



TAXATION OF FIDUCIARY STRUCTURES IN PORTUGAL

Portugal has formally recognised *Trusts* in mainstream legislation. *Trusts* are defined as *fiduciary* structures and are now assessable for tax. Three forms of taxation may be levied as defined in the legislation: 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.

What is a fiduciary structure?

A fiduciary acts on behalf of another. There are many common examples of fiduciary roles in day-to-day life. A parent acts on behalf of a minor child. A guardian stands in for an incapacitated adult; an executor represents the intentions of a deceased person in settling an estate.

A *trust* is a device which creates a fiduciary relationship with respect to *assets*, typically separating the responsibility for management of the assets held in Trust from the beneficial ownership of those assets. In a Trust, the *Settlor* (the person who establishes the Trust) appoints *Trustees* (who administer the assets of the Trust according to the wishes of the Settlor) to the welfare and benefit of the *Beneficiaries* (those who receive the material benefit of the Trust).

Private Trusts

Private Trusts are created to the benefit of one or more ascertainable beneficiaries. They are highly individualised in nature and are subject to the forms of assessment in Portugal as described above. Discretionary Trusts are the most common form of Private Trusts. These are the principal fiduciary structures that are being taxed under current legislation.



Public Trust

A Public Trust represents the interests of a collective group. *Pension Trusts* are designed to manage assets to provide pension benefits to its members. Open pension trusts support at least one pension plan with no restriction on membership while closed pension funds support only pension plans that are limited to certain individuals. Pension funds are public trusts and are not effected by the forms of Portuguese assessment impacting private trusts.

Transformation vs Transfer

The *transformation* of Private Trust into a Public Trust does not in itself constitute a chargeable event. In accordance with Article n°10 of the Portuguese Individual Income tax Code, there must be a *transfer* of ownership or the associated rights in order for an assessment to take place.

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