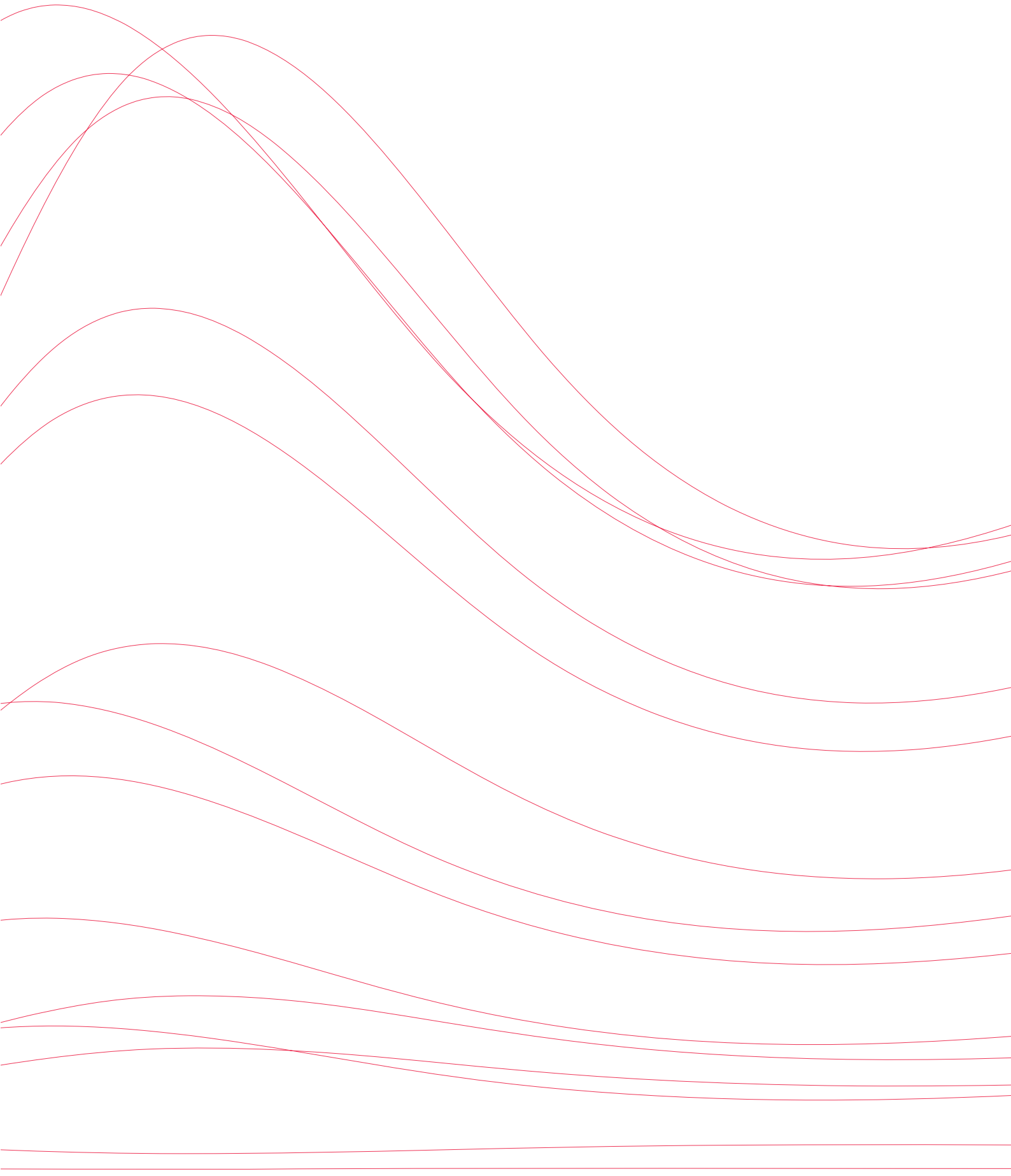




Portugal Investor Guide 2021

THE LEGAL PERSPECTIVE



Contents

INTRODUCTION	04	6.6 Assignments/transfers	12
1. OWNERSHIP OF REAL ESTATE	05	6.7 Subleases	12
1.1 Full ownership	05	6.8 Termination	12
1.2 Surface right, usufruct and right of use	05	6.9 Sale of leased property	12
1.3 Condominium	05	7. TAX	13
1.4 Restrictions on ownership by foreigners	05	7.1 Transfer Tax, Stamp Duty	13
2. ACQUISITION OF OWNERSHIP	06	7.2 Value added Tax	13
2.1 Formal requirements	06	7.3 Other Real Estate Taxes	14
2.2 Registration	06	7.4 Taxation of rental income from Real Estate	14
2.3 Asset deals	06	7.5 Taxation of dividends from a company owning Real Estate	15
2.4 Share deals	07	7.6 Taxation of capital gains on Real Estate	16
2.5 Public auctions	07	7.7 Taxation of capital gains from the disposal of shares Corporate Resident Entities	16
3. OTHER RIGHTS TO PROPERTY	08	7.8 Taxation of Capital Gains From the Disposal of Shares by Non-Residents	16
3.1 Mortgages and charges	08	7.9 Real Estate Funds	17
3.2 Easements	08	7.10 Portuguese Reits	18
3.3 Pre-emption rights	08	8. REAL ESTATE FINANCE	20
3.4 Options	08	8.1 Interest rate risks	20
3.5 Overage	08	8.2 Assets held as security	20
4. ZONING AND PLANNING LAW PERMITS	09	8.3 Further collateral agreements	20
5. ENVIRONMENTAL LIABILITY	10	8.4 Taxation on the creation of security	20
6. LEASES	11	CONTACT	21
6.1 Duration	11	ABOUT DLA PIPER	22
6.2 Rent	11		
6.3 Rent review	11		
6.4 Operating expenses	11		
6.5 Maintenance, repair and reinstatement at end of lease	11		

Introduction

In recent years, Portugal has become an attractive market for investment in real estate. The market has seen a huge growth in volume of transactions during that time, particularly in Lisbon. This has been eased by the golden visa program, which allows citizens of non-EU Member States to apply for a residency permit, subject to certain conditions, one of which is a minimum investment in real estate of EUR500,000, or EUR350,000 in some special cases, and also as a result of Europe wide tax reforms which have placed Portugal in the spotlight for investors aiming to benefit from the tax regime pertaining to non-residents. Additionally, as the economy has improved, national investors have also regained

access to credit, which has in turn enhanced the ability to finance real estate transactions. Furthermore, in 2015 significant changes in the tax treatment of collective investment entities, including Real Estate Investment Funds incorporated either as corporate funds or as contractual funds, came into force and this has served as a further boost to the market.

An additional boost has been provided by the influx of tourists from around the world to both Lisbon and Oporto, which combined with the coming into force of a regime allowing owners to offer short term leases, has created a great opportunity for investors aiming to obtain a significant return on investment.

The stability of the real estate market along with a large inclination among market players to embrace foreign investment has placed Portugal, and particularly Lisbon, as an attractive place in which to invest.

Investors around the world want to have a clear idea of the acquisition process and the relevant tax implications arising in connection with these transactions and ongoing ownership. Accordingly, we have prepared this real estate investment guide to allow investors to assess the regime and to obtain an overview of the legal issues involved with property acquisitions in Portugal. For any further questions, please contact our Lisbon Real Estate Team.



1. Ownership of Real Estate

1.1 Full Ownership

Full ownership consists of a complete and exclusive right to possess, benefit and dispose of a property. However, this may be subject to limitations arising from specific public statutes (including development plans).

