

*euro*FINESCO

eBook nº 16

Estate Planning & Portuguese Nominee Companies

by

Dennis Swing Greene



PORTUGAL

Ficha Técnica:

109ª Edição: *euroFINESCO eBook nº16*
Estate Planning & Portuguese Nominee Companies
Autor: Dennis Swing Greene
Designer: Maria de São José Belchior Horta
Distribuição: *euroFINESCOs.a.*
Tiragem: Internet
Executado: Abril 2018

Reservados todos os direitos.

Esta publicação não pode ser reproduzida no todo ou em parte, por qualquer processo, sem prévia autorização por escrito do autor.

COPYRIGHT © ALL RIGHTS RESERVED

Violators will be prosecuted to the full extent of the law

euroFINESCO s.a.

HEADQUARTERS

Rua do Sol, 4
8200-448 GUIA (Algarve)
tel: +351 289 561 333
fax: +351 289 562 061

Madeira Branch

Rua do Aljube, 61, 2º Dtº
9000-067 FUNCHAL (Sé)
tel: +351 291 221095
fax: +351 291 221103

Lisbon Branch

Rua António Maria Cardoso, 15, 4ºD
1200-273 LISBOA (Chiado)
tel: +351 21 342 4210
fax: +351 21 342 4212

Internet

e-mail: info@eurofinesco.com
www.eurofinesco.com
Portugal
mobile: +351 96 910 2813



Beyond Advising on Portuguese Nominee Companies. 5

Introduction: *Your Estate Plan*. 7

- Succession of Assets
- Family Situations
- Inheritance Tax
- A Compliant Solution
- An Affordable Solution

1. *Cross Border Estate Planning*. 9

- What is International Estate Planning?
- Can I have more than one Will?
- Disposition of Assets
- Can I give up my Domicile of Origin?
- Forced Heirship Issues
- Trusts in International Estate Planning

2. *What is a Nominee Company?*. 11

- Civil Companies
- Trusts
- Confidentiality
- Fiscal Transparency Regime
- Company Assets

3. *Nominee Companies for holding Foreign Property*. 17

- A Fully Compliant Structure
- Tax Efficiency
- Potential Transfer Tax Exemption
- Confidentiality
- Ease of Transfer
- Restrictions

4.	<i>Family Ownership and Tenancy Rights.</i>	19
	Staying in Control	
	“ <i>Usufruto</i> ”	
	Creation and Cessation of Tenancy Rights	
5.	<i>Nominee Companies for Lump Sum Pension Plan.</i>	21
	Pensions and Portugal	
	Pension Plan Set Up	
	Withdrawals and Taxation	
6.	<i>Nominees Companies for Investment Portfolios.</i>	25
	Advantages for Portfolio Investment	
	Legal and Tax Status	
	Estate Planning	
	Formation	
	The Partners	
	Investment Options	
	Administration	
	Filing Requirements	
7.	<i>euroFINESCO Domiciliary Services.</i>	27
	Asset Protection	
	Fiscal Requirements for the Company	
	Resourcing Information to Shareholders	
	Liaison between <i>Finanças</i> and Owners	
	Personalised Service	
	Payment Facility	
	Plain English	
	Conclusion: <i>Portugal - a tax haven within Europe?</i>	29
	Other <i>euroFINESCO e-Books.</i>	32



Beyond Questions on Estate Planning

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-Residents 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

FINESCO 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

CROSS BORDER ESTATE PLANNING

Cross Border Planning for individuals becomes important when assets and income are split between two or more jurisdictions. If you are a foreign resident, married to a foreigner, have international sources of income, or have assets in a another jurisdiction, Cross Border Planning may be necessary to avoid unforeseen harsh Inheritance Tax consequences.

Anytime foreign laws are introduced into a plan, complexity is an inevitable outcome because contradictory legislation must be accounted for. Because laws are so different in the international arena, planning in advance becomes essential.



Introduction: *Your Estate Plan*

Everyone has an estate plan, whether they know it or not. Just because you may *think* that you have no plan - because you have not made out a will or other provisions - you still have a plan. It is simply one that is dictated by the laws of the country where your assets are domiciled at the time of your death.

The process of Estate Planning for foreign residents with assets and heirs in different jurisdictions can often be complex and requires particular attention to both structure and detail.

