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REAL ESTATE

INVESTING IN PORTUGAL

OWNERSHIP OF REAL ESTATE

Categories of Property Rights

Full Ownership or freehold is the strongest form of ownership title over real estate and the most used in Portugal.

Surface right is the right to construct or maintain - permanently or temporarily - a building on land owned by another person or entity.

Usufruct is the right to use and manage temporarily a property whose title belongs to another person or it can be be lifetime right.

Commonly, entities acquiring real estate in Portugal start by entering into **promissory agreements** making a **down payment** ranging from 10% to 30%. In case of non-compliance, promising buyers shall be entitled to twice the down payment and the promissory sellers to keep same.

The definitive acquisition is typically executed through public deed. Registration with the Land Registry is required to ensure effect vis-à-vis third parties. The reason for this **two-step acquisition process** has to do with i) pre-emption rights in most municipalities within the city center; ii) time for the buyer to secure bank loans, iii) due diligence.

Condominium

Buildings may be segregated into independent units, which may be separately owned by different persons who have full ownership rights over their units and co-ownership right over the common areas of the building. Both rights are indissoluble and may not be transferred separately.

Due Diligence

Before the acquisition of real estate properties, it is important for buyers to undertake legal and technical due diligence to the properties. The main documents to be reviewed include the following: (i) Land Registry Certificate, (ii) Tax Registry certificate, (iii) License of use certificate (in the case of buildings), (iv) Planning, zoning and environment documentation in the case of land for construction, (v) Proof of non-exercise of pre-emption rights.

Foreign ownership

There are no restrictions on the ownership of real estate by foreign investors: However, certain formalities need to be complied with, notably anti-money laundry regulations.



LEASES ON REAL ESTATE

In the past, Urban Lease Law was very protective of tenants but changes in recent years have set a more balanced regime. Residential and non-residential leases are subject to a maximum term of 30 years.

The legal framework of non-residential lease agreements is quite flexible, the majority of clauses being freely agreed by the parties. Commonly, commercial leases range between 5 to 10 years but parties may agree on longer periods.

Rents usually correspond to a fixed monthly amount, upfront payment of up to 6 months being a widespread practice.

Differently, the lease of retail units in shopping centers is typically governed by "Shopping center contracts" encompassing detailed provisions on the use of shops and ancillary services.

TAXES ON REAL ESTATE

Acquisition of real estate: Asset Deal vs Share Deal

The transfer of real estate assets may be implemented through a direct transfer (**asset deal**) or indirectly (**share deal**), units in Collective Investment Undertakings or SIGI (Real Estate Investment Trusts).

Asset Deal

The acquisition of real estate located in Portugal is subject to Property Transfer Tax (**IMT**) and **Stamp Duty** (0.8% rate). IMT is levied on the purchase price at the following rates: (i) up to 6% for housing properties up to € 1 million and 7.5% for properties exceeding such threshold, (ii) 5% for rural property, (iii) 6.5% for other types of properties. In the case of entities resident (or controlled by entities resident) in blacklisted jurisdictions, a 10% rate applies.

Share deal

The acquisition of at least 75% of the equity of a Portuguese company, whose assets encompass more than 50% of real estate located in Portugal, not allocated to an agricultural, industrial or commercial activity may trigger IMT. Likewise, the acquisition of units in privately placed closed-end real estate investment funds is subject to IMT.



Holding of Property

Municipal Property Tax (IMI)

IMI is levied annually on the tax registered value of properties located in Portugal. The general rates range between 0.3% and 0.45% for urban properties and 0.8% for rural properties. A 7.5% rate applies to entities resident in blacklisted jurisdictions.

Moreover, individual, undivided inheritances, companies and certain collectives bodies may be liable to Additional IMI, which is calculated on the sum of urban properties not classed as commercial, industrial or for services.

Rental Income

Residents

Resident individual taxpayers are subject to a 28% rate. Long-term rental contracts may benefit from reduced rates. A 5% rate applies to leases of rehabilitated properties located in designated areas.

Income derived by corporate entities shall be included in the yearly corporate income tax (IRC), general rate of 21%, plus municipal surcharge and state surcharge.

Non-residents

Property income is subject to 25% corporate income tax (legal entities) and 28% for individuals.

Tax Benefits

The law provides several exemptions on the acquisition and ownership of real estate, including notably (i) the acquisition by trading companies for resale purposes, (ii) for rehabilitation purposes, (iii) properties used on the production of renewable energies.

ZONING AND PLANNING

Each Municipality has different planning instruments, which determine the permitted use of a given parcel (housing, commerce, services industry, etc). The three types of municipal plans are: (i) the general plan (*Plano Director Municipal*), (ii) the urbanization plan (*Planos de Urbanização*) and the detailed plans (*Planos de Pormenor*).

The development of real estate projects may entail different operations including (i) plotting, (ii) infrastructure works and (iii) construction works, which may follow different approval procedures.

The Legal Regime for Construction and Land Development foresees the basic procedures for the construction of new buildings or other works in existing buildings, providing several processes.



REAL ESTATE FINANCE

Typically, the financing of real estate projects in Portugal is secured by a mortgage, which may be associated with other guarantees, such as: (i) assignment of revenues (*consignação de rendimentos*); (ii) pledge of shares/quotas (iii) a pledge over receivables (insurances, indemnities, rents); (iv) pledge of bank accounts, (v) personal guarantees (*fiança*).

As a rule, the use of credit by a Portuguese borrower is subject to Stamp Duty at variable rates over the amount of the loan, according to the loan term.

ENVIRONMENTAL LIABILITY

The environmental law framework governing construction developments reflects European law principles. There are relevant statutes on (i) water quality, (ii) ecological and agricultural reserves, (iii) waste management, (iv) noise pollution, (v) protected areas. Projects with detrimental impacts on the environment are subject to an environmental assessment.



At VCA we have a very dedicated Real Estate team providing active and practical counsel on all types of investment strategies. This team assists clients from all over the world through all the steps - from advising on best strategies to attend to the administrative requirements.

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We appreciate your consideration



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