The Real Estate Investment Structure Taxation Review

Fourth Edition

Editors
Giuseppe Andrea Giannantonio and Tobias Steinmann

The Law Reviews

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THE REAL ESTATE INVESTMENT STRUCTURE TAXATION REVIEW

FOURTH EDITION

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This article was first published in June 2022
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THE LAWREVIEWS

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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK
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www.TheLawReviews.co.uk

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Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-80449-088-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

AABØ-EVENSEN & CO ADVOKATFIRMA AS

ARENDT & MEDERNACH SA

CAIADO GUERREIRO

CHIOMENTI

CMS PASQUIER CIULLA MARQUET PASTOR SVARA & GAZO

DENTONS

EPRA

GIDE LOYRETTE NOUEL AARPI

GLEISS LUTZ

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HOMBURGER AG

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PREFACE

The real estate sector plays a crucial role in the global economy and social environment.

In particular, the commercial property sector offers the infrastructure needed for the growth and development of entrepreneurship and business, including offices, shops, industrial and logistics premises, and hotels. In Europe alone, commercial real estate represents a business of €8.5 trillion.

The real estate sector is also a fundamental source of employment. In 2019, the European real estate sector employed 4.2 million people – more than the car manufacturing and telecommunications sectors combined. Moreover, it provides residential accommodation and is seen as a tool to meet social and public needs. New types of properties are emerging and have increasingly been included in investment portfolios, such as senior living, student accommodation and life sciences. In addition, urban regeneration has become a key element of many decisions taken at EU level, boosting city renovation, decarbonisation and green transition. In this respect, the NextGenerationEU recovery fund will play a key role in supporting this transformation.

In this context, attracting investments from institutional investors such as pension funds, insurance companies and sovereign wealth funds is crucial for the growth of the real estate sector. In particular, it is desirable that those investors are involved in both financing large development projects and investing in properties held for rent.

Based on market practice, investments from foreign institutional investors are mainly carried out indirectly rather than through direct acquisitions, and particularly through specialised vehicles such as non-listed real estate funds, listed property companies and real estate investment trusts.

The emergency caused by the covid-19 pandemic over the past couple of years has affected the real estate sector like so many other sectors. Although any disturbance to private real estate valuations is normally only revealed over time, listed real estate stocks suffered a sharp decline in 2020. However, thanks to strategies put in place after the 2008 global financial crisis (GFC) (most notably restructuring of debt), the listed sector's recovery was five time faster than that following the GFC. With investors increasingly focusing on thematic investment, the post-crisis landscape has been characterised by higher demand for alternative real estate sectors and assets, accelerating a process of transformation that was already ongoing.

After a deep recession in most of the European economies in 2020 due to the pandemic, 2021 has been characterised by an economic recovery that, in principle, was forecasted to continue on a more moderate path in 2022 and 2023.

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However, in April 2022, inflation in the eurozone reached a record level (7.5 per cent) due to heightened uncertainty and geopolitical risks as well as skyrocketing energy and raw material prices caused by the war in Ukraine. This is not slowing down investments despite the uncertainty, because the sector has strong fundamentals.

Based on the above, national legislators are facing a new phase of uncertainty, inflation and geopolitical risks that will have an impact on new provisions aimed at stimulating or attracting selected investments in their countries. Part of the NextGenerationEU recovery fund might be reviewed in light of new 'what if' scenarios as well as tax credits and allowances resulting from increased costs of construction. Any review of national legislation should also take into account international sanctions against Russia.

We are convinced that the role of the real estate sector as an economic, employment and social catalyst needs to be supported by a legislative framework that increases transparency and competitiveness and simplifies, as well as standardises, bureaucratic processes.

However, within the European Union, the covid-19 crisis, the conflict between Russia and Ukraine and, consequently, the rise in inflation have all had different impacts on different countries. This will, of course, further exacerbate differences between the interventions made by legislators in the individual jurisdictions, with allowances, tax credits, and other tax provisions introduced and applied very differently from one Member State to another. Generally, these disparities reflect the level of impact those elements have in particular jurisdictions, the economic policies followed by their respective governments and the level of resources available to achieve those aims.

Correlatively, national legislators will need to adapt any new provisions to those pre-existing types of specialised real estate investment vehicles that currently benefit from tax exemptions or other advantageous tax allowances, for both direct and indirect tax purposes.

Given all of the above, the aim of this volume is to provide a useful guide to those international and institutional investors that are willing to invest in real estate properties located in Europe and elsewhere, and to illustrate in a comparative manner possible alternatives for the establishment of investment platforms in Europe and investment vehicles at a local level. In particular, each country-specific chapter provides insights from leading experts into key tax considerations and investment opportunities based on the relevant national legislation. Furthermore, in this edition, we have sought to provide indications of any allowances and facilitations introduced temporarily in response to the current economic crisis that might also present investors with investment opportunities in specific countries.

We would like to thank the authors of this volume for their extensive expertise and their efforts to ensure the successful outcome of this work. We hope that the reader finds this volume useful and we welcome any comments and suggestions for improvement for the next edition.

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June 2022

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Chapter 10

PORTUGAL

Ana Castro Gonçalves and Maria Margarida Torres[1]

I OVERVIEW

i Investment vehicles in real estate

A public limited company (SA), often known as a joint stock company, is the most frequently used vehicle for investing in real estate in Portugal. It is an unregulated flexible vehicle with low initial and continuing administration costs and few compliance requirements.

Regulated vehicles, such as real estate investment funds (FIIs), real estate investment companies (SICAVIs or SICAFIs), and real estate investment and management companies (SIGIs), might also be appealing investment vehicles; however, they are not so widely used because of their highly regulated regimes, as well as their higher management and compliance costs.

ii Property taxes

In the acquisition of real estate, the purchaser must consider the charges associated with the acquisition and ownership of the property, in particular those relating to real estate transfer tax (IMT), stamp duty (IS) and municipal real estate tax (IMI).

IMT is due on onerous transfers of ownership rights or equivalent rights held in respect of real estate located in the Portuguese territory, whereas IMI is due annually by the holders of ownership, usufruct or surface rights over real estate. An additional and separate tax (AIMI) is also levied on residential property and land for building if certain circumstances are verified (see below).

As for value added tax (VAT), the transfer of real estate is, as a rule, exempt from such tax. However, the seller (together with the purchaser) may waive the VAT exemption on the transfer of urban non-residential real estate under specific circumstances.

II ASSET DEALS VERSUS SHARE DEALS

i Legal framework

According to the legal definition of the right of ownership, foreseen in the Portuguese Civil Code, the owner of a property has complete and exclusive use, enjoyment and disposition rights to real estate, subject to legal limitations.

In addition to the right of full ownership, the Portuguese legal system foresees other (minor) *in rem* rights, such as surface rights, use and living rights, and usufruct rights.