Succession of Assets

Internationally, different national laws that govern asset succession are a confusing labyrinth:

- In some countries, real property is governed by situs law and personal property by the law of domicile.
- There are countries that will recognize foreign wills and entities such as trusts if drafted to comply with the statutes of country of domicile.
- Some Civil Law countries do not recognize trusts, but may (or may not) recognize foreign trusts of non-resident foreigners or foreign domiciliaries.
- Some countries will apply the law of the decedent's domicile with respect to wills and estates, while others will apply the law of the country of Nationality while still others relate the rules of Residency .

Family Situations

If the succession laws are perplexing, family situations are no simpler. Marriage & divorce, birth & death, ambition & envy are just the “tip of the iceberg” of countless complicated forces that govern family life. Any plan, once formulated, needs to be updated on a regular basis to be able to have any hope of accomplishing its purpose.

Inheritance Tax

While some forms of taxation in the European Union may have experienced different degrees of tax harmonisation in recent years, the same cannot be said for Gift and Inheritance Tax.

- Some countries tax on a worldwide basis, others only nationally.
- Some have an Estate Tax, taxing the estate on a fixed rate basis; others tax the heirs on a sliding scale, depending upon the relationship to the deceased and the amount received.
- A few countries, like Portugal, have abolished Inheritance Tax yet may have replaced this levy with another form of assessment.

A Compliant Solution

At *euroFINESCO*, we believe in compliant solutions. Of course, we all dislike paying our taxes; that's only human. But most of us, in our hearts, are conscientious citizens, cognisant of the fact that we need to contribute our fair share. But while we have compliance obligations to meet, it is still our *right* to be taxed at the *legal minimum*. There is nothing wrong about paying as little as possible, as long as you do so within the bounds of legislation.

That is at the core of our purpose: to explain to you what your rights are under Portuguese Law and how to implement these goals in the minefield of Portuguese bureaucracy.

An Affordable Solution

The solutions that we offer are not expensive. In fact, our services are competitively priced so there should be no significant difference in costs to you as compared with other solutions. As we will show, a *Portuguese Nominee Company* can be a very versatile tool, both to take advantage of attractive opportunities as well as for resolving many types of problems that face those engaged in Estate Planning in Portugal.

The issue is not merely how much you are going to pay. The key is how *wisely* you choose to assure that you achieve the results that you wish for you and your family.



1. Cross Border Estate Planning

If you are a Foreign Resident in Portugal, married to a foreigner, have foreign sourced 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 inevitable. Because laws are so different in the international arena, planning in advance becomes very important 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
- Conflict of Law Analysis
- Tax Treaty Analysis
- Domiciling Assets:
 - ▶ *Portuguese Nominee Companies* for Real Estate
 - ▶ *Portuguese Nominee Company* for Investment Portfolios

What is International Estate Planning?

International Estate Planning involves connections between different countries. These connections typically arise when a citizen of one country resides in another country, owns property in a foreign country, or has beneficiaries such as a spouse, children or other beneficiaries who live abroad. All modern societies regulate the typical events in a human's life: Birth, death, marriage, divorce, bankruptcy, and the passing of property at death. Regulations differ, adding complexity to any planning across borders: who is entitled to assets? how much can a taxing authority claim? Legal definitions of seemingly identical terms differ. Formalities for the legal validity of typical estate planning documents like wills or trusts differ. The legal structures by which nations have attempted to build predictability into the international system of resolving cross border

disputes are a patchwork of conventions, treaties, and conflicting court opinions which frequently change. Some governments and their currencies are unstable.

In the face of these changes and conflicts, an international estate planner is expected to effect the clients wishes for the distribution of assets, lessen red tape such as probate and administration costs, minimise taxes, and look into the future and predict the outcome of a client's distribution scheme by planning for unforeseen events.

If I have assets in several jurisdictions, which one controls the disposition of my assets?

Whatever jurisdiction is faced with this issue will first characterize the property as real property or personal property. Jurisdictions may use different terminology like “immovable” or “moveable”. The concepts are similar but not identical. Real property is almost universally governed by the law of the location (called *situs*) of the real property. The personal property will generally be determined by the law of the final domicile of the deceased.

Can I have more than one will?

Yes. In international estate planning, persons with assets in multiple jurisdictions can and often should have a will in each jurisdiction where assets are located. Frequently, a Will is made for the country of domicile and a second Will made in another where an asset may be located. Assets separate into two categories - domiciliary assets and non-domiciliary assets. This is done for confidentiality reasons, to speed up the probate process, and to save taxes. When utilizing multiple Wills, drafting must be carefully coordinated to avoid inadvertent revocation in other Wills and contradictory clauses must also be eliminated.

