



*euro*FINESCO

eBOOK n° 18

The Move to Portugal
before, during & after

by

Dennis Swing Greene

PORTUGAL

Ficha Técnica:

11ª Edição: *euroFINESCO eBook nº18:*
The Move to Portugal: *before, during and after*
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Designer: Maria de São José Belchior Horta
Distribuição: *euroFINESCOs.a.*
Tiragem: Internet
Executado: May 2020

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Beyond Advising on the Move to Portugal..... 5

INTRODUCTION..... 7

1) **BEFORE: As a Non-Resident, *before the move***

 a) Choosing a Fiscal Representative 9

 b) Sorting Double Taxation Issues 11

2) **DURING: Taking up Residency, *sorting out the paperwork***

 a) “Residência” Permit 15

 b) Tax Residency 19

 c) National Health 21

 d) Driving License 24

3) **GETTING ADAPTED: Making the Transition, *restructuring***

 a) Home Ownership 27

 b) Investing - *from Capital Growth to Income*..... 29

4) AFTER: Estate Planning and Domicile	
a) Making a Will in Portugal.	31
b) Personal Law or Domicile of Choice.	35
CONCLUSION	37
Notes	40



Beyond Questions on the Move to Portugal

At **euroFINESCO**, we take pride in being a frontrunner in fiscal and expatriate services in Portugal, playing a leading role in interpreting Portuguese fiscal legislation as plain English for the foreign resident community since 1991.

PORTUGUESE TAXATION

- *IRS* - Individual Income Tax Returns
- *IRC* - Income Tax Preparation for Portuguese Nominee Companies as well as Non-Resident Companies
- Fiscal Residency Transitions to Portugal
- Fiscal Representation for Non-Resident Individuals
- Fiscal Representation for Companies

INTERNATIONAL TAX ISSUES

- Bilateral Tax Treaties
- Jurisdiction Conflict Resolution
- Compliance Issues

PERSONAL TAX PREPARATION

The Portuguese tax system offers surprising opportunities to the foreign resident. When properly prepared, Portugal can prove to be a “tax haven within Europe” for you.

PORTUGUESE “IRS” INCOME TAX RETURNS

euroFINESCO specializes in helping foreign residents by preparing their annual Portuguese *IRS* Income Tax Returns.

NOMINEE COMPANIES FOR PORTUGUESE PROPERTY

- Meeting basic compulsory compliance commitments;
- Liaison between *Finanças* and Company Owners.
- Resourcing information to Owners;

FISCAL REPRESENTATION

- Protecting your Valuable Investment
- Meeting Compliance Requirements
- Resourcing Key Information
- Liaison with *Finanças*
- Personalised Service
- Payment Facility
- Plain English

DOCUMENTATION

We can assist you by cutting through the bureaucracy:

- “*Residências*”
- Portuguese Wills
- Driving Licences
- Rates Exemptions
- Fiscal Numbers
- Medical Cards

SMALL BUSINESS FORMATION

We can help expatriates launch new businesses in Portugal:

- Choosing the right structure
- Accountancy Services
- Social Security & VAT



Getting Started as a Foreign Resident in Portugal

When moving to Portugal, many facets need to be taken into consideration. Prior to your move, you will need to lay the foundations for your new life. While this may be a phase of experimentation, you will want to be sure that you take the right steps. You want build a secure future, not dig yourself into a hole! Once here, you will need to meet core requirements expected of all citizens. Finally, you will need to reconcile potentially conflicting legislation in formulating a successful estate plan.

Our purpose in this eBook is not to present a do-it-yourself manual covering everything you need to know from A to Z. In contrast, we will highlight a few key aspects that are essential to a central theme: *Compliance*. Whether dealing with bureaucracy, coping with the taxman or determining bequests to your heirs, you must choose a path that is *compliant*. In a new land, it is all too easy to make the wrong assumptions. Having the right guidance and access to timely expertise may well make the difference between getting it right or being entangled into seemingly unending complications and confusion.

At **euroFINESCO**, our comprehensive services and friendly assistance can help you overcome the hurdles of change and provide you with the needed support to make the most of your new life in Portugal.

Language

A short course in Portuguese may equip you to order a meal in a restaurant or buy groceries in the market. However, you will want serious professional help in your native tongue when it comes to meeting your fundamental compliance obligations or making plans for your financial future.

Bureaucracy

All countries have their fair share of bureaucracy. However, if you don't speak the language or don't know where to begin to get things sorted out, you may be in for a rough ride.

Adjustment

Being a long way from your loved ones can be more of a hardship than you expected. It normally takes time to get resettled and make new friends. A helpful hand sorting out problems can be a blessing.

Planning for the Future

Both your present and your future are tied to the legislation of different countries. Cross Border Planning may be necessary to avoid unforeseen harsh tax consequences. Ignorance of the rules is no excuse!

1a. **Choosing your Fiscal Representative**

In Portugal, Fiscal Representation is indispensable for *Non-Residents* who systemically require the services of a Fiscal Representative to meet complex tax compliance obligations associated with property ownership or income arising in Portugal.

Using the best does not necessarily entail extra cost. Experienced professionals such as **euroFINESCO** not only bring excellence in service but can prove invaluable in giving timely advice that could be worth many thousands in savings in the long run.

