

LEGAL AND TAX REAL ESTATE GUIDE

PORTUGAL

1. HAVE A PROPERTY RIGHT

The most common and the strongest form of ownership title over real estate in Portugal is full ownership (*direito de propriedade*) which confers exclusive rights.

Instead of full ownership, could be held a "surface right" (*direito de superficie*) which entitles the respective titleholders to build or maintain a construction, perpetually or temporarily.

For non-residential purposes, as commercial or industrial, the use is typically formalized through Lease agreements.

2. INVESTMENT STRUCTURES

Instead of direct acquisition of properties, investors can structure their investments through:

- Corporate Vehicles: such as public limited companies ("*sociedades anónimas*") or private limited companies ("*sociedades por quotas*") or Purchase for Resale Companies ("*Sociedades de compra e venda para revenda*")

- Portuguese Collective Investment Undertakings ("*fundos de investimento imobiliário*" e "*sociedades de investimento imobiliário*")
- SIGI's ("*sociedades de investimento e gestão imobiliária*"): designed to attract local and foreign investment for the acquisition of real estate assets and project mainly focused on the lease market;
- Non Resident Companies

3. TAX ISSUES

A. Real Estate Acquisition

- **The Municipal Tax on the Real Estate Transfer ("*IMT*")**

Is due on the transfer of real estate located in the Portuguese territory, on the higher of (i) the declared acquisition value or (ii) the taxable value of the property; The tax range between 5% and 10%; Its due by the acquirer.

- **Stamp Duty ("*IS*")**

Is due on the acquisition of property, at a rate of 0.8%, on the higher of (i) the declared acquisition value or (ii) the taxable value of the property; Its due by the acquirer.

- **Municipal Property Tax ("*IMI*")**

Is due for the holding of the property, at a rate between 0,3% to 10%, on the taxable value of the property.

- **Corporate Income Tax ("*IRC*")**

For Resident companies all income is included in the taxable profits and subject to IRC, at a rate of 21%, accrued with municipal surcharge (up to 1,5%).

For non resident companies, the property income such as lease income and the capital gains are subject to IRC at a rate of 25%.

B. Share Acquisition

- **The Municipal Tax on the Real Estate Transfer ("IMT"), Stamp Duty ("IS"), Municipal Property Tax ("IMI")**

If the acquisition applies to more than 75% of the share capital of a Portuguese company or of a close-ended real estate investment fund, which have more than 50% of assets in Portugal, the tax is due as explain in above (A.).

- **Corporate Income Tax ("IRC")**

The profits of a company in PT are subject to a tax rate of 21%, accrued with Municipal Surtax (between 0% to 1,5%).

The capital gains are included on the taxable profits of the resident shareholder, unless if the participation exemption frame applies.

The capital gains of non-resident shareholders are subject to a tax rate of 25%, except if an exemption or tax benefit could apply.

The dividends paid to resident shareholders are generally fully taxable (25% and 28% WHT rate depending if the shareholder is corporate or individual), but a participation exemption could apply for qualified shareholders.

A 10% withholding tax applies for income distributed to non-resident shareholders (with certain limitations).

4. SPECIAL BENEFITS

- **Golden Visa**

Since 1 January 2022, the Golden Visa program allows the granting of a temporary residence permit for third-country nationals that intend to invest in Portugal, through the acquisition of real estate assets with a

minimum price value of €500,000 or through the purchase of real estate property for rehabilitation of properties with more than 30 years or located in urban rehabilitation areas, in which case the total investment value allowing to apply for the residence permit is lowered to €350,000.

The properties only qualify for the purposes of the Golden Visa program if the real estate properties are in inland municipalities and in Azores or Madeira.

- **Non Habitual Residents**

The NHR regime apply to individuals who have not been considered residents for tax purposes in the last five years, in Portugal and decide to transfer their tax residence to Portugal.

The special benefits of being a NHR in Portugal are related with the possibility of being tax on the rate of 20% over certain incomes and activities. Also the NHR will be exempt from personal income tax on certain types of qualifying income if this income is subject to tax in the country of source under an existing Double Tax Treaty that allows for this or, if no Tax Treaty exists, is subject to tax in another jurisdiction and is not considered as Portuguese source income under domestic rules.