A title over a property may be vested in a sole owner or multiple owners and, in the latter case, a co-ownership regime in accordance with the terms of the Civil Code will apply. This regime contains specific rules for property management and contains also rights that will be triggered in the event of disposal, such as pre-emption rights in favour of the other co-owner(s).

In order to create a more than merely contractual right and ensure a title in real estate is binding on third parties, said title in real estate must be registered before the Land Register Office.

1.2 Surface Right,Usufruct and Right of Use

A surface right is defined as the right to build and maintain a building or use and enjoy a building located on or over land which is owned by a third party. The surface right can be established for a limited period or can be granted in perpetuity.

Usufruct is the right to use and enjoy temporarily and in full a third party's property for a certain period or during the beneficiary's lifetime.

If the beneficiary is a legal person it is limited to a period of 30 years. The beneficiary is entitled to use the property as if he /she was the owner.

The right of use is a right to use a property owned by a third party under certain terms and conditions.

In all the above cases, in order to have effect vis-à-vis third parties, registration before the Land Register Office is required.

1.3 Condominium

The incorporation of a condominium is in connection to the submission of the building to the "*strata title regime*" (horizontal property regime), i.e. the building legally divided into several autonomous units.

The submission of a property into this regime must be executed by means of a public deed and typically occur at the same time as the owners approve the condominium regulations. A condominium regulation is only mandatory when there are more than four different owners of the same property.

We advise that the approval of the condominium regulation shall be treated separately from the submission of the building to the horizontal property regime to the extent that in case of an alteration to the condominium regulation, which is connected with the submission of the building to the horizontal property regime, can only be done by means of public deed and approved unanimously by all condominium owners.

The condominium regulation sets forth the terms and conditions for the use and benefit of the common areas and sets out the rules for the management of the property. Additionally, payment regarding the amounts for the maintenance of the property and the respective monthly amount attributable to each owner for items used in common areas shall be agreed. It is always possible to amend and alter the condominium regulations, although depending on the subject matter of any proposed amendment a specific majority or unanimity may be required.

1.4 Restrictions On Ownership By Foreigners

Foreign investors are not subject to any limitations on real estate investment. Portugal has adopted several measures to encourage and attract foreign investment, such as the establishment of a residency permit program (commonly referred to as "Golden Visa") and a more favourable tax regime when compared with other EU countries.

2. Acquisition of Ownership

2.1 Formal Requirements

Since 2008, any agreement for property purchase can be undertaken by private contract. This is subject to legalization of the signatures of both seller and buyer, in accordance with specific statutory requirements. Purchase and sale agreement may be executed by legal representatives on behalf of their clients, subject to compliance of mandatory procedures set forth by the Portuguese Bar. Property purchase may also be executed by notarial deed.

In order to execute a deed or a private contract, the buyer undertakes to provide evidence that all taxes due on the transaction have been duly paid. It is from the responsibility of the seller to provide evidence of compliance with all formalities relating to the transaction, including evidence that all necessary notices were complied with as to any pre-emption rights.

2.2 Registration

Every property is recorded before the Land Registry Office and all details, including a description of all transactions pertaining to the property, since its registration is publicly available. The Land Registry Office also provides a code to have access to this information through an online platform. The Land Registry is accurate and any potential buyer may rely on its content. The land registry certification attests to the current and legal situation of the property.

2.3 Asset Deals

A title to a property may be acquired directly by the buyer from the owner. A straightforward asset deal is the direct purchase by the buyer to the seller. The sale and purchase agreement must clearly state and identify the parties, the identification of the property involved in the transaction, the price, the payment method and all main terms and conditions applicable. Additionally, as mentioned above, the sale and purchase agreement may be executed by means of a private contract (subject to compliance with all formalities for this purpose) or by means of a public deed. Registration is required in order to be enforceable against third parties.

It is also usual for parties to execute a promissory sale and purchase agreement setting forth the agreed terms of the transaction, prior to the deed or private contract signing. This interim agreement is normally used to secure the transaction. It is advisable to promote a provisional registration of the promissory agreement before the Land Registry Office, which will be converted into a definitive registration upon the private contract or public deed signing.

Legal advice should be obtained in connection with the drafting of the abovementioned contracts or for the review of same. Additionally, legal advisors will typically conduct due diligence on behalf of a potential purchaser based on the information disclosed by the seller or on additional information/documents requested for such purpose. The due diligence aims to identify all liens and encumbrances that are registered over the property and their legal status.

Notary fees are determined by each Notarial Office, although a table detailing prices for each service is published regularly. Costs for the execution of a deed are determined by reference to the acquisition price. Registration costs are lower when all procedures are undertaken online as the cost will be EUR250 per property/unit.

Prior to completion of the transaction, the buyer must pay the property transfer tax ("IMT") and stamp duty ("*Imposto do Selo*"). In principle, the transfer of real estate is exempt from paying VAT. IMT rates vary depending on the price or on the value of the property as assessed by the Tax Authority ("VPT"), whichever is higher and the purpose for which the property is acquired subject to a top marginal rate of 8%. An exception to the rate referred above was introduced to discourage the acquisition of properties through offshore vehicles or by entities under the dominium or control (directly or indirectly) of an offshore entity and where this takes place IMT will be levied at a rate of 10% if the buyer is a company established in a country, territory or region whose tax regime is deemed to be less onerous.

Stamp duty is levied on the price or on the value of the property as assessed by the Tax Authority ("VPT"), whichever is higher, at a fixed rate of 0.8%. There are some specific cases where different rates apply. For that purpose, please refer to 7.1 below.

2.4 Share Deals

Property may also be acquired via acquisition of the vehicle registered as its proprietor. Although there are other legal entities which may acquire a property, there are two types of limited liability company which can be used, namely (i) a joint stock company (*sociedade anónima* – S.A.) or (ii) a limited liability company by quotas (*sociedade por quotas* – Lda.).

Where this structure is adopted due diligence includes, in addition to all information on the property, all legal considerations connected to the company and its quota or shares, as applicable. A review of the company accounts and articles of association, as well as all information regarding compliance with and discharge of tax and social security obligations must also be undertaken. In this case, comprehensive information must be collected and/ or provided by the seller as the information contained in the Companies Registry is not exhaustive and not all information requires to be registered (e.g. information on board minutes and employee records, etc.).

Formalities such as pre-emption rights waivers and/ or consent for the transaction must be discharged and dealt prior to signing the sale and purchase agreement. This may be executed either by public deed

or private contract, according to the parties' intention. Parties are also free to agree on a price mechanism for calculation of the assets valuation.

Where a share structure is used, IMT applies to the purchase of an equity position both in a private limited liability company (Lda.) and in a corporation (S.A.) which holds real estate assets located in Portugal if the following requirements are cumulatively met:

- i. The asset value of the company transferred is, directly or indirectly, composed, in more than 50% of real estate assets located in Portugal;
- ii. The real estate assets are not directly allocated to an activity of an agricultural, industrial or commercial nature, unless the activity is of purchase and sale of real estate property; and
- iii. As a result of the acquisition (or other corporate events) one of the shareholders retains at least 75% of the share capital of the target entity (or the number of shareholders is reduced to two persons married or in a non-marital partnership).

Until December 31, 2020, IMT could only apply with respect to private limited liability companies, but this tax applied in all cases that resulted in a transfer of at least 75% of the share capital of the company.

If the purchase of shares involves a privately placed closed-end Real Estate Investment Funds, the transaction is subject to IMT if after the acquisition the acquirer holds 75% or more of the units in the fund.

