



INHERITANCE LAW IN PORTUGAL HOW IT WORKS

Thinking about inheritance and to whom we are going to leave our assets may not be our main priority, especially when we still have many years to live.

But, if you are already living in Portugal or if you are thinking of moving, it is important to understand how the law of succession works and how this may affect the decisions you have to make.

Imagine that you keep a property in another country and some accounts there, but in the meantime, you bought a house in Portugal and came to live here, in the list of assets, after death, all movable and immovable assets should be listed, including financial products and even debts whether in Portugal or in the other country.

If you are not a Portuguese citizen, it is important to understand which legislation applies.

Under the European Regulation applicable to this topic, the competence of succession should be attributed to the State of the deceased's last habitual residence or, if the deceased had made that choice, to the State of his nationality.

When Portuguese law is the law applicable to the succession, it is important to emphasize that there are mandatory rules, to protect the heirs, which cannot be set aside.

**IN CASE YOU ARE LIVING IN
PORTUGAL, PORTUGUESE LAW
APPLIES.**

**THAT IS, IF THE HABITUAL
RESIDENCE AT THE TIME OF
DEATH IS IN PORTUGAL,
NATIONAL LAW APPLIES, EVEN
WHEN THE ESTATE INCLUDES
ASSETS IN PORTUGAL AND IN
OTHER COUNTRIES.**



INHERITANCE LAW IN PORTUGAL HOW IT WORKS

WHAT TYPES OF INHERITANCES ARE THERE?

The Law of Succession in Portugal provides for two types of succession:

- Legal succession
- Voluntary succession, which is made through a will.

When there is no will, the assets are divided among the children, spouses, and parents - also called legitimate heirs in the Civil Code.

If you want to decide who gets what, you must leave this in a will or through a contract.

If there is no Will, then after death you have to make the “Habilitação de Herdeiros” i.e., the habilitation of the heirs.

HABILITAÇÃO DE HERDEIROS

- IN THE FRONT LINE FOR INHERITING PROPERTY ARE THE SPOUSE AND CHILDREN.
- IF THERE ARE NO DESCENDANTS AND YOU'RE NOT MARRIED, THEN IT IS THE PARENTS WHO ASSUME THE BENEFIT OF THE INHERITANCE.
- IF THERE ARE NO MORE LIVING ASCENDANTS, THE NEXT STEP IS TO LOOK FOR THE SIBLINGS, UNCLES, COUSINS, OR NEPHEWS AND NIECES, AT A RELATIONSHIP LEVEL THAT CAN GO UP TO THE FOURTH DEGREE.
- IF THERE ARE NO LEGITIMATE HEIRS, THE ESTATE GOES TO THE STATE.



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IF IN YOUR WILL YOU DON'T WANT TO LEAVE ANYTHING TO YOUR CHILDREN?

Even though you can give part of your estate to whomever you want, even if it is not your family, Portuguese inheritance law does not allow you to distribute your assets as you wish.

In fact, you can only dispose of **1/3 of the inheritance to leave to whomever you wish, by will** - this is what is called the available share.

The other 2/3 corresponds to the unavailable (or legitimate) share), and **must be divided among the spouse, descendants and ascendants**. These relatives are called legitimate heirs in the Civil Code, since they are always entitled to a share of the estate, regardless of the testator's will.

THE AVAILABLE AND UNAVAILABLE SHARES VARY DEPENDING ON THE NUMBER OF HEIRS AND THEIR NATURE. FOR EXAMPLE:

- IF THERE ARE NO DESCENDANTS OR ASCENDANTS, THE SPOUSE'S LEGITIMATE SHARE CORRESPONDS TO HALF OF THE INHERITANCE.
- IF THERE IS NO SPOUSE, THE CHILDREN'S RIGHTFUL SHARES CORRESPOND TO HALF.
- IF THERE IS NO SPOUSE OR CHILDREN, THE ASCENDANTS SHARES CORRESPOND TO HALF OR 1/3 OF THE INHERITANCE, DEPENDING ON WHETHER THEY ARE PARENTS OR GRANDPARENTS.

TO CALCULATE THE UNAVAILABLE SHARE, POINTS SUCH AS THE VALUE OF THE ASSETS EXISTING IN THE ESTATE AT THE DATE OF DEATH, DONATIONS MADE DURING LIFE TO DESCENDANTS WHO ARE HEIRS AND WHO, THEREFORE, MUST RETURN THE ASSETS TO THE ESTATE, AS WELL AS THE DEBTS OF THE ESTATE, MUST BE CONSIDERED.