If I do not wish assets to go to my spouse or children, are there ways to prevent this?

Yes. However, our primary focus in this book will be to embrace those assumptions common to forced heirship jurisdictions such as Portugal. Nevertheless, there are still a number of methods for circumventing succession laws: removing assets from the jurisdiction whose succession laws frustrate the testator's intent; gifting and sale of the assets are other ways of dealing with the problem.

Can I give up my domicile of origin and establish a “domicile of choice” in Portugal?

Yes. If it is your sincere intention to live out your days in Portugal and you are willing to restructure your affairs appropriately, you may well be able to take advantage of one of the major tax benefits available in Portugal: no Inheritance Tax when succession is to immediate family members.

What is the value of trusts in international estate planning?

A trust arises when one person transfers property to another person, the trustee, who holds legal title to the property, for the benefit of another person, the beneficiary. The benefits from the trust are split from the ownership of the assets. The trustee is bound by law to fulfill the provisions of the trust with a high degree of loyalty and prudence (fiduciary duty). A trust can be a very useful device in international estate planning, but most civil law countries do not recognize trusts.

While Portugal does not formally recognise trusts (except within the free trade zone of Madeira), it does have a similar long-standing structure called “*Sociedade Civil de Simples Administração de Bens Próprios*”. The translation is quite simple: a civil company is a non-commercial company; the directors administrate the assets to the benefit of the shareholders, just as in a trust. The role of the administrators is rigorously defined and enjoys the same essential fiduciary relations as the trustees do in a trust. These administrators are subject to public registry but not the shareholders so this structure also enjoys a degree of confidentiality as occurs in most trust arrangements. Over the course of this book, we refer to this structure in English as a “*Portuguese Nominee Company*”.

- ▶ A Nominee Company provides a vehicle to manage assets professionally. This will separate the management of assets from people who cannot, or have no interest, in managing their financial affairs.
- ▶ A Nominee Company can be another way of disposing of assets. If title to assets has already been transferred into a Nominee Company prior to death, the structure can avoid the expenses and burdens of probate, possibly in multiple jurisdictions.

- ▶ A trust can be used to collect assets from various jurisdictions and provide one structure to hold and manage assets.
- ▶ Nominee Companies can have provisions for the administrator to manage a person's financial affairs if a disability strikes.
- ▶ Foreigners who use Nominee Companies can circumvent their country of origin, citizenship, or nationality's estate or income tax laws through the utilisation of these structures.
- ▶ One can have multiple Nominee Companies to hold different assets or for differing purposes.



2. *What is a Nominee Company?*

A Portuguese Nominee Company (*Sociedade Civil de Simples Administração de Bens Próprios*), with headquarters and effective management in Portugal, is one that limits its activity to the mere administration of belongings and assets held as a reserve, a benefit, or the purchase of accommodation for its shareholders. In these Companies, the share capital must belong to either a family group or from two (2) to five (5) shareholders and may be either resident or non-resident indiscriminately. Normally held by individual family members, shareholders may also be other companies or trusts, although none of these may be a public collective entity.

Civil Companies

As Civil Companies, these entities do not practice any commercial activity or other like activities as defined in Portuguese Law. They are pure Civil Companies, regulated by the Civil Code, and may or may not have “judicial personality” (formation via public deed). These Companies are subject to the Fiscal Transparency Regime (*see below*).

Trusts

Those familiar with Trusts will immediately recognise certain similarities. A Trust is a legal device under English Common Law that allows title to - and possession of - property to be held, used and/or managed by one person, *the trustee*, for the benefit of another different person or group, *the beneficiaries*.

In the case of the Nominee Company, possession of property is transferred to the Company, overseen by the *administrators*, and managed for the benefit of the shareholders, the owners of the Company. Competencies of the administrators are defined in the *Statutes* of the Company and are normally limited to meeting required compliance and basic administrative functions as stipulated under Portuguese law.