1 Ana Castro Gonçalves and Maria Margarida Torres are partners at Caiado Guerreiro.

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Any facts that generate, recognise, acquire or amend any rights over real estate must be registered with the land registry office, which also keeps track of the property's description. Furthermore, under the priority of registration concept, a right registered initially has precedence over any competing rights or activities registered later.

Real estate rights can be transferred directly (through an asset deal) or indirectly via transfer of shares in the company or other vehicle that owns the property (a share deal).

Asset deals

In Portugal, the acquisition or establishment of a right *in rem* in real estate starts, as a rule, with the execution of a promissory purchase and sale agreement, which regulates aspects such as the term for the execution of the definitive contract, the price and payment conditions, the potential rights of preference, the parties' representations and warranties, events of default and respective consequences, among other things.

The promissory agreement is followed by the execution of a public deed or private authenticated document, at which time the ownership (or other *in rem* right) in the property is transferred.

Although the transfer of such rights occurs when the underlying agreement is signed, as previously mentioned, the transfer must be registered to ensure public disclosure of the assets' legal status and the legality of the property transaction.

A public deed shall be performed and signed before a notary public, whereas a private document can be authenticated by a person or entity legally authorised for this operation, such as a lawyer or a registry officer.

Apart from complying with tax obligations arising from the purchase of real estate, several documents are required for the transfer of real estate ownership, such as the property's energy performance certificate and the municipality's use permit, among other things.

Share deals

Private agreements that do not require notarisation are the most common means used to formalise share deals. Therein, the parties agree on the terms and conditions for the transfer of the shares, which typically include specific provisions on the underlying real estate assets.

The legal requirements for transferring shares vary depending on the investment instrument.

ii Corporate forms and corporate tax framework

The corporate forms that are used most in Portugal for investment in real estate are SAs and private limited companies (Ldas).

SAs have a minimum number of shareholders of five (or one, if it is a corporate entity) and a minimum share capital of €50,000, with the nominal value of each share not being less than €0.01. The liability of the shareholders in an SA is limited to the shares subscribed by each shareholder, with the company's assets being the only assets liable for the company's debts. The most common corporate structure includes a board of directors (or sole director), the general shareholders' meeting and a supervisory body (supervisory board or single auditor). Alternatively, it is also possible to adopt Anglo-Saxon or continental European models of corporate governance, involving the creation of different bodies.

As for the Ldas, the minimum number of quota holders is two and the minimum share capital is of €2 (minimum of €1 per quota). The liability is limited to the amount of the contribution of each quota holder, although, generally, only the company's assets are liable

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for the debts of the company. The corporate structure of an Lda comprises the management (one or more members, who may or may not be quota holders) and the general meeting. The appointment of a supervisory body is generally optional but is compulsory in cases whereby the company exceeds certain established legal limits for two consecutive fiscal years.

Other (less commonly used) corporate forms allowed by the Portuguese legal system include single limited companies by quotas, general partnerships and limited partnerships.

Regardless of the legal form they use, all corporate entities engaged in a commercial activity in Portugal are deemed taxable entities subject to corporate income tax (CIT).

CIT is levied on the annual profit obtained by such entities, at the standard rate (in mainland Portugal) of 21 per cent, to which a municipal and a state surcharge can be added.

It should be noted, however, that some entities are deemed tax transparent for CIT purposes, namely entities that have simple assets and either are managed by a family or have no more than five shareholders. In these cases, personal income tax (IRS) rules shall also be taken into consideration.

iii Direct investment in real estate

Indirect taxes on purchase

IMT

As a rule, IMT is levied on the transfers for consideration of real estate located in Portugal. It is due by the purchaser and it is calculated over the purchase price or the property tax value (whichever is higher). IMT is also due when minor *in rem* rights, such as usufruct and surface rights, are formed, transferred or cancelled, subject to specific rules as to the calculation of the tax base.

The rates vary according to the nature and purpose of the real estate, namely, whether it is rural or urban, residential, or non-residential, for habitual and personal inhabitation or not. Hence, the acquisition of rural properties is subject to a 5 per cent rate, whereas the purchase of urban non-residential property is subject to a 6.5 per cent rate and urban residential property is subject to progressive rates that go up to 7.5 per cent.

If the purchaser is an entity that is resident or has a head office in a country, territory or region subject to a more favourable tax regime included in the list of blacklisted jurisdictions approved by the Minister of Finance,[2] or if real estate is purchased by an entity that, despite not being resident in a blacklisted jurisdiction, is under the direct or indirect domain or control of such an entity, a 10 per cent rate applies regardless of the nature of the property.

2 Portugal's blacklist of jurisdictions: Anguilla, Antigua and Barbuda, Dutch Antilles, Aruba, Ascension, Bahamas, Bahrain, Barbados, Belize, Bermuda Islands, Bolivia, Brunei, Channel Islands (Alderney, Guernsey, Jersey, Great Stark, Herm, Little Sark, Brechou, Jethou and Lihou), Cayman Islands, Cocos (Keeling) Islands, Cook Islands, Costa Rica, Djibouti, Dominica, United Arab Emirates, Falkland Islands or Malvinas, Fiji Islands, Gambia, Grenada, Gibraltar, Guam Island, Guiana, Honduras, Hong Kong, Jamaica, Jordan, Queshm Islands, Kiribati Island, Kuwait, Labuan, Lebanon, Liberia, Liechtenstein, Maldives Islands, Isle of Man, Northern Marianas Islands, Marshall Islands, Mauritius, Monaco, Monserrate, Nauru, Natal Islands, Niue Island, Norfolk Island, Sultanate of Oman, other Pacific islands not listed, Palau Islands, Panama, Pitcairn Island, French Polynesia, Puerto Rico, Qatar, Solomon Islands, American Samoa, Western Samoa, Saint Helena Island, Saint Lucia, Saint Christopher and Nevis, San Marino, San Pedro and Miquelon Island, Saint Vincent and the Grenadines, Seychelles, Swaziland, Svalbard Islands (Spitsbergen archipelago and Bjornoya Island), Tokelau Island, Tonga, Trinidad and Tobago, Island Tristan da Cunha, Turks and Caicos Islands, Tuvalu Island, Uruguay, Vanuatu Republic, British Virgin Islands, United States of America Virgin Islands and Arab Republic of Yemen.

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Under certain circumstances, IMT is also levied upon the signature of promissory purchase and sale agreements, as well as the transfer of the promissory purchaser's contractual position in such agreements, or upon the grant or transfer of an irreversible power to sell real estate through a proxy.

There are notable exemptions regarding the payment of IMT, such as (1) the acquisition of properties for resale and (2) the acquisition of urban properties with the purpose of urban rehabilitation.

Acquisition of properties for resale

Acquisitions of properties for resale are exempt from IMT, provided that, among other conditions, the acquisition is for the purpose of resale and such resale takes place within three years of the acquisition.

