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The International Comparative Legal Guide to:

Private Client 2019

8th Edition

A practical cross-border insight into private client work

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FOREWORD

Welcome to the 2019 edition of The International Comparative Legal Guide to Private Client which I am delighted to introduce this year. The Guide covers a comprehensive and diverse range of articles that would pique the interest of any domestic or international practice client adviser. The publication is designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

The Guide is divided into two sections and the first section contains seven general chapters. Each topical chapter is written by a different firm which will be most helpful for advisers with international clients.

The second section contains insightful country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 35 jurisdictions.

As an overview, the Guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work. The articles are provided by some of the most authoritative and respected advisers in the private client industry and I trust that you will find them just as valuable.

George Hodgson, CEO, STEP (Society of Trust & Estate Practitioners)

Portugal

SRS Advogados

José Pedroso de Melo



1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Domicile and habitual residence are concepts of civil law that do not assume conceptual relevance in determining the tax liability of individuals. The concept of “non-habitual” residency was introduced in 2009 to define persons qualifying for the non-habitual residency (NHR) tax regime.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

Please refer to our response to question 1.1 above.

For the purposes of applying to the non-habitual residency regime, an individual is eligible to register as a “non-habitual resident” if he or she qualifies as a Portuguese tax resident pursuant to the Portuguese personal income tax code, and he has not been tax resident for the last five years.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Liability to personal income tax (IRS) is defined on the basis of the concept of tax residency.

Portuguese tax residents are subject to IRS on their worldwide income on an unlimited liability basis. Non-resident individuals are subject to tax on their income obtained within the Portuguese territory.

1.4 If residence is relevant, how is it defined for taxation purposes?

Generally, a person is deemed to be considered tax resident if, in the year to which the income relates, he or she:

- stays in the Portuguese territory for more than 183 days, whether these days are consecutive or not, in any 12-month period commencing or ending in the year concerned; or
- has at his or her own disposal a dwelling in such conditions that it may be inferred that there is the intention to keep and occupy it as a habitual abode.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Nationality is not a relevant concept in defining liability to taxation in Portugal, except for the purposes of the application of the anti-abuse measure, under which Portuguese nationals who relocate to a country, territory or region with a clearly more favourable tax regime (blacklisted jurisdiction), as defined on the list approved by Ministerial Order no. 150/2004, of 13 February 2004, as amended will be deemed tax resident in Portugal for personal income tax purposes, in that year and in the following four years.

Notwithstanding the above, most of the tax treaties entered into by Portugal foresee that nationality may constitute a tie-break criterion in case of double-residency conflict.

1.6 If nationality is relevant, how is it defined for taxation purposes?

Please refer to our response to question 1.5 above.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

Non-resident persons may also be liable to tax in Portugal regarding income obtained within the Portuguese territory (source of income connecting factor), as referred to above.

2 General Taxation Regime

2.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

There is no estate or wealth tax in Portugal (apart from immovable property tax).

Gift taxes are due at a 10 per cent rate on assets physically or legally located within the Portuguese territory at the time of death or donation. A surcharge of 0.8 per cent of the taxable property value may be imposed on gifts or inheritance as far as they consist of real estate.

Gifts and inheritances in favour of spouses, descendants or ascendants are Stamp Duty-exempt.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

Portuguese tax residents are liable to personal income tax under the worldwide income principle.

For personal income tax purposes, income is divided into six categories: A (employment income); B (business and professional income); E (investment income); F (real estate income); G (capital gains); and H (pensions).

Employment income and business and professional income capital gains from the sale of property and pensions are subject to a progressive income tax rate of up to 48 per cent. A surcharge applies to the part of the income exceeding €80,000, as follows: 2.5 per cent on income exceeding €80,000 and up to €250,000; and 5 per cent on income exceeding €250,000.

Investment income (such as dividends, royalties and interests), real estate income and capital gains derived from the disposal of securities (such as shares, bonds, etc.) are subject to taxation at an autonomous final rate of 28 per cent.

Without prejudice to the above, individuals who become tax resident in Portugal, and have not been resident in Portuguese territory in the five previous years, may apply for the non-habitual residency tax regime, under which income derived from engagement in high value-added activities, as defined in an Administrative Order, is subject to a reduced flat tax rate, and foreign-source income, namely pensions, capital gains or business profits, may be fully exempt from tax, irrespective of remittance.