ALSO, NOTE THAT IF THE AUTHOR OF THE SUCCESSION IS IN DIVORCE PROCEEDINGS, AT THE TIME OF DEATH, THE SPOUSE IS NOT CALLED TO THE INHERITANCE.



INHERITANCE LAW IN PORTUGAL

TAXES - HOW IT WORKS

INHERITANCE TAXES IN PORTUGAL

In general, and abstract terms, the event "death" may constitute a taxable event, since it may imply a transfer of assets between taxable persons.

It is common to refer that Portugal does not tax inheritances, as there is no inheritance tax, using this argument as an element of attractiveness of the national legal-tax system and that differentiates it from other systems (mainly European).

This does not mean, however, that taxpayers do not have to comply with tax obligations, including declarations, triggered by the death of their relatives, or even, when sharing the inheritance, pay taxes, specifically Stamp Duty, Real Estate Transfer Tax (IMT) and even Personal Income Tax (IRS).

STAMP DUTY

LEVIED ON ALL ACTS, CONTRACTS, DOCUMENTS, TITLES, PAPERS AND OTHER LEGAL FACTS OR SITUATIONS SPECIFIED IN THE GENERAL TABLE OF THIS TAX, INCLUDING GRATUITOUS TRANSFERS OF ASSETS, BETWEEN ACQUISITIONS BY DONATION OR BY INHERITANCE.

HOWEVER, STAMP DUTY IS NOT ALWAYS DUE SINCE THE LAW PROVIDES RELEVANT EXEMPTIONS.



Transfers occurring between spouses or unmarried partners, descendants and ascendants are exempt from payment of this tax - i.e., in the case of succession by death, transfers of assets to the legitimate heirs are exempt from payment of this tax.



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TAXES - HOW IT WORKS

INHERITANCE TAXES IN PORTUGAL

However, the fact that the legislator has created this tax exemption does not relieve the taxpayer from fulfilling its reporting obligations. It is mandatory to complete the Stamp Duty return, declaring the transfer of assets that were part of the inheritance of the author of the succession, as well as reporting the death to the administrative and tax authorities.

The tax liability arises when the succession is opened, and the reporting obligation regarding the fact of death must be completed by the third month following that in which the obligation arose (i.e., after the death of the person whose estate is being administered).

On the other hand, if there is real estate in the inheritance, IMT may also be charged on the excess of the acquirer's share or on the sale of the inheritance or of the hereditary portion.

It should also be noted that, in the event of payment of tournaments, whoever receives them may also realize a capital gain subject to IRS and must at the same time comply with all the underlying payment and reporting obligations.

IT IS IMPORTANT TO NOTE THAT, IN CASE THE UNDIVIDED ESTATE CONTINUES TO GENERATE INCOME, IT IS MANDATORY THAT THIS INCOME CONTINUES TO BE DECLARED, EITHER BY THE HEAD OF THE COUPLE OR BY THE HEIRS THEMSELVES, SINCE SUCH INCOME DOES NOT CEASE TO BE SUBJECT TO IRS TAXATION.

PORTUGUESE LEGAL-TAX SYSTEM DOES NOT CONTEMPLATE THE EXISTENCE OF AN INHERITANCE TAX, I.E., A TAX APPLICABLE TO THE TRANSMISSION OF ASSETS FROM THE SPHERE OF THE DECEASED PERSON TO THE SPHERE OF HIS HEIRS.

HOWEVER, THE SUCCESSION AND SHARING OF THE INHERITANCE MAY GIVE RISE TO THE PAYMENT OF STAMP DUTY, IMT OR IRS.



INHERITANCE LAW IN PORTUGAL

TAXES - HOW IT WORKS

DIRECT HEIRS ARE FREE OF TAXES?

In Portugal, inheritance law establishes the **payment of stamp duty at a rate of 10% of the patrimonial value of the assets received, located in national territory**. However, not all heirs have to pay this tax.

Exempt from this payment are spouses or unmarried partners, children, and parents. The remaining beneficiaries of the inheritance, even if they are relatives of the person in question, must pay the tax.

ONCE THE DEATH HAS OCCURRED, WHAT YOU WILL HAVE TO DO IS REQUEST:

I. DEATH STATEMENT. THE FIRST STEP TO TAKE IS TO DECLARE AND REGISTER THE DEATH IN THE CIVIL REGISTRY OFFICE WITHIN 48 HOURS.