Taxes paid and necessary expenses for your *Fiscal Representation* in Portugal can serve as tax credits or tax deductions in your home jurisdiction. At the end of the day, these expenditures should prove to be a nil expense.

Do you have a “Volunteer Fiscal Representative”?

Did someone volunteer to get you a Portuguese Fiscal Number? Does a neighbour forward Property Rates Bills to help out? Do you have a *Fiscal Representative* who does little more than send you invoices?

Non-Residents often require skilled assistance and guidance that a well intentioned “volunteer” is rarely able to provide. In the event of a tax audit, who will orchestrate a viable defence? When a property is going to be sold, who will know how to mitigate Capital Gains Tax liabilities?

Professional Services

Using qualified professionals such as **euroFINESCO** as your Fiscal Representative goes far beyond minimum compliance requirements. Whether helping you to get off to a good start, keeping you informed about important changes, or saving you money in the long run, our comprehensive services add real value to your investment.

With **euroFINESCO** on your side, you can count on the following quality services:

- **Asset Protection:** Your property is a major investment. If basic requirements go unmet or are not completed correctly, your asset could be at serious risk. Having a qualified professional *Fiscal Representative* should be considered a prerequisite, not an add-on.
- **Tax Requirements for Property Owners:** Meeting fiscal obligations is a matter of Law. At *euroFINESCO*, we will make sure you are fully compliant while helping you to pay the legal minimum.
- **Resourcing Information to Owners:** Portugal is often a difficult country for obtaining accurate, reliable information. At *euroFINESCO*, we “wrote the book”. We have publications on a host of different topics relating to Portuguese Taxation and a variety of property matters. We can provide you with accurate, up-to-date answers to your questions.
- **Liaison between *Finanças* & Property Owners:** We will represent you and defend you and your interests as we have for others in Portugal since 1991.
- **Personalised Service:** As a diversified service company, we have a dedicated Fiscal Representation Department, staffed by capable, knowledgeable professionals who are specialised in meeting your representation needs. Personalised service is one of our principal goals.
- **Plain English:** As you have probably already learned by now, Portugal has complex bureaucracy. All the forms and web pages are only available in Portuguese and instructions are often in a jargon that even native Portuguese sometimes have trouble understanding. We put the full process to you in Plain English. With proper guidance, even those who speak English as a Second Language should have little trouble in getting it right.

1b - Double Taxation Issues

For those moving to Portugal, most, if not all financial resources will come from abroad, thereby triggering double taxation treaty issues. Overseas income from abroad is often entitled to a tax credit for any tax paid internationally, up to the amount owed under Portuguese regulations. These sources are then assessed at the normal marginal rates in Portugal.

Portugal has signed treaties with many countries to help avoid double taxation. If you file in Portugal, yet have income arising in another country, there are likely to be special rules which apply specifically to your situation. Do not assume that just because you pay *some tax somewhere* that your obligations are met correctly. It is essential to follow the rules of the Tax Treaties as they normally supercede domestic legislation.

“But I already pay tax at home, why should I pay tax in Portugal?”

While you may feel morally justified because you have already paid tax in your home jurisdiction, you need to be aware of the fact that there are specific laws and treaties which govern such situations. It should no surprise that the choice regarding which government to pay is not optional. Double Taxation Treaties exist to protect citizens against paying tax twice on the same income. Quietly in the background, Portugal has been negotiating and signing Double Taxation Treaties including all of the EU partner states in addition to many other countries around the world . In fact, over recent years, Portugal has more than doubled the number of such agreements, currently totaling 49. While these may appear complex and hard-to-understand legal documents, they have a great bearing on foreign nationals living in Portugal. It is essential that your understand those aspects that are relevant to your situation in order to avoid unfounded expectations or unforeseen complications later on down the road.

“How do these tax treaties effect me?”

- 1) It is important to understand a few basics about such agreements. The fundamental purpose is quite simple: to avoid double taxation. If you receive income in one State, yet are resident in another, which

government has the right to tax you? It is imperative to remember that the terms of these conventions take precedence over domestic tax laws. The myriad articles of the pacts cover almost every conceivable form of income in an attempt to clarify the rights of the taxpayer and those of the taxman.

As you might expect, negotiations on such instruments do not start from scratch. There are models which act as a jump-off point as well as priorities which are established by each government. While there are often patterns as to how particular forms of income are taxed, complexities often arise when a clause in one article supercedes certain provisions in another. In other words, these are not transparent documents and require careful, professional interpretation.

- 2) Besides protecting you from double taxation, these agreements open the channels of communications between respective tax authorities. When no such agreement exists, there is also no formal link for information sharing, making it possible for some to “hide between the cracks”. However, for law-abiding citizen, this *de facto* privacy comes at a high price: paying tax twice on the same income. It is no small wonder that in this age of rapidly evolving computer technology, tax authorities are more anxious than ever before to know everything they can about us.

