



CASTRO NETO
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INVESTING AND LIVING IN PORTUGAL

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Portugal is, admittedly, a country of *mild manners, welcoming people, wonderful climate and beautiful beaches*.

In addition, **Portugal** has one of the lowest rates of crime in Europe, a vast network of motorways that cross the entire country and an average cost of life rather lower than in other European countries.

Thanks to these circumstances, and also due to the great ease of the Portuguese individuals to communicate in foreign languages, **Portugal** is now at the top of the main tourist destinations in the world.

Presently the extensive Atlantic Coast of Portugal benefits from a specific taxation assembled with a view to providing unique benefits for foreigners (or nationals who reside abroad for a long time) who wish to invest in Portugal. There are interesting business opportunities and investment: the corporate and real estate assets are still strongly undervalued. There is no extraordinary tax on fortunes.

Portugal has then become, and in the last years, a preferred destination for Private Investors to **Settling, Investing and Living**.





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Income Tax Regime

NON REGULAR RESIDENTS TAX REGIME (RNH)

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Qualification. Registration. Requirements.

All **citizens** (Portuguese or foreign ones) with fiscal domicile (in the last 5 years) outside Portuguese Territory, who wish to settle in Portugal, may – through the filling of an application form, which will be considered, on a case by case basis, by the Portuguese Fiscal Administration – benefit from the called **Non Regular Residents Regime (RNH)**, acquiring the right to be taxed according to said regime by a period of 10 consecutive years, at the end of which they will be taxed according to the rules applicable to regular residents – Code on the Income Tax (CIRS).

The tax residence in Portuguese territory with recourse to the Statute of the RNH, in situations - in any period of 12-month beginning or ending in the year from which one intends to benefit from the statute in question - in which the non-regular resident has remained in Portuguese territory more than 183 days, followed or with interruptions or, having remained less time, has a residence in Portuguese territory that might suppose the intention to maintain it and occupy it as habitual residence.

RNH. Tax. Types of Income.

Passive income from foreign source - interests, dividends and other income from capital, capital gains, income from pensions and income property.

Active income from foreign and domestic source (Portuguese) - deriving from employment and self-employment and royalties.

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Foreign Source Income. Active and Passive.

I. Income deriving from employment:

In case of income obtained abroad, as a rule, the same are exempted from taxation in Portugal, when, in alternative, any of the following conditions are met:

- i. Income is taxed in the source Country, in accordance with the convention to eliminate double taxation, signed by Portugal and that Country; or
- ii. In accordance with the criteria foreseen in Portuguese legislation, such income is not considered to have been obtained in Portuguese territory.

II. Business and professional income, capital income, real state income and income derived from capital gain:

In this case, income obtained abroad, as a rule, is exempted from taxation in Portugal, when, in alternative, any of the following conditions are met:

- i. The income may be taxed in the source Country, in accordance with the convention to eliminate double taxation signed between Portugal and that Country;
- ii. The income may be taxed in the source Country, in accordance with the OECD Model Tax Convention on Income and on Capital;
- iii. The income at issue is not considered as obtained in Portuguese territory, in accordance with applicable Portuguese legislation;

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** In case the country of the income source is part of the list of tax havens, the non-regular residence regime will not apply for taxation purposes, the general rules on taxation of such income applying*

Contrary to the employment income, in the scope of which the application of tax exemption in Portugal is dependent on the effective taxation in the Country of the income source*, in the case of **business and professional income, capital income, real state income and income derived from capital gain, the application of tax exemption in Portugal is achieved with the mere possibility of taxation of this type of income by the respective Country of the income source, therefore the effective taxation is not necessary.**

** Whenever the above-mentioned exemption is not applicable to IRS, the income obtained abroad deriving from employment and self-employment (provided that, in both cases, it results from the high added value rendering of services, with scientific, artistic or technical nature as defined in Ordinance no. 12/2010 of 7 January), will be subject to IRS tax, at a special rate of 20% plus surcharges (and not to the progressive rates of this tax – presently until 48% to which surcharges might also be added).*

III. Income derived from Pensions:

Income deriving from pensions (private) is exempted from taxation in Portugal, provided that in alternative, any of the following conditions are met:

- i. Income is taxed in the State of income source, in accordance with the convention to eliminate double taxation, signed by Portugal and that State; or
- ii. The income at issue is not considered as obtained in Portuguese territory, in accordance with applicable Portuguese legislation.