The transfer of shares or quotas does not impact on the existing arrangements at the Land Registry and thus there are no additional registration requirements. Post completion actions such as the resignation of directors and updates with regard to the Commercial Registry are required and performed prior to signing the sale and purchase agreement.

2.5 Public Auctions

Properties which become the subject of public auctions are usually distressed assets following a default of its registered proprietor in relation to its creditors, tax authorities or any other instance where the property has been provided as security.

In view of the complex nature and specific requirements of the auction process a prospective buyer would be advised to obtain legal advice on the process, including ascertaining the legal status of the property, and whether there any liens or encumbrances that may be subsisting or affecting the property.



3. Other Rights to Property

3.1 Mortgages and Charges

Mortgages are the most common form of charge. They can be (i) voluntary or (ii) legal, depending on the reason for their creation. For example, (i) bank mortgages for the purpose of granting loans are voluntary and (ii) for the guarantee of a specific debt to a public entity (such as the Social Security or the Tax Authority) are legal mortgages.

Another form of charge that may also be used is the encumbrance which arises by the act of a creditor initiating a legal procedure for the payment of an existing debt.

The debtor's assets are subject to an encumbrance (via a legal procedure filed with the relevant court), which will be registered before the Land Registry and evidenced by issuance of a land registry certificate.

In order to be enforceable and to have effect vis-à-vis third parties, mortgages and charges must be registered and evidenced in the Land Registry Certificate. There are specific rules which apply for registration in the event that the owner has suffered an insolvency event. In these cases, registration of securities such as mortgages or pledges granted for the benefit of the Government, local authorities or in favour of the Department of Social Security may be declared void if the registration occurred less than two months prior to the insolvency proceedings. Other mortgages can also be declared void if the registration is not completed on the date of the relevant insolvency ruling.

It should be noted that the registration of mortgages before the relevant Land Registry Office is essential for the validity and enforceability of the guarantee.

3.2 Easements

Under Portuguese law, properties may be encumbered in favour of the neighbouring property by the establishment of easements such as rights of way, rights of use and restrictions on use, prevention of development, etc.

All easements must be registered before the Land Registry Office in order to be enforceable. Depending on the type of easement a specific form may be required, although for most cases a private contract with the signatures duly legalized shall take place.

3.3 Pre-Emption Rights

Pre-emption rights may arise either by legal provision or via agreement between the parties. Examples of legal pre-emption rights are:

- co-ownership: if one co-owner intends to sell its part, the other co-owners will have a pre-emption right;
- owners of rural plots of land may have pre-emption rights for the sale of adjoining properties;
- public entities may have pre-emption rights for the acquisition of properties which are classified as assets of special historic and/or architectural value;
- local authorities have pre-emption rights for certain types of transaction which involve dealings in real estate within their jurisdiction;

- tenants which have been granted a lease for a term of more than 2 years benefit from pre-emption rights in the event of sale of the leased property.

Apart from the legal pre-emption rights contained in the Civil Code, parties are free to create other pre-emption rights by agreement, although those rights cannot act in priority to legal pre-emption rights. If a pre-emption right is granted (by agreement). In order for this pre-emption right to be enforceable against third parties, it shall be registered before the Land Registry Office.

3.4 Options

Purchase options may be agreed and granted to third parties by the owner of the property. The option shall be formalised via a unilateral contract and registered before the Land Registry Office to be legally binding.

3.5 Overage

Overage provisions are typically found in contracts for the use of units in shopping centres in order to assess the rent payable. Although the Contracts for the Use of Stores in Shopping Centres regime has not yet come into force, the regime has proved to be an alternative to non-residential contracts when applied to a commercial space within and forming part of a multi-let commercial property which is managed by a property management company.

4. Zoning and Planning Law Permits

Zoning and planning in Portugal is mainly governed by a planning policy, enacted by Decree Law No. 80/2015, of 14 May 2015. All plans are binding on public bodies, and in addition individuals are subject to the requirement of special plans and municipal plans. The relevant urban plan will prescribe whether a landowner may construct a new building or refurbish an existing building. The parameters and conditions contained in these plans for urban areas are applicable in the construction, alteration, extension and demolition, and will also determine the uses permitted.

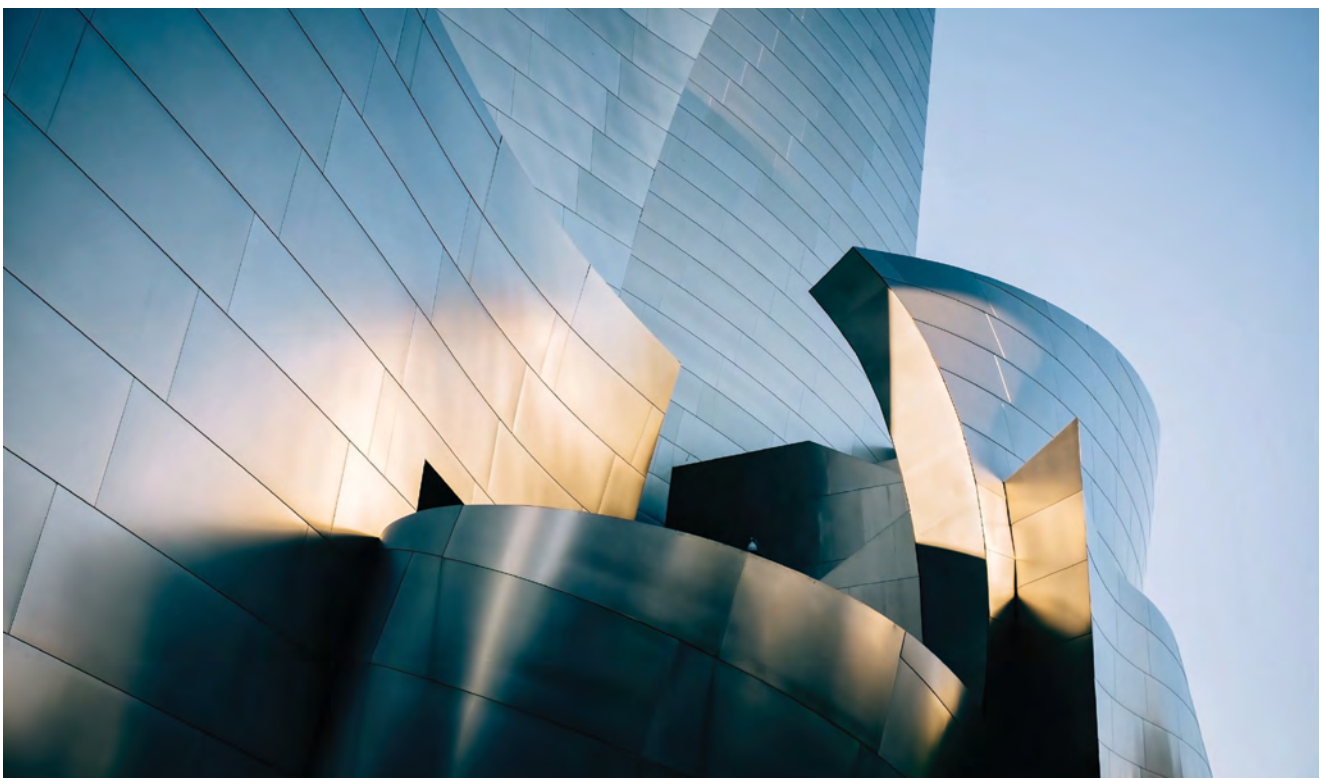
The design and appearance of a new building may be governed by public law if a detailed plan or an urbanisation plan has been approved for the area. However, the design and appearance of a new

building will not always be the sole preserve of public law. The method of construction is governed by building regulations such as the General Regulations of Urban Buildings, enacted by the Decree Law No. 38382/51, of August 1951 – Regulamento Geral das Edificações Urbanas – and the Legal Regime of Urban Planning and Building, enacted by the Decree Law No.º 555/99, of 16 December 1999 – Regime Jurídico da Urbanização e Edificação.