The following is the current list of countries with Double Tax Treaties with Portugal:

(See next page)

- | | | |
|--------------------|-----------------|-----------------------|
| 1. Algeria | 27. Greece | 52. Pakistan |
| 2. Andorra | 28. Hong Kong | 53. Panama |
| 3. Angola | 29. Hungary | 54. Peru |
| 4. Austria | 30. Iceland | 55. Poland |
| 5. Bahrein | 31. India | 56. Qatar |
| 6. Belgium | 32. Indonesia | 57. Romania |
| 7. Brazil | 33. Ireland | 58. Russia |
| 8. Bulgaria | 34. Israel | 59. S.Tome e Principe |
| 9. Canada | 35. Italy | 60. Senegal |
| 10. Cape Verde | 36. Ivory Coast | 61. San Marino |
| 11. Chile | 37. Japan | 62. Singapore |
| 12. China | 38. Korea | 63. Slovenia |
| 13. Colombia | 39. Kuwait | 64. Slovakia |
| 14. Croatia | 40. Latvia | 65. South Africa |
| 15. Cuba | 41. Lithuania | 66. Spain |
| 16. Cyprus | 42. Luxembourg | 67. Sweden |
| 17. Czech Republic | 43. Macau | 68. Switzerland |
| 18. Denmark | 44. Malta | 69. Tunisia |
| 19. East Timor | 45. Mexico | 70. Turkey |
| 20. Estonia | 46. Moldova | 71. Ukraine |
| 21. Ethiopia | 47. Morocco | 72. United Kingdom |
| 22. Finland | 48. Mozambique | 73. U.Arab Emirates |
| 23. France | 49. Norway | 74. USA |
| 24. Georgia | 50. Netherlands | 75. Venezuela |
| 25. Germany | 51. Oman | 76. Vietnam |
| 26. Guinea Bissau | | |

In addition, there are many other countries with treaties negotiations in progress. If you have income from abroad and are resident or are contemplating residency in Portugal, it is wise to seek professional advice. In addition to being on the right side of the law, it is often possible to use the terms of these treaties to your best advantage.

FISCAL & EXPATRIATE SERVICES
from
euroFINESCO



We are is a full service company, helping expatriates to make the most of their new life in Portugal since 1991. Whether it be meeting obligations in a new land, maximizing opportunities in a smooth transition from the past, or financial and estate planning for the future, euroFINESCO is here to guide you, keep you compliant and prepare you to meet your goals.

TAX CONSULTANCY

FISCAL REPRESENTATION

NOMINEE COMPANIES FOR PORTUGUESE PROPERTY

CROSS BORDER ESTATE PLANNING

SMALL BUSINESS FORMATION

DOCUMENTATION

2a. Residence Permit

The current Residency Law regulates the free circulation and residency of EU Citizens in Portugal. Transposing the EU Directive of 2004, this legislation changes basic assumptions and definitions while greatly simplifying the compliance process for EU citizens.. The statutes define three phases and are in harmony with similar measures adopted throughout the member countries of the European Community and European Economic Area.

What are the advantages of holding *Residência*?

Apart from the fact that you are secure in the knowledge that you have the correct documentation to reside here, there are other advantages that can prove to important to you:

- ✓ A home-owner, in certain circumstances, can apply for the exemption of property taxes (*Imposto Municipal Imobiliário - "IMI"*).
- ✓ A resident is entitled to vote in local elections.
- ✓ The Portuguese Health Authorities have a reciprocal arrangement with the British National Health which provides for medical treatment.
- ✓ Mortgages, bank loans and credit are more readily available and have lower interest rate spreads.
- ✓ Children over the age of 10 can be educated within the state system.
- ✓ In most cases, there is no importation duty on an EU motor vehicle when making application for *Residência*.

What are the disadvantages of being resident?

None. The basic requirements mandate that you declare that you can provide your own means and will not be a burden on their Portuguese Social Security system.

Phase 1: Free Circulation - up to 3 months

For periods less than three months, all that is required for an EU citizen to travel in Portugal is an Identity Card or Passport. No visa and no registration are required.

Phase 2: Residency - more than 3 months

If citizens wish to stay beyond three months, they must register with the *Câmara* (local Council) in the town where they reside within 30 days following the initial period. Beyond presenting proper identification, the registration includes a self-declaration, stating the basis of the Residency:

- a) Employment or Self-Employment,
- b) Health Insurance and Declaration of Means (*no lower than Portuguese national standards*),
- c) Education or
- d) Family.

The purpose behind the Means Test and health insurance is to assure that new arrivals will not be a burden on Portugal's social support system. Based on the self-declaration principle, no documentation is required to accompany this application. A Residency Registration Certificate (*Certificado de Registo*) is to be issued in the act and is valid for 5 years.

Phase 3: Permanent Residency - more than 5 years

After five years, a permanent Residency Card is required. This document is issued by the *Serviços de Estrangeiros e Fronteiras*. The only required documentation is an Identity Card or Passport and the original *Certificado de Registo* from the *Câmara*. Upon application, the foreign resident receives an acknowledging certificate with the final version issued within 15 days - a photo ID "credit-card style" credential (*Cartão de Residência*).

In the interim, the current 3-fold *Residência* cards remain valid and may be exchanged on demand.

Loss of Residency

As a foreign resident, you may continue to travel freely within the EU. Your Residency status will only be lost when absent from Portugal for 2 consecutive years or when there is evidence of abuse of rights, fraud or a marriage of convenience.

Fines

Those who fail to comply with the residency permit requirements leave themselves open to complications. Fines are as follows:

Lack of Registration: €400 - €1,500

Ongoing non-compliance: €500 - €2,500

Negligence: half of the above

Conclusion

With these simple, universal procedures being applied throughout the member countries of the European Union, it only makes sense to be in compliance. If you currently live in Portugal and intend to stay, yet don't have a *Residência*, now is the time to stop procrastinating.