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Portuguese source income. Active.

Income derived from employment and self-employment obtained in Portugal

Income will be subject to IRS tax, to the special rate of 20% (plus eventual surcharges), in case of high added value activities, of scientific, artistic or technical nature, performed in Portugal (and not to the progressive rates of this tax – presently until 48% to which surcharges might also be added).

Remaining income is subject to general rules foreseen in Portuguese legislation, therefore capital income, capital gain income and real state income will be taxed at the rate of 28%.





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Taxation of Real Estate Investment – IMT / IS / IMI

REAL ESTATE ACQUISITION

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Anyone buying a property has to consider the costs associated to the acquisition and to the ownership of the real estate, in particular the ones related to the municipal property transfer tax (IMT), stamp duty (IS) and municipal property tax (IMI).

IMT – this tax is charged on any transfer for value of the right of ownership at a progressive rate up to the rate of 6,5%, charged on the price appearing in the contract or on the taxable value of the property (whichever is higher).

**In some circumstances a higher rate may apply if the buyer has their Office or tax domicile in a country, territory or region subject to a clearly more favorable tax regime (“Tax Haven”).*

IS – Tax originated by the transaction and is charged on the value as used to pay IMT, at a rate of 0.8%.

**As from 1 January 2017, due to the new municipal property surcharge (AIMI), the taxation of stamp duty is no longer applicable – at the general rate of 1% on residential properties, usufruct of surface rights – of urban properties (urban or land for construction) the taxable value of which in the land tax register under the terms of the IMI Code were identical or above Eur one million.*





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IMI tax is payable by whoever is the registered owner of a property on 31 December of the year to which the tax relates, at a rate which varies between 0,3% e 0,45% for urban buildings (depending on their location and according to what has been determined by the respective municipality) and 0,8% for rural buildings, calculated on the respective taxable value, without prejudice of the indicated, tax might be higher annually in the case of urban buildings that have been empty for more than one year and derelict buildings.

For property owned by an entity domiciled in a tax haven appearing on the list approved by order of the Minister of Finance, a rate of 7.5% will apply.

Property with a taxable value (VPT) identical or above EUR 600,000 will be charged with a surcharge to IMI (AIMI), at the rate of 0,7% (natural persons and undivided estate), applicable on the difference of the VPT and the minimum limit to be considered by the taxable person (€ 600,000).

When the taxable value exceeds € 1.000,000, or the double of this amount for married or unmarried partners taxable persons, who have opted for joint taxation, a rate of 1% will apply, when the taxable person is a natural person, also applies on the difference between the VPT and the minimum limit to be considered by taxable person (€ 600,000).





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REGULAMENTO EU n.º 650/2012

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The Succession Regime – EU Regulation no. 650/2012, of 17 August

The EU Regulation no. 650/2012 regulates all **civil matters** emerging from succession by death, which, being applicable to deceased persons as from 17 August 2015, brought a substantial alteration in cases of cross-border succession.

Under this Regulation on jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance, and enforcement of authentic instruments in matters of succession and, on the creation of a European Certificate of Succession (the “Regulation”), a person aiming at living and residing in Portugal, regardless of his/her nationality, may elect Portuguese Law as the applicable law to his/her succession, in detriment of the his/her personal Law.

The following are the fundamental principles of the EU Regulation no. 650/2012:

- i. Jurisdiction and incidence of the succession on the entirety of the deceased’s assets (regardless of his/her situation and localization);
- ii. The last habitual residence of the deceased at the time of the death is a determining connection element of the applicable law to the succession;
- iii. The Applicable Law to the deceased succession applies to the entire succession.



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We underline, however, that the applicability of the Habitual Residence Law of the deceased may be replaced by the Law of the State of his/her Nationality, in a form of a disposition of property with express mention of the choice for the Law of the State of his/her Nationality. In this case, (the deceased's choice for the Law of the State of his/her Nationality to regulate his/her succession) the heirs are required to determine that the jurisdictional authorities of the Member-State of the Law chosen are the competent ones to assess the matter. That is to say, the heirs of the deceased are required to determine that the jurisdictional authorities of the State of Nationality of the deceased have exclusive jurisdiction to decide all and any issue on succession nature (choice of the court agreement).