Municipal plans for land planning determine the permitted use of development land according to the sector (housing, commerce and services, industry, agriculture, etc.). Special plans (detailing protected areas, coastline, public reservoirs, estuaries and archaeological parks) define unauthorised, conditional and preferred uses.

The main relevant administrative authorities are the Municipalities (local authorities). The Municipalities draw up and approve the municipal plans for land zoning and are the authorities which have the power to conduct control procedures for any development scheme.

A construction permit is required to undertake a development which involves the erection of a building or significant alteration of an existing one. Depending on the nature of the project and the proposed use, specific planning conditions may be imposed, including in relation to the architectural nature of the project. In order to implement industrial, tourist and commercial projects, other specific authorisations/licenses are required.



5. Environmental Liability

In Portugal, the environmental law framework that governs construction developments reflects European Law principles. The main statutes are: Law No. 19/2014, of 14 April 2014 and Decree Law No. 151-B/2013, of 31 October 2013. There are also other relevant statutes on:

- waste management
- noise pollution
- air quality

- use of water areas
- water quality
- specially protected areas (such as national parks and national reserves)
- ecological and agricultural reserves
- energy certification of buildings

Public and private projects, which may be deemed to have detrimental effects on the

environment, are subject to an environmental impact assessment. Depending on the area where such projects are to be implemented, specific requirements regarding decontamination of the soil may be in place.

It is very important to conduct specific due diligence in connection with the environmental search of the proposed site and the surrounding land.



6. Leases

6.1 Duration

The length of a residential or non-residential lease is freely determined by agreement between the parties, with a minimum of 1 year and a maximum limit of 30 years (minimum limit not applicable to temporary contracts for professional, educational or touristic reasons). In the absence of a specific term, the contract shall be deemed to be in force for a 5-year term. A residential lease is subject to the same maximum period and the rules regarding termination and expiration are mandatory. Tenant and Landlord may respect the prior-notices foreseen in the law, which should be applied according to the term / duration of the lease agreement. For residential leases, once one third of the initial term of the lease agreement or of its renewal has elapsed, the tenant may terminate the lease agreement at any time, through written notice sent to the landlord with a minimum prior notice of 120 days to the lease agreement intended term. Recent changes to the law on leases were implemented to a more protective regime for tenants, therefore we advise any investor to seek for legal assistance before investing in real estate for the lease market.

6.2 Rent

Rent is usually calculated by reference to a sum per square meter of the area let. Typically, rents are payable in advance (i.e. on the month prior to the one it respects to) on a monthly basis.

Rent is normally charged free of VAT. However, subject to satisfaction of certain requirements, it is possible to

request the Tax Authority for a waiver from the VAT exemption.

The landlord may request the waiver and charge VAT in order to recover sums of VAT incurred on landlord expenses in connection with the property. The tenant must also be a VAT taxable person for the tax waiver from the VAT exemption to apply. The current VAT rate for leasing purposes is 23%.

6.3 Rent Review

A rent review shall be undertaken in accordance with the legal annual coefficient approved by the government. However, parties may also agree other criteria for rent review.

The landlord may operate additional rent reviews in older leases (non-residential leases granted before 1995 and residential leases granted before 1990), where the rents are very low. Urban Lease Law provides scope for negotiation between the parties in order to agree a new rent which reflects the current market. If the parties do not reach agreement, the rent is reviewed in accordance with a formula provided, being the annual rent equal to 1/15 of the VPT (with some exceptions to this rule).

6.4 Operating Expenses

The tenant is responsible for the payment of charges and expenses for the supply of goods or services related to the use of the property (for example: water, electricity, gas, telephone, and internet). The tenant is only responsible for other expenses if it is expressly agreed between the parties in lease agreement.

The landlord is responsible for the payment of the water rates, insurance fees, property tax ("IMI") and stamp duty due on the grant of the lease (10% of the first rent).

Unless otherwise agreed, the landlord is responsible for property repair. It is usual for the landlord to be liable for any cases of extraordinary repair that may be undertaken, and for the tenant to be responsible for ordinary repair costs.

6.5 Maintenance, Repair and Reinstatement at end of Lease

The tenant is only permitted to carry out works when the landlord has given their prior written consent (except in emergencies). However, the tenant may (and is under an obligation to) carry out minor repairs to the property to ensure that it remains adequate for its intended purpose.

Should the tenant carry out improvements to property they shall be entitled to receive compensation or remove these improvements provided their removal does not cause damage to the property, unless otherwise is agreed.

The landlord is responsible for the repair and maintenance of the building common areas in which the property is located, except if otherwise agreed in the lease agreement.

Typically leases foresee that premises shall be let in a condition fit for purpose for which they are intended (subject to fair wear and tear).

6.6 Assignments/Transfers

As a general rule transfers of leases to a third party require the landlord's consent.

In case of transfer of commercial establishment installed in leased premises ("trespasse"), the landlord's authorization is not required although the landlord has a pre-emption right over the transfer. In such cases, the transferor must notify the landlord in order to exercise such pre-emption right.

6.7 Subleases

The tenant cannot sub-let the property, either in whole or part, without the landlord's prior written consent. Should subletting occur without this being obtained, the landlord may terminate the agreement based on the tenant's definitive default.

The tenant may not charge the subtenant a higher or proportionally higher rent than is due under the lease agreement, increased by twenty percent, unless otherwise agreed with the landlord.

6.8 Termination

The landlord can only terminate the agreement before the end of its initial term or of its renewals or in the event of tenant's default (e.g. non-payment of rent for a period equal or superior to three months after the due dates) The law sets out some of the grounds on which the landlord may terminate. In addition to these grounds, the landlord may specify, in the lease agreement, others which will be deemed to be an event of default.

Non-residential leases are more flexible and parties may set out specific break options during the term or renewals of the lease agreement, including the right for the landlord to terminate the lease prior to initial term.