Specifically, with regard to foreign-source income, the regime provides for a tax exemption if certain requirements regarding the type of income and taxation in the source state are met. These conditions are as follows:

- Employment income – The exemption will apply to foreign-source income if this is taxed in the source state in accordance with a double tax treaty entered into between Portugal and that state, or, if no tax treaty has been entered into between both states, the income is taxed in the source state and is not considered to arise in the Portuguese territory according to the domestic criteria.
- Profits, interest, income from immovable property, capital gains, business and professional income arising from high value-added activities that are of a scientific, artistic or technical nature, and royalties – The exemption will apply if the income or gains can be subject to tax in the other state under a tax treaty entered into between Portugal and that state. Alternatively, if no tax treaty has been entered into between Portugal and the source state, the exemption applies if, pursuant to the rules of the OECD model tax convention, interpreted in accordance with Portugal's observations and reservations, the income or gains can be taxed in the source state, and provided that the income is not deemed to be sourced either in a blacklisted jurisdiction or in Portugal.
- Pensions – The exemption will apply if the foreign-source pension income is subject to tax in the source state in accordance with a tax treaty entered into between Portugal and that state or, alternatively, if the income is not considered to arise in Portuguese territory.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

Irrespective of whether they become established or not, persons who acquire immovable property in Portugal will be liable to Local

Property Tax (IMI) and eventually an additional IMI (AIMI). IMI is levied annually on the tax patrimonial value of the properties as inscribed in the Tax Registry.

The IMI (property tax) rates are:

- rural property – 0.8 per cent;
- urban property – 0.3 per cent to 0.45 per cent, depending on the Municipality; and
- rural or urban property when the owner is domiciled in a blacklisted jurisdiction – 7.5 per cent.

AIMI is levied on the sum of the urban properties for dwelling held by a person on the taxable amount exceeding €600,000. The tax rate is 0.7 per cent for properties owned by individuals, increasing to 1 per cent for the amount of taxable value exceeding €1 million.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

Indirect taxes like VAT and customs and excise duties are due if the consumption is deemed to take place in Portugal.

Portuguese VAT legislation basically follows the EU common system of VAT. It applies to the supply of goods, services, and intra-Community acquisitions and imports into the Portuguese territory.

Any person or corporate entity that independently carries out an economic activity, or that carries out a single taxable transaction either in connection with the performance of the above-mentioned activities or that is subject to personal tax or CIT, is liable to charge VAT on every supply it makes in the scope of its activities, and afterwards to deliver the due amount to the tax authorities.

On the Portuguese mainland, VAT rates are as follows: 23 per cent (standard); 13 per cent (intermediate); and 6 per cent (reduced).

In the autonomous regions of Azores and Madeira, the VAT rates are currently reduced to 18 and 22 per cent (standard); 9 and 12 per cent (intermediate); and 4 and 5 per cent (reduced), respectively.

Excise duties apply to alcoholic beverages, oil and energy products, and tobacco.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

Yes, there are several specific anti-avoidance taxation provisions designed to penalise offshore arrangements.

Among others, income paid by, and property held by, entities or individuals who are resident in *blacklisted jurisdictions*, are subject to aggravated tax rates in determining IRS, Property Transfer Tax and Local Property Tax liability.

Furthermore, under CFC rules, individuals that control foreign legal entities that are deemed domiciled in blacklisted jurisdictions must include in their taxable income the undistributed passive income received by such entities.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

The Portuguese general anti-avoidance rule (GAAR) provides for a general principle of substance over form, under which the tax authorities may disregard the legal form agreed upon by the parties where a transaction is deemed exclusively or principally tax-driven, and they may recharacterise the facts for tax purposes in accordance with the underlying economic reality.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

Yes. Since 2008, financial institutions, lawyers, chartered accountants and accountants involved in tax planning schemes in view of obtaining tax advantages, as defined in the law, are subject to mandatory communication, information and clarification duties.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

The territoriality principle, on the one hand, and the exemption applicable on the gifts and inheritances in favour of spouses, descendants or ascendants, on the other, diminishes the importance of pre-entry planning in this regard. Notwithstanding, advice may be useful, notably in anticipation of an eventual change in the law.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Besides other general planning advice, special attention must be paid to existing offshore structures or trust structures, and optimisation of investment portfolio composition, notably as regards persons applying for the non-habitual residency tax regime (see above).

