



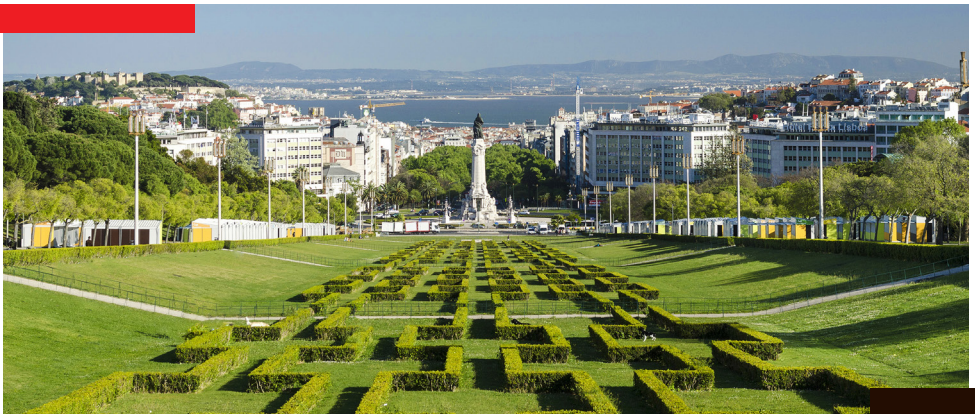
Investing and living in Portugal: The Private Investor's Guide



Why Portugal?

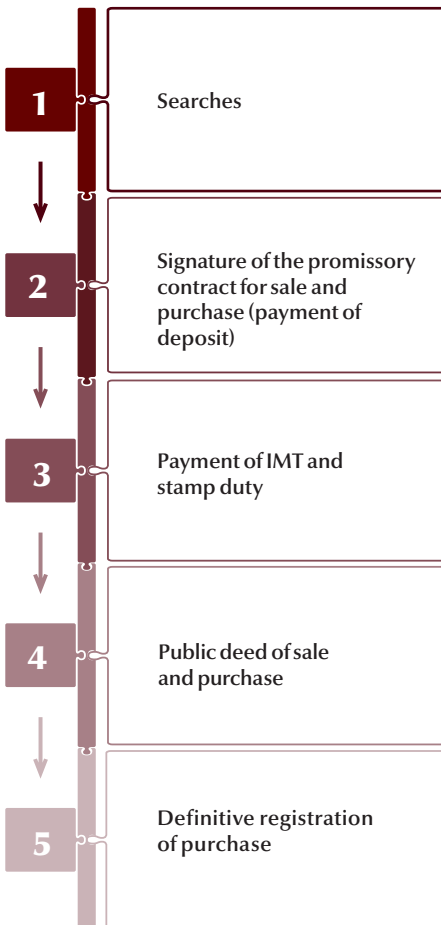
Portugal is known around the world for its year-round pleasant climate, its endless Atlantic coastline and welcoming people. Thanks to one of the lowest crime rates in the European Union, a vast network of motorways, a cost of living well below the EU average and the ease with which its people communicate in many different foreign languages, Portugal has become a destination of choice as a place to live or invest.

This guide serves as a “map” for anyone who would like to invest and/or live in Portugal, taking full advantage of the various beneficial legal frameworks that are available. From buying a property to passing it on to your heirs, while benefiting from advantageous tax rules, the Portuguese system is set up to bring unparalleled advantages for anyone who would like to invest in the country.



Investing and living in Portugal: the private investor's guide

I. Buying a Property



The process for buying properties (real estate) located in Portugal is simple and, once you have agreed the essential conditions with the seller, everything can be concluded in a short space of time. In certain circumstances, you can buy a property by following these three steps:

A) SEARCHES

Carrying out searches before you buy is essential to ensuring (i) that the property is actually owned by the seller, (ii) whether any charges are registered over the property (mortgages, charging orders, tax debts, etc.) and (iii) whether all the documentation legally necessary to sell the property is in order.

