

PORTUGAL

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Summary

Located in southwestern Europe and bordered by the North Atlantic Ocean and Spain, Portugal is a European parliamentary democracy with approximately 10 million inhabitants. The Portuguese territory covers an area located in the Iberian Peninsula, which constitutes mainland Portugal, as well as Madeira and Azores, two archipelagos in the Atlantic Ocean benefiting from a special administrative autonomy status.

In 1986, Portugal joined the European Economic Community (EEC), which would later become the European Union (EU). Accession to the EU allowed the country to improve and develop its national economy through easier access to foreign markets and structural support from the EU.

In addition to being a founding member of both the North Atlantic Treaty Organization (NATO) and the Organization for Economic Co-operation and Development (OECD), Portugal is also a member of several international organizations.

Legal System

Portugal is headed by a President elected for a five-year term by direct and universal suffrage. Presidential powers include the appointment of the Prime Minister and Members of Government, dissolving the Assembly of the Republic (*Assembleia da República*), vetoing legislation and declaring a State of Siege or a State of Emergency. The Government is headed by a Prime Minister appointed by the President, pursuant to the parliamentary elections, who appoints a Council of Ministers to act as the government and cabinet.

Portugal has a civil law legal system, which relies mainly on the 1976 Constitution, and codified legislation, including the Portuguese Civil Code and Criminal Code. Legislation is enacted by a unicameral Parliament (the Assembly of the Republic), the Government (depending on the underlying subject matter) or the Regional Legislative Assemblies and subsequent promulgated by the President. A Constitutional Court composed of 13 justices performs a review of the legislation enacted by Parliament and promulgated by the President.

Courts are divided into First Instance and Appeal Courts, which may also be competent to rule on certain matters. The Supreme Court is the highest instance of the judicial system.

Visas

The Portuguese immigration legal framework is comprised of several domestic and EU legal instruments, resulting in a complex legal and regulatory system.

Visa requirements and rights of entry, stay and exit of foreign nationals in Portugal depend on which category the applicant falls into:

- Non-EU citizens; or
- EU nationals.

Third Country Citizens

Short Term Visas

Short Term Visas are generally granted to Non-EU foreign nationals for the carrying out of activities which are allowed by Portuguese authorities. This is the case for tourism, business visits, transit as well for accompanying family members holding a temporary visa.

These Visas may be issued for a period of up to one year. However, the total duration of the foreign nationals stay may not, in general, exceed a maximum period of 90 days over each 180-day period, which is calculated from the date of first entry in Portugal. Short Term Visas are ordinarily issued by the relevant Portuguese diplomatic mission with jurisdiction over the foreign national applicant's place of residence or origin.

Long-Term Visas

Employment-Related Residence Visas

EU Blue Card

EU Directive 2009/50/CE introduced a EU-wide¹ immigration mechanism specifically designed for highly skilled Non-EU foreign nationals. This type of visa is commonly known as a EU Blue Card and is a specific type of

¹ Excluding the United Kingdom, the Republic of Ireland and Denmark.

residence permit, and it is not to be confused with any other work visas provided for under the domestic legislation of each individual EU State.

Holders of a EU Blue Card are entitled to reside and conduct highly skilled activities in Portugal. Family regrouping is one of the main advantages of these types of permits.

Non-EU foreign nationals wishing to apply for a EU Blue Card must have:

- an employment agreement or promissory agreement created for at least one year in which the employee's activities outlined in the agreement are of a highly skilled nature. Depending on the activities to be performed, the amount of remuneration established in the employment agreement should correspond to at least one, two or 1.5 times the average gross annual national income in the same occupation;
- valid health insurance, or provide evidence of registration with the National Health Care system;
- registered with the Social Security authority;
- if the profession is not specifically regulated, evidence of the skill required for carrying out the corresponding activities or work in the specific activity sector; and
- if the profession is regulated, to submit evidence of the relevant professional certification.

Additional and specific conditions apply to both the applicant and the hiring entity.

The application should be filed by the applicant or the hiring entity with Portuguese Immigration authorities (*Serviços de Estrangeiros e Fronteiras* – SEF). EU Blue Cards are issued for one year and may be renewed for successive two-year periods.

Residence Visa Issued for Employment Purposes

Non-EU foreign nationals wishing to enter and stay in Portugal for the purposes of employment must request and obtain a specific residence visa.