The exemption in question may operate via reimbursement of the IMT liquidated in the acquisition of real estate at the time of its resale or applied immediately at the time of the acquisition, provided that the legally prescribed requirements are met.

One such requirement is that the purchaser can show that it regularly engages in the activity of acquisition of properties for resale, as evidenced by a statement issued by the Portuguese tax authorities attesting that the purchaser resold at least one property previously acquired with the intention of reselling or acquired a property with the intention of reselling in the preceding calendar year.

Acquisition of urban properties with the purpose of urban rehabilitation

To encourage investors to opt for urban rehabilitation, the Portuguese Tax Benefits Code (EBF) establishes that purchases of urban buildings intended for urban rehabilitation shall be exempt from IMT, provided that the purchaser starts the rehabilitation works within three years of the acquisition. This regime applies to urban buildings or autonomous fractions completed more than 30 years ago or located in urban rehabilitation areas.

The works carried out should qualify as urban rehabilitation work under the requirements of the relevant legal regimes. Furthermore, the property's preservation grade must be raised two levels, with a minimum rating of good required.

The recognition of the exemption falls, as a rule, to the city council of the location of the property after the completion of the rehabilitation works and once the urban and energy certification is awarded to the rehabilitated building. Considering that the exemption is subject to recognition, IMT is paid a priori in the acquisition of the property intended for rehabilitation, and is refunded to the purchaser only after the recognition of the exemption. Once the exemption has been recognised, the city council must communicate it to the tax services of the area of the location of the property within 20 days so that it can cancel the IMT settlements and refund the tax paid.

At the same time, and to encourage the purchase of rehabilitated properties, an exemption from IMT is granted on the first acquisition, following the rehabilitation, if the property is allocated to rental for permanent housing or, when located in an urban rehabilitation area, it is allocated to one's own and permanent housing.

As per the State Budget Proposal for 2022,[3] this IMT exemption granted on the first acquisition shall cease if, in the six years following the exempt transfer, the property is used

3 Passed, in its general terms, by the Portuguese Parliament on 29 April 2022.

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for a purpose other than that which allowed for the exemption to apply. The same shall occur if the property is not allocated to one's own and permanent housing within six months after the transfer date, or if the property is not rented for permanent housing within one year after the transfer date.

IS

IS is a tax that is levied in Portugal on all acts, contracts, documents, titles, papers, and other legal facts or situations foreseen in its 'General Chart', including gifts of assets. In the case of acquisitions of real estate, it is calculated over the purchase price or the property tax value (whichever is higher) and results from the application of the rate of 0.8 per cent.

VAT

In most cases, the transfer of Portuguese real estate is VAT free, which means that no VAT is applied to the sale of the property.

The seller (together with the purchaser) may, however, waive the VAT exemption when both are VAT taxable entities and engaged in activities for which they are entitled to deduct input VAT or, if they engage in activities for which VAT is deductible and non-deductible, the former activities must account for at least 80 per cent[4] of their business turnover in the previous year.

The real estate in question must be an urban property or an autonomous fraction of one that is not used for residential purposes, such as commercial and industrial properties and plots of land for construction, and it must be used for activities that qualify for input VAT deductions, such as VAT-liable and non-exempt transactions.

Furthermore, the following conditions shall be met:

a it is the first transfer after construction, and input VAT on construction has been or may still be deducted in full or in part;

b it is the first transfer after extensive renovation or transformation that has resulted in an increase in the property's tax value of more than 30 per cent, and input VAT incurred on the renovation or transformation may still be deducted in full or in part; or

c it is the first transfer after a transaction where the VAT exemption was waived, and the initial deduction of input VAT has not yet reached the end of its 20-year adjustment period.

Indirect taxes on holding

IMI

IMI is a municipal tax, calculated on the property tax value of urban and rural properties located in the Portuguese territory.

It is due, on an annual basis, by those who have the ownership, usufruct or surface rights over property on 31 December of the relevant year, and is collected and paid the following year.

The rates of IMI range from 0.3 per cent to 0.45 per cent for urban properties and 0.8 per cent for rural properties, as determined by each municipality on an annual basis.

4 The 80 per cent requirement does not apply to VAT taxable persons who principally engage in operations relating to the development and renovation of real estate or the acquisition of real estate for resale or rental.

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Similarly to the IMT, there is an aggravated IMI rate of 7.5 per cent for cases in which the real estate is held by an entity that is resident or has a head office in a country, territory or region subject to a more favourable tax regime included in the list of blacklisted jurisdictions approved by the Minister of Finance, or by an entity that, despite not being resident in a blacklisted jurisdiction, is under the direct or indirect domain or control of such an entity.

IMI is paid in one, two or three instalments depending on the amount to be paid:

a amounts up to €100: one instalment paid in May;
b amounts from €100 to €500 inclusive: two instalments paid in May and November; and
c amounts exceeding €500: three instalments in May, August and November.

The EBF also foresees IMI benefits for cases of properties for resale and those subject to urban rehabilitation.

Real estate held for resale and accounted for as inventory and stock is liable for IMI only from the third year after acquisition, and under certain conditions, unless the property was acquired from an entity that already benefited from this tax deferral regime. The deferral regime may also apply to property that was not purchased for resale but was accounted for as inventory or stock.

Real estate subject to urban rehabilitation can benefit from an IMI exemption for three years, counting from (and including) the year of completion of the works, subject to the same terms and restrictions as the IMT urban rehabilitation exemption. This exemption may be extended for an additional five years upon request in the case of properties rented for permanent housing or for one's own permanent housing.

In addition to IMI, the owners, usufructuaries or holders of surface rights over urban properties located in the Portuguese territory (except those classified as commercial, industry, or services and others) are required to pay AIMI tax on an annual basis.

The AIMI is levied on the sum of the tax registration value of all the non-excluded urban properties as at 1 January each year (excluding the tax registration value of properties that benefit from an exemption or that were out of scope of IMI in the previous year).

Except for corporations or assimilated entities domiciled in blacklisted jurisdictions, which are subject to a rate of 7.5 per cent, the general AIMI rate for corporations or assimilated entities is 0.4 per cent.

Companies that carry out the activities of lease or accommodation have the option to deduct the AIMI paid, capped at the portion of the tax assessed that corresponds to the income generated by properties subject to AIMI.

Direct taxes on holding and disposal and permanent establishment issues

Income generated during the holding and upon the sale of real estate investments in Portugal shall be subject to CIT.

In this context, it is important to distinguish between investors that are non-residents without a permanent establishment (PE)[5] in Portugal and those operating in this territory through a PE or a local subsidiary.

In recent years, the OECD has sought to harmonise the concept of the PE by publishing guidelines, in particular under Action 7 of the base erosion and profit shifting

5 The definition of 'permanent establishment' under Portuguese CIT legislation and in the terms of the agreements to avoid double taxation signed by Portugal is consistent with Article 5 of the OECD Model Tax Convention.