If, like most people, you cannot come up with a single reason to the basic question: “*Why not obey the law?*”, then you have already answered the question.

FREQUENTLY ASKED QUESTIONS
from
euroFINESCO



Are you in doubt? Have a query?

Find the answer in our FAQ's:

1. Pensions: *the Audit Protection Plan*
2. Capital Gain Tax
3. Fiscal Representation in Portugal
4. Licensing for Short-Term Lets
5. Fractional Ownership
6. EU Savings Directive
7. Dividends & Royalties
8. Rental Income
9. Sole Traders & *the Simplified Regime*
10. Portuguese “IRS” - Scope of Taxation

2b Tax Residency

Whether you are planning an impending move to Portugal to retire, simply seeking a more attractive lifestyle in the sun or have lived here for many years yet are in arrears in your compliance obligations, our “*Year One*” Plan will help you get off to a proper start in Portugal. All those who live more than six months in the tax year in Portugal and earn income on a worldwide basis are required to submit a Portuguese “*IRS*” tax declaration, with only rare exemptions.

Our **euroFINESCO** package of services will help you meet all outstanding requirements related to Individual Income Tax, first by adopting fiscal residency in Portugal, then becoming officially non-resident in your home jurisdiction and finally, getting you a tax refund in the process.

Your First “*IRS*” Return

Submitting a tax return is not synonymous with paying tax. The Portuguese tax code has generous allowances and unexpected exclusions on certain forms of income, broad deductions for numerous types of expenses and liberal tax credits for many common expenditures. Many people find their new tax burden in Portugal to be significantly lower than they experienced before in their country of origin.

Fiscal Residency

Submitting your first income tax submission in Portugal is just the kick-off point. You will not be recognised as resident for tax purposes in Portugal or no longer resident back home unless you follow the appropriate procedures. With your first declaration in the hands of *Finanças*, the next step is to submit the application for a *Certificate of Fiscal Residency*.

Eliminating Withholding

With the completion of this Portuguese-language-only formality, the International Division of the Tax Authority in your home country must be alerted to the change in your status. Some countries have specific dual language forms, while others accept the Portuguese *Certificate of Fiscal Residency*, duly translated. From this point on, most sources of income can be paid to you gross, thereby avoiding withholding tax levied at source.

Your Refund

Normally, there will be taxes that were inappropriately withheld after the initial date of establishment of fiscal residency in Portugal. By completing the appropriate steps, you will most likely be entitled to a tax refund. Many taxpayers are pleasantly surprised to find that the fiscal residency transition process, when properly completed, can more often than not pay for itself.

Remember...

Just because you have already paid tax elsewhere does not mean that you have done so *correctly*. The relevant Double Taxation Treaty sorts out conflicts between jurisdictions and defines your obligations as a taxpayer.

Compliance

Beyond meeting basic formalities and essential obligations, **euroFINESCO** will be by your side to help resolve problems that may arise in navigating your way through Portuguese bureaucracy.

It is our purpose at **euroFINESCO** to assist you to become fully compliant while helping you pay the legal minimum.

2c National Healthcare

Access to medical care in Portugal

If you are in receipt of a Social Security Pension or long term Incapacity Benefit and you decide to move to Portugal permanently, ask for your S1 (previously E121) from your Social Security office or, in the case of UK nationals, the International Pension Centre (IPC) in Newcastle.

Once registered with the Portuguese authorities, the S1 gives you and your dependants the same medical cover in Portugal as a Portuguese national under the Portuguese national health scheme. This cover may not be the same as you received before so you may have to pay for some treatments or services. Remember that:

- you will be charged a nominal fee for a state GP consultation;
- you will have to pay a contribution towards the cost of any medicines and/or medical exams you may need, such as x-rays, scans, blood tests;
- spectacles are not available free-of-charge;
- treatment given privately and repatriation costs to the UK are not covered. Think about whether you want to take out private health insurance;
- some social services may not be available.

Registering with the authorities for Healthcare

In order to register for healthcare and obtain a health card (*Cartão de Utente*), take your S1 and your identification to your local health centre (*Centro da Saúde*) or nearest *Loja do Cidadão*. They will keep both copies of your S1 and issue you with a provisional certificate to allow you to access the Portuguese state-run health system immediately. Your health card will be sent to you later by post.

Full access to state healthcare starts from the day you register your S1 so:

- don't wait until you need treatment as you may find you are only entitled to emergency cover and will then be asked to produce a European Health Insurance Card;
- think about taking out private medical insurance to help with the cost of medicines, spectacles and any private medical or dental treatment you may undergo;

- make sure you ask to include any dependants on the S1 form when you apply for it;
- you can also ask your health centre or district social security office (*Centro Distrital de Segurança Social*) to apply for an S1 on your behalf but this is likely to cause delays in processing your application so it is advisable to avoid this if you can.

If your circumstances change

You need to tell the authorities if you or a dependant family member:

- start work or start getting a pension from another country;
- change address in Portugal, or move to another country.

Someone will also need to inform the IPC in the event of your death or that of a family member in receipt of a pension or benefit.

If you travel to another EU country

From 1st May 2010, your home jurisdiction became responsible for issuing the EHIC to national pensioners resident in other EU countries.

