

MARRIAGE VS COHABITATION: Portuguese Tax Implications



- LEGAL FRAMEWORK - PT Tax Implications**
Cohabiting couples have equal treatment to married couples. Singles are taxed separately.
- AS A COUPLE: Separation**
“IRS”: loss of eligibility to “marriage coefficient” & possible loss of other tax credits.
- AS A COUPLE: Financial Support**
20% Tax credit for court-ordered *Pensão de Alimentos* in 2011, reducing to 10% in 2012.
- AS A COUPLE: Housing**
Tax credits available for rent or mortgage on principal residence with an upper limit of €591.
- AS A COUPLE: Division of Assets**
Gifts are assessed Stamp Duty of 10% when the recipient is not an immediate family member.
- FAMILY MATTERS: Parental Responsibility**
Custody (and tax credits) may be shared.
- FAMILY MATTERS: Adoption**
In “IRS” declarations, cohabiting & married couples have identical credits.
- FAMILY MATTERS: Visitation Rights**
PT Tax Implications - n.a.
- FAMILY MATTERS: Reproduction**
Medical expenses are supported by Social Security, including cost of abortion, contraceptives, etc.
- SUCCESSION PROBLEMS: Banking**
Any inheritance transfer is subject to 10% Stamp Duty.
- SUCCESSION PROBLEMS: Intestacy**
Succession of a cohabiting partner is subject to Stamp Duty of 10% on any transfer to the survivor.
- SUCCESSION PROBLEMS: Survivor’s Pension**
Unmarried individuals pay 10% Stamp Duty on the inheritance based on patrimonial value.



Elements of a “Title Search” when buying Property in Portugal



In some countries, when purchasing property, a “Title Search” is the norm or even mandatory by law. In Portugal, all too often, the accompanying attorney focuses only on the new paperwork - always in abundance in Portugal - rather than seeking out any statutory problems with the property.

Closing Notes

- Income from Offshore Capital Tax Rate
- “IRS” Tax Rebate for Albufeira Residents
- Fines for Tax Offenses Rise in 2012
- Offshore “IMI” rates jump again
- Increasing Rates of “IMI”
- PT Bank Deposits guaranteed to €100,000



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Important Dates: “IRS” - round 2 - paper declaration 01-30 April
“IRS” - round 1 - online declaration 01-30 April

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1. LEGAL FRAMEWORK

UK: *Common Law Marriage*

People often refer to couples who live together as "common law" husbands and wives. There is, in fact, no such legal status in the UK although it does the US as well as parts of Canada & Australia. UK law describes such domestic partnerships as "cohabitation".

PT: "*União de Facto*"

Cohabitation is legal status that recognises the union of two people without the need of a civil marriage. (*Lei 7/2001, de 11/05; Lei 23/2010 de 30/08*)

PT Tax Implications : Under the "IRS" tax code, cohabiting couples have equal treatment to married couples. Singles are taxed independently.

2. AS A COUPLE: *Separation*

UK: A cohabiting couple can separate informally without court intervention, whereas a married couple needs to go to court to end the marriage formally. In both cases, the court has power to make orders relating to the care of the children.

PT: Cohabiting couples can separate informally under their own volition. Married couples can divorce by mutual consent declared in front of a Notary.

PT Tax Implications: "IRS": loss of eligibility to the "*marriage coefficient*" and possible loss of other tax credits.

3. AS A COUPLE: *Financial Support*

UK: *Alimony* - Financial support of cohabiting partners is not a legal duty, whereas each married partner has a duty to support the other. If a marriage splits, there can be a fair sharing of the assets. If cohabitation ends, no obligation exists.

PT: "*Pensão de Alimentos*" Financial support of a cohabiting partner is not required. Married partners may have a legal duty to support the other, even after a split. No maintenance obligations for former partner or children.

PT Tax Implications: 20% Tax credit for court-ordered *Pensão de Alimentos*.

4. AS A COUPLE: *Housing*

UK: *Tenancy Rights* - The cohabiting partner of a tenant does not have the right to stay in the accommodation if the tenant asks him/her to leave. In a marriage, both partners have the right to live in the matrimonial home, no matter whose name the tenancy agreement is in. The situation is identical for a rented home.

PT: A survivor has the right to stay in the home for 5 years or a period equal to the duration of the union following the death of the partner; In a sale, the survivor has the right of *first refusal*; In case of separation, rental contracts can be transferred to the former partner.

PT Tax Implications: Tax credit for rent or mortgage on principal residence with an upper limit of €591.