Confidentiality

The Nominee Company is registered with the National Company Registry (*Registo Nacional de Pessoas Colectivas*) as well as with *Finanças*. Only Company administrators are recorded, not the shareholders. Nor are the shareholders identified in the Statutes of the Company, which appears as an annex to the Deed of Establishment. Their names do appear in this initial deed as well as in any Deed of Transfer of ownership of the Company. These deeds are kept in the archives of the notary as the sole registry. While technically available to the public, the contents are not part of central archives and are only available on specific request.

Fiscal Transparency Regime

Nominee Companies fall under the regime of Fiscal Transparency. Chargeable events of the Nominee Company, as calculated according to the Corporate Tax Code (“*CIRC*”), are attributed and assessed directly to the shareholders (beneficial owners) in their Individual Income Tax declaration (“*IRS*”). The Company itself is tax exempt but still has nominal reporting requirements (“*IRC*”).

Fiscal Transparency protects Shareholders against double taxation. Typical company structures first assess the Company on profits, then tax Shareholders on the distribution of dividends. The tax exemption of the Nominee Company protects against this fiscal injustice.

Company Assets

Portuguese law does not place limits on what kinds of assets may be held in a Nominee Company. They may be immovable (real property) or moveable (investment portfolio).

Normally, one property or portfolio is held in each Company so that ownership of the Company may be easily transferred. If the conveyance is a gift or bequest to an immediate family member, the transfer is tax exempt. When the shares are sold, the gain will be subject to a flat tax of 10%.

Two types of Companies

There are two kinds of *Portuguese Civil Companies*. The simple form has much in common with the Anglo-Saxon Trust and allows for confidentiality of shareholders. We recommend using for movable assets as well real property outside of Portugal.

In its commercial form, full registration and disclosure apply as in any standard trading company. This type is better suited to Portuguese real estate holdings as it facilitates normal local registration requirements.

***Local Lodging Plan
for Non-Residents***
from *euroFINESCO*



If you have qualifying short-term tourist lets, our *Local Lodging Plan* allows you to reduce your Portuguese income tax assessment to just 5%. Even more important, this specific category of income is normally taxable only in Portugal, exempt from subsequent assessment in the country of tax residency in most cases.

*(If you do not as yet have a Local Lodging License for your property, **euroFINESCO** can help you obtain the necessary permit as part of our standard Fiscal Representation service)*



3. Nominee Companies for Foreign Property

When real estate is held in a Company, “immoveable” property is transformed into a “moveable” asset (ie. shares). At the point of sale, the Company shares are transferred while the property remains untouched, securely in the hands of the Company.

Needless to say, assessment on share conveyance is quite different from that of immoveable assets. While no “one-size-fits-all” solution exists, there are many situations where a Company structure can alleviate many burdens, open opportunities while mitigating tax implications of the underlying transaction.

1. *A Fully Compliant Solution*

This is a fully compliant solution. The *Portuguese Civil Company* structure has been in Portuguese legislation since the nineteenth century and has survived countless reforms over almost 150 years. While there is no crystal ball to predict future legislation, this basic corporate structure under Portuguese Law has undoubtedly stood the test of time. Its recent revival is thanks to the “win-win” solution that it offers to both buyers and sellers, squarely within the law. In fact, the simplicity of this form of company makes this structure easy and relatively inexpensive to run.

2. *Tax Efficiency*

As a non-trading entity, Portuguese Civil Companies are exempt from Portuguese Corporate Tax (“*IRC*”) and Special Tax on Account (“*PEC*”). They follow Fiscal Transparency rules where any chargeable events are assessed directly to shareholders, not the Company.

The Capital Gains Tax rate in Portugal on the sale of Civil Company shares is only 10%.

3. *Confidentiality*

In its simple form, required registrations only identify the Company’s administrators, leaving shareholder identity confidential.

4. An Invaluable Estate Planning Tool

Domicile or “Personal Law” - the determination of which body of law governs one’s life and respective estate - is a key element of any Estate Planning strategy. When seeking to establish Domicile of Choice, Portuguese Civil Companies can be used to retain control of assets located in one country while effectively re-domiciling them in another.

While direct retention of property can often be interpreted as an intention to return by the local Revenue, transfer of ownership to a Portuguese Civil Company effectively relocates the holding in Portugal in a confidential yet mainstream structure, thereby eliminating direct links to the individual.

5. Ease of Transfer

With the property secured safely within the Company, bureaucracy is significantly reduced at the time of sale, cutting costs and complications so often associated with property ownership. A simple Deed of Transfer declaring the sale of the shares is all it takes, thereby avoiding the headaches related to licencing, registration and ever-changing rules of property red tape.