The EU Regulation no. 650/2012 presents the undeniable advantage on allowing the heirs (the beneficiaries of the succession) to handle all the case with a single authority, avoiding costs doubling and associated proceedings.

For that purpose, and on what is a substantial enhancement compared to the past, a European Certificate of Succession has been created, allowing the heirs and/or the administrators of the estate to prove their capacity with any authority of the Member—States, without further formalities.

Nowadays, the succession of a deceased person is globally assessed, encompassing - the scope of the applicability of said Regulation – all matters regarding the administration of the estate until its liquidation stage.

On this purpose, we underline that the choice for the Portuguese Law may have a beneficial impact on the legal sphere of the direct heirs (relatives), given that, under the terms of Portuguese Law, the succession on immovable property between ascending and descending relatives, and consorts are **free** from taxation.



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In a summary:

In Portugal there is **NO** Inheritance Tax, contrary to what happens in other European Union Member-States, such as United Kingdom, France and Germany (the same applies to the Tax on Wealth – Tax on Wealth does not exist in Portugal and it is not estimated to be implemented in a near future. Portugal still continues to foster/encourage the private foreign investment).

In Portugal, free transfers are only subject to taxation on Duty Stamp at the rate of 10%.

In case of **succession and donations to consorts, direct ascending and descending relatives**(nuclear family) there is any kind of taxation, a Regime of **Tax Exemption** being in force



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Golden VISAS

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Special Regime for Granting Residence Permit . Golden Visa– ARI.

Further to the benefits associated to the obtaining of the RNH Statute, there is another attractive and competitive Tax Regime for foreigners, who intend to invest in Portugal: The **Golden Visa**.

This is a (special) Tax Regime which grants third country citizens, who make *Qualified Investments*, the possibility to acede to Temporary Residence Permit – without a prior request for residence permit.

It is called as "ARI - Autorização de Residência para Actividade de Investimento" (Residence Permit for Investment Activity) and is foreseen in Law no. 23/2007, of 4 July amended by Law 63/2015, of 30 June (which not only extended the scope of the eligible activities for the obtaining of ARI as well as it expanded the situations encompassed by the familiar reunification law, in the specific cases of *Golden Visa*).



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ARI. Golden Visa. Requirements.

Purchase of Real Estate.

Third country citizens, personally or through a company may, in case of purchasing of real estates in a value equal or above to EUR 500,000 qualify to the granting of *Golden Visa*.

The applicant of temporary residence permit has to prove to be the owner of real estates (which may be acquired in co-ownership, provided that each one of the owners invest, in a minimum, **EUR 500,000**) or is a promising purchaser of the same, and, in this case, the deposit paid, as advance payment is, at least EUR 500,000, by filing the respective updated certificate(s) of the Land Register, as well as a document attesting the acquisition or the promise of purchasing the real estates. This document has also to encompass a declaration issued by a financial institution, operating in Portugal, attesting the effective transfer of capital (from third countries) for the purpose (definitive acquisition (total cost) or the payment of the deposit). In the cases, in which the granting of ARI is supported on a promising sale and purchase agreement, the definitive agreement has to be filed before the renewal period.

We underline that the real estates acquired for the purposes of obtaining ARI **may be charged in the part exceeding the minimum value of the Investment** (as from a value above **EUR 500,000**), as well as the data for the rental and exploration for commercial, agricultural or touristic purposes, without losing the Permit at issue.

The **investment** elected by the applicant for temporary residence permit has to be concluded at the time of the filing of the request for residence permit and is to be maintained by a **minimum period of 5 years**, counted as from the date in which such permit is granted, the same being **valid for 1 year period** counted as from the date of its issuance, **with possibility of being renewed by 2 successive years**, provided that the eligible requirements for its granting are maintained.

The holders of ARI in Portugal may freely circulate through Schengen Area (Germany, Austria, Belgium, Dinamark, Slovakia, Slovenia, Estonia, Spain, Finland, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Czech Republic, Netherlands, Poland, Portugal, Sweden and Switzerland).

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Golden Visa. Requirements.

Purchase of Real state.