5. AS A COUPLE: *Division of Assets*

UK: If no agreement exists, an ex can walk away with the savings and possessions that he/she built up out of his/her own money. Where bought together but each contributed different amounts, ownership is proportional.

PT: For cohabiting couples in Portugal, no formal rights exist to divide the assets either after a split or upon death of one of the partners. Where bought together, ownership is proportional.

PT Tax Implications: Gratuitous transfers (gifts) assessed Stamp Duty of 10% when not next-of-kin.

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6. **FAMILY MATTERS:** *Parental Responsibility*

UK: All the rights, duties and obligations to do with children rest with the unmarried mother unless a) she has registered the birth with the child's father, b) they have a formal agreement or c) if the father has obtained a court order. In marriage, the mother is awarded parental responsibility automatically and the father gets it because he is married to the mother. If the couple is unmarried, the mother gets it automatically but the father has to acquire it.

PT: There is a presumption of fatherhood when, during the legal period of conception, there existed a cohabitational relationship. In cases of divorce or separation, parental custody is defined by court order or by decision of the Civil Registrar.

PT Tax Implications: No tax credits for education expenses unless custody is retained after separation.



7. **FAMILY MATTERS:** *Adoption*

UK: Cohabiting couples cannot adopt a child; one partner must apply as *single*.

PT: Cohabiting heterosexual couples have the same adoption rights as married couples. However, gay couples cannot adopt.

PT Tax Implications: In “IRS” tax declarations, cohabiting & married couples have identical tax credits. “IRS” personal tax credit for dependent children under the age of 3 is double.



8. **FAMILY MATTERS:** *Visitation Rights*

UK: Cohabiting couples do not enjoy the same rights as civilly married couples to visit a partner in hospital or in prison.

PT: Cohabiting couples have the same rights as married couples to visit a partner in hospital or in prison.

PT Tax Implications - na



9. **FAMILY MATTERS:** *Reproduction*

UK: Decisions on sterilisation, abortion and even fitting of a contraceptive coil can be made without one cohabiting partner having to ask the other. In marriage, although consent is not legally required, a clinic may ask for it.

PT: Legal consent of a partner is not required for the issuing of contraception. Any mother can voluntarily interrupt pregnancy within the 10 weeks after conception.

PT Tax Implications: Any medical expenses are supported by Social Security, including cost of abortion, contraceptives, etc.



MARRIAGE VS COHABITING: Portuguese Tax Implications**10. SUCCESSION PROBLEMS: *Banking***

UK: In banking, if a cohabiting partner dies, any money held in the deceased person's account will become the property of the estate and cannot be used until the estate is settled. In marriage, a bank may allow the remaining partner to withdraw the balance.

PT: Bank accounts are frozen upon the death of one of the partners and cannot be accessed until the estate is settled.

PT Tax Implications: Any inheritance is subject to 10% Stamp Duty with the exception of next of kin which constitutes a tax free transfer.

11. SUCCESSION PROBLEMS: *Intestacy*

UK: A surviving spouse automatically inherits the estate. Without a will, the surviving partner in a cohabiting partnership will not inherit anything unless the couple owned property jointly.

PT: Only family members have rights to intestate succession. Cohabiting partners can only be looked after in a Will.

PT Tax Implications - Succession of a cohabiting partner is subject to Stamp Duty of 10% on any transfer to the survivor.

12. SUCCESSION PROBLEMS: *Survivor's Pension*

UK: *National Insurance Pension* - A widow's or widower's pension cannot be claimed by a cohabiting partner. You will not get any state bereavement benefit or a state pension based on a percentage of your ex's national insurance contributions, even if you had given up work to look after the kids and depended on your partner's income.

PT: "*Pensão de Sobrevivência*" - The survivor of a Cohabiting Couple is entitled to a Social Security survivor's pension upon the death of the partner.

PT Tax Implications: If one of the partners receives alimony, death benefits or similar financial support related to a prior marriage, subsequent entering into a cohabiting bond does not impact any preexisting rights. However, if the partners were to marry, the benefits cease.

13. SUCCESSION PROBLEMS: *Inheritance Tax*

UK: If you have made a will and the estate that you inherit is worth more than £325,000 (for 2011-2012), you will have to pay inheritance tax.

PT: In 2004, Portugal abolished Inheritance Tax. Next-of-kin are tax-exempt on gifts and bequests. Stamp Duty of 10% is assessed on all other heirs.

PT Tax Implications: Unmarried individuals pay 10% Stamp Duty on the inheritance based on patrimonial value.

