



Real Estate Investment: Main Tax Issues



“All the lawyers know what’s happening on the case and work really well as a team. It sets them apart from others in the market.”

Client reference from Chambers and Partners.



Over the years, this team of lawyers has consistently been considered one of the best and most experienced, and it is one that is recognised both in Portugal and internationally as a leader.

PLMJ, a partner you can trust

PLMJ has been a leader in the legal sector in Portugal and internationally for more than 45 years. The firm is known for its dedication to its clients, dynamism, capacity for innovation and the quality of its services. PLMJ is a highly specialised, full-service firm that focuses on adding value to its clients' activities. It is also a firm with high ethical standards that is cohesive, socially responsible and competitive, and its mission is to provide first-class legal services.

+ 230 LAWYERS

+ 45 YEARS' EXPERIENCE

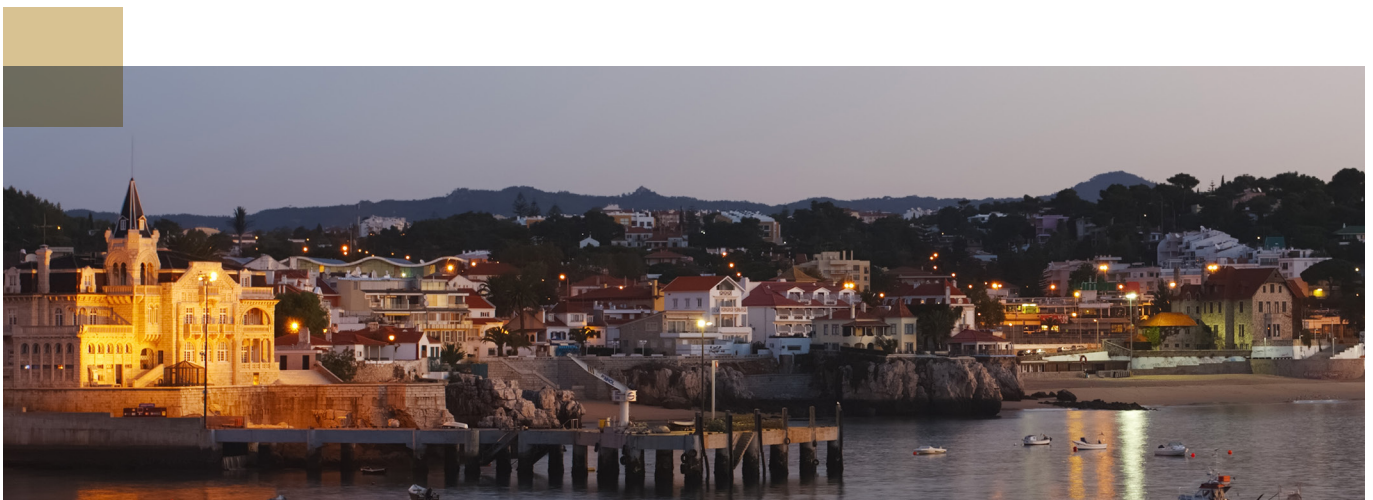
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I. Taxes due on acquisition of property

IMT – MUNICIPAL PROPERTY TRANSFER TAX

■ MOST COMMON OPERATIONS

Sale and purchase of property, acquisition of shares in companies (excluding shares in public companies) that own real property located in Portugal, when the acquiring shareholder comes to hold at least 75% of the share capital; contribution of real property to the capital of commercial companies.

■ TAXABLE VALUE AND RATES

IMT is calculated in accordance with the declared value or the taxable value of the property, whichever is higher, and the following rates apply:

PROPERTY TYPE	TAXAS
Rural properties	5%
Urban properties exclusively for residential use	6% (maximum progressive rate)
Urban properties not exclusively for residential use	6,5%
Properties acquired by residents in tax havens	10%

■ MOST IMPORTANT EXEMPTIONS

Real estate companies – 100% exemption as long as the property (i) is re-sold in 3 years; (ii) in the same state; (iii) without being re-sold again. Acquisition of property in the context of urban rehabilitation operations – 100% exemption upon certain conditions; (iv) 50% exemption from IMT when properties are held by open or closed real estate investment funds with public subscription.

STAMP DUTY

The following rates of stamp duty apply to the taxable events listed:

TAXABLE EVENT	RATE	
Acquisition of property for value or by gift	0,8%	
Letting or sub-letting (on one month's rent)	10%	
Guarantees (except when ancillary to contracts specially taxed under the General Table)	Term < 1 year - for each month or fraction	0,04%
	Term >= 1 year	0,5%
	Without term or term >= 5 years	0,6%
Use of credit	Term < 1 year for each month or fraction	0,04%
	Term >= 1 year	0,5%
	Term >= 5 years	0,6%
	Without fixed term (e.g. current account) - per month on the monthly average debt	0,04%
Operations carried out by financial institutions	Commissions for guarantees given	3%
	Interest and other commissions	4%
Right of ownership, usufruct or a surface right over an urban property with a tax value >= €1,000,000	With residential application	1%
	Land for construction when the authorised or planned construction is for housing	
	Held by offshore entities (except when held by individuals)	7,5%

VAT – VALUE ADDED TAX

■ MOST COMMON OPERATIONS

Sale and purchase, letting and sub-letting of properties.