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(BEPS) project, which have filled the conceptual gaps arising from economic developments. Consequently, the Portuguese domestic law has followed international trends in this field and has incorporated a more comprehensive concept of the PE.

Non-residents without a PE

Non-residents investing directly in the purchase of Portuguese real estate shall not be considered to have a PE provided that they do not engage in a related active business activity and limit their investment to the holding of the property and the collection of rents arising from the corresponding lease.

Both the rules of the agreements to avoid double taxation signed by Portugal and domestic tax legislation determine that the income earned throughout the holding and sale of real estate investments by non-residents without a PE shall be subject to CIT.

In most cases, the taxable rental income shall equal the gross income less all connected costs and expenses and shall be subject to a 25 per cent CIT rate. Deductions for financial costs and depreciation shall not be allowed.

If the lessee is a Portuguese entity subject to organised accounting rules, it shall carry out the withholding of tax upon the payment of the rents, at the rate of 25 per cent, as an advance payment of the final tax due, which shall be calculated after the filing of the annual CIT return by the non-resident investor.

Capital gains on the sale of real estate property are also subject to CIT in Portugal, at the rate of 25 per cent. The taxable gain shall equal the difference between the property's transfer value and its purchase value. If the property's tax value is higher than the declared transfer value, the former will be the relevant value for capital gains purposes unless the transferor provides evidence that the transfer value was, in fact, lower than the property's tax value.

Expenses for property renovations in the 12 years leading up to the transfer should be added to the acquisition value, which is updated by a monetary adjustment coefficient if the property is transferred more than 2 years after the purchase date.

Furthermore, gains arising from the onerous transfer of shares or similar rights in companies or other entities, whereby at any time during the preceding 365 days the value of such shares or rights results, directly or indirectly, in excess of 50 per cent of real estate or rights *in rem* in real estate located in Portugal, with the exception of real estate engaged in an activity of an agricultural, industrial, or commercial nature other than the purchase and sale of real estate, shall be subject to CIT in Portugal at a 25 per cent tax rate levied on the positive difference between the transfer value and the purchase value of the shares (updated by a devaluation coefficient if the shares have been held for more than two years).

CIT shall be due upon the verification of the following elements:

a generation of a gain

b by an entity with no registered office or effective management in Portugal,

c resulting from the transfer for consideration of shares in the capital of another company not having its registered office or effective place of management in Portugal,

d which value (i.e., of the transferred shares) results, directly or indirectly, in more than 50 per cent of any real estate rights located in Portugal

e either on the date of sale or on any day during the 365 days prior to the transfer subject to tax.

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It should, however, be noted that CIT taxation on these capital gains may be overcome under the terms of an agreement to avoid double taxation executed between Portugal and the transferor's State of residence.

The agreement to avoid double taxation executed between Portugal and the United Kingdom, for example, does not foresee any clause conferring jurisdiction on the source State (i.e., Portugal) to tax the capital gains obtained by a resident of a contracting State (i.e., the UK) arising from the sale of shares of companies holding, directly or indirectly, real estate in the other contracting State (i.e., Portugal). In these cases, the State of residence shall have exclusive taxation rights over the gains arising from the sale of shares, regardless of the composition of the company's assets to which they refer.

Hence, in the above-mentioned case, any capital gains obtained by the UK resident entity from the sale of an entity resident in, for instance, Spain, the value of which is derived by more than 50 per cent from real estate located in Portugal, may be taxed, in light of the agreement to avoid double taxation executed between Portugal and the UK, only in the State of residence (in this case, the UK).

Non-residents with a PE and resident companies

A PE can be perceived as a common extension of the foreign company. Although it has no legal autonomy, it has tax autonomy and, therefore, it may be taxed in the same way as resident companies, with the precision that it shall be subject to Portuguese CIT (in general terms) only on the income that is attributable to the activity carried out by the PE in Portugal.

Furthermore, considering the coexistence of two States with potential taxation rights over income, the State of residence of the head office and the State of the location of the PE, the agreements to avoid double taxation shall also be considered in addition to the local domestic law.

For resident entities engaged in a commercial, industrial or agricultural activity (i.e., a business operation), the annual CIT tax base is calculated by adding the year's accounting profit or loss to certain positive and negative changes in equity not reflected in the profit and loss account, subject to certain adjustments required by the CIT law.

All costs and losses documented and incurred during the business operation are acknowledged as deductible for CIT purposes, according to the general rules.

Net financial expenditures are deductible only up to the higher of €1 million or 30 per cent of profits before depreciation, amortisation, net interest costs and tax. Net financial expenditures that are not deductible in a particular tax year can be carried forward for five years. Similarly, if deductible net financial expenditures do not exceed the 30 per cent threshold in a given year, the unused deduction amount can be carried forward for five years.

Although real estate accounted for as stock or inventory is not subject to depreciation, the yearly cost of depreciation of real estate accounted for as investment property or as tangible fixed assets under the cost model is considered as a deductible cost for CIT purposes. Land is not subject to depreciation.

Depreciation rates for buildings range from 2 per cent to 5 per cent (for both residential and non-residential assets). During the estimated lifespan period, major repairs and improvements that increase the value or duration of the assets that are the subject of the works may also be depreciated.

The sale of real estate accounted for as investment property or tangible fixed assets results in capital gains or losses, which are included in the company's CIT taxable income. The difference between the transfer value (less inherent expenses) and the purchase value

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(less tax relevant depreciation and impairment losses and updated by a monetary adjustment coefficient if the real estate is kept for more than two years) shall correspond to the taxable capital gain or loss.

In mainland Portugal, CIT is charged at a standard rate of 21 per cent.

In addition to CIT, corporate entities are subject to a municipal surcharge of up to 1.5 per cent on the taxable profits for the year (levied by most municipalities), as well as to a state surcharge levied on taxable profits exceeding €1.5 million (before deducting tax losses). The state surcharge's rates are progressive and range from 3 per cent (on taxable profits over €1.5 million) to 9 per cent (on taxable profits over €35 million).[6]

Companies that limit their activities to the administration of assets or securities held as an investment or for fruition, or the purchase of buildings for the housing of their shareholders, as well as companies that engage in other activities but whose revenue from those assets, securities or properties accounts for more than 50 per cent of the total revenues, on average, over the previous three years, can be deemed tax transparent for CIT purposes.

This shall occur with simple asset management companies that are held, directly or indirectly, for more than 183 days in any given year by a family group or that have no more than five shareholders (and none of those is a public corporate entity).

These companies' taxable income is calculated in accordance with the general rules of the CIT Code, but it is apportioned and taxed at the level of the shareholders (IRS for individuals and CIT for corporate entities).

Portuguese companies are entitled to carry forward tax losses. For losses incurred in tax periods beginning on or after 1 January 2017, the carry-forward period is five years, except for micro, small and medium-sized companies (PMEs), which have a 12-year carry-forward period.