For further information on this change visit the appropriate website.

The UK European Health Insurance Card is valid for holidaymakers and temporary visitors who need to use the State Health System while in another EU country. If you are a resident in the Portugal, you should apply for your EHIC before travelling to other European Union Member States. A EHIC is usually valid for three to five years - but if you stop being a resident, you need to return your EHIC to the Health Service immediately.

Treatments covered by the “EHIC”

In Portugal, the “EHIC” covers:

- all medical care that becomes necessary during a temporary stay;
- oxygen and dialysis treatment, as well as treatment for chronic diseases or a pre-existing illness. You should inform healthcare authorities at your destination in Portugal before you travel, to ensure that supplies are available;
- routine maternity care
- between 20-95% off prescriptions (see further information below).

Treatment not covered by the “EHICW”

The EHIC does not cover the following:

- if getting treatment is the main purpose of your trip. In this case you need to get permission from your local healthcare trust who will issue you with form E112;
- for long term, routine or planned treatment;
- for treatment at private sector healthcare providers.

You must use the state health system if you are a resident in Portugal. If you live here, you must have a *Cartão de Utente* in order to access state health treatment.

The “EHIC” also covers any treatment you need for a chronic disease or pre-existing illness. You need to make arrangements in advance for kidney dialysis and oxygen therapy.

Reimbursements

You may be entitled to reimbursement of any contribution you have made where the actual cost of your hospital treatment abroad if the amount of the contribution you have made is less than what it would have cost in your country of residence. Reimbursement may be limited. You are not entitled to be reimbursed an amount greater than the contribution you made and you might not recoup all of it.

You are advised to take out comprehensive private travel insurance for visits to all countries, regardless of whether you are covered by your “EHIC”. Private travel insurance will cover any contribution which is not reimbursable, as well as other eventualities not covered by the “EHIC”.

Remember that the “EHIC” won't cover you if getting medical treatment is the main purpose of your trip. Your “EHIC” should cover you for routine maternity care while you are away.

2d **Driving License**

When moving to Portugal, sorting out new documentation requirements can often be a bit of a nuisance. Making mandatory changes in your UK Driving Licence falls into this category. Once you receive your *Residência* (Residency Permit), effectively transferring your residency status to Portugal, you have 30 days to make the necessary changes in your UK Driving Licence.

Since the United Kingdom has no formal Identity Cards as is common in most EU countries, your Driving Licence often takes on the role of an informal identification document. For this reason, the alternatives listed below can have far reaching consequences. While it is important to be compliant, it is also necessary to cope with different existing realities. There are two options available: a) exchange for a Portuguese Driving Licence or b) registration of your new address.

Option n° 1: Licence Exchange

- *Residência* is a pre-requisite;
- Medical examination required; documents & relevant forms submitted;
- Original Licence is handed over to *Instituto da Mobilidade e dos Transportes Terrestres, I.P.* (IMTT) who issue a corroborative receipt which authorises driving in Portugal whilst Portuguese License is being processed;
- The receipt is not valid outside of Portugal;
- The receipt is valid for 90 days, after which re-validation is required for another 90 day period if the new Portuguese Driving Licence has not as yet been issued;
- The process generally takes 4-6 months;
- Original Licence is eventually returned by IMTT to the issuing body.

Option n° 2: Registration of Address

- *Residência* is a pre-requisite;
- IMTT is informed of address in Portugal and issue a corroborative certificate to confirm;
- Driver now holds original Driving Licence and Portuguese certificate of registration of address;
- Process takes effect immediately;
- Back office process advised \pm 6 months;
- IMTT enters details on to EU database;
- Issuing body advised in this way of registration of address;
- When licence is to be renewed, the individual must renew with local authority (IMTT), exchanging original UK Driving Licence for a Portuguese one.

Note on UK procedures:

- a) UK Driving Licences are only renewed at age 70;*
- b) Foreign addresses are not currently permitted on a UK Licence;*
- c) A Driving Licence may not be renewed once holder has registered residence outside of UK. This may be important if you are over age 70.*
- d) UK Driver and Vehicle Licensing Agency also advises that there are rumours that, in time, it may become possible to put EU addresses on UK licences, as is the case in Holland. However, it is important to note this is not currently the case.)*



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Tax Techniques

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information before it reaches
other media. Stay informed
about the crucial changes that
will impact your life
in Portugal .*

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3.

Getting Adapted . . .

3a Home Ownership

This form of home ownership offers many of the advantages that property buyers once sought in Offshore Property Companies but achieves these objectives in a compliant, mainstream fashion. This type of non-trading company can provide stability as well as attractive benefits, meeting diverse potential needs:

- First-time home buyers in Portugal;
- Estate planning;
- Downsizing;
- Capital Gains Tax mitigation;
- Offshore Property Companies (both white and blacklisted).

First-time Home Buyers in Portugal

Even if you are an experienced property investor prior to coming to Portugal, when you purchase your first home in Portugal, you will face the common problem of any novice: inexperience - the language, the bureaucracy, the idiosyncrasies. Do you know where to go, how to get things done, who to trust?

