

Portugal

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1. Types of tax

1.1 Inheritance 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 However, as a result of a tax reform, effective from 1 January 2004, inheritance and gift tax was revoked and inheritance and gifts became subject to stamp tax (ST) (*Imposto do Selo*), hereinafter ST.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*) also became 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 (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 21%) 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.

1.6 Municipal tax and additional municipal tax

Municipal tax is levied by each municipality on the cadastral value of real estate located in Portuguese territory.

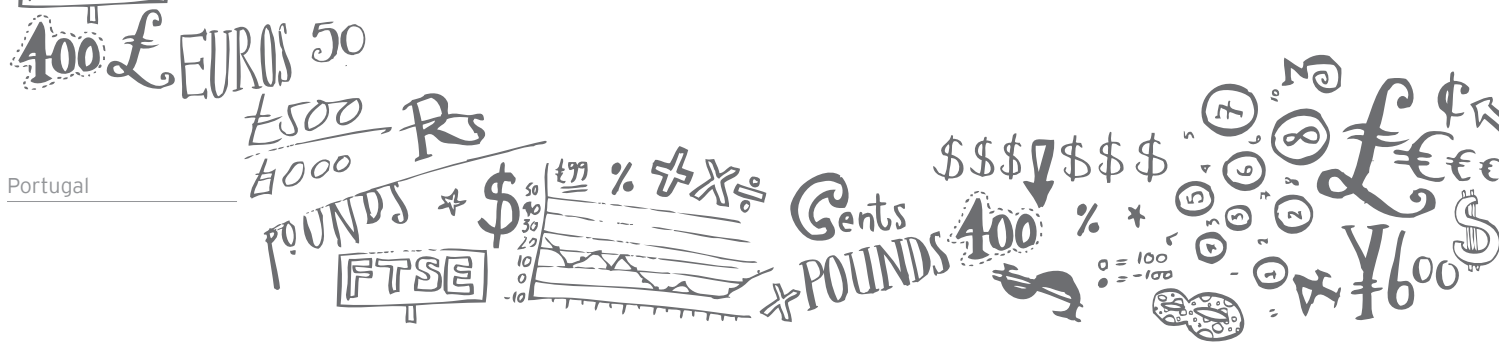
As of 1 January 2017, an additional municipal tax is imposed and applies to the sum of all cadastral values of real estate located in Portuguese territory (some deductions are allowed, and some exceptions are available).

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
- ▶ Amounts distributed as a result of the settlement, revocation or termination of fiduciary structures to taxable persons who have not constituted them



4. Those who discharge abroad an office or commission of a public nature, in the service of the Portuguese State
5. The status of tax resident in Portugal continues if the individual relocates his or her 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, in the year of relocation and in the subsequent four years (this presumption is refutable); this status will cease to apply if he or she becomes tax resident in another country, territory or region not subject to a clearly more favorable tax regime, as in the list approved by order of the Minister for Finance.

Individuals who become tax residents in Portugal under any of the criteria set forth in (1) to (4) and who 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.

The loss of tax resident status occurs from the last day of staying in Portuguese territory unless the person in Portugal remains more than 183 days on the departure year and derives, after the departure, any Portuguese source income that would otherwise be subject to tax, in which case, he or she will continue to be considered tax resident in Portugal for the whole year (except if some conditions are met). By contrast, if a tax resident leaves Portugal and returns in the following year after becoming nonresident in Portugal (one year of nonresidency in Portugal), that person will be deemed Portuguese tax resident for the prior year (year in which he had been nonresident).

As of 1 January 2015, the marital status and tax residency of the spouse is no longer a condition to determine tax residency of an individual in Portugal, as the PIT Reform introduced the principle of separate taxation.

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 21%) 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, descendants and ascendants
- ▶ Exemption of ST on gifts for spouses, civil partners, descendants 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

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 applicable rules:

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 when the following events occur: the receipt of a gift; the death, or declaration of presumptive death, of the *de cujus*, and the acquisition of property by way of adverse possession, under the terms laid down by the Immovable Property Register Code (*Código do Registo Predial*) or any other deed or contract involving a transfer of property.

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. Assessments and valuations

This does not apply to Portugal.

7. Trusts, foundations and private purpose funds

Until 2015, trusts were 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 had not ratified the Hague Convention on the Recognition of Trusts dated as of 20 October 1984.

The lack of recognition of this figure implied that the tax treatment of trusts was still a gray area in Portugal. Though the Portuguese tax authorities issued a ruling indicating that trusts do not benefit from the application of double-taxation 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).

As from January 2015, a PIT Reform entered in force and introduced rules applicable to fiduciary structures (trusts). As such, if the beneficiary of the trust is the settlor, then:

- ▶ If the trust is domiciled in a country, territory or region subject to a more favorable regime, income is subject to PIT at a rate of 35%.
- ▶ If the trust is not domiciled in a country, territory or region subject to a more favorable regime, income is subject to PIT at a rate of 28%.

In both cases this is applicable only if the result of the liquidation, revocation or extinction of the trust, distributed or reimbursed, is higher than the value of the assets transferred by the settlor to the trust upon its constitution.

Taxation applies only if the good or asset acquired is located in Portuguese territory at the acquisition date and no ST exemption applies. In both cases, this is applicable only if the result of the liquidation, revocation or extinction of the trust, distributed or reimbursed, is higher than the value of the assets transferred by the settlor to the trust upon its constitution. If the beneficiary of the trust is a third person, income is subject to ST at a rate of 10%.

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 and 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).





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

10.4 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.



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.

10.5 Intestacy

Under the Portuguese Law of Succession, a person may only dispose of his 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 his goods and assets or estate (in accordance with the quotas described in Section 10.3 above), the law will ascertain the validity of the will, provide 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 10.3).

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*) and 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 his or her power, have it kept under the custody of a third party or deposit it in any notary office.

When there are cross-border issues, the conflicts-of-law provisions will be relevant, which is beyond the scope of this book.

10.6 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.



11. Estate tax treaties

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

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

* This tax treaty is not yet in force.