6. Low Operating Costs

Annual operating costs are modest for *Portuguese Civil Companies*. These mainstream onshore structures are not subject to the restrictive and costly prerequisites that increasingly make many offshore regimes prohibitively expensive.

7. No Benefit-in-Kind Assessment

Both under Legislation as well as Company Statutes, Shareholders cannot be construed as “*Shadow Directors*”, an underlying premise for any alleged benefit-in-kind assessment.



4. Family Ownership and Tenancy Rights

When buying property, many investors are looking to build their net wealth, enjoy retirement and pass their assets on to the next generation. Many want to buy their home and include their children in the ownership, leaving their affairs in order while mitigating eventual inheritance tax problems.

However, life sometimes takes unexpected and cruel twists: bitter divorce, crippling illness, untimely death. In the worst case scenario, a retirement home in the children's name can vanish as a consequence of an unanticipated calamity, leaving the parents without a home, nor the means to replace it.

Staying in Control

One simple solution is to use a Nominee Company with the shareholding in the name of the children. The Company grants a Deed of Life Tenancy (“*Usufruto Vitalicio*”) to the parents who then have full and exclusive rights to the property for as long as they live. Upon the passing of the last survivor, the tenancy rights automatically revert to the Company which is already owned by the children, thereby solving harmlessly any potential inheritance problem inside and outside of Portugal.

Usufruto

Usufruto (right of tenancy) is the right to the use and enjoyment of the fruits or profits of another's asset, without fundamentally changing its substance. It is the right to enjoy things that someone else owns, in the same way as an owner, but subject to an obligation to conserve the substance. In defining usufruct, it is necessary to introduce two other characteristics:

- a) first, usufruct is a temporary right, and in the majority of cases, on a lifetime basis of an individual (a corporate entity is restricted to 30 years). Individuals, however, may define a set period if they so wish up to 30 years;
- b) also usufruct is a real right (*direito real*).

Usufruto grants the right to use the asset and receive the benefits (fruits).

Without the right of usufruct, there is the complementary right called bare ownership (*nua propriedade*). When the usufruct is extinguished the bare ownership reverts to absolute ownership (*plena propriedade*). Usufruct comprises two of the rights to property as recognized in Roman law, the right of use (*usus*) and the right of enjoyment (*fructus*), but does not include the right to change or transform the property (*abusus*), this latter right is only available to the owner (*nu proprietário*).

Creating Tenancy Rights

Usufruct may be created by deed, by testamentary grant or it may be created by law, as with the right of parents over the property of their children while they are minors. Usufruct may be granted over movable (*móveis*) or immovable (*imóveis*) property. Unlike a lessee, the usufructuary takes and accepts the thing as he finds it, but is obliged to return the subject matter as he found it originally or to provide equivalent value. Although, if the property wears out through normal use, as with most goods, the usufructuary is not responsible for such degradation. The grantor or bare-owner (*nu proprietário*), is responsible primarily for major repairs and the usufructuary for maintenance, but not for deterioration due to wear and tear (*vetustez*) or damage caused by “*força mayor*”.

Cessation of Tenancy Rights

A usufruct may come to an end:

- a) at the death of the grantee;
- b) a set period of limitation;
- c) by renunciation, merger or subrogation.



5. Lump Sum Pension Plan

Pensions and Portugal

While most people believe that they must contribute regularly throughout their working careers to a pension fund in order to qualify for pension income, many do not realise that such a qualifying plan can be created Offshore on a lump-sum basis. In addition, because the law does not stipulate age as a prerequisite, a pension can be set up and drawn years or even decades before normal retirement age. Therefore, for those who lack or need a private pension plan, this can be created at will. And unlike annuities or conventional onshore pension plans, where income is provided but capital forfeited upon death, the capital base can remain intact and passed on to heirs as part of one's estate.

Pension Set Up

First, the earmarked capital funds accumulate within a Portuguese Nominee Company. The second stage is the transfer of capital assets of the company to a Pension Fund. This Fund will be in the name of the Company and will continue to figure within the Company's accounts. The shareholders are to be the beneficiaries of the Pension Fund, until such time that they renounce this role. If this were to occur, the Company directors could subsequently instruct that the Pension Fund to be dissolved and encashed. The Company could then choose to re-invest the asset in another form if so desired.

