



PORTUGUESE ASSESSMENT OF TRUSTS

Portuguese law views a trust as a contract. All transactions involving trusts are deemed to be made with the trustees – the legal owners of the trust’s assets – rather than with the entitled beneficiaries under the terms of the trust. Beneficial interest is not a right formally recognised under Portuguese legislation.

Background

Historically, transfers made to the trustees or of distributions made by the trustees were not subject to income tax in Portugal. Income tax implies a certain action (work, investment, consideration) on the part of the recipient. Nevertheless, Portuguese law did tax certain gratuitous transfers (gifts) under the Stamp Duty Code. This assessment could apply to contributions made by a Portuguese settlor to a trust, where the trust is considered a non-resident corporate entity, and the assets being transferred were deemed to be located in Portugal. These circumstances were the exception rather than the rule.

Changes in legislation

In the 2015 Budget, Portugal formally recognised Trusts in mainstream legislation for the first time. In the new statutes, Trusts are defined as *bespoke fiduciary structures* and are now liable to taxation. Public Trusts, such as pension funds, are not affected by the changes. As defined in the new rules, three forms of taxation may now be levied: a flat 28% tax on distributions from a Trust; Capital Gains Tax when winding up a Trust; and Stamp Duty on gifts distributed from a Trust. Whenever a trust is deemed to be a bespoke fiduciary structure (a private trust), transfers made by trustees to a Portuguese resident beneficiary are considered to be a chargeable event, assessed as follows:



1. Distributions characterised as investment income from a trust paid to a Portuguese resident beneficiary are taxed under the Individual Income Tax Code at the current rate of 28%. Income paid by an entity resident in a black-listed jurisdiction pays 35% rather than the standard rate;
2. Distributions on the winding-up of the trust will be:
 - a. Characterised as Capital Gains if the beneficiary, being resident in Portugal, is the settlor of the trust, to be taxed under CIRS at the current rate of 28%. Nevertheless, no Capital gains Tax is due upon winding up a trust when the Beneficiary is different from the Settlor;
 - b. Qualifying as a Gift if the beneficiary, being resident in Portugal, is not the settlor of the trust and is taxed under the Stamp Duty Code at a general rate of 10% (only if the income, either cash or assets, is to be deemed located in Portugal).
 - c. A beneficiary who is related to the settlor (spouse, ascendant or descendant) may qualify for an exemption from this tax.

Following the changes to the taxation of trusts, the question arises whether the accountable entity should be deemed to be the trustee or the underlying source of the income. In other words, should the trust be a transparent or an opaque structure? In the absence of statutory clarification, the accountable entity would assumed to be the trustees who make remittances to the beneficiary.