However, the deduction to be made in each of the tax periods shall not exceed the amount corresponding to 70 per cent of the taxable profit, without prejudice to the deduction of that part of the loss that has not been deducted, under the same conditions, until the end of the respective reporting period.

The supplementary State Budget for 2020 introduced a special regime for tax losses from 2020 and 2021, which can be carried forward for a total of 12 years, regardless of the size of the company (PME or otherwise). The above-mentioned threshold (70 per cent of each tax period's taxable income) is, in these cases, raised to 80 per cent. Also, for tax losses carried forward on the first day of the 2020 financial year, the carry-forward period was suspended during the 2020 and 2021 financial years, which translates into a two-year increase in the carry-forward period for tax losses incurred in 2014 and subsequent years.

Finally, tax losses carried forward shall be lost lost if at least 50 per cent of the ownership of the company changes, unless the company obtains approval from the Minister of Finance by filing a request to the tax authorities prior to the change of its ownership.

iv Acquisition of shares in a real estate company

Indirect taxes on acquisition

IMT

The IMT, as previously mentioned, is generally levied on the transfers, for a consideration, of the property rights or minor *in rem* rights over real estate located in Portugal.

6 Taxable profits over €7.5 million are subject to a 5 per cent rate.

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The IMT Code, however, foresees several extensions of the concept of real estate transfer and determines its taxation. One such notable extension is the acquisition of a company's shares or quotas when cumulatively:

a the value of the company's assets results, directly or indirectly, in more than 50 per cent of real estate located in Portugal, considering the balance sheet value or, if higher, the property tax value;
b such properties are not directly related to an agricultural, industrial or commercial activity, excluding the purchase and sale of properties; and
c as a result of that acquisition, amortisation or any other facts, one of the shareholders has at least 75 per cent of the share capital, or the number of shareholders is reduced to two married or cohabiting partners.

In these cases, IMT shall be due by the purchaser at a 6.5 per cent rate over the balance sheet value or, if higher, the property tax value.

Taxes on share income and capital gains for shareholders

Dividends

Under Portuguese domestic tax regulations, dividends paid to non-resident investors are subject to withholding tax at a rate of 28 per cent when paid to individuals (IRS) or 25 per cent when paid to corporate entities (CIT). In both cases, withholding tax is final.

This withholding tax may be overcome in certain circumstances, such as the following.

If the beneficiary of the dividend is resident in a State with which Portugal has concluded an agreement to avoid double taxation, the withholding tax rate may be decreased, often to 10 per cent or 15 per cent, depending on the applicable agreement.

On the other hand, dividends paid by a Portuguese resident subsidiary to a non-resident parent company may be excluded from withholding tax if the dividend-paying Portuguese subsidiary is subject to Portuguese CIT and is not treated as a CIT-transparent entity, provided that the non-resident parent company:

a is resident in another EU Member State;
b is resident in a European Economic Area (EEA) Member State bound by an administrative cooperation procedure in tax matters similar to that established within the EU;
c is resident in a country with which Portugal has an agreement to avoid double taxation allowing for the exchange of information for tax purposes;
d is subject to one of the taxes listed in Article 2 of Council Directive 2011/96/EU (the Parent–Subsidiary Directive) and not exempt from it, or is subject to a tax equivalent to the Portuguese CIT with a tax rate of not less than 12.6 per cent; and
e has held, directly or indirectly, at least 10 per cent in the share capital or voting rights of the Portuguese subsidiary for a period of at least one year prior to the dividend distribution.

If the one-year period holding is not verified, at the time the dividends are distributed, the non-resident parent company may ask for a refund of the tax withheld once such minimum holding period is completed.

This regime shall not apply to distributed dividends when there is a construction or series of constructions that, having been carried out for the main purpose or one of the main purposes of obtaining a tax advantage that has the object and purpose of frustrating the

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elimination of double taxation on such income, is not considered genuine, considering all relevant facts and circumstances. A construction or series of constructions is not genuine insofar as it is not carried out for valid economic reasons and does not reflect economic substance.

Such a regime shall also not apply if the entity resident in Portugal has failed to comply with the reporting obligations under the Legal Regime of the Central Registry of the Beneficial Owner, as well as in situations whereby the declared beneficial owner, or any of the beneficial owners declared under that regime, is resident in blacklisted countries, and the Portuguese company is unable to demonstrate that the structure was put in place for valid economic reasons.

Capital gains

Under Portuguese tax legislation, capital gains obtained by non-resident entities through the transfer of shares in a Portuguese resident company whose assets primarily comprise real estate located in Portugal shall be subject to Portuguese CIT. The applicable rate is 25 per cent and it is levied on the positive difference between the transfer value and the purchase value of the shares (updated by a monetary devaluation coefficient if the shares were held for more than two years).

CIT taxation on these capital gains may be overcome under the terms of an agreement to avoid double taxation executed between Portugal and the non-resident entities' State of residence.

III REGULATED REAL ESTATE INVESTMENT VEHICLES

i Regulatory framework

Regulated real estate investment vehicles in Portugal are governed by Law No. 16/2015 of 24 February 2015 and the General Regime of Collective Investment Undertakings (RGOIC), as republished by Decree-Law No. 144/2019, of 23 September 2019, and with amendments introduced by Law No. 25/2020, of 7 July 2020; by Law No. 50/2020, of 25 August 2020; by Decree-Law No. 72/2021, of 16 August 2021; by Decree-Law No. 109-F/2021, of 9 December 2021; and by Law No. 99-A/2021, of 31 December 2021. The RGOIC partially implemented into Portuguese law Directive 2011/61/EU of 8 June 2011.

Furthermore, because the collective investment undertakings are subject to supervision by the Portuguese Securities Commission (CMVM), the rules of the RGOIC shall be complemented by CMVM Regulation No. 2/2015, as republished by Regulation No. 3/2020 and with amendments introduced by CMVM Regulations Nos. 6/2020 and 9/2020.

Other relevant domestic legislation should be considered, such as the Portuguese Securities Code and the Portuguese Commercial Companies Code.

ii Overview of the different regulated investment vehicles

As mentioned, FIIs may be legally classified as collective investment undertakings (OICs), which constitute autonomous assets that result from the collection and investment of savings of individual and collective entities in real estate assets or equivalent, under a principle of risk sharing.

The capital of a FII is represented by participation units, the management being, as a rule, carried out by independent FII management companies.

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FIIs may be open ended, closed ended or mixed. Investment funds with a variable number of units are open ended. Closed-ended funds are those with participation units fixed in number.

FIIs may also be created under a corporate form as real estate investment companies, which may have a fixed capital (SICAFI) or a variable capital (SICAVI).

Although FIIs constitute autonomous assets managed by third parties (management companies), SICAVIs or SICAFIs are collective investment undertakings with legal personality, which own the assets in their own name and may or may not be self-managed.