■ TAXATION

The sale and purchase, and letting and sub-letting of properties are exempt from VAT. Upon sale and purchase or letting of properties or independent units within properties, it is possible, if certain conditions are met, to waive the VAT exemption and subject the operations to VAT at the rate of 23% (22% in Madeira; 18% in the Azores). The exemption from VAT does not cover “office center” type contracts, which are subject to VAT under the general terms.

IRC – CORPORATE INCOME TAX

■ MOST COMMON OPERATIONS

Activities that are commercial, industrial or agricultural in nature, including earning income from property (rent) or from capital gains made on the disposal of properties (if the properties were accounted for as stock, the income is treated as a gain).

■ TAXABLE PERSONS

Resident or non-resident legal entities (with or without permanent establishment in Portugal to which the taxable income is attributable).

■ TAXABLE VALUE

- Resident and non-resident legal entities with a permanent establishment in Portugal to which the taxable income is attributable are subject to IRC taxation depending on the taxable profit calculated in accordance with the accounting rules, adjusted by the rules set out in the IRC Code.

- Non-resident legal entities without a permanent establishment in Portugal to which the taxable income can be attributed are subject to IRC taxation in accordance with the rules set out in the IRC Code.

■ TAX DEDUCTIBILITY OF EXPENSES

Expenses related to the activity of the IRC taxable person can, as a general rule, be deducted for tax purposes.

II. Taxes due on ownership and commercial operation of properties

■ DEDUCTIBILITY OF FINANCIAL EXPENSES

Financing expenses, net of income of an identical nature, are only deductible up to the following limits: €1,000,000 or 30% of EBITDA (60% in 2014, 50% in 2015, 40% in 2016 and 30% as from 2017). Net financing expenses that exceed the above limits may be carried forward for the purposes of deduction in the following 5 tax years. If the net financing expenses are below 30% of EBITDA, the difference is added to the maximum deductible amount in each of the following 5 tax years, until it has been used in full.

■ CAPITAL GAINS

Capital gains and capital losses made on the transfer for value of properties are calculated taking into account the difference between the proceeds of sale (transfer), net of any charges inherent to them, and the acquisition value, less depreciations and amortisations acceptable for tax purposes, and less any impairment losses and other corrections in value provided for in the law, as well as any values recognised as tax costs. The acquisition value may be updated by applying the monetary depreciation coefficients whenever, on the date of sale, at least two years have passed since the acquisition. This correction is not applicable to financial instruments, with the exception of participations in companies. Capital gains for tax purposes will only be considered as to 50% of the respective amount when the proceeds of sale are re-invested in full by the end of the second financial year following the year of sale, in accordance with the provisions of the IRC Code.

■ RATES

- Non-resident legal entities: IRC rate of 25%.

- Resident legal entities and non-resident legal entities with a permanent establishment in Portugal: IRC rate of 21%, plus the Municipal Surcharge, at the maximum rate of 1.5% on the taxable profit, and the State Surcharge, which is calculated in accordance with the following limits and rates: taxable profit exceeding €1,500,000 and not exceeding €7,500,000 - 3%. Taxable profit between €7,500,000 and not exceeding €35,000,000 - 5%. Taxable profit exceeding €35,000,000 - 7%.

■ TAX CARRY FORWARD

12 tax years following the loss (the deduction is limited to 70% of the taxable profit assessed in the relevant tax year).

■ PAYMENT OF INTEREST ABROAD

Taxed at the rate of 25% with possibility of reduction or exemption if a double taxation agreement applies or the conditions set out in the Interest and Royalties Directive and included in the IRC Code are met.



VAT

■ MOST COMMON OPERATIONS

Construction, recovery and rehabilitation of properties for sale or letting.

■ TAXATION

Construction and other provisions of services are subject to taxation at the general rate of VAT of 23% (22% in Madeira; 18% in the Azores).