Solution: A built-in support structure

When you buy property via a Portuguese Nominee Company, you do much more than just lock in multiple tax advantages in a fully compliant structure. With **euroFINESCO**, you have a team of competent professionals on your side, specialised in sorting out the problems that constantly arise in Portugal: navigating a complex and unpredictable bureaucratic system, keeping you updated regarding constantly changing legislation. Meeting tax obligations is a matter of Law. We will make sure you are fully compliant while helping you to pay the legal minimum. You have someone who can put the problem - and the solution - to you in plain English, an extended team of capable, knowledgeable professionals who are specialised in meeting your needs. Providing you with personalised service is one of our principal goals.

Additional advantages of the *Nominee Company* are numerous:

- *Simplified control*
Property is indivisible whereas shares may be easily divided amongst owners;
- *Capital improvements never expire*
Capital increases provide the value uplift from renovations;
- *Reduced closing costs*
Quick and easy share transfer eliminates property bureaucracy;
- *No punitive taxation*
Unlike Offshore Companies, there is no punitive taxation;
No deemed income, standard property rates
- *Low operating costs*
Modest annual fees
- *Tax efficiency*
Enjoys favourable tax treatment under Portuguese law:
There is a CGT rate of only 14% on the sale of Company shares.
- *A fully compliant solution*
Free from the onus of Anti-Avoidance legislation.

The *Nominee Company* structure has been in Portuguese legislation since the nineteenth century and has survived countless reforms over the past 150 years. Although this type of company had fallen into disuse until recently, its recent revival is thanks to the “win-win” solution that it offers to both buyers and sellers, squarely within Portuguese legislation.

3b **Investing - from *Capital Growth to Income***

When moving to Portugal, many adjustments need to be made, not the least of which is your investment portfolio. To begin with, not only are you moving to a new country but, equally important, you are beginning a new chapter of your life. During one's working career, it is common to see Capital Growth as the principal objective. However, in retirement, Income becomes increasingly important. In addition, former domestic investment structures, such as PEP's and ISA's, may no longer be relevant under Portuguese fiscal statutes .

The type of investment you choose will depend on whether you require capital growth for the future, income from your investment for now, or a combination of both. Some people, such as retirees or those with short investment time frames, may choose to receive an income from their investment. Income is generated from the interest and dividends earned from the investment. Bonds and cash are examples of income producing investments, and they generally provide stable and regular returns.

Growth assets, such as shares and property, generally suit people who want to invest for five or more years. These types of assets grow your capital with moderate levels of income over time. Investors wanting to generate wealth over the long term should consider placing a greater portion of their investment into growth assets. While growth assets can be volatile over shorter periods, they have historically produced greater returns than income assets.

In determining which investments are best for you, you should consider your "investment time horizon". Each asset class has a distinct time horizon, which helps to determine its suitability. For example, if your time horizon is one to two years, you should consider a cash investment, such as a term deposit.

As an investor, you aim to get the highest return at the level of risk you feel comfortable with. You need to consider how tolerant you are of market fluctuations and the probability that your investment returns may not meet expectations. Some investments can even lose money.

Investment markets move in cycles. They can vary from providing strong returns year after year to a sudden drop, which can be quite alarming for investors. There are many factors that drive these movements, as

evidenced by the downturn in the share market in late 2007/early 2008, brought about by the 'sub-prime' mortgage crisis in the United States. However, markets do recover. An investment plan can help minimise the impacts of market volatility, and should be designed to meet your long-term goals and help your investments remain on track. An investment plan should take the following fundamentals into consideration:

- Time in the market may help to ride out the lows, and in the long run, maximise the value of your investment.
- Cost averaging means investing a fixed sum over regular intervals regardless of where investment markets are heading.
- Diversification ensures your investments are spread across a range in line with your investment objectives.
- Remember, in times of uncertainty:
 - Don't panic;
 - Revisit your investment goals;
 - Align your investments to meet your goals;
 - Ensure your portfolio is diversified;
 - Speak to a qualified financial advisor.

Estate Planning and Domicile Issues

4a Wills

Cross Border Estate Planning

If you are a Foreign Resident in Portugal, married to a foreigner, have foreign source income, or assets in a foreign jurisdiction, Cross Border Planning is a must. Anytime foreign laws are introduced into a plan or dispute, complexity is introduced. Because legislation is so different in the international arena, planning in advance becomes essential in order to meet one's goals, take advantage of opportunities and avoid nasty surprises along the way.

International Estate Planning is quite different from domestic estate planning and involves diverse analysis.

- Domicile Planning
- Last Will and Testament
- Planning for One or More “Situs” Wills for foreign property
- Conflict of Law Analysis
- Tax Treaty Analysis
- Redomiciling Assets:
 - ▶ “Portuguese Nominee Company for Property (immovables)
 - ▶ “Portuguese Nominee Company for Portfolios (movables)

Your Will in Portugal

Estate Planning can be a complex process, specially for Foreign Nationals in Portugal, due to the laws of different jurisdictions that need to be reconciled. As a key part of the process, it is always advisable for property owners to make a Will in Portugal that deals exclusively with the assets located in Portugal. Making a Portuguese Will reduces expenses and avoids needless delays in the execution of the estate. This instrument does not replace but rather supplements your existing Will

in your home jurisdiction. Otherwise, if someone dies intestate (without a Will), there are no guidelines as to how the assets are to be distributed. A properly thought out Will can save a family from much confusion and discomfort at what is already a difficult moment.