If you are planning to buy a building plot, you will need to check planning regulations, restrictions and licences – as well as any other regulations that affect the use of the land – with the local municipal council.

Unlike many other countries, in Portugal, municipal councils are responsible for licensing and approving any construction in urban areas. This means that a use licence issued by the local municipal council provides a guarantee that any works have been properly completed and that the property can be used for its intended purpose and sold on freely.

B) PROMISSORY CONTRACT FOR SALE AND PURCHASE (OPTIONAL)

In Portugal, the legal process of buying the property usually begins with a promissory contract for sale and purchase (“**Contract**”). In it, the signatures of the parties must be witnessed and it must certify that the property has the necessary use or construction licence (if applicable).

The Contract formalises the agreement between the parties and provides for completion of the deal.

The main issues dealt with in the Contract are:

- **The timing for completion of the sale** – this can vary depending on whether or not it is necessary for the parties to meet any conditions before completion (obtaining any licences or permits, or obtaining financing, etc.);

- **Price and payment conditions** – it is usually necessary to pay a deposit of between 10% and 30% of the price. This deposit acts as part payment but also as a guarantee that the buyer will go through with the purchase and as compensation if they do not (see below);

- **Rights of preference** – depending on their location or historical or architectural significance, properties may be subject to rights that benefit, among others, the local municipal council or the Portuguese State (through the Directorate General of Cultural Heritage). They must be given prior notice of the sale and of its terms and conditions. When properties are rented out, the tenant may have a right of preference; and

- **Declarations and warranties** – it is common for the parties to include certain declarations and warranties in the Contract about the state of the property, the absence of any legal proceedings, debts, liabilities or tax charges. If a party breaches any of these declarations and warranties, they will have to pay compensation to the other party.

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As we have said, the Contract formalises the agreement made between the parties. Payment of the deposit upon signature of the Contract is essential because, if the seller breaches of contract, the buyer has the right to double the value of their deposit as compensation. If the buyer breaches the contract, the seller has the right to keep the deposit. Besides these arrangements for compensation, the parties are free to agree any other compensation, and it is always open to the non-breaching party to demand specific performance of the contract.

Once the Contract has been signed, the buyer can consolidate their position by applying for provisional registration of the purchase. This registration becomes definitive upon completion of the purchase of the property.

C) COMPLETION OF THE PURCHASE

The process of buying a property in Portugal always ends with signature of the “definitive contract” (known in many countries as completion or closing). This contract can be signed before a notary, as a public deed of sale and purchase (*escritura pública de compra e venda*), or before a lawyer or legal executive as an authenticated private document (*documento particular autenticado*). Both these forms of contract finalise the transfer of ownership (or other real right, depending on what has been agreed in the Contract) to the purchaser and make it possible for the registration of the purchase to be made definitive.



II. Taxation of Real Estate Investments

Anyone buying a property has to take into account the costs associated with acquiring ownership. These include municipal property transfer tax (*Imposto Municipal sobre as Transmissões Onerosas – IMT*), stamp duty (*Imposto do Selo*) and the annual municipal property tax (*Imposto Municipal sobre Imóveis – IMI*):

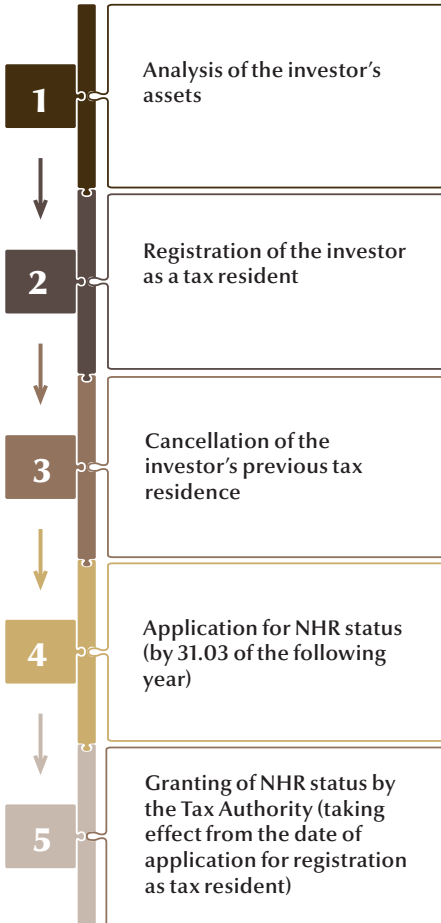
■ **IMT** is charged on any transfer for value of the right of ownership. It is a progressive tax up to the rate of 6.5%, charged on the price appearing in the contract or on the taxable value of the property, whichever is higher. In some circumstances, a higher rate can apply if the buyer has their registered office or tax residence in a tax haven (a country, territory or region subject to a clearly more favourable tax regime);

