INVESTING IN PORTUGUESE REAL ESTATE

Legal Framework

1. Property Title

Full ownership (direito de propriedade) is the most common and the strongest form of ownership title over real estate in Portugal. The full owner of a property is entitled, within the limits of the law, to exclusive rights of use, fruition and disposal of the property, such ownership being unlimited in time (full ownership would be equivalent to a freehold in common law systems and to the French concept of droit de proprieté). Under Portuguese Law other forms of property tenancy are allowed, such as horizontal property (condominium), co-ownership (compropriedade), surface right (direito de superfície) and usufruct (usufruto).

2. Investment Structures

Apart from the standard direct acquisition of the asset (asset deal), investors tend to structure their investments by resourcing to indirect acquisition solutions (share deal), through different alternatives, as detailed below:

a) Corporate vehicles, that mainly include public limited liability companies (sociedades anónimas) or private limited liability companies (sociedades por quotas);
b) Portuguese Collective Investment Undertakings, that include (i) real estate investment funds, which capital is composed by the fund's units and (ii) public limited liability companies, which capital is composed by shares;
c) SIGI's (the Portuguese REIT regime was enacted in 2019, in order to create an additional instrument to attract local and foreign investment for the acquisition of real estate assets and projects mainly focused on the lease market).

3. Real Estate Transactions

The transfer of real estate assets in Portugal (asset deal), may be performed by means of (i) a public deed, or (II) a private document certified by a notary, a Land Registry Office or a lawyer. The transfer of title must be registered with the Land Registry Office within 30 days as from the date of the transaction.

Land Registry Offices are the entities in charge of keeping public records reflecting the description of properties and their current status, including ownership and encumbrances.

Alternatively, the transfer of real estate assets in Portugal may be performed indirectly, by means of the acquisition of shares in the property holding company (share deal). The transfer of shares may be effected by means of a private agreement between the parties.

The acquisition of shares in public limited liability companies (sociedade anónima) must, in certain cases, be notified to the company (notably for the registration of the shares on behalf of the purchaser) and to public authorities (tax authorities and regulatory entities). The acquisition of a stake in a private limited liability company (sociedade por quotas limited liability company whose share capital is represented by "quotas") must be registered with the Portuguese Companies Registry.

4. Financing

The financing of real estate projects in Portugal is typically secured against the relevant real estate assets and/or the shares of the property-owning company and/or the property generated income.

A mortgage is the most common security provided. In case of breach of repayment obligations under a financing arrangement, a mortgage grants the creditor the right to be paid preferentially towards other non-secured creditors, from the proceeds of the sale of the mortgaged property (provided other creditors do not benefit from special privileges, which would be the case, for instance, of the tax authorities, in respect of property taxes). Pledges of shares and receivables or credits (rents, deposits, indemnities, etc.) are also commonly included in real estate financing security packages.

Tax Framework

Asset Deal Transactions

Acquisition of Real Estate

Property Transfer Tax (IMT) is a municipal tax levied on the transfer of real estate located in the Portuguese territory.

Property Transfer Tax is levied on the higher of (i) the declared acquisition value and (ii) the taxable value of the property and the applicable tax rates are as follows:

a) Urban properties used exclusively as primary residence: 6% (maximum progressive rate, according with the taxable value of the property);
b) Rural properties: 5%;
c) Urban properties not intended for residential purposes: 6.5%;
d) Properties purchased by entities resident in a blacklisted jurisdiction (as detailed on the Ministerial Order 150/2004, of 13 February, as amended): 10%.

Stamp duty is levied on the acquisition of property, at a rate of 0.8%. The tax basis for Stamp Duty is equivalent to that of IMT.

Holding of Real Estate

Municipal Property Tax (IMI) is levied annually on the taxable value of the property (VPT), as follows:

a) Urban properties: 0,3% to 0,45% (variable according to each municipality);
b) Rural properties: 0,8%;
c) Properties owned by entities resident in blacklisted jurisdictions: 7,5%.

Regarding real estate income, if any, taxation will vary depending on the entity holding and/or exploiting the real estate assets.

As of 2017 a new tax was enacted (Additional to Municipal Property Tax or "AIMI"), was enacted and is effective as from January 2017 onwards. AIMI is levied only on urban properties for residential purposes and plots for construction located in Portugal. Urban properties classified for "trade, industry, or services" or as "other types of property" are excluded from Additional to Municipal Property Tax.

The taxable amount corresponds to the sum of the Property Tax Value of the urban properties and construction plots held by each taxpayer reported on January 1st of each year and rates vary as follows:

a) For corporations, AIMI rate is of 0.4%. However, properties exclusively allocated to the personal use of board members and family relatives (spouses, descendants or ascendants), are subject to an aggravated rate of 0.7%. For taxable amounts in excess of € 1 Million, the marginal rate is 1%, and for taxable amounts in excess of € 2 Million, the marginal rate is 1.5%.
b) For individuals, the AIMI rate is 0.7% of the taxable amount after the deductions below. For taxable amounts in excess of € 1 Million, the marginal rate is 1%, and for taxable amounts in excess of € 2 Million, the marginal rate is 1.5%. Deductions: In the case of individuals and undivided estates, a deduction of € 600,000 is applied to the taxable amount, prior to the application of the AIMI; Married taxpayers or taxpayers under a civil union (união de facto) are entitled to a deduction of € 1.2 million.
c) For properties owned by entities resident in a blacklisted jurisdiction (as detailed on the Ministerial Order 150/2004, of February 13, as amended), the rate is 7.5%.