In Portugal, a Will is read in accordance with the Personal Law (*lei pessoal*) of the individual, a concept in Civil Law roughly equivalent to *Domicile* (see Chapter 4b) in Common Law jurisdictions. Under the Portuguese Civil Code, an individual's Personal Law is determined by nationality. For those who have not established a *Domicile of Choice* in Portugal, their Will must be read under the legal rules of the country of origin. For the Will to be recognised as valid, it must be reviewed by a "competent authority" (usually an attorney in the respective jurisdiction) who issues a declaration stating that the terms of the documents are in harmony with the law of origin.

Portuguese legislation recognizes several types:

- 1) "*Testamento Público*": The most common is the *Public Will* which is dictated to the notary by the individual who then drafts the document in the presence of the author and two witnesses. The Will is signed by the individual and then recorded by the Notary.
- 2) "*Testamento Cerrado*": The *Closed Will* is drafted by the individual or by his/her solicitor and subsequently notarized. The Notary only recognizes the document and does not keep a copy, the safekeeping of which is entrusted to the individual.
- 3) "*Testamento Internacional*": Pursuant to the Washington Convention of 1973, any country which adopts the Convention agrees to recognize as valid in its jurisdiction a will prepared in accordance with the provisions of the Act. Portugal is a party to this Convention. While quite simple and straightforward for the testator (the person registering the Will), the other forms of Wills are usually preferable in terms of simplicity and economy when the estate is executed.

Forced Heirship

If and when one's *personal law* becomes that of Portugal (see chapter 4b), there are a number of important consequences. First, Portugal applies the principal of Territoriality to the execution of the estate. This means that the scope of the deceased' estate is limited to assets held within Portugal. Portuguese law does not attempt to regulate or tax any assets outside of its borders.

Next, Portugal abolished inheritance Tax in 2004. Bequests to immediate family members (spouse, children, grandchildren, grandparents & parents) are tax exempt. Transfers to others are assessed 10% Stamp Duty.

Finally, there are restrictions to the discretion of the testator. Legislation requires forced inheritance ("*a legitima*") in many instances and only permits limited leeway to an individual in the Will.

The following summarises the part of the estate that the testator is at liberty to apportion:

Living Relatives at the Time of Death	Part of Inheritance Free to Allocate
Spouse	$\frac{1}{2}$
Spouse and Children (a)	$\frac{1}{3}$
Two or more Children	$\frac{1}{3}$
One Child	$\frac{1}{2}$
Spouse and Parents/Grandparents	$\frac{1}{3}$
Father and/or Mother	$\frac{1}{2}$
Grandparents/ Great grandparents	$\frac{2}{3}$
No immediate Living Relatives	ALL

- (a) The spouse receives $\frac{1}{4}$, if there are more than 3 children.
The remaining $\frac{3}{4}$ is to be divided equally amongst the children.

Who can make a Will?

Anyone — resident or non-resident, national or foreign citizen — can make a Will except minors and those who are judicially deemed unfit.

Who cannot be an Heir?

In order to avoid conflicts of interests, certain people cannot be named beneficiaries. This is the case with Doctors, Nurses or Priests who assist an individual at the time of death. The same applies to a tutor, legal administrator, or guardian (unless a family member), an accomplice in the event of adultery of the deceased or anyone intervening in the preparation of the Will.

Which country's legislation should be followed?

It is not uncommon for the principle of *Renvoi* (from the French, meaning "send back") to be applied. In order to determine which legislation has jurisdiction, the legal considerations may go back and forth between the two (or more) before a final determination is achieved.

4b - **PERSONAL LAW or *Domicile of Choice***

Individuals from Civil Code countries determine Personal Law either by *Nationality*, as occurs in Portugal, or by *Habitual Residence*, as in many EU countries. Alternatively, the individual may designate a Personal Law through a *choice of law* clause in the Will. Final determination may finally be resolved by the process of *Renvoi*. (see Chapter 4a).

For those from Common Law states, Domicile designates the law of a person (*Personal Law*) that determines certain cardinal legal questions such as the interpretation of a Will. A person may have many places of residence, but may only have one Domicile. At birth, a person obtains the Domicile of the parents, and can change it by forsaking their former Domicile and intending to reside indefinitely at a new place in which they are physically and lawfully present. The law of the Domicile governs the law of succession applicable on death as well as the matrimonial law governing the property of a married couple wherever that property may be located.

After establishing habitual residence in Portugal, some individuals may wish to embrace Portugal as their *Domicile of Choice* to replace their *Domicile of Origin*. To do this, they must reside in Portugal and form a clear and fixed intention of making their permanent home here.

In some countries such as Portugal, *Domicile* is largely irrelevant for tax purposes. In others, such as the UK, this concept is crucial and affects Inheritance Tax, Capital Gains Tax and Income Tax.

The crucial test to be applied is whether a person has made the claimed Domicile of Choice his/her home with the intention of establishing a family there and/or remaining there indefinitely, unless something happens to cause a change of mind. (Please refer to *euroFINESCO's "12 Badges of Domicile"* to help make this determination.)

The length of residence is not in itself conclusive proof of whether a Domicile of Choice has been acquired. A person who has only resided in a particular country for a few years could satisfy the test if it were clear that he/she intended to live in that country permanently. Conversely, a person may have lived in a particular country for a

considerable time (for example, for employment purposes) but may have no intention of remaining there.