■ **Stamp duty** is payable on the transaction. A rate of 0.8% is applied to the same value as used to assess IMT. Residential properties with a taxable value of EUR 1 million or more are also annually taxed at the rate of 1%;

■ **IMI** is payable by whoever is the registered owner of the property on 31 December of the year to which the tax relates. The rate is between 0.3% and 0.5% for urban buildings (depending on their location) and 0.8% for rural buildings. These rates apply to the taxable value of the property. It should be noted that the rates can be increased annually in the case of urban buildings that have been empty for more than one year and derelict buildings. The applicable IMI rate can be between 0.5% and 0.8% if the property in question has not been valued under the rules set out in the IMI Code. If the building is 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.



III. Income Tax – the Non-habitual Residents (NHR) Scheme



Anyone whose tax residence is outside Portugal, but wishes to move it to this country, can benefit from the non-habitual residents (NHR) scheme. To do this, they must not have been taxed as a tax resident in Portugal in any of the preceding five years, and they must make an application to the tax authorities, which will be considered on a case-by-case basis. Once a person has obtained NHR status, they have the right to be taxed as non-habitual residents for a period of 10 consecutive years. After this period, they will be taxed under the general rules of the Personal Income Tax Code.

Residence in Portugal for tax purposes can be acquired in any year. Among other situations, it can be acquired when, in any 12-month period beginning or ending in the year in question, a person has remained in Portugal for more than 183 days, whether consecutive or not. Even if the person has not remained in Portugal for this period, they can acquire tax residence if they have a home in Portugal in conditions under which it can be assumed that they intend to maintain and occupy it as their habitual residence.

Anyone whose tax residence is outside Portugal, but wishes to move it to this country, can benefit from the non-habitual residents scheme.

A) OVERVIEW OF THE NHR SCHEME

The NHR scheme has two distinct sets of rules that apply to two different types of income:

- **“Passive” income source** from outside Portugal, including interest, dividends and other investment income, capital gains, income from property and pension income; and
- **“Active” income** from within or outside Portugal, including income from salaried employment, self-employment income, and royalties.

Under the first set of rules, “passive” income (except pension income) earned abroad is (progressively) exempt from personal income tax in Portugal. To benefit from this exemption, it must be possible for the income in question to be taxed in the source State under a double taxation agreement (DTA) made between Portugal and the State in question. Alternatively, in cases where no DTA is in place, the exemption will apply if: (i) the income can be taxed in the source State under the OECD Model Tax Convention on Income and Capital; (ii) the income is not deemed to be earned in Portugal under the Personal Income Tax Code; and (iii) the country, territory or region that is the source of the income is not on the Portuguese list of tax havens.

This means that the only condition you need to need to fulfil to be exempt from personal income tax is that the “passive” income in question can be taxed in the source State. It is not necessary for it to be actually taxed in State.

Pension income will only be exempt from taxation in Portugal under the NHR scheme if it is actually taxed in the source State and that State has entered into a DTA with Portugal, or if this income is not considered earned in Portugal under the Personal Income Tax Code rules.

When it comes to the second set of rules on “active” income, any income from salaried employment earned outside Portugal will be (progressively) exempt from personal income tax. To be exempt, the income must actually be taxed in the source State, under a DTA between Portugal and that State. If no DTA is in place, the income will be exempt if it is actually taxed in the source State and cannot be considered earned in Portugal under the Personal Income Tax Code rules.