Companies resident in Portugal for tax purposes are subject to Corporate Income Tax (CIT) at a standard rate of 21%, accrued with Municipal Surcharge (up to 1.5%) and State Surcharge (applicable to profits exceeding €1.5million, up to a maximum rate of 9%).

Non-resident companies without a permanent establishment in Portugal are subject to CIT at a rate of 25%. This rate applies both to rental income (limited ability to deduct costs incurred) and capital gains from the sale of property.

Share Deal Transactions

Acquisition of Portuguese real estate companies

If the target company is formed as a private limited liability company ("sociedade por quotas") or a privately placed closed-end real estate investment fund ("fundo de investimento imobiliário fechado de subscrição particular") and the acquirer purchases at least 75% of the share capital or of the units of the fund, Property Transfer Tax will be levied on the transaction (as if it was an asset deal).

Sale of Portuguese real estate companies

Capital gains realized by resident shareholders are included in the taxable profits of the shareholder, except if the "participation exemption" regime applies (i.e. for shareholders that hold at least 10% of the real estate company, for a minimum period of 1 year).

Regarding non-resident shareholders, capital gains are subject to Corporate Income Tax at a rate of 25% except if an exemption applies pursuant to the Tax Benefits Code or a double tax treaty.

We note that if more than 50% of the assets of the company consist of real estate assets, in principle, capital gains from a share deal are not exempt, except if real estate is used for a commercial activity in Portugal.

Investment Incentives (selection)

Renovation Tax Regime

The Portuguese tax system has a wide range of benefits applicable to urban renovation, as follows:

a) **VAT**: the urban renovation construction contracts are subject to a reduced rate of 6% (instead of 23%)

b) **IMT**: Exemption for buildings or units built more than 30 years or those located in urban renovation areas (ARU)

c) **IMI and AIMI**: Exemption for 3 to 5 years after acquisition

Non-habitual tax residents regime

The Non-habitual Tax Residents regime ("NHR") foresees a very favorable tax regime applicable to individuals transferring their tax residence to Portugal. The NHR is one of the most competitive European regimes and is granted for a period of 10 years.

A non-habitual tax resident is an individual that:

- Was not a resident taxpayer for Personal Income Tax purposes in the 5 years prior to the application of the regime; and
- Becomes a resident taxpayer for Portuguese Personal Income Tax Code ("PIT" Code).

To qualify as a tax resident under Portuguese domestic rules, an individual is required to:

- Spend more than 183 days in Portuguese territory (on a 12-months period); or
- Own a dwelling that qualifies as a habitual residence in Portuguese territory (regardless of the number of days effectively spent in Portugal).

The benefits provided in the NHR range from a full exemption on certain types of income and a reduced flat tax rate of 20% to other types of income.

Foreign-source income:

i. Passive income deriving from outside Portugal (e.g. dividends, interest, pensions and rental income) are fully exempt in Portugal and this exemption applies irrespective of the taxation applicable at source (i.e. it is possible to achieve double non-taxation); and

ii. Active income (e.g. income from employment and self-employment) deriving in connection with "high value-added activities" may also be fully exempt provided specific conditions are met. The activities qualified as "high value added" are identified in a statutory shortlist and include software developers, academics, researchers, tax advisors and senior company personnel.

Portuguese-source income, in particular active income deriving in Portugal in connection with "high value-added activities" will be subject to a flat rate of 20% (instead of the general progressive tax rates).

Golden Visa and Portuguese Citizenship

The Golden Visa Program corresponds to a special legal regime that allows non-EU nationals that intend to invest in Portugal to apply for a temporary residence permit ("Temporary Residence Permit for Investment" or "ARI").

Temporary permit

Any third-country nationals can apply for Golden Visa, provided they are holders of a valid Schengen visa (or being exempt from it) or legalize their permanence in Portugal within 90 days as of their first entry into national territory.

The minimum quantitative requirement is deemed fulfilled if one of the following conditions is met:

i. capital transfer with a value equal to or above 1 million Euros;

ii. the creation of at least 10 jobs;

iii. the purchase of real estate property for a value equal or above 500 thousand Euros;

iv. the purchase of real estate property regarding buildings older than 30 years or located in urban renovation areas, destined to renovation, for a total value equal to or above 350 thousand euros;

v. capital transfer with a value equal to or above 350 thousand Euros for investing in research activities conducted by public or private scientific research institutions involved in the national scientific or technologic system;

vi. capital transfer with a value equal to or above 250 thousand Euros for investing in artistic output or supporting the arts, for reconstruction or renovation of the national heritage;

vii. capital transfer with a value equal to or above 500 thousand Euros, for purchasing shares in investment funds or in venture capital funds geared to capitalize small and medium companies; or

viii. capital transfer of the amount of 350 thousand Euros, or higher, for a constitution of a commercial company with head office in the national territory, combined with the creation of five permanent working jobs.

The Golden Visa investor must stay in Portugal for a period of, at least, 7 days during the first year, and 14 or more days, in the subsequent 2-year periods.

Portuguese citizenship

In order to apply for Portuguese citizenship applicants must legally live in Portugal for at least 5 years.

The granting of Portuguese citizenship is subject to certain requirements, notably the applicant shall (i) be of legal age under the Portuguese law (parents may also apply for the citizenship of their children in certain conditions), (ii) have not been convicted in Portugal for a crime punishable with deprivation of liberty exceeding 3 years (iii) show evidence of sufficient knowledge of Portuguese language (to be proven through a written test) and (iv) a link with Portugal and with the Portuguese culture (to be ascertained by the immigration authorities on a case by case basis).

The granting of Portuguese citizenship is subject to a discretionary decision of Portuguese competent authorities.