Elements of a “Title Search” when buying Property in Portugal

In some countries, when purchasing property, a “Title Search” is the norm or even mandatory by law. Without a doubt, this investigation should be the principal contribution of the legal advisor guiding the process of acquisition. Regrettably, this does not always prove to be the case. Too often, the accompanying attorney focuses only on the new paperwork - always in abundance in Portugal - rather than seeking out any bureaucratic “*skeletons in the closet*”. At the end of the day, you want to be sure that you are getting what you expect, not a *pandora’s box* of nasty surprises.

What to look for

Before concluding the Promissory Contract (*Buy-Sell Agreement*), it is essential to dig out the true situation of the property:

At the Land Registry, (“*Conservatória do Registo Predial*”), check to ensure that:

- The Seller is truly the owner of the property, i.e. if the property is registered in his name;
- Any charges or encumbrances levied on the property, such as tenancy rights, habitation rights, surface rights, servitude, mortgages, liens, foreclosures, seizures, listings or judicial proceedings;
- Any discrepancies in recorded areas between official registrations in different government offices (Land Registry / Town Council / Tax Office);
- If the building is already set up as a condominium (“*horizontal property*”), or if there are already prescribed units.

At the Town Council (“*Câmara Municipal*”) where the property is situated, find out:

- ★ If the property has a Habitation License issued for residential purposes;
- ★ Verify that all the supplementary elements of the Property are duly registered and approved, such as additions, swimming pool, garage, outbuildings, etc.
- ★ If you plan to build, make sure the land has permission for subdivision and/or construction and what characteristics and area of housing have been authorised.

At the local Tax Office (“*Repartição de Finanças*”), verify:

- If the Owner has any debts to the State (even if none exist on the premises, the current owner may be under prosecution in connection with other tax debts);
- If the property is vacant, ensure that there are no heirs with any rights to the property (such as first refusal);
- current amount of “*VPT*” (Rateable Value) & when this appraisal was last performed;
- eligibility for exemption from Council Tax (“*IMP*”) and necessary procedures to claim exemption;
- if not entitled to exemption, what will be a) the new Rateable Value and b) the new Council Rates (“*IMP*”) that will be due after the mandatory fiscal reappraisal of the property upon final conveyance;
- If purchasing a used property, check to ensure that all taxes obligations are current.

Do your homework

Proper research at the beginning can avoid potential nightmares later on. Don’t just assume that someone else is handling things for you. While your Lawyer and Estate Agent are the ones on the ground who are best positioned to get the job done, there is no substitute for informed buyers who are diligently asking the right questions and looking after their own interests.



Closing Notes

OFFSHORE TAX RATE

Income from Capital, paid or made available to residents in Portugal, payable by Offshores will be subject to taxation at the rate of 30%, either by withholding or by special tax as of 01 January.

Also subject to withholding tax at rate of 30% is income from capital paid or made available to the entities referred to above by tax residents in Portugal.

IRS TAX REBATE FOR ALBUFEIRA RESIDENTS

Your IRS bill does not only depend on the income profile of your household and expenses that each family member has. It can also hinge on the municipality where you live. Since 2008, local councils gained the right to decide to keep or refund up to 5% of IRS revenues of resident taxpayers. The final discount is calculated directly by Finanças and is already included in your IRS demand.

Most of the municipalities that will trigger this tax rebate in 2011 are smaller, less populous ones scattered throughout mainland Portugal. Out of 51 municipalities offering refunds, only 2 are in the Algarve: Albufeira and Alcoutim (each offering the maximum 5%) and none in Madeira or the Azores.

FINES FOR TAX OFFENSES RISE IN 2012

Penalties for all fiscal infractions have increased recently in the current State Budget in 2012. For example, failure to present appropriate document to accompany a tax declaration sees the minimum fine jump from €250 to €350 and maximum penalty from €50,000 to €75,000.

OFFSHORE “IMI” HIKE

Buildings owned by entities that are domiciled in black-listed tax havens will suffer a Rates (“IMI”) increase to 7.5% (previously the rate was 5%) in 2012.

INCREASING RATES OF “IMI”

The minimum and maximum rates applicable to the “IMI” urban buildings have increased with the entry into force of the State Budget for 2012 (OE 2012). The rates for “IMI” are:

- Urban property evaluated under the former system : 0.5% to 0.8% (previously were between 0.4% and 0.7%)
- Urban property assessed under the CIMI: 0.3% to 0.5% (previously were between 0.2% and 0.4%).

PORTUGUESE BANK DEPOSITS GUARANTEED TO €100,000

The Deposit Guarantee Fund (*Fundo de Garantia de Depósitos*) has once again set €100,000 as the level of guarantee for bank deposits for 2012.