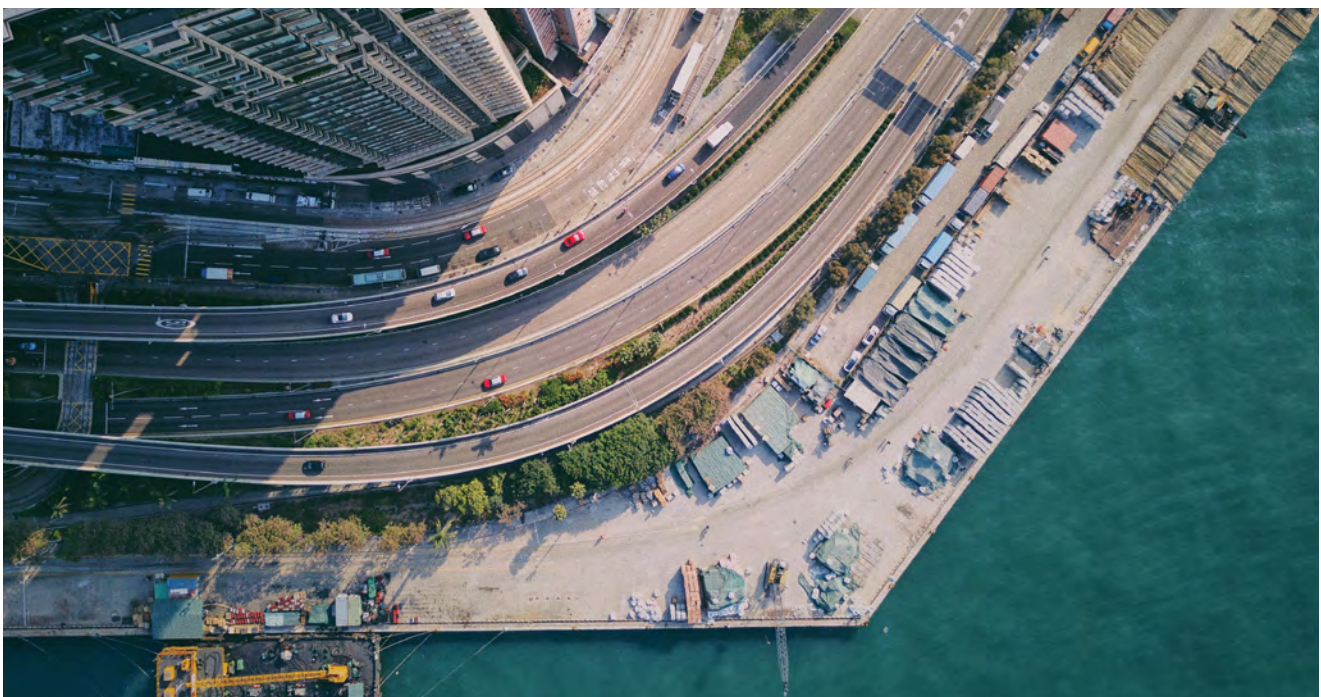
The landlord and the tenant may agree that the contract can be automatically renewed for a similar renewal period or for a different one. Regarding residential leases, with recent changes in the law, regardless of its duration, the first opposition to the renewal by the landlord only takes effect after 3 years of duration.

A non-residential lease is also subject to the same provision, whilst the first opposition to renewal by the landlord can only occur after 5 years of duration.

Landlords may agree on non-renewable lease contracts.

6.9 Sale of Leased Property

The sale of a leased property does not affect the lease and all rights and obligations of the previous owner are transferred to the new owner. However, in case of a lease in force for more than 2 years, the tenant has a pre-emption right in the transaction and must be given notice of the sale and purchase terms and conditions in order to assess if the tenant intends to exercise its pre-emption right.



7. Tax

7.1 Transfer Tax, Stamp Duty

The applicable tax will be determined according to whether it is structured as an asset or as a share deal. In the case of an asset deal, Municipal Property Transfer Tax (IMT) will be levied on the purchase price paid or on the "VPT" (value of the real estate assessed by the Tax Authority), whichever is higher.

IMT is charged at the following rates:

- A flat rate of 6.5% on the sale or transfer of any urban property not used exclusively for residential purposes.
- A flat rate of 5% for rural properties.
- Progressive rates on the sale and transfer of urban buildings or apartments used exclusively for residential purposes that are intended to be the buyer's permanent residence, ranging from 0% to 8% (top marginal rates), with a combined rate not exceeding 7,5%.
- Progressive rates on the sale and transfer of urban buildings or apartments exclusively for residential purposes and/or intended for letting purposes, but not intended as the buyer's permanent residence, ranging from 1% to 8% (top marginal rates), with a combined rate not exceeding 7,5%.

The onerous transfer of property is also subject to Stamp Duty at a flat rate of 0.8%. Stamp Duty will be calculated on the price of the transaction or on the "VPT", whichever is higher.

In the case of a share deal, IMT applies on the purchase of shares or units (in the case of funds) in the following entities holding real estate assets: (i) private limited liability companies ("*sociedade por quotas*"), (ii) corporations ("*sociedades anónimas*"), (iii) limited partnerships ("*sociedade em comandita simples*") (iv) general partnerships ("*sociedade em nome coletivo*"), and (v) privately placed closed-end Real Estate Investment Funds.

As provided above, in all above mentioned entities (except privately placed closed-end Real Estate Investment Funds), IMT will be due on the purchase of an equity position in companies that hold real estate assets located in Portugal if the following requirements are cumulatively met:

- The asset value of the company transferred is, directly or indirectly, composed, in more than 50%, of real estate assets located in Portugal;
- The real estate assets are not directly allocated to an activity of an agricultural, industrial or commercial nature, unless the activity is of purchase and sale of real estate property; and
- As result of the acquisition (or other corporate events) one of the shareholders retains at least 75% of the share capital of the target entity (or the number of shareholders is reduced to two persons married or in a non-marital partnership).

In case of privately placed closed-end Real Estate Investment Funds, IMT will be due if, following the transaction, one shareholder / unit holder becomes holder of 75% or more of the company's/ fund's total equity, or the number of shareholders / unit holders is reduced to two married or unmarried civil partners

The onerous transfer of shares is not subject to Stamp Duty, irrespective of the legal entity type.

In both cases – asset deals and share deals – the buyer is responsible for the assessment and payment of IMT. IMT must be paid prior to completion and the notary is obliged to confirm payment.

Stamp Duty, where applicable, is paid by the buyer before the public deed of transfer is signed.

IMT exemptions may be available with respect to properties purchased to be resold, or to be subject to rehabilitation works, subject to specific legal requirements.

7.2 Value Added Tax

Although as a rule the transfer of property and shares in Portugal is exempt from VAT, it may be applicable in the case of transfer of property. In this case, the seller may waive the exemption if certain conditions have been met and the operation of the waiver is subject to compliance with several formalities.

If the exemption is waived, VAT can be recovered in accordance with specific provisions set out in the Portuguese VAT Code.

7.3 Other Real Estate Taxes

IMI is a municipal property tax, payable by the owner or the person entitled to use the property (excluding tenants) which is assessed on the property's VPT (value of the real estate for tax purposes) for urban and rural properties. For urban properties the applicable rates range between 0.3% and 0.45%, depending on the rules of the municipality where they are located (an IMI surcharge may apply for urban properties with a VPT exceeding EUR600,000 – the rates range between 0.5% and 1% depending on whether the taxpayer is a legal entity or an individual, and on the properties' aggregate VPT). For rural properties a rate of 0.8% applies.

Urban properties to be used solely for residential use by the buyer, as his or his family's primary domicile, may benefit from a temporary exemption from IMI for up to three years, if the property's VPT is less than EUR125,000. To benefit from this exemption, the buyer's income for Personal Income tax purposes in the previous year cannot exceed EUR153.300.

Exemptions from IMI are also available regarding buildings classified as being of national, public or local interest and buildings subject to rehabilitation (specific legal rehabilitation criteria must be observed).

IMI is borne by the owners of property and is collected by the local authorities according to the property's VPT.

For real estate owned through a company domiciled in a country, territory or region classified as a tax haven for Portuguese tax purposes, or through an entity under the

dominium or control (directly or indirectly) of another entity domiciled in a tax haven jurisdiction, the applicable rate is 7.5% per year.

7.4 Taxation of Rental Income From Real Estate

Rents and gains arising from the sale of property are the main income-generating events in connection with the ownership of real estate.

Rents from urban, rural or mixed-use properties are classified as taxable income for the purposes of Portuguese Corporate Income Tax (IRC). If the investor is an individual, rents will be treated as taxable income for Personal Income Tax (IRS) purposes.

Whether generated through an on-shore corporate entity, a permanent establishment in Portugal or a non-resident vehicle with no permanent establishment in Portugal, rents from Real Estate located in Portugal are always subject to Income Tax.