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

Yes, depending on the profile of the person and expected investments and income, pre-entry planning may be advisable.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

Acquisition and holding of real estate property in Portugal is subject to Property Transfer Tax and an annual Property Tax regardless of the residency of the investor. Investment income (such as dividends, royalties and interests), real estate income and capital gains derived from the disposal of securities and real estate assets by non-resident individuals are subject to Personal Income Tax at a final rate of 28 per cent, eventually reduced under an applicable tax treaty in the case of dividends, royalties and interests.

Notwithstanding, capital gains realised by non-resident individuals on the transfer of shares, autonomous warrants and other marketable securities, issued by entities resident in the Portuguese territory, as well as derivative financial instruments negotiated in regulated stock exchange markets, are, as a rule, exempted from taxation.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Importation of assets is subject to VAT according to the applicable tax rate (the general tax rate being 23 per cent) and excise taxes.

Exemptions can be granted to the import of personal goods and household items.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

Acquisition of property is subject to Property Transfer Tax and Stamp Duty, as referred to above. Acquisition of property for residential purposes may benefit from some tax reductions and exemptions, notably under the urban rehabilitation regime.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

A corporate entity is subject to Corporate Income Tax (CIT) if it has its head office or effective management in Portugal, a permanent establishment in Portugal, or if it derives income of Portuguese source.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

The regular CIT rate in Portugal is 21 per cent. The tax rate applicable to the first €15,000 of the taxable income of taxpayers qualifying as small and medium-sized enterprises, as provided by EU Commission Recommendation 2003/361/EC, is 17 per cent.

Corporate taxpayers with taxable income of more than €1.5 million are also subject to a state surcharge of 3 per cent. The surcharge increases to 5 per cent for taxable income exceeding €7.5 million, and to 9 per cent for taxable profits in excess of €35 million.

A municipal surcharge is levied in addition to CIT in most municipalities at a rate of up to 1.5 per cent of taxable income.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

In general terms, domestic branch profits are taxed on the same basis as corporate income. Nevertheless, there are some differences in tax treatment (general administrative expenses incurred by the head office may be allocated to the branch, and there may be certain restrictions concerning the deductibility of certain expenses charged by the head office to the branch).

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Portugal has entered into treaties to prevent double taxation with 80 countries (76 of which are already in force), which prevail over domestic law provisions under the Constitution Law. The impact of the tax treaties is felt in most cross-border activities, providing for reductions on dividend, interest and royalty withholding tax rates, and limiting the scope of permanent establishment activities, among others. Tax treaties are also relevant to determine the scope of foreign-source income exemptions under the non-habitual residency tax regime.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

As a rule, tax treaties entered into by Portugal broadly follow the OECD Tax Convention Model, although some treaties incorporate provisions derived from the UN Model.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Portugal is not party to any estate or gift tax treaties.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable in Portugal.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

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

In Portugal, the most common forms of will are the public will (which is drawn up by a notary and archived in the notary's books, although remaining strictly confidential) and the private will (which is handwritten by the testator and its conformity with form requirements is then verified by a notary who issues the validation instrument. Portuguese law states that any will would be valid in Portugal if the material requirements of Portuguese law are met, the disposition does not offend or limit the reserved portion of the legal heirs and if it is compliant with the laws of at least one of the following jurisdictions: (i) the place where the will was concluded; (ii) the personal law of the testator at the moment of the declaration; (iii) the personal law of the testator at the moment of death; or (iv) the jurisdiction to which the local conflict-of-law rules refer.

Although not as common as any of the said wills, it is also possible to conclude an international will, according to the Convention providing a Uniform Law on the Form of an International Will, concluded in Washington, D.C. on 26 October 1973.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

No, there are not.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

Portuguese succession law stipulates a forced heirship regime to protect spouses, descendants and ascendants, ensuring these heirs receive from one-third to two-thirds of the deceased's total assets.