II. HABILITATION OF HEIRS. THIS HAPPENS WHEN THERE IS NO WILL. AS A GENERAL RULE, THIS PROCEDURE IS HANDLED BY THE HEAD OF THE COUPLE, I.E. THE OLDEST HEIR. THIS CAN BE DONE IN A NATIONAL NOTARY'S OFFICE OR AT THE INHERITANCE COUNTER.

III. REPORTING TO THE TAX OFFICE. THE FAMILY HAS THREE MONTHS AFTER THE DEATH TO INFORM THE TAX AUTHORITY OF YOUR DEATH. IT IS NECESSARY TO PRESENT THE DEATH CERTIFICATE AND THE CITIZEN CARD OF THE PERSON WHO DIED AND OF THE RESPECTIVE HEIRS.

IV. SHARING OF ASSETS. IF THERE IS AN UNDERSTANDING BETWEEN THE HEIRS, THE DIVISION IS DONE AT THE NOTARY'S OFFICE OR AT THE INHERITANCE OFFICE. WHEN PEOPLE DO NOT AGREE ON THE DIVISION OF PROPERTY, A LITIGATION PROCESS IS INITIATED.



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INHERITANCE LAW IN PORTUGAL TAXES - HOW IT WORKS

TAXATION OF INCOME GENERATED BY UNDIVIDED ESTATES

If the undivided estate (to be shared among the heirs) **continues to generate income subject to taxation, this must be declared** by the head of the couple.

However, there are cases in which the heirs themselves will declare such income in their annual Personal Income Tax returns (**Modelo 3**).

In addition to the undivided estate itself, heirs may also be taxed on other income that the undivided estate continues to generate, until the time of its division and distribution.

IN SUCH CASES, THIS INCOME WILL BE TAXED IN OTHER INCOME CATEGORIES, NAMELY:

- **CATEGORY E (CAPITAL INCOME)** IN CASE, FOR EXAMPLE, INTEREST INCOME CONTINUES TO BE EARNED.
- **CATEGORY F (RENTAL INCOME)** IN CASE THE INHERITANCE CONTINUES TO GENERATE RENTS; AND
- **CATEGORY G (CAPITAL GAINS FROM MOVABLE AND IMMOVABLE PROPERTY).**

IT IS IMPORTANT TO NOTE THAT THE HEIRS MAY LIST EXPENSES AND DEBTS, DEDUCTING FROM THE VALUE OF THE ASSETS TO BE TRANSFERRED THE AMOUNT OF SUCH "ENCUMBRANCES" IN FAVOR OF THE PERSON WHOSE ESTATE IS BEING ADMINISTERED UP TO THE DATE OF THE OPENING OF THE SUCCESSION.



INHERITANCE LAW IN PORTUGAL

STATE COMPETENT - HOW IT WORKS

THE DETERMINATION OF THE STATE COMPETENT TO ADMINISTER THE SUCCESSION

When a succession has no contact with several jurisdictions, it is not at first difficult to determine the applicable national law. However, in the globalized world in which we live, more and more situations, personal, family and property, are plurilocalized.

If a succession has elements of connection with the Portuguese legal system, but also with others, it is necessary to determine whether Portuguese law governs such succession.

Portuguese conflict rules stipulate that the law applicable to the succession of an individual is his personal law, which corresponds to his nationality.

However, there is a European Regulation, directly applicable, so it is important to consider its rules.

REGULATION (EU) NO. 650/2012

According to this Regulation, the habitual residence of an individual has to be assessed by taking into consideration "a close and stable relationship" with the chosen State, in the years before and at the time of death (which may be difficult to ascertain).

Nevertheless, there is the possibility of a prior choice of law to regulate the entire succession - **Will** -, as long as it is the law of the deceased person's nationality at the time the choice is made or at the time of death.

The application of the Regulation may therefore determine that it will be a third State (not a member of the European Union) that will regulate the succession.

After determining and attributing the competence of succession to a State (of the European Union or a third State), it should be the internal law of that State that governs the succession as a whole.



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STATE COMPETENT - HOW IT WORKS

PORTUGUESE SUCCESSION RULES

Portuguese law establishes rules that prevent the disinheritance of direct relatives of the author of the succession. The figures of the unavailable share (or "legitimate share") and the legitimate heirs continue to exist and the rules regarding these matters cannot be set aside.

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Under the Civil Code, the unavailable share ("**legitimate share**") corresponds to the part of the assets that **cannot be disposed of by the heir of the succession**, which will be inherited by the so-called lawful heirs.



Spouse, descendants and ascendants of the deceased, who will receive half of the inheritance if the only surviving heir is the spouse or a child, or 2/3 of the total inheritance in other cases.