The issuance of these visas is dependent on the existence of employment opportunities which cannot be filled by:

- Portuguese nationals;
- EU or EEC citizens; or

- nationals of a country which has entered into a bilateral agreement with Portugal.

Residence Visa Issued for Independent or Entrepreneurial Activities

Independent professionals and entrepreneurs of Non-EU countries are eligible to apply for a specific type of residence visa.

Independent professionals are required to meet the following requirements:

- to have a written services agreement or promissory agreement in the liberal professions' sector; and
- to be qualified to develop the underlying independent activity (if applicable).

Entrepreneurs wishing to invest in Portugal must:

- prove that they have performed investment operations; and
- provide evidence of sufficient financial means in Portugal.

Investment Residence Title (Golden Visa)

In a bid to boost foreign investment in the country, the Portuguese immigration legal framework was amended in 2012 to include a privileged immigration regime specifically designed for third-country investors (Golden Visa). The general conditions of this special regime are set forth in Law No. 23/2007 of July 4, 2007 further regulate this matter.

This specific type of visa grants its holders numerous advantages, including the following:

- free movement within the Schengen area, without requiring any additional visa(s). Note that the United Kingdom (UK) is not part of the Schengen area;
- possibility of acquiring a Permanent Residence after five years in accordance with the applicable legal framework;
- possibility of obtaining Portuguese citizenship after six years in accordance with the applicable legal framework; and
- possibility of benefiting from family regrouping.

Despite the above, foreign nationals holding a Golden Visa are subject to the following restrictions:

- the establishment of a residence within the Schengen area is limited to the Portuguese territory; and

- circulation within the Schengen area (excluding Portugal) is limited to 90 days over each 180-day period. Each country may establish different conditions applicable to the entry of foreign nationals.

Only Non-EU foreign nationals are eligible to apply for a Golden Visa. This visa category requires foreign nationals holding equity in a company with registered office or branch or liaison office in Portugal.

General requirements for applying for this type of visa are as follows:

- holding a valid passport;
- absence of any fact which could jeopardize the issuing of a visa, should Portuguese authorities become aware of it;
- being in Portuguese territory;
- having sufficient means of subsistence, as defined in the applicable legal framework;
- having accommodation for the stay;
- being registered with the national Social Security authority (if applicable);
- not having been convicted of a crime punishable with a prison term of more than one year in Portugal;
- not being subject to any entry prohibition in Portuguese territory following expulsion;
- not being identified in the Schengen Information System; and
- not being identified in the information system run by Portuguese immigration authorities.

Additional specific requirements may apply.

Investment Requirements

Not all types of investment fall under the purview of the Golden Visa. Under the applicable legal framework, the following criteria must be met:

- capital transfer of a minimum of EUR 1,000,000 into the Portuguese jurisdiction;
- creation of a minimum of 10 job positions;
- acquisition of a minimum of EUR 500,000 in real estate;
- acquisition of real estate whose construction has been concluded for at least 30 years, located in an urban recovery

area or undertaking construction work of the acquired property with a global amount of EUR 350,000 or more;

- capital transfer of EUR 350,000 or more which is applied in research activities pursued by public or private institutions which undertake scientific research;
- capital transfer of EUR 250,000 or more which is applied in investment or support of artistic production/preservation of national cultural heritage, through public entities, foundations, among other entities which undertake these type of activities;
- capital transfer of EUR 500,000 or more for the acquisition of units in investment funds or venture capital funds focused on capitalization of small and medium-sized enterprises with a feasible capitalization plan.

With exception of the first and last points listed above, the minimum amount/quantitative requirement can be reduced by 20 percent when the investment is undertaken in a low population density areas as characterized by the law.

Lastly, it should be noted that capital transfers performed with a view to completing the above transactions must necessarily come from abroad. National transfers are not accepted for the purposes of applying for a Golden Visa.

Permanent Residence Title

Long-term foreign nationals may be eligible for permanent residency in Portugal. Permanent residence titles have no validity limit, despite having to be renewed every five years.