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

8 Trusts and Foundations

8.1 Are trusts recognised/permitted in your jurisdiction?

As a classic civil law jurisdiction, Portugal does not regulate trusts or recognise the existence of trusts regulated by foreign law, and does not even refer to such entities, with a few exceptional situations:

- to allow the incorporation of offshore trusts within the scope of the Madeira International Business Centre and regulate the corresponding tax effects;
- in the context of the tax treaties entered into with the USA and Canada, acknowledging the trusts as possible resident entities in such states, strictly for the purposes of the application of the treaty dispositions, under certain circumstances;
- for anti-abuse purposes, to consider attributable to a Portuguese tax-resident individual the income obtained by entities domiciled in blacklisted jurisdictions irrespective of the distribution, in cases where the rights over the income are handled through a fiduciary entity; and
- to qualify the income arising from the distributions, liquidation, revocation or termination of the trust (see below).

8.2 How are trusts/settlers/beneficiaries taxed in your jurisdiction?

The income accumulated in the trust during its lifetime is not subject to tax at the level of the settlor or beneficiaries, unless CFC rules should apply. The beneficiaries of trusts are subject to tax as follows:

- (i) in the case of eventual distributions made during the lifetime of the structure, either to the settlor or the beneficiaries, is considered as capital income for the full amount distributed (irrespective of its nature of capital or income) and subject to a 28 per cent flat rate (that may be increased to 35 per cent in cases where the income is deemed obtained in a blacklisted territory); and
- (ii) in the case of liquidation, revocation or termination of the structure:
 - if paid to the settlor or founder, qualifying as capital gains, being the taxable income equal to the difference between the amounts delivered to the trusts and the amounts received as it happens with common corporations, and subject to a 28 per cent rate (increased to 35 per cent in cases where the income is deemed to have been obtained in a blacklisted territory); and
 - if paid to the beneficiary(ies), deemed as transferred for free (donation or inheritance) subject to Stamp Duty (flat rate of 10 per cent), even if, according to the territoriality principle laid down in the Stamp Duty Code, only the assets located within the Portuguese territory would be subject to tax.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

A Portuguese settlor who sets up a trust must respect Portuguese mandatory heirship rules. Any infringement of these rules can be challenged by the heirs of the settlor, and the assets transferred to the trust may be reduced accordingly.

8.4 Are private foundations recognised/permitted in your jurisdiction?

Private benefit foundations are not permitted in Portugal. Under the Civil Law, a foundation must pursue a social interest purpose.

8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

Non-resident foundations and other fiduciary structures are taxed in similar terms as those referred to in question 8.2 above.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Refer to question 8.3 above.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Both civil partnerships and same-sex marriages are recognised by Portuguese law.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

Couples can choose to marry under the separation of estate, universal community of property or community of property subsequent to marriage regimes.

Unless there is a pre-marital agreement providing otherwise, the community of property regime applies. Under this regime, the income of the work of the spouses and any property acquired by the spouses during their marriage will be deemed common.

Under the separation of property regime, which is mandatory when the marriage was entered into without completing the preliminary marriage procedures or when either one or both of the spouses are aged 60 years or older, each spouse retains control over and entitlement to all of his/her present and future property, which he/she may freely dispose of. The spouses' separate property includes, but is not limited to, the following:

- the property that each spouse owned at the time the marriage was entered into;
- any property a spouse acquired during the marriage through succession or as a gift; and
- property acquired during the marriage under a prior entitlement.

Under the universal community of property regime, all present and future property belonging to the spouses forms part of the community property.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Pre-marital agreements are permitted to choose one of the matrimonial property regimes legally defined or adopt a different one within the limits of the law.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

Besides the need for division of common property, the divorce may also determine: (i) a compensation for damages to a spouse; (ii) giving the family residence for rental to one of the spouses; and (iii) the payment of alimony or spousal support from one spouse to another.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Entry into Portugal by foreign citizens who are nationals of third states (non-EU or non-signatories of the Schengen Convention) is decided on the basis of the reason for their visit and the amount of time that they stay. For short stays, foreign citizens must meet the requirements of the Schengen rules. For long stays of more than three months, the requirements of Portuguese legislation in force must be met.