With the necessary adaptations, FIIs, SICAVIs and SICAFIs benefit from a similar legal regime and their constitution and operation are subject to regulation and supervision by the CMVM.

iii Tax payable on acquisition of real estate assets

FIIs, SICAVIs and SICAFIs do not benefit from any special tax regime on the acquisition of real estate assets (see Section II.iii).

iv Tax regime for the investment vehicle

CIT and IS

FIIs' taxable income shall be subject to the standard 21 per cent CIT rate in Portugal. The taxable income shall correspond to the net profit for the period calculated using the accounting standards specifically applicable to these entities.

Income from capital, rents and capital gains shall, however, be excluded for the purposes of determining the taxable profit, except when derived from entities resident or domiciled in blacklisted jurisdictions.

It should be noted that this exclusion covers not only all the above-mentioned types of income but also income and expenses arising from the application of fair value to financial instruments and real estate, as well as management fees and other fees accruing to these entities. Exempt income expenses are not tax deductible, including financial costs associated with asset purchases or costs associated with taxes incurred upon asset acquisition or during the investment.

Income received or due to FIIs is not subject to withholding tax and these entities are not liable for State and municipal surcharges.

In addition to CIT, FIIs are subject to IS levied over the net overall assets of the funds, every quarter, at a 0.0125 per cent rate.

The overall net taxable amount is determined according to the average of the values reported to the CMVM, or disclosed by the management companies, on the last day of March, June, September and December.

v Tax regime for investors

As far as the taxation of participants is concerned, the applicable tax system is based on an exit tax logic.

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Resident individual investors

Income obtained out of the scope of a commercial, industrial or agricultural activity

Income distributed by the FII and income obtained from the redemption of participation units shall be subject to withholding tax at the final rate of 28 per cent (the investors may, instead, opt for its aggregation).

The income obtained from the transfer for consideration of participation units is subject to autonomous taxation at a rate of 28 per cent on the positive difference between the gains and losses of the tax period.

Income obtained in the scope of a commercial, industrial or agricultural activity

Income distributed by the FII is subject to withholding tax at the rate of 28 per cent, with the withholding tax being the final tax payment.

The income obtained from the redemption and the transfer for consideration of participation units shall integrate the taxable profit, being subject to the general rules of the IRS or CIT Codes (depending on the regime applicable to the investor in question).

Non-resident individual investors

Income distributed by the FII and income obtained from the redemption of participation units shall be subject to withholding tax at the final rate of 10 per cent.

Income obtained from the transfer for consideration of participation units is subject to autonomous taxation at the rate of 10 per cent.

When individual investors are resident in blacklisted jurisdictions, the income from participation units is subject to taxation by withholding tax, at the rate of 35 per cent in the case of dividends and at the rate of 28 per cent in the case of redemption, or through autonomous taxation at the rate of 28 per cent in the case of income from the transfer for consideration of the participation units.

Resident corporate investors

Income distributed by the FII is subject to withholding tax at the rate of 25 per cent, on account for the final tax due.

On the other hand, income obtained from the redemption or the transfer for consideration of the participation units is included in the calculation of the taxable profit, in accordance with the CIT Code.

Non-resident corporate investors

Income distributed by the FII and income obtained from the redemption of participation units shall be subject to withholding tax at the final rate of 10 per cent.

Income obtained from the transfer for consideration of the participation units is subject to autonomous taxation at the rate of 10 per cent.

In the case of legal persons resident in blacklisted jurisdictions, the income from participation units (i.e., dividends) is subject to withholding tax at the rate of 35 per cent, or autonomous taxation at the rate of 25 per cent in the case of income from the redemption or the transfer for consideration of the participation units.

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Non-resident entities with more than 25 per cent of their participation units or shares held by residents, except residents in the EU, EEA Member States or countries with an agreement to avoid double taxation with Portugal, are subject to withholding tax at the rate of 25 per cent.

IV REAL ESTATE INVESTMENT TRUSTS AND SIMILAR STRUCTURES

i Legal framework

Decree-Law No. 19/2019, of 28 January 2019, which came into force on 1 February 2019, created and regulated, in the Portuguese legal system, SIGIs, closely following the trend seen in the European market that has welcomed, in recent years, real estate investment trusts (REITs).

SIGIs have their own legal regime under which these entities are assimilated to SAs subject to supervision.

Other specific features of the regime specifically applicable to these entities relate to multiple restrictions relating to debt ratios and capital dispersion and investment policies specifically aimed at operating rental property.

ii Requirements to access the regime

To qualify as a SIGI, it is necessary for the commercial company (with a registered office and effective management in Portugal) to be an SA and that it adopts the supervisory model corresponding to a supervisory board and a statutory auditor (or a firm of statutory auditors that is not a member of that body).

SIGIs must also have a subscribed and paid-up share capital of at least €5 million and integrate *Sociedade de Investimento e Gestão Imobiliária, SA* or 'SIGI, SA' in its corporate name.

In addition, a SIGI shall have as its main corporate purposes:

a the acquisition of property rights, surface rights or other rights with equivalent content over real estate for rental, covering atypical contractual forms that include the provision of services necessary for the use of the property;

b the acquisition of shareholdings in other SIGIs or in companies with their registered office in Portugal or in another Member State of the EU or EEA that is bound to administrative cooperation in the area of taxation equivalent to that established within the EU and which meet certain requirements that also apply to SIGIs; and

c the acquisition of participations (shares or participation units) in:
- real estate investment bodies created under and governed by the General Regime of Collective Investment Undertakings, whose income distribution policy is similar to that established for SIGIs; and
- FIIs for residential rentals and SICAVIs or SICAFIs for residential rentals, whose income distribution policy is similar to that established for SIGIs.

One of the main features of the SIGI regime is that its shares must be admitted to trading on a regulated market or selected for trading on a multilateral trading facility within one year from the date of the commercial registration of the respective incorporation or the date on which the transformation takes effect. Furthermore, without prejudice to the rules of each platform, the following minimum percentages of the shares representing the share capital of SIGIs must be dispersed among investors holding participations corresponding to less than 2 per cent of the voting rights:

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

SIGIs' assets should consist mainly of property rights, surface rights or other rights of equivalent content over real estate for rental, including atypical contractual forms that include the provision of services required for the use of the property.

These assets must also respect the following cumulative limits:
a the value of the rights over the real estate and shareholdings must represent at least 80 per cent of the value of the assets of the SIGI; and
b the value of the rights over real estate to be leased, covering atypical forms of contract, which include the provision of services necessary for the use of the property, must represent at least 75 per cent of the total value of the assets of the SIGI.

However, the regime states that it is necessary that the above-mentioned asset composition requirements are met at all times only as from the second year after the incorporation of the SIGI, and that, even so, each of the rights and shareholdings must be held for at least three years after their acquisition.

