

## Is Portugal an eldorado for French entrepreneurs?

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The number of candidates seeking business adventure in Portugal may further increase due to the tax measures recently adopted in France relating to business transfer and exit tax.

This enthusiasm must however be anticipated both on the tax and civil levels.

### I - Required tax anticipations

With regard to business transfers, the 2019 Finance Act considerably relaxes the conditions to benefit from a partial exemption on donation and inheritance taxes (the "Dutheil-transmission" scheme).

Despite the fact that Portugal offers attractive fiscal opportunities for taxation on income ("Non-Habitual Resident" status) and on assets (low inheritance tax), France remains eligible to tax its former residents in numerous cases (heirs domiciled in France, assets situated on the French territory), in the absence of an applicable convention between France and Portugal on gift and inheritance taxes.

The current tax situation offers these entrepreneurs the opportunity to anticipate the future transmission of their companies. Anticipating a transmission is however not reserved only for entrepreneurs willing to make a donation, but also for those wishing to secure the patrimonial situation of their family in case of death.

The « Dutheil-transmission » scheme consists in entering into a collective commitment to retain for a minimum period of two years the securities of an eligible company. A transmission of these securities during this collective commitment period allows the application of a transfer tax exemption on 75% of the tax base if certain conditions are met.

The collective commitment should from now on be subscribed by one or several partners and must concern 17% of the financial rights and 34% of the voting rights of the non-listed eligible company. Besides the substantial easing of the tax declaration obligations, the Finance Act facilitates the restructuring of groups of companies without endangering partial exemption which would already be applied to a transmission.

Furthermore, for transferring tax residence outside France as from 1st January 2019, the deadline for rebate of the exit tax applied to unrealised gains has been reduced (two years, or five years for equity holdings amounting to over 2,57 M€ at the time of departure from France).

These flexibilities help to securely structure a professional activity in or from Portugal, while offering the guarantee of an advantageous taxation in France, in the case of a transfer as in many other cases.

It should be noted that the issue about securing tax residence in Portugal remains essentially in the forefront. After transferring the tax residence to Portugal, it is essential to actually have income taxable in this State in order to benefit from and qualify for tax residency in this State within the meaning of the tax convention between France and Portugal.

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## II – Estate management anticipation

Cross-border estate planning must take into account the civilian aspects of the family unit, the first among which rank the matrimonial regime and the succession laws.

Determining the matrimonial regime of a couple married without a marriage contract may turn out to be complex and have serious setbacks. Since the coming into force – on 29th January 2019 – of the EU Regulation on Matrimonial Regimes, applicable both in Portugal and in France, the relevant rules have been unified for the future. For marriages before 29th January 2019, tools are made available to spouses in order to clarify their status, with the assurance of being recognised both in France and in Portugal.

Regarding inheritance law, since the entry into force of the EU Regulation on successions in 2015, instead of the law of the last habitual residence, it is henceforth possible to designate one's civil national law to govern the succession, which is from now on the law applicable, in principle, in the States bound by the Regulation.

And yet, this choice is not neutral:

- The two countries guarantee succession rights to both the spouse and the descendants, but in very different proportions;
- In Portugal, the spouse always benefits from forced heirship, while in France he/she has statutory rights to a minimum share only in the absence of descendants;
- In Portugal, ascendants belong to the category of rightful heirs insofar as there are no descendants, which is not the case in France;
- France makes no distinction between a child fully integrated in the family by full adoption and another one by simple adoption; in Portugal a child integrated by simple adoption can inherit only in exceptional cases.

The choice of the applicable law may thus prove to be crucial depending on the family setup and must not be neglected.