Aside from tourism, the Schengen visa also allows entry into Portugal for foreign citizens travelling on business or for professional, family, scientific, cultural, sporting, political or religious reasons.

All foreign citizens intending to remain in Portugal for a period of up to one year, or to establish their residence for more than one year, must request the respective long-stay visa – Temporary Stay or Residence – from the Portuguese embassy in their country of residence or from the Portuguese embassy with jurisdiction over their country of residence.

Visas may be requested for the following purposes: investment; work (employed or independent); study; professional training; research; highly skilled work or teaching; religious training; and medical recovery and treatment.

All nationals of European Union Member States, states that are part of the European Economic Area (EEA), states with which the European Community have free travel agreements and nationals of third states who are family members of a Portuguese citizen or family members of EU or EEA citizens are excluded from long-stay visa procedures.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

Yes. In 2012, Portugal introduced a Residency Permit for Investment Activities (Golden Visa) with the aim of attracting foreign investment to Portugal, under which third-country nationals may be granted a temporary residence permit without the need to previously obtain a Portuguese residence visa, by making one of the following investments:

- transfer of capital in an amount equal to, or greater than, €1,000,000;
- creation of a minimum of 10 jobs;
- purchase of real estate with a value equivalent to, or greater than, €500,000;
- purchase of real estate (in relation to which construction was completed at least 30 years ago or located in an urban renovation zone) and the effecting of renovation works to such property with a total value (i.e., purchase price plus renovation works) equivalent to, or greater than, €350,000;
- capital transfer with a value equivalent to, or greater than, €350,000, to be used for research activities carried out by scientific research institutions;

- capital transfer with a value equivalent to, or greater than, €250,000, to be used for investment in, or support of, artistic production and recuperation or maintenance of national cultural heritage;
- capital transfer with a value equivalent to, or greater than, €350,000, to be used for the acquisition of units in Portuguese investment or venture capital funds of which 60 per cent of investments must be in Portuguese companies; or
- capital transfer with a value equivalent to, or greater than, €350,000, either for the incorporation of a Portuguese company or for a capital increase in an existing Portuguese company and the creation of five permanent jobs (with the employees registered with the social security authorities).

Applicants are required to possess a valid Schengen visa, i.e. a single or multiple-entry short-term visa to allow movement through the Schengen Area, with a maximum validity of 90 days. This visa can be obtained from the Portuguese Consulate of the area of residence of the applicant. Nationals of some countries are exempted from obtaining a Schengen visa.

Applicants must comply with the general requirements for the issuance of a temporary residence permit, including:

- health insurance valid in Portugal (if living in Portugal);
- no debts to the Portuguese tax or social security authorities; and
- no criminal convictions.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Portuguese nationality may be obtained by attribution (original) or by acquisition (derivative).

- (i) Original nationality – by attribution – may be applied by:
- the child of a Portuguese mother or Portuguese father born in Portugal;
 - the children of a Portuguese mother or Portuguese father born abroad, if the Portuguese parent lives there, servicing the Portuguese State;
 - the children of a Portuguese mother or Portuguese father born abroad if their birth is registered in the Portuguese civil registry or they declare they want to be Portuguese;
 - the grandchild of a Portuguese grandfather or Portuguese grandmother born abroad who maintains effective links with the national community;
 - individuals born in Portugal, who are children of foreign parents, if at least one of the parents was also born in Portugal and has his/her residence here, regardless of the title, title length or time of birth;
 - children of foreign parents, born in Portugal, if at the time of birth one of the parents lived in Portugal legally for at least two years; or
 - individuals born in Portugal who have no other nationality.
- (ii) Derivative nationality – by acquisition – may be applied by:
- Effects of willingness:
 - in case of minors or incapacitated children of a father or mother that acquired Portuguese nationality;
 - in case of marriage or consensual union for more than three years with a national Portuguese;
 - in case of loss of Portuguese nationality during incapability; or
 - by adoption.
 - By naturalisation:
 - in case of individuals, of age, who have been legally resident in Portugal for at least five years, who have sufficient knowledge of the Portuguese language, have

not been convicted with a custodial sentence of over three years, and do not constitute a danger or a threat to national security or defence;