(i) Indirect investment through a corporate entity

If the shareholder has its registered office in Portugal (i.e. it is a Portuguese corporate entity) or if its place of effective management is located in the Portuguese territory it is treated as a resident for tax purposes.

The income of resident corporate taxpayers (including rental income) is subject to IRC at a general rate of 21% (on the Portuguese mainland). A reduced rate of 17% may be applicable to the first EUR25,000 of taxable income if the company is qualified as a small or medium-sized company, meaning that it has, respectively: (i) fewer than 50 or 250 employees

(ii) its annual turnover does not exceed 10 or 50 million and (iii) its annual balance sheet does not exceed 10 or 43 million EUR.

The income of resident corporate taxpayers may also be subject to a municipal surcharge of up to 1.5%, which is levied by many Portuguese local authorities.

A state surcharge is also applicable at rates ranging between 3% and 9% when the corporate taxable income is higher than 1.5 million EUR. Taxable income for IRC purposes is calculated on the basis of the net accounting profit as adjusted for tax purposes.

A corporate entity is entitled to deduct costs related to maintenance and repairs, general costs and municipal property tax (IMI), and other specific costs such as those incurred in connection with the construction or acquisition of the property (to the extent not capitalized) and depreciation (excluding land).

(ii) Direct investment through a permanent establishment.

Income attributable to a Portuguese permanent establishment is subject to IRC under the same terms as a Portuguese-resident company (i.e. subject to the same IRC rates, and to the same rules in terms of computation of the taxable income, as those applicable to resident corporations).

(iii) Direct investment without a permanent establishment.

If the investor does not have (nor is deemed to have) a permanent establishment in Portugal, Income Tax is only payable on Portuguese-source income.

Rental income from properties located in Portugal is considered Portuguese-source income and is subject to Corporate Income Tax at a rate of 25% for non-resident entities. As to Personal Income Tax, the applicable rate is 28%.

A withholding tax may apply to non-resident individuals or corporations, if the lessee is a corporate entity or an individual with organized accounting in Portugal. This would usually be the case with a commercial lease.

Foreign investors deriving rental income in Portugal must file an annual tax return with the Portuguese Tax Authority to declare such income in the cases where there is no withholding agent in Portugal (e.g. derived from a rental agreement with an individual not required to maintain organized accounting).

7.5 Taxation of Dividends From a Company Owning Real Estate

In Portugal a withholding tax may apply on certain distributions of dividends to shareholders. If applicable, tax may be withheld on account of the final tax due (for residents) or as a final withholding (for non-residents). This depends on the investor's status as follows:

7.5.1 PORTUGUESE-RESIDENT CORPORATE SHAREHOLDERS

(i) General Framework

Dividends may be distributed to corporate shareholders resident in Portugal with no withholding tax if the requirements under the participation exemption regime are met and provided that the shares with respect to which the dividends are distributed are held for at least one year (at the time the distribution takes place).

If the above requirements are not met, a 25% withholding tax applies. If the requirements to meet the participation exemption (see below) are not met the tax withheld is considered as an advance on account of the final tax due.

(ii) Participation Exemption

Distributions of dividends to Portuguese-resident corporate shareholders are exempt from IRC if the requirements under the participation exemption regime are met. The main requirements are as follows:

- 1) the taxpayer holds shares representing at least 10% of the share capital or voting rights of the entity distributing the dividends;
- 2) the relevant holding is maintained during a consecutive period of at least one year;
- 3) the taxpayer is not subject to the tax transparency regime;
- 4) the entity distributing the dividends is not exempt from IRC or is subject to a similar tax at a rate not lower than 60% of the Portuguese tax (currently, 12.6%);
- 5) the entity distributing profits is not resident in a country, territory or region classified as a tax haven for Portuguese tax purposes.

7.5.2 CORPORATE SHAREHOLDERS NOT RESIDENT IN PORTUGAL (FINAL WITHHOLDING TAX)

Profits distributed by a legal entity which is tax resident in Portugal are exempt from IRC if the shareholder is resident (i) in a Member State of the EU; (ii) in an EEA country which has agreed to co-operate on tax administrative matters; or (iii) in a State with which a Double Tax Agreement ("DTA"), with an exchange of information provision, has been

entered into.

Besides the requirements as to tax residency of the shareholder, further conditions need to be satisfied, notably:

- 1) the taxpayer must hold shares representing at least 10% of the share capital or voting rights of the entity distributing the dividends at the time of the distribution;
- 2) the referred holding must be maintained continuously during the year prior to the distribution;
- 3) the entity distributing the dividends must not be subject to the tax transparency regime; and,
- 4) the shareholder must be subject to and not exempt from a corporate income tax mentioned in the EU Parent Subsidiary Directive, or, when the shareholder is resident in a non-EU country, to a corporate income tax similar to IRC, at a rate not lower than 60% of the Portuguese tax (currently, 12.6%).

Additionally, profits distributed to a company deemed to be tax resident in Switzerland are exempt from IRC in the terms set out in article 15 of the EU-Switzerland Agreement if

- 1) the company to which the profits are distributed holds directly at least 25% of the share capital of the distributing company, for at least 2 years;
- 2) under the terms set out in the DTAs entered into by Portugal and Switzerland with any third countries, the distributing entity and the distribute are not deemed to be tax resident in such country;
- 3) neither company benefits from an exemption from Corporate Income Tax; and,

4) both companies are limited liability companies.

If the above requirements are not satisfied, 25% of any dividend paid must be withheld by the Portuguese distributing entity, except if reduced under an applicable DTA.

Most of the DTAs entered into by Portugal, following the OECD Model Treaty, provide that the applicable Portuguese withholding tax rate on dividend or profit distributions cannot exceed 15%. This may be reduced to 5%, depending on the percentage of the shareholding in the corporate vehicle.

Dividends paid to shareholders established in a country, territory or region classified as a tax haven for Portuguese tax purposes will be subject to withholding tax at a rate of 35%.

Dividends deposited in accounts of trustee entities on behalf of undisclosed third parties, will be subject to withholding tax at a rate of 35%.

7.6 Taxation of Capital Gains on Real Estate

Capital gains arising from the disposal of Portuguese real estate derived by a corporate resident entity are subject to IRC at the standard rates (see the rates described above in 7.4 (i)). The gain, for IRC purposes, corresponds to the difference between the amount realized and the asset's value for tax purposes (subject to certain adjustment, e.g. for inflation) and should be considered when computing the entity's taxable income.

Additionally, there are provisions for a specific reinvestment regime under which only 50% of the value of the capital gains is considered when determining the taxable income, provided the sale proceeds are

reinvested in the acquisition of specific types of assets, set by law.

A permanent establishment is taxed on capital gains arising from the disposal of real estate in the same way as a Portuguese corporate vehicle.

Capital gains from the sale of real estate held by non-resident entities without a permanent establishment in the Portuguese territory are subject to IRC at a flat rate of 25%. For IRS purposes, capital gains are taxed at a flat rate of 28% for non-residents..

7.7 Taxation Of Capital Gains on Disposal Of Shares by Corporate Resident Entities

For corporate resident entities, capital gains arising from the sale of shares in a company owning real estate are subject to IRC at the standard rates (see the rates described above in 7.4 (i)), unless the requirements to apply the participation exemption are met, in which case such gains are exempt.