■ REDUCED RATE

A reduced VAT rate of 6% (5% in Madeira and the Azores) may be applied to (i) urban rehabilitation works contracts on properties or public spaces located in areas of urban rehabilitation defined in legal terms, or in the context of reclassification and rehabilitation in projects of recognised national public interest; (ii) works contracts for rehabilitation of properties contracted directly by the Institute of Housing and Urban Rehabilitation or carried out under programmes supported by it; and (iii) works contracts for improvement, conversion, renovation, restauration, repair or conservation of properties or independent units in properties used for housing, with the exception of cleaning works, maintenance of green spaces and works contracts for properties that cover the whole or part of the elements that make up swimming pools, saunas, tennis courts, golf or mini-golf or similar installations (in the latter case the reduced VAT rate does not cover the materials incorporated, except if the respective value does not exceed 20% of the total value of the provision of services).

IMI – MUNICIPAL PROPERTY TAX

■ MOST COMMON OPERATIONS

Ownership of urban and rural properties as well as usufruct (use and profit) or surface rights over them.

■ TAXABLE PERSONS

Individuals and legal entities that, on 31 December of the year in question, are the owner, the usufructuary, or the holder of the surface right, whether or not they are

resident in Portugal.

■ TAXABLE VALUE AND RATES

IMI is charged on the taxable value and is calculated using the rates in the table below:

PROPERTY TYPE	RATES (WITHOUT TAXABLE VALUE)
Rural properties	0,8%
Urban properties	0,3% to 0,5%
Property owned by residents in offshores	7,5%

■ MOST IMPORTANT EXEMPTIONS / DEFERRAL OF TAXATION

(i) 100% exemption from IMI in the case of properties classified as national monuments and properties individually classified as being of public interest or municipal interest; (ii) 50% exemption from IMI in the case of ownership of properties by open or closed real estate investment funds with public subscription; (iii) deferral of IMI taxation for 4 years in the case of land for construction and to be used to construct buildings for sale; (iv) deferral of IMI taxation for 3 years in the case of properties for re-sale; (v) exemption from IMI for 3 years, in the case of urban properties subject to urban rehabilitation, including exemption from the issue of the respective municipal licence; (vi) exemption from IMI for 5 + 5 years in the case of urban properties subject to rehabilitation work, including the exemption from conclusion of rehabilitation begun after 1 January 2008 and concluded by 31 December 2020 (in this case, the urban properties have to be located in urban rehabilitation areas or must be properties that are rented out and be subject to updating of the rents in stages under the NRAU or 'New Urban Letting Rules').

III. Exit taxes

IRC

■ MOST COMMON OPERATIONS

Sale of real estate assets by a Portuguese company or branch and repatriation of the gains through the distribution of profits and/or reserves, or sale by shareholders of their shareholdings in the Portuguese company.

■ SALE OF REAL ESTATE ASSETS BY A PORTUGUESE COMPANY OR BRANCH

On the tax treatment of profits or capital gains obtained by the selling company or branch, see Point II above.

■ SALE OF A STAKE IN A PORTUGUESE REAL ESTATE COMPANY

- Capital gains made by shareholders, legal entities that are tax residents in Portugal, or by non-resident legal entities that have a permanent establishment in Portugal to which such capital gains are attributable, are subject to IRC taxation at the rate of 21%, plus the Municipal and State Surcharges (see Point II above).
- Capital gains made by shareholders, legal entities that are non-resident in Portugal for tax purposes and do not have a permanent establishment in Portugal to which such capital gains can be attributed, our text of the rate of 25%. However, in the latter case, when a double taxation agreement to which Portugal is a party applies and which provides for taxation of the same capital gains exclusively by the State of residence in the beneficiary, such gains are not subject to taxation Portugal.

■ PAYMENT OF PROFITS AND RESERVES

- By a Portuguese company to non-resident legal entities without a permanent establishment in Portugal: an IRC rate of 25%, with the possibility of reduction of the withholding rate when a double taxation agreement applies, or of an exemption, as long as certain conditions are met (shareholding => 5% held for more than 24 months).
- By a Portuguese company to resident or non-resident legal entities with a permanent establishment in Portugal: subject to IRC taxation with the possibility of a tax credit.
- By a branch in Portugal to the parent company: not subject to IRC.

STAMP DUTY

The transfer of shareholdings is not subject to stamp duty.

VAT

The transfer of shareholdings is not subject to VAT.

The tax matters described above apply, in general terms, to companies and branches that operate in Portugal that are not subject to tax transparency rules for IRC.



How can PLMJ help?

The lawyers of PLMJ's real estate practice are skilled and experienced in providing legal advice and assistance on:

THE DESIGN AND STRUCTURE OF THE INVESTMENT

THE CREATION OF A DYNAMIC BUSINESS PLAN, TAKING INTO ACCOUNT THE EXPECTED MATURITY OF THE PROJECT

THE IMPLEMENTATION OF EVERY STAGE OF THE PROJECT TAKING INTO ACCOUNT THE VARIOUS PARTIES INVOLVED

THE DUE DILIGENCE PROCESS AND THE PROCESS OF CALCULATING PAYMENT AND