It is important to remember the distinction that the law draws between income simply being subject to the tax and it actually being taxed in the source State.

Different rules apply to self-employment income earned from high added value activities with a scientific, artistic or technical nature, as defined in Ministerial Order no. 12/2010 of 7 January, and to royalties earned outside Portugal. Any such income will be (progressively) exempt from personal income tax. To benefit from this exemption, it must be possible for the income in question to be taxed in the source State under a double taxation agreement (DTA) made between Portugal and the State in question. Alternatively, in cases where no DTA is in place, the exemption will apply if: (i) the income can be taxed in the source State under the OECD Model Tax Convention on Income and Capital; (ii) the income is not deemed to be earned in Portugal under the Personal Income Tax Code; and (iii) the country, territory or region that is the source of the income is not on the Portuguese list of tax havens.

It is important to remember the distinction that the law draws between income simply *being subject to the tax* and it *actually being taxed* in the source State.

Whenever the personal income tax exemptions described above do not apply, income earned outside Portugal from salaried employment and self-employment (in both cases, as long as it is earned from high added value activities with a scientific, artistic or technical nature, as defined in Ministerial Order no. 12/2010 of 7 January), will be subject to a special personal income tax rate of 20% (plus any applicable surcharges). However, it will not be taxed at the usual progressive rates that currently go up to 48%, plus any applicable surcharges).



IV. Succession (Inheritance) Rules



The new EU Succession Regulation¹ will apply to the succession and estate of anyone who dies on or after 17 August 2015. Under the new rules, anyone who wishes to move their domicile to Portugal and live there can choose Portuguese law to apply to their succession instead of their personal law, and they can do this whatever their nationality.

The Succession Regulation is based on three fundamental principles:

- Jurisdiction over and application to all of the assets of the deceased regardless of their situation and location;
- The habitual residence of the deceased at the date of death determines the law applicable to the deceased's succession; and
- The law that applies to the deceased's succession under the Succession Regulation applies to the whole of the succession.

¹ Regulation EU no. 650/2012 of 17 August 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.

Under the second principle, the habitual residence of the deceased at the date of death determines the applicable law by default. However, a person can instead choose the law of their nationality by including an express provision in their will to that effect.

Under the second principle, the habitual residence of the deceased at the date of death determines the applicable law by default. However, a person can instead choose the law of their nationality by including an express provision in their will to that effect. If a person chooses the law of their nationality to govern their succession, it will be necessary for their heirs to agree that the courts of the State of the chosen law have jurisdiction to deal with the matter. Therefore, the heirs must agree that the courts of the State of the deceased's nationality have exclusive jurisdiction to decide on all and any matters relating to the succession (choice of the forum agreement).

A further advantage of the Succession Regulation is that it allows the beneficiaries of the succession to deal with the whole process with a single authority. This avoids them having to duplicate procedures and incur additional costs.

The Succession Regulation creates a European Certificate of Succession that enables the heirs, executors or administrators of the estate to prove their capacity to authorities in any of the EU Member States. They do not need any other formalities and this is a significant improvement on the situation that has existed up to now.

Successions that involve different countries may now be dealt with as a single case as the Succession Regulation applies to all aspects of succession from the date the process begins until the final distribution of the estate.

The choice of Portuguese law to govern your succession may be a significant one. This is because Portuguese law provides that successions involving property (real estate) passing between direct family members (spouses, children or relatives in the ascending line) are exempt from tax. In fact, unlike what happens in in most Member States of the European Union, the Portuguese legislature chose not to tax successions between direct family members.

Furthermore, in Portugal, even if property is left to non-direct family members, the beneficiaries are only subject to stamp duty at the rate of 10%, and this is substantially lower than the rates that apply in most Member States.



“All the lawyers know what’s happening on the case and work really well as a team. It sets them apart from others in the market.”

Client reference from Chambers and Partners



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