The main requirements to apply the participation exemption are as follows:

- 1) the taxpayer holds shares representing at least 10% of the share capital or voting rights of the entity being transferred;
- 2) the transferred shares were held for at least one year prior to the disposition;
- 3) the taxpayer is not subject to the tax transparency regime;
- 4) the entity whose shares are being disposed is not exempt from IRC or is subject to a similar tax at a rate not lower than 60% of the Portuguese tax (currently, 12.6%);
- 5) the entity whose shares are being

disposed is not resident in a country, territory or region classified as a tax haven for Portuguese tax purposes.

Further, please note that the participation exemption on capital gains is generally not applicable to Portuguese resident companies whose assets are comprised in more than 50% by real estate. However, immovable property used in an agricultural, industrial or commercial activity (with the exception of property acquired to be resold) should not be counted towards determining if the 50% threshold is met.

7.8 Taxation of Capital Gains From the Disposal of Shares by Non-Residents

The following rates of taxation apply on capital gains of non-residents generated from the disposal of shares in a Portuguese-resident company:

- 25% for corporate entities.
- 28% for individuals (however, only half of the capital gain will be taken into consideration for tax purposes if the company whose shares are sold is recognized as a micro or small company not listed in a regulated market).

Certain exemptions from Portuguese income tax are available with respect to capital gains from the sale of shares in Portuguese-resident companies derived by non-resident individuals or entities. However, these do not apply to the disposal of shares in Portuguese-resident companies where more than 50% of the company's assets consist of real estate assets located in Portugal ("Property-Rich Company"), or of shares in holding companies in which a company affiliated to or controlled by it is a Property-Rich Company.

Further, as of January 1, 2019 indirect sales of shares of a Portuguese resident entity by non-residents (through the transfer of shares of a non-resident entity holding shares of a Property-Rich Company) may also be subject to tax in Portugal at the abovementioned rates. This will be the case if, at any time within the preceding 365 days, the value of the transferred shares (of the non-resident entity) is derived – direct or indirectly – in more than 50% from immovable property or rights over immovable property located in Portugal. Please note that immovable property used in an agricultural, industrial or commercial activity (with the exception of property acquired to be resold) should not be counted towards determining if the 50% threshold is met.

7.9 Real Estate Funds

Decree-Law No. 7/2015 of January 13, which came into force on July 1 2015, has introduced a new tax regime for collective investment undertakings (UCI), and applies to the following entities: (i) Securities Investment Funds (SIFs); (ii) Real Estate Investment Funds (REIFs); (iii) Securities Investment Companies (SICs); and (iv) Real Estate Investment Companies (REICs).

The newly adopted SIGIs (a special type of real estate investment company, subject to a significantly relaxed regulatory framework) are also subject to the income tax regime applicable to UCIs (the SIGIs' regime entered into force on February 1, 2019).

Following a major trend in investment vehicles' tax regimes in Europe, the UCIs tax regime adopts the "exit taxation method", whereby the income is taxed at the investor level.

Income derived from units in REIFs' and from REICs' shares shall be classified as income from property for the purposes of this regime.

The income tax regime governing REIFs, REICs and SIGIs can be summarized as follows:

- Subject to IRC at a rate of 21%. The taxable income for these purposes will be calculated as the net income, excluding investment income, capital gains, rental income and related costs incurred, as well as income and expenses relating to management fees and other commissions earned by REIFs, REICs and SIGIs.
- Tax losses may be carried forward for a period of 5 years (for tax losses registered after 1 of January 2017. Tax losses from previous periods must be subject to an individual analysis).
- Benefit from an exemption from the local authority surcharge (derrama municipal) and state surcharge (derrama estadual).
- Mergers, demergers, or subscriptions in kind between the mentioned entities may benefit from the tax neutrality regime in the IRC code. This will allow a more efficient restructuring operation or the transfer of assets between investment vehicles.
- Subject to autonomous tax rates ("*taxas de tributação autónoma*") set forth in Article 88 of the IRC code – up to 50% of certain expenses.

- Income derived by these entities is not subject to withholding tax.
- Subject to the obligations contained in the IRC code, regarding organization of accounting systems and tax administration.
- Further, Stamp Duty is payable, on a quarterly basis, on the global net asset value of an UCI. The tax rates are the following:
 - – 0.0025% for UCIs investing only in money market instruments and deposits;
 - – 0.0125% for other types of UCIs (including real estate funds and companies).

Taxation of Investors

RESIDENT INVESTORS:

- Individuals – shall be subject to IRS at a withholding tax rate of 28%. The withholding tax will be final where income is not obtained under a commercial, industrial, or agricultural activity. This will not apply where an investor elects to include this income with his other taxable income, in which case the general progressive tax rates (from 14.5% to 48%) and the IRS surcharges shall apply;
- Corporate investors – subject to IRC at a provisional withholding tax rate of 25% (unless the relevant beneficiaries are exempt from IRC – excluding investment income – in which case the 25% withholding tax will be final).

NON-RESIDENT INVESTORS:

- Non-resident investors without a permanent establishment in Portugal, who receive income from REIFs, REICs, or SIGIs shall be subject to withholding tax at a rate of 10%.

- Non-resident investors
 - (i) failing to present proof of their non-resident status in Portugal;
 - (ii) that are established in a country, territory or region qualified as a tax haven for Portuguese tax purposes; or
 - (iii) whose equity shares are held in more than 25% by Portuguese residents either directly or indirectly are subject to withholding tax at the fixed rates of 25%, 28% or 35% (as applicable) – determined under the applicable regime for resident investors. A punitive 35% rate also applies with respect to income that is paid or made available in accounts in the name of one or more holders but on behalf of an undisclosed third party.

7.10. Portuguese Reits

The Decree-Law 19/2019, of January 28, approves the legal regime of the *Sociedades de Investimento e Gestão Imobiliária* ("SIGI"). This is a new type of real estate investment companies, envisaging the investment and dynamization of the real estate market, particularly of the leasing market.

SIGI correspond to the Portuguese version of REIT ("Real Estate Investment Trusts").

SIGI are required to adopt the corporate type of limited liability company by shares ("S.A. companies"), and their corporate name shall include «Sociedade de Investimento e Gestão Imobiliária, S. A.» or «SIGI, S. A.».

SIGI require a minimum subscribed and fully paid-up share capital of EUR 5,000,000, and share capital contributions may not be postponed. SIGI may, or not, be incorporated following a public offering and, in the first case, an incomplete

subscription will not prevent the definitive commercial registration of the incorporation, provided some conditions are met.

The new legal regime provides for the application of the public companies ("sociedades abertas") legal regime to SIGI should they achieve to qualify as such, which will mandatorily occur should the SIG be incorporated through an initial public offering or, even if not incorporated by means of an IPO, should they be listed on a regulated market situated or operating in Portugal. In these situations, the legal regime of public companies as provided for under the Portuguese Securities Code, besides the newly approved regime, shall apply to SIGI.

This diploma also allows that, by complying with certain requirements, existing S.A. companies and SICAVIs and SICAFIs can be converted into a SIGI, by means of a resolution of the shareholders, subject to qualified approval majorities.

CORPORATE PURPOSE

The SIGI's corporate purpose comprises the following:

- Acquisition of property rights, surface rights or other equivalent rights over real estate for leasing covering atypical contractual forms that include the provision of services necessary for the use of the property, such as construction projects and rehabilitation of real estate, shop use agreements (within shopping malls) and space use contracts for office purposes.
- For the purposes of this legislation, the concept of real estate assets includes rural properties covering atypical contractual forms that include the provision of services necessary for the use of the property

(including for forestry purposes), urban buildings, autonomous units, as well as land that may be classified as urban buildings or autonomous units within three years of their acquisition. The acquisition of shares in other SIGI or in companies based in another Member State of the EU or the European Economic Area, as long as such company complies with the main rules of the SIGI regime.