To be eligible to apply for a permanent residence title, foreign nationals must have held a temporary residence title (for the purposes of employment, investment or entrepreneurial activities) for a minimum of five years prior to filing the application. Migrants must likewise be free of any criminal conviction(s) punished with prison term(s) exceeding one year, including, in case of a criminal conviction on grounds of terrorism, violent or organized criminal behavior, suspended sentences. Additional requirements also apply, such as:

- the obligation to provide evidence of sufficient means of subsistence;
- housing; and
- mastering the Portuguese language.

Family Regrouping

Foreign nationals holding a valid residence title are entitled to family regrouping. Family members of the foreign national residing legally in Portugal, as defined by law, may therefore benefit from certain advantages in regards visa applications.

EU Citizens

Freedom of movement of EU citizens

Pursuant to the applicable EU legal framework, freedom of movement for workers is secured within the EU. No discrimination is based on nationality within the EU Member States with regard to employment, remuneration and other conditions of work and employment.

Subject to limitations justified on grounds of public policy, public security or public health, EU workers have the right to:

- accept an actual employment offer;
- move freely within the territory of Member States for this purpose;
- stay in a EU Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; and
- remain in the territory of a EU Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.

Working in Portugal

EU workers enjoy full freedom of movement rights within EU Member States, including Portugal. As a matter of principle, all EU citizens are entitled to enter, exit, stay and work in a EU country other than that of their citizenship, subject to carrying and presenting valid identification documents (passport or national ID card). For stays not exceeding three months, no additional formalities apply. EU citizens intending to stay for longer periods are nonetheless required to register with local authorities.

Additional formalities may apply depending on the specific provisions in force in each jurisdiction.

Family Regrouping

Foreign nationals who are family members of a EU citizen (as defined by law) established in Portugal, benefit from specific advantages in the context of family regrouping.

Employment and Labor Laws

From an international standpoint, Portugal is a member of the International Labor Organization (ILO) and generally observes the principles contained in Conventions adopted by this organization.

At the national level, the Portuguese employment and labor legal framework is made up of principles and rules contained in the Labor Code, enacted by Law No. 7/2009 of 12 February 2009 (as amended), as well as in ancillary legislation and regulations, all which rest upon a number of fundamental principles and rights provided for under the 1976 Constitution of the Portuguese Republic.

The Portuguese government recently approved Decree-Law No. 254-A/2015 of 31 December 2015, which raised the national minimum monthly wage to EUR 530 as of 1 January 2016.

Income Tax and Social Security Contributions

The Portuguese Tax System has both direct and indirect taxation and includes personal, corporate, consumption and real estate taxes.

The taxation of individuals (Personal Income Tax – IRS) considers different types of income, divided into several different categories of taxable income such as:

- employment income;
- entrepreneurial income;
- capital investment income
- property rental
- capital gains; and
- pensions.

A tax resident should be linked or connected to the national territory on an economic and social scale. The residence principle of taxation legitimizes resident's taxation on their worldwide income.

Pursuant to the Personal Income Tax Code, the general rule is that natural persons remaining in Portugal for a minimum of 183 consecutive or non-sequential days in a given year are deemed to be residents in Portugal for tax purposes.

Tax residency may also be assessed on the following criteria, amongst others:

- Individuals remaining in the country for less than the aforementioned period are likewise considered residents in Portugal for tax purposes, in the event that, on any given day in a fiscal year, they possess housing in the country in such conditions that it may be inferred there is the intention to keep and occupy it as a place of habitual residence; or
- individuals exercising functions abroad at the service of the Portuguese State.

As a rule, income is taxed based on progressive rates.

In relation to Corporate Income Taxation (IRC), per the IRC Code investor's vehicles may be considered taxable persons for corporate income tax purposes as residents, non-residents and permanent establishment.

Workers, Members of Statutory Bodies (MOE) and self-employed entrepreneurs will be subject to Social Security Contributions (SSC), which are levied on their remuneration (actual or contractual). Several forms of remuneration are excluded from SSC's tax base, for instance allowances, supplementary pensions, some transportation expenses, in certain circumstances the profits distributed to workers, amongst other forms of compensation.

The applicable rates vary depending on employees and the company liability. Under the general system the applicable rates are 23.75 percent for the employer and 11 percent for the employee. The responsibility for the contributions of MOEs which are member of management or administration bodies and distributed as follows: the company 23.75 percent and 11 percent the beneficiaries. In the case of independent work performed by self-employed individuals, the general rate is 29.6 percent to be paid by the individuals or five percent by the entity hiring the provision of services.