It is important to note that the shareholders are not employees of the Company nor is the benefit of the Pension Fund a compensation for past services. Rather, given the social purpose of the Company, they are the sole legitimate beneficiaries of the structure. As individuals, they will be taxed squarely within Portuguese IRS legislation since both are tax resident in Portugal.

As with any capital-to-capital transfer, this act does not constitute a chargeable event to either the Company, as it represents no more than a shift from one entry of assets in the balance sheet for another, nor to its shareholders in accordance with the definition of taxable income under article 5° of the CIRS.

The choice of a Pension Fund should be based on the following criteria:

- a) *An international plan compliant with Portuguese pension legislation;*
- b) *Retention of capital and potential for capital growth;*
- c) *Potential for stable yet flexible income;*
- d) *A vehicle compatible with estate planning objectives.*

Features and Benefits

- Complete independence and control to meet your individual retirement needs
- Choice of single or regular contributions
- Variety of assets can be held in the scheme
- Tax-free growth
- Choice of currency
- Access to a wide range of investments
- Access to a professional Investment management team
- Freedom to appoint your own discretionary investment manager
- Withdraw funds when required
- Retire when it suits you
- Efficient succession planning - future generations can decide whether to continue receiving income or distribute assets

Withdrawals

The final stage will be the eventual pension withdrawals. Although the Plan is designed to provide a regular flow of income, you retain control of how much income is taken, and could elect any combination of the following:

- regular income
- loans from the scheme
- ad-hoc withdrawals
- the option to encash, at any time

Taxation

As tax residents of Portugal, the shareholders will be subject to “*IRS*” individual income tax assessment. Since these pension disbursements will be a mixture of both original capital invested and subsequent growth from the underlying investments, we must refer to the rules under article 54° of the CIRS to determine what will be the taxable portion of their pensions. Under the recently re-enforced rules of current legislation, the shareholder/pensioners/taxpayers will be allowed to exclude from taxation 85% of pensions. The remaining 15% will be their final taxable income. To illustrate the final impact of these rules, if each shareholder were to draw a pension of €100,000 each - a total of €200,000 for the couple - the gross tax before personal tax credits would be approximately €2,000 or 1% of gross income received. Without application of these rules, assessment on the full pension amounts would be almost €65,000.

Under the rules of the scheme, disbursements may be flexible. In addition, the shareholders’ heirs can also be the eventual beneficiaries of the Trust for estate planning purposes.

By applying mainstream Portuguese pension legislation, a relatively simple, flexible and tax-efficient structure can be achieved to meet the needs of the shareholders for the foreseeable future.

FREQUENTLY ASKED QUESTIONS
from
*euro***FINESCO**



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



6. Nominees Companies for Investment Portfolios

Advantages of a Nominee Company for Portfolio Investment

A Portuguese Civil Company may be a suitable vehicle for portfolio investment and estate planning. For investors with an investment portfolio, the Portuguese Nominee Company ("PNC") provides an excellent alternative to the typical tax-exempt vehicles, since it is an effective way to diversify assets yet domicile the structure in Portugal.

The main advantages of using a PNC with a portfolio investment account can be summarized as follows:

- Tax transparent in Portugal (no double taxation);
- As a wholly domestic structure, succession can take advantage of the full exemption afforded to immediate family members under Portuguese rules.
- Only *proforma* reporting requirements in Portugal;
- Portugal is an integral member of the European Union;
- Advantageous Estate Planning potential.

Legal and tax status

A PNC is a see-through entity for Portuguese legal and tax purposes. If structured properly, the PNC should be tax-efficient in Portugal. Most importantly, as a domiciled corporate entity in Portugal owned by Residents of Portugal, the structure falls entirely within Portuguese sovereign rules, despite the potential international diversification of the assets held therein. In this way, foreign assets can be held to the benefit of the Portuguese tax-resident owners and succession will fall exclusively within the bounds of domestic legislation.

Estate Planning

The PNC is an excellent vehicle for estate planning purposes. For example, parents who wish to leave (part of) their investment portfolio to their children or other family members, can already transfer these assets to those persons with the understanding that the assets are to be

contributed to a PNC. The parents would typically also make a (small) contribution, thereby also becoming partners in the PNC. In the deed of incorporation, it is stipulated that all the assets of the PNC are managed by a bank, professional and/or by a specific partner (usually the parents). In this way, the parents can keep control over the assets of the PNC. The children or other family members, as well as the parents, may be entitled to the annual profits on the assets. Upon the passing of the parents, the joint heirs shall substitute the deceased partner, all in accordance with the inheritance rules of their home country.