Also, on what concerns the **Real Estate Investment**, the purchase (by the Applicant of the temporary residence Permit) of real estate and the refurbishing of the same, with an investment /global minimum value of **EUR 350.000, with construction dating back more than 30 years ago**, or located in **urban regeneration areas** are also eligible for the purposes of granting ARI.

Other Investments.

For the purposes of this special granting of residence permit investment activities with **capital transfer with a value equal to or above EUR 1,000,000** (including shares in investment funds or the creation of, at least, 10 job positions are also considered.

Also eligible for the granting of ARI are: **capital transfer** with a value equal to or above **EUR 350,000** for investing in research activities conducted by public or private scientific research institutions involved in the national scientific or technologic system; **capital transfer** with a value equal to or above **EUR 250,000** for investing in artistic output or supporting the arts, for reconstruction or refurbishment of the national heritage, through the local and central authorities, public institutions, public corporate sector, public foundations, private foundations of public interest, networked local authorities, local corporate sector organizations, local associations and public cultural associations, pursuing activities of artistic output, and reconstruction or maintenance of the national heritage and lastly, **capital transfer** with a value equal to or above EUR 500,000, for **purchasing shares in investment funds** or in venture capital geared to capitalize small and medium companies that, in turn, must present a feasible capitalization plan.

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In a summary:

ARI – *GOLDEN VISA* – Direct or indirect Investment, for a minimum period of 5 (five years):

Elegibility: Purchase of Real Estate with a value = or > to EUR 500,000; Urban Regeneration, in a minimum of EUR 350,000; Capital transfer = or > to EUR 1,000,000; Creation of at least 10 job positions; Investment to Support Scientific Investigation = or > to EUR 350,000; Investment to Support artistic output or supporting the arts, for reconstruction or refurbishment of the national heritage = or > to EUR 250,000 shares in investment funds or in venture capital geared to capitalize small and medium companies = or > to EUR 500,000.

Benefits: Possibility of free circulation within Schengen Area; Possibility of settling residence (and work) in Portugal; Possibility of Family Reunification; Possibility of, after 5 (five) years request the Permanent Residence Permit for one year and subsequently, Portuguese Citizenship.

For the ones, who do not aim to settle residence: this regime does not demand a long stay in Portugal.



NON-REGULAR RESIDENTS REGIME (RNH)

- i. We analyse the Investor's patrimonial structure
- ii. We register the Investor as a tax resident
- iii. We cancel earlier tax residence
- iv. We assist in the application for RNH status (until 31 March of the following year)
- v. We accompany all the process until the granting of RNH, by the Tax Authority (taking effect as from the date of the application for registration as tax resident).

ACQUISITION OF REAL ESTATE

- i. We have partnerships which assist us in the identification of the Actives; in the local trips and previous stays and intended to the Investment; in the management of asset actives acquired for exploration/income or for self-use (incidental), including rendering of services directed to the Investor's needs
- ii. We promote the Legal Audit to the Real Estate (we attest if the same is owned by whom is intending to sell it; we attest if there are contingences (covenants or encumbrances) registered over the real estate, such as mortgages, liens, tax debts; we attest if the documentation legally necessary to sell the real estate is in order)
- iii. We assist in the opening of a bank account and on the relationship with the Bank, in particular in the obtaining of financing
- iv. We provide all the Legal Assistance intended to the conclusion of the promissory contract for sale and purchase
- v. We promote the legal communications for the rendering of the right of preference by the entities, which eventually benefit from it
- vi. We promote the payment of the IMT and IS due in the sequence of the transaction
- vii. We render all the Legal Assistance and accompanying intended to the completion of the public deed of sale and purchase
- viii. We ensure the definitive registration of the acquisition and the matricial inscription of the Real Estate in the name of the Investor
- ix. We ensure the compliance of tax liabilities, including the hiring and accompanying of the Accounting services

Contents of this short information – intended to the Visitors of the Portuguese Real Estate and Tourism Hall (Salão do Imobiliário e do Turismo Português) (SITP), 12-14 May 2017, to be held in Paris – does not constitute legal counselling directed to specific cases, therefore it should not be cited in that sense.

Portugal has concluded several agreements to avoid Double Taxation, the provisions of which have to be considered.

Specific counseling shall be sought and rendered in the light of the specific circumstances of each case (Investor / Investment).

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