When an individual acquires a new Domicile of Choice, it is as if he is connected to his Domicile of Origin by a piece of elastic, known as the Doctrine of Continuance. If he/she abandons one Domicile of Choice for another, then the Domicile of Origin revives, however briefly: the elastic drags him back to his first home despite the fact that he has severed all connections with it for many years. This could have the effect of triggering a further three-year deemed domicile quarantine period for UK Inheritance Tax purposes.

Prolonged actual residence is an important item of evidence of volition, but other facts and circumstances indicative of intention must supplement it. The residence must answer a qualitative as well as quantitative test. A domicile of choice must be a residence not for a limited period or particular purpose, but general and indefinite in its future contemplation. The intention must be a present intention to reside permanently, but it does not mean that such intention must be irrevocable. It must be an intention unlimited in period, but not irrevocable in character.

It is not necessary to show that the intention to make a home in the new country is irrevocable or that the person whose intention is under consideration believes that for reasons of health or otherwise he will have no opportunity to change his mind. The true test is whether he intends to make his home in the new country until the end of his days unless and until something happens to change his mind.



It may come as a surprise that filing a correct tax return in Portugal can actually save you money. Submitting a tax declaration is not synonymous with paying tax. The Portuguese tax code has generous allowances and unexpected exclusions on certain forms of income, and liberal tax credits for many common expenditures. Many people find their tax burden in Portugal to be significantly lower than in their country of origin. Note these examples:

Pensions

- Each pensioner will be entitled to a pension allowance of €4,104. This means that a retired couple, after personal allowances, typically receives the first ±€15,000 of pension earnings free of tax.
- Many pensions paid within EU and beyond are entitled to an appreciable exclusion applying basic principles of elimination of Double Taxation. If eligible, an occupational pension of €60,000 should have little or no tax to pay.

Non-Habitual Resident

- Only Portuguese-sourced income of a non-habitual resident's salary is subject to Portuguese Income Tax. Additionally, this income will be levied at a flat rate of 20%.
- Foreign-sourced income will be exempt from assessment in Portugal when assessed under the rules of standing Double Taxation Agreements or the like.

Disabilities Benefits

Sometimes the common consequences of aging qualify taxpayers for 60% or greater disability status and still not hurt your golf game. If you are eligible, you will enjoy enhanced deductions.

Income from Portuguese Property

When reported as Portuguese-sourced business income, final tax rates are 4% or less with no further tax liability in the home jurisdiction for Non-Residents.

Dividends

Dividends paid by Portuguese and EU Companies are entitled to a 50% exclusion and are taxed on the other half at marginal rates with withholding on national dividends.

Roll-Over Relief

If you sell your principal residence and fully reinvest the proceeds in a new home, the capital gain is exempt. This is to be extended eventually to new home reinvestment anywhere in the European Union.

Nominee Companies

If you purchase property for investment purposes, using a Portuguese Nominee Company will provide many benefits including simplified bureaucracy and tax efficiency.

Inheritance Tax

Portugal abolished Inheritance Tax as of 2004. Transfers to immediate relatives (spouse, children, grandchildren, parents and grandparents) are tax exempt. All others pay only 10% Stamp Duty.

Sidestepping “Forced Heirship” Rules

Portugal is a Civil Code jurisdiction that applies the principle of “*forced heirship*” where partial inheritance of the estate (“*a legitima*”) is the legal right of the spouse and children simultaneously. In many cases, this may not necessarily be the preferred order of the testator. However, Portuguese succession rules only apply within Portugal (“*territoriality*”). You can use a foreign succession instrument, such as a Trust, to accomplish your goals that may fall at odds with domestic criteria.

These and other benefits are entitlements under legislation. It is your right as a citizen and taxpayer to take maximum advantage of these tax breaks. Who knows? Portugal may prove to be a legal “*tax haven*” for you within Europe.

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eBooks from euroFINESCO

- 1) Offshore Companies: *Moving Onshore*
- 2) Self-Employed in Portugal
- 3) Requirements of the Common Reporting Standard
- 4) Setting Up Fiscal Residence
- 5) Capital Gains Tax on Portuguese Property
- 6) Portuguese Tax Code Summaries
- 7) “VPT” Unveiled
- 8) Tax-Efficient Investing in Portuguese Property
- 9) Income from Portuguese Property
- 10) Taxation on Portuguese Property
- 11) “S.C.I.”: *Sociedade Civil Imobiliária*
- 12) Property Companies: *White-List or Portugal*
- 13) Nominee Companies for Portuguese Property
- 14) Fiscal Representation in Portugal
- 15) “Permutas” or Property Swaps
- 16) Estate Planning & Nominee Companies
- 17) “I.H.T.” – Residence Rules & Determining Domicile
- 18) The Move to Portugal – *before, during & after*
- 19) Taxation of Pensions in Portugal
- 20) “I.R.S.” Tax Credits
- 21) CGT Mitigation: *14 Arrows in the Quiver*
- 22) Residence Rules: *in the EU, Portugal and the UK*
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 - 26) Access to Education
 - 27) Recognition of Qualifications
 - 28) Social Security Entitlements
 - 29) Golden Residence Visa
 - 30) Leaving Portugal - *Moving Back*
 - 31) Non-Habitual Residence Status and the Alternatives
 - 32) Trusts, Foundations and Fiduciary Structures