With regard to indebtedness, the SIGI legal regime establishes that the same may not correspond, at any time, to more than 60 per cent of the value of the total assets.

Finally, with regard to dividends, the regime determines that within nine months after the close of each financial year, SIGIs shall distribute in the form of dividends at least (1) 90 per cent of the profit for the financial year resulting from the payment of dividends and income from shares or participation units distributed by the entities in which they may hold a share and (2) 75 per cent of the remaining distributable profit for the financial year.

Furthermore, it is established that at least 75 per cent of the net proceeds from the disposal of assets assigned to the pursuit of the main commercial purpose of SIGIs must be reinvested in other such assets within three years of the said disposal.

iii Tax regime

It was expressly established that the tax regime for SIGIs is the tax regime applicable to OICs, set out in Articles 22 and 22-A of the EBF.

Capital income, rental income and real estate capital gains earned by SIGIs are therefore expressly excluded from taxation.

The tax regime provides, however, that income resulting from the disposal of *in rem* rights in real estate may benefit from the exclusion from taxation only if it has been held by the SIGI for at least three years.

iv Tax regime for investors

Regarding investors, the tax regime establishes that the income distributed by a SIGI to resident individuals shall be subject to withholding tax at a rate of 28 per cent, and that when distributed to resident corporate entities, it shall be subject to a withholding tax rate of 25 per cent.

Non-resident investors shall be taxed at a reduced rate of only 10 per cent.

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v Forfeiture of REIT status

Companies forfeit their SIGI status when they:

a cease to comply with the requirements relating to company type, supervisory model, corporate purpose or minimum share capital;

b fail to comply with the obligation to apply for the admission to trading of their shares in the terms described above in time for the timely fulfilment of the admission requirement (one year after registration);

c fail, for a period of more than six months, to meet the dispersion requirements referred to above;

d fail to comply simultaneously, for more than six months, with the asset composition requirements mentioned above;

e fail, during two consecutive financial years or interpolated during a period corresponding to five financial years, to comply with at least one of the asset composition requirements mentioned above;

f fail to comply with the obligation to hold real estate rights and participations for a minimum period of three years after their acquisition; and

g fail to comply with the indebtedness limit mentioned above.

Although the loss of the status as a SIGI does not prejudice the maintenance of the nature of public company by the company that has acquired it, it prevents the same company from reacquiring the status of a SIGI in the following three years and generates liability of the members of the management and supervisory bodies towards the shareholders for damages directly caused to them due to the loss of their status.

When an entity loses the status of SIGI, it ceases to be eligible for the respective special tax regime. In this case, the taxable profit will be determined and taxed under the general terms of the CIT Code, considering, for this purpose, as a tax period the period between the date of forfeiture of the status and the end of the calendar year in which it occurred. Furthermore, any income from shareholdings in SIGIs paid or made available to the respective shareholders after the forfeiture date, as well as any capital gains raised after such date, shall be taxed under the general IRS or CIT rules.

V INTERNATIONAL AND CROSS-BORDER TAX ASPECTS

i Tax treaties

Portugal has signed 79[7] agreements to avoid double taxation currently (77 in force and two awaiting entry into force), all of which are based on the OECD Model Tax Convention.

7 South Africa, Germany, Andorra, Angola, Saudi Arabia, Algeria, Austria, Barbados, Bahrein, Belgium, Brazil, Bulgaria, Cape Verde, Canada, Chile, China, Cyprus, Colombia, South Korea, Ivory Coast, Croatia, Cuba, Denmark, United Arab Emirates, Slovakia, Slovenia, Spain, United State of America, Estonia, Ethiopia, France, Georgia, Greece, Guinea-Bissau, Netherlands, Hong Kong, Hungary, India, Indonesia, Ireland, Iceland, Israel, Italy, Japan, Kuwait, Latvia, Lithuania, Luxembourg, Macao, Malta, Morocco, Mexico, Mozambique, Moldova, Montenegro, Norway, Panama, Pakistan, Peru, Poland, Qatar, Kenya, United Kingdom, Czech Republic, Romania, Russia, San Marino, Sao Tome and Principe, Senegal, Singapore, Switzerland, Sultanate of Oman, East Timor, Tunisia, Turkey, Ukraine, Uruguay, Venezuela and Vietnam.

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Furthermore, Portuguese Parliament Resolution No. 225/2019, published on 14 November 2019, approved the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the Multilateral Agreement (MLI)), which came into effect in Portugal on 1 June 2020.

From a practical point of view, the MLI amends the agreements to avoid double taxation signed by Portugal, as discussed, and approved in the context of the BEPS project, intending to eliminate double taxation in respect of the taxes covered by it without creating opportunities for non-taxation or reduced taxation through treaty abuse.

The rules that make up the MLI have several variants, allowing signatory States to opt for different alternatives to the same standard. In principle, there will be automatic modification of the agreement to avoid double taxation only when there is a coincidence (a match) in the options adopted by the States.

The multiplicity of options leads to an exercise of high interpretive complexity, so the OECD has created a matrix called the matching database. This database was created so that the user chooses the two jurisdictions concerned, and the matching database informs the impact of the combined options of the two States for each article of the agreement to avoid double taxation.

In this context, it is worth mentioning the MLI options adopted by Portugal regarding dividends and capital gains derived from the divestment of companies whose assets consist mainly of real estate. For example, in the agreement to avoid double taxation between Portugal and France, it appears that there is a coincidence in the choices made by both States in relation to Article 9 of the MLI concerning capital gains derived from the sale of shares, rights or participations in entities whose value is primarily derived from real estate.

According to the matching database matrix, Article 9, Paragraph 1 of the MLI will not apply, so Article 14, Paragraph 1, Subparagraph 3 of this agreement to avoid double taxation shall be replaced by Article 9, Paragraph 4 of the MLI.

Thus, although the agreement to avoid double taxation foresees that capital gains resulting from the sale of shares of companies whose assets are essentially real estate may be taxed in the State where the real estate is located, MLI replaces this provision with another (more objectively densified) by establishing a new standard of splitting of jurisdiction, according to which taxation in the State of location of the assets may occur only when, at any time during the 365 days prior to the disposal, the value of such shares or similar rights results, directly or indirectly, in more than 50 per cent of real estate located in the other State.

ii Cross-border considerations

The ownership of real estate and the acquisition of shares in Portuguese companies by non-residents or foreign investors are generally unrestricted under Portuguese law, except for certain formal requirements, such as obtaining a Portuguese taxpayer number or, in the case of non-EU domiciled investors, appointing a local tax representative.

iii Locally domiciled vehicles investing abroad

Portugal offers relevant advantages as a platform for investment abroad. Its stable political and socioeconomic environment, together with a competitive tax system, attracts several foreign investors who choose Portugal as their springboard for investments elsewhere.