- the acquisition of shares or units of participation in:
 - a) Collective Real Estate Investment Institutions (incorporated under the applicable law – the "*Regime Geral dos Organismos de Investimento Colectivo*") with similar profit distribution policies;
 - b) Real Estate Funds and Real Estate Investment Companies for residential lease purposes subject to the Law n. 64-A/2008, 102 article, with similar profit distribution policies.

COMPOSITION AND CONTINUITY OF ASSETS

Each of the rights and/or interests must be held by the SIGI for a minimum period of three years.

The SIGI must comply with specific requirements regarding the composition of its assets. In any of the following cases, the limits are verified by reference to the values included in the SIGI's accounts.

From the second year after the constitution of the SIGI:

- At least 80% of the total value of SIGI's assets will have to correspond to the value of the rights held on real estate and financial participations held under its corporate purpose;

- At least 75% of the total value of SIGI's assets will have to correspond to the value of real estate rights subject to leasing or other forms of exploitation, as per the corporate purpose.

The SIGI's indebtedness is limited to a maximum of 60% of its total assets.

TRADING ON A REGULATED MARKET

Within 1 year from incorporation, the shares representing the total of the SIGI's share capital must be admitted to trading on regulated markets or on a multilateral trading facility.

The representative shares of SIGI's capital stock must meet the dispersion requirements. of shares of the public applicable in each trading platform and guarantee compliance with the following minimum dispersion limits by investors who shareholders corresponding to less than 2% of the voting rights imputed in accordance with article 20 of the CVM:

- a) 20% from the end of the third full calendar year after the admission or selection for trading of SIGI shares on one of the trading platforms;
- b) 25% from the end of the fifth full calendar year after the admission or selection for trading of SIGI shares on one of the trading platforms.

PROFIT DISTRIBUTION

The SIGI are also subject to specific rules regarding the distribution of income and reinvestment. Within 9 months from the end of each tax year, the following minimum thresholds of profit distribution are required:

- 90% of the profits arising from the dividends and other income originated by the investments in shares and investment units held under the corporate purpose;
- 75% of the remaining distributable profits as per general corporate law;

A minimum of 75% of the profits arising from the sale of assets acquired following the SIGI's corporate purpose must be reinvested within 3 years from sale date.

Failure to comply with some requirements applicable to SIGI shall determine the loss of capacity as SIGI.

TAX REGIME

The SIGI is a new category of real estate investment company and therefore it is subject to the existing regime foreseen for collective investment undertakings. Contrary to what succeeded upon the creation of its Spanish REIT counterpart, which created a specific tax regime for the SOCIMI, the

Portuguese legislator created SIGI as a type of real estate investment companies, which determined the application of the already existing regime foreseen in article 22 of the Portuguese Tax Incentives Statute (EBF) for this type of investment companies.

Following the above:

- SIGI are taxed under the Corporate Income Tax Code, with the following particularities: exclusion from the assessment of taxable profit of capital income, rental income and capital gains (except when income derives from entities domiciled in a tax haven).
- SIGI are exempt from State and Municipal surcharge;
- The income obtained by SIGI is exempt from withholding.

In what concerns the tax legal framework applicable to the income paid by the SIGI to the participants the Personal Income Tax rules applies to individuals and the Corporate Income tax rules apply to companies. Depending on the nature of the income obtained and the participant's statute of residence, withholding tax rates may vary between 10% and 28%. The effective taxation will always depend on a casuistic analysis according to the specificities of the type of income and of the investor.



8. Real Estate Finance

8.1 Interest Rate Risks

Raising of finance for the acquisition of property or for refinancing debt can be done by way of long-term or short-term loans. Where a fixed interest rate is not agreed there is always the risk of interest rate fluctuation which might be hedged via derivatives or interest rate-swaps. One of the most common types of interest rate swap is the plain vanilla swap and is available from a financial institution. In this case, the borrower agrees to pay a fixed rate to the counterparty, while receiving a floating rate indexed to a reference rate. This plain vanilla swap aims to mitigate the risks arising from any rise in the interest rates..

8.2 Assets Held as Security

Loan agreements are typically granted with real estate being used as security. A mortgage is granted over the property for this purpose. As mentioned above, to be valid the mortgage must be registered at the Land Registry Office, and this will usually be done by filing the mortgage deed.

8.3 Further Collateral Agreements

Share/interest pledge agreement: shares and interest pledges can be used as security for loans. The execution of a share pledge can be performed by means of a private contract, although it is

necessary to determine in each case if there are any restrictions or further requirements relating to the execution of this type of security under the articles of association of the company or specific legal rules.

Bank account pledge agreements: bank account pledges as security are permitted and are commonly used to guarantee specific agreements. The terms of the pledge including the right of the pledgor to access the bank account must be set out in the written agreement between the parties.

Assignment of rents: under this agreement all sums receivable in connection with the grant of a lease are assigned in favour of the lending institution. It is also possible to execute a global assignment encompassing an assignment of all rights, claims and other sums receivable (either present or future) in connection with a transaction.

8.4 Taxation on the Creation of Security

Stamp Duty is levied in respect of both loan agreements and guarantees.

When the loan agreement and guarantee are jointly executed and when the guarantee is ancillary to the loan agreement, this guarantee is not taxed. In this case the loan agreement is taxed at the

following rates:

- 0.04% of the total amount, for each month or part of a month, for agreements with maturity of less than one year
- 0.5% of the total amount, for loans with a maturity of one year or more, but less than five years
- 0.6% of the total amount, for loans with a maturity of five years or more
- When the guarantee is not ancillary to the loan agreement, it will be taxed at the following rates:
 - 0.04% of the total amount secured, for each month or part of a month, for guarantees with maturity of less than one year
 - 0.5% of the total amount secured, for guarantees with a maturity of one year or more, but less than five years
 - 0.6% of the total amount secured guarantees with a maturity of five years or more, or open-ended arrangements

If the loan is made to a consumer, under to Decree Law No. 133/2009, of 2 June, the rates are as follows:

- 0.08%, for each month or part month for loans maturing in less than one year
- 1% for maturities of one or more

Contacts

Lisbon

DLA Piper ABBC

Largo S. Carlos, N° 3
1200-410 Lisboa – Portugal
T +351 21 358 36 20
F +351 21 315 94 34
dlapiperabbc@dlapiper.com
www.dlapiper.com



Luís Filipe Carvalho

Partner

T: +351 21 358 36 20
luis.carvalho@pt.dlapiper.com



Paulo Anjo

Senior Associate

T: + 351 213 583 620
paulo.anjo@pt.dlapiper.com

About DLA Piper

With more than 600 lawyers globally, DLA Piper boasts the world's largest real estate practice and is consistently top-ranked around the world.

As real estate develops into a truly global industry, the ability to quickly and efficiently provide legal services in structuring cross-border investments and transactions is paramount. DLA Piper clients value the team's global resources, regional strength and local delivery, and include private and public companies, institutional investors and government entities.

This guide was written predominantly by Luís Filipe Carvalho and Paulo Anjo of DLA Piper ABBC.

This guide was updated in October 2021. Subsequent changes in law are therefore not taken into account. This guide cannot be considered as a substitute for obtaining specific legal advice in

individual cases. Neither DLA Piper nor DLA Piper ABBC assumes any liability in connection with this guide.

Visit www.dlapiperREALWORLD.com – DLA Piper's online guide to international real estate.