- in case of minors born in Portugal, who have sufficient knowledge of the Portuguese language, have not been convicted with a custodial sentence of over three years, and do not constitute a danger or a threat to national security or defence, provided that: (i) one of the parents has been living in Portugal regardless of their title in the five years immediately prior to the application; and (ii) the minor has completed at least one cycle of elementary education or secondary education; or
- in case of individual descendants of Portuguese Sephardic Jews, who are of age, have not been convicted with a custodial sentence of over three years, and do not constitute a danger or a threat to national security or defence.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

No. As mentioned above, taxation liability is determined on the basis of the residency concept.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

Please refer to questions 2.2 and 10.2 above.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Portugal has signed 15 automatic exchange of information agreements with the following jurisdictions:

- Andorra;
- Antigua and Barbuda;
- Belize;
- Bermuda;
- Dominica;
- Gibraltar;
- State of Guernsey;
- Isle of Man;
- Cayman Islands;
- British Virgin Islands;
- Jersey;
- Liberia;
- St. Kitts and Nevis;
- Saint Lucia; and
- Turks and Caicos Islands.

Portugal has also concluded mutual assistance agreements with Brazil, Cape Verde and Mozambique under which the signatory parts may exchange information on an automatic basis regarding income obtained in one Contracting State by a resident of other Contracting State.

Besides, in 2014, Portugal approved a special financial information reporting regime, aimed at establishing the terms of the information

exchange under the Foreign Account Tax Compliance Act (FATCA) agreement between the Portuguese and US tax authorities, including identification of the reporting entities, definition of reportable accounts, due diligence process for reportable accounts, information to be reported, timetable for reporting and penalties for non-compliance with the required information. On 6 August 2015, the Portuguese Republic and the United States of America concluded an agreement to improve international tax compliance and implement FATCA, which entered into force on 10 August 2016, after the fulfilment of its constitutional requirements.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

Please refer to question 2.7 above as regards mandatory disclosure of tax planning schemes involving financial institutions, lawyers, chartered accountants and accountants.

Furthermore, credit institutions and financial companies are subject to an automatic reporting mechanism for cross-border transfers to entities residing in blacklisted jurisdictions, other than those relating to income payments subject to any of the tax reporting systems already covered by law.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Yes. A new legal regime of the Beneficial Owner Central Registry (BOCR) was approved on August 2018, resulting from the transposition into domestic law of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Under the Portuguese BOCR legal regime, companies, funds, associations, foundations and representations of non-resident entities developing an activity in Portugal are required to file a new form annually, with the purpose of disclosing the identity and other relevant information on its beneficial owners.

Companies are also required to produce and keep updated internal records on the identification of the direct shareholders (including details on the number of shares held by each shareholder) and of all individuals who, directly or indirectly, have ownership of the shareholding or the effective control of the Portuguese disclosing company.



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José is a specialised tax lawyer with more than 20 years of experience in advising on domestic and international tax law, banking and insurance, corporate and high-net-worth individuals' assets restructuring, mergers and acquisitions operations, compliance procedures and tax litigation. José is consistently ranked by the main international legal directories such as *Chambers* and *The Legal 500*, and is recommended in *Who's Who Legal*, *Best Lawyer* and *International Taxation Review* as a tax controversy leader. He is frequently invited to publish opinion articles regarding tax issues in economic newspapers and is a regular commentator on specialised TV channels. He is a tax expert, recognised as such by the Portuguese Bar, and has been a tax arbitrator listed by the Centre for Tax and Administrative Arbitration (CAAD) since its creation.



SRS Advogados' tax practice is one of the most innovative on the national market, with a highly specialised team with in-depth knowledge of the Portuguese and international tax environment.

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The practice has also achieved general recognition for its expertise in tax litigation and tax planning.

We are able to offer integrated tax advice in relation to the most varied operations. The team consists of lawyers with expertise in Portuguese taxation and international tax law and is organised into the areas of consultancy and litigation. We provide support on daily corporate and individual tax matters, as well as transactional advice on all aspects of Portuguese taxation, in particular corporate and individual income tax, property tax, indirect taxes and duties and international tax law.

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