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The vast network of agreements to avoid double taxation, a relatively low CIT rate (21 per cent), and the low incorporation and maintenance costs of investment vehicles are some of the characteristics valued by foreign investors.

Furthermore, the fact that Portugal is part of the EU and, consequently, benefits from the application of the EU Directives, as well as certain domestic law aspects (the participation exemption regime is a clear example, as is the beneficial 10 per cent tax rate applicable to non-resident investors in OICs), are also attractive factors.

VI YEAR IN REVIEW

In terms of real estate investment, 2021 was a year of growth. As evidenced by Jones Lang LaSalle in its 'Market 360º'[8] 2021/2022 research report for Portugal, properties for housing was a leading sector in 2021, exceeding all previous levels of activity, with a transaction estimated at 190,000 homes and a sales volume of €30,000 million. The industrial and logistics segment also revealed a surprising performance in which occupation levels passed the unprecedented plateau of 580,000 m2. The alternatives segment was also highlighted, with the highest ever capital allocation of €684 million registered investment, and a diversification of asset classes as a focus of investment. The private rental and health segments were the most dynamic, but seniors' residences became more attractive. Finally, in the investment segment, the acquisition of commercial real estate totalled €2,020 million, of which 80 per cent was of international origin, evidencing the attractiveness of the national real estate market.

From a legal and taxation point of view, there have been some changes that were relevant to real estate investment.

The end of the taxation of capital gains resulting from the decommissioning of local and temporary accommodation, for example, proved essential to minimising the damage to entrepreneurs caused by the drastic fall in tourist traffic to Portugal due to the pandemic and to prevent entrepreneurs from paying income tax that they were not actually earning, at a rate that did not correspond to their ability to pay (in the course of 2021, thousands of local accommodation permits were cancelled, presumably because several of these properties were used, even if temporarily, for own housing or traditional rental).

Another relevant amendment concerned situations treated as real estate transfers for consideration, as provided for in the IMT Code. The transfer of shares in public limited liability companies was not included here, which allowed several real estate deals to take place through the purchase and sale of public limited liability companies due to the tax savings it allowed, which encouraged domestic and foreign investors. This regime has been amended and, since 2021, acquisitions of shareholdings in any type of commercial company are subject to IMT, provided that their assets consist of more than 50 per cent by real estate located in Portugal and the remaining legal requirements are verified.

As far as case law is concerned, the Portuguese Supreme Administrative Court (STA) issued several decisions in 2021, in which it was discussed whether the real estate transfers in which shareholders, on a gratuitous basis, used properties to fulfil the obligation to make accessory payments of capital, were or were not subject to tax. The STA has considered that in these cases there should be no tax, contrary to what was advocated by the tax authorities.

8 https://www.jll.pt/content/dam/jll-com/documents/pdf/research/emea/portugal/en/jll-portugal-market-360-2022.pdf.

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These decisions were, most likely, the basis for an amendment to the IMT Code now foreseen in the proposed State Budget for 2022. If approved, it will expressly determine that when a shareholder contributes real estate to the company, as a means of fulfilling accessory payments of capital, this transaction will be subject to IMT. The same rule shall apply in reverse situations (i.e., in cases where the share capital is reduced, or there is a repayment of accessory payments of capital or other forms of discharging obligations by companies, by means of transferring a real estate asset to the shareholder).

This extension of the cases whereby certain transactions are subject to IMT will also affect, if approved, privately subscribed closed-ended real estate investment funds. This means that when property is awarded to participants as a form of reimbursement in kind of units they hold, it will also be taxed. A payment will be required when a liquidation of the fund takes place, a capital reduction takes place or, simply, there is a redemption of participation units.

VII OUTLOOK

The real estate market has proven to be resilient over the past two years of the covid-19 pandemic, but it is now facing another challenge: the worsening of the crisis in raw materials and building materials due to the conflict between Russia and Ukraine.

These factors will undoubtedly influence potential real estate investment, although it is currently unclear in which direction. If some investors perceive real estate as a safer and more stable means of investment and the intrinsic characteristics of Portugal as even more appealing (political and social stability, most of all), others may, in these times of uncertainty, prioritise short-term, more liquid forms of investment over real estate.

The coming months will, in any case, be challenging and some legal and tax measures in the sector, which many consider long overdue, may actually be put in place.

Such is the case of the revision of the AIMI regime to relieve real estate activities from this additional tax burden when real estate is its business source and not a sign of wealth. Also identified is the importance of updating the tax regime applicable to capital gains obtained by non-resident legal persons with the sale of a domestic company with real estate in Portugal, excluding from taxation situations in which the real estate is engaged in an activity of an agricultural, industrial, or commercial nature other than the purchase and sale of real estate. In this way, it is brought in line with what is already foreseen for the cases of capital gains obtained by Portuguese resident companies or even capital gains obtained by non-resident legal persons with the sale of another non-resident entity with real estate in Portugal.

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Appendix 1

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Ana Castro Gonçalves is a partner in the tax department. She has been with the firm since 2002. She obtained her law degree at the University of Lisbon and has carried out postgraduate studies in advanced tax law and a master's in international mergers and acquisitions.

Over the years, she has assisted national and international clients in cross-border tax planning and the structuring and negotiation of complex M&A transactions, joint ventures and restructurings.

Ana has also developed a significant practice in the rendering of consultancy services regarding direct and indirect taxation involving personal income tax and corporate income tax, customs duties, stamp duty and VAT, with a particular focus on the real estate investment and tourism areas. She has successfully allied this practice with the matters raised in the areas of administrative and environmental law, focusing on administrative litigation and on environmental responsibility, environmental tax, environmental administrative offences, pre-litigation and court proceedings.

In the words of *Chambers and Partners*, Ana Castro Gonçalves is 'extremely responsive, proactive and versatile'.

Ana is a member of the Portuguese Bar Association and the Portuguese Fiscal Association. She also represents Caiado Guerreiro at the United Tax Network.

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Maria Margarida Torres coordinates the immigration and real estate law team and has been an associate at Caiado Guerreiro since 2009 and a partner since 2019. She obtained her law degree at the University of Lisbon and has carried out postgraduate studies in public law, real estate law and migration law.

She has been responsible for many private and business investment operations in her areas of activity, advising domestic and international clients of several nationalities. She regularly deals with contracts, due diligences, negotiations and licences.

She has been active in various areas of public law, with particular emphasis on urbanism, in procedural matters and in administrative litigation. She has accompanied clients in operations involving office buildings, shopping centres, retail parks, logistics parks and hotels, among others.

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She is the author of numerous articles regarding immigration, real estate and urban planning law, in Portuguese and international publications. She is also often invited to be a keynote speaker at conferences worldwide, in China, South Africa, Brazil and the UK.

Maria Margarida Torres is a member of the Portuguese Bar Association. She is also the vice president of the General Assembly of the Portuguese Property Owners Association (APPROP).

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ISBN 978-1-80449-088-4

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