.
- Secret will (Testamento cerrado) this is a will drafted by the testator and approved by the notary under the notarial laws. The testator may keep the secret will in its power, have it kept under the custody of a third party or deposit it in any notary office.

Where there are cross-border issues, the Conflicts of Law provisions will be relevant, which is beyond the scope of this book.

8.6 Probate

Portuguese law does not require executors to be appointed; however, when a person dies owning property, it may be necessary to collect documentation, organize certified translations of documents, appoint a local notary and follow specific procedures.

After completing the probate procedure, it will be possible to register the immovable assets in the name of the heirs.

9. Estate tax treaties

Portugal has not concluded any double tax treaty with other jurisdictions in connection with inheritance and gifts or real estate transfers.

Portugal has signed several double tax treaties for income tax purposes: Algeria, Austria, Barbados*, Belgium, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia*, Cuba, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guinea, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kuwait, Latvia, Lithuania, Luxembourg, Macau, Malta, Mexico, Moldova, Morocco, Mozambique, the Netherlands, Norway, Pakistan, Panama, Peru*, Poland, Qatar*, Romania, Russia, San Marino*, Singapore, Slovak Republic, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, East Timor*, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay and Venezuela.

** This tax treaty is not yet in force.*