Formation

A PNC is formed by private or notarial deed, executed by at least two partners. The private deed of incorporation does not need to be filed with a public authority.

The Partners

There should be at least two partners in a PNC, all of whom should be entitled to the profits of the PNC. The partners should be individuals or non-commercial entities like trusts or foundations in order to ensure the fiscal transparency of the PNC in Portugal. All partners have to contribute a certain amount of capital to the PNC. There is no minimum capital requirement. The partners of a PNC with portfolio holding activities are in equal parts liable for the debts of the PNC.

INVESTMENT OPTIONS

Administration

It is important to have professional administrators for the PNC. In addition to meeting formal compliance obligations, they are the only individuals that are registered with *Finanças* and the National Company Registry. The powers of the Administrators are limited in the Company Statutes to exclusively administrative responsibilities and do not represent a potential loss of control of the partners.

Filing requirements

Under the Fiscal Transparency Regime, taxable events are charged directly to the shareholders. As a tax exempt entity, annual accounts of the PNC are normally *pro forma* in nature. No corporate registration need to be filed and there is also no registration for the partners of the PNC with the National Company Registry or with *Finanças*.



7. Domiciliary Services

At **euroFINESCO**, we recognize that each owner of a Portuguese Nominee Company has individualized requirements; no two situations are identical. As Company Administrators, we are qualified & prepared to meet compulsory company compliance commitments. Our services also include:

- Resourcing accurate and current information in Portugal to Shareholders regarding Company obligations as well as relevant legislation;
- Clarification of procedures and interpretations by *Finanças*;
- Communications liaison between *Finanças* and the Company;
- Reporting to Shareholders about Company status in Portugal;
- Acting as Company Administration,

Professional Services

Using qualified professionals such as **euroFINESCO** as your Company Administrators, you can count on the following quality services:

- 1) **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 Company Administrator is an absolute prerequisite.
- 2) **Statutory Fiscal Requirements for Property Owners**
Meeting tax obligations is a matter of Law. At **euroFINESCO**, we will make sure you are fully compliant while helping you to pay the legal minimum. We stand behind our work and will defend you at no extra cost in case of an audit.
- 3) **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. We can provide you with the most accurate, up-to-date answers to your questions.

When changes occur in legislation that may impact your situation, we will keep you abreast of current requirements and the steps that you need to take to stay compliant.

- 4) **Liaison between *Finanças* and Property Owners:** We will represent you and defend you and your interests as we have for others in Portugal since 1991. We have broad experience as well as an excellent rapport with local, regional and national *Finanças* offices to help sort out any problems that may arise.
- 5) **Personalised Service:** As a diversified *Expatriate Service Company*, we have a dedicated Nominee Company Administration Department, staffed by competent, knowledgeable professionals who are specialised in meeting your needs. Personalised service is one of our principal goals.
- 6) **Payment Facility:** Included in your annual fee is a Payment Facility. Through deposits to your *personal client account*, we can pay Rates or Income Tax demands on a timely basis at no extra charge, avoiding additional costs and delays that could eventually lead to fines and late interest payments.
- 7) **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 language 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 taking maximum advantage of the opportunities that Portugal presents.



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:

Pensions

- Each pensioner will be entitled to a pension allowance of over €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 5% 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.



euroFINESCO s.a.

HEADQUARTERS

Rua do Sol, 4
8200-448 GUIA (Algarve)
tel: +351 289 561 333
fax: +351 289 562 061

Madeira Branch

Rua do Aljube, 61, 2º Dtº
9000-067 FUNCHAL (Sé)
tel: +351 291 221095
fax: +351 291 221103

Lisbon Branch

Rua A.M. Cardoso, 15, 4ºD
1200-273 LISBOA (Chiado)
tel: +351 21 342 4210
fax: +351 21 342 4212

Internet

e-mail: info@eurofinesco.com
www.eurofinesco.com
Portugal
mobile: +351 96 910 2813

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) Moving 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*
 - Extracts from *Relocating to Portugal - Useful Information*
 - 23) Acquiring Portuguese Citizenship
 - 24) Visas and Legal Framework
 - 25) Your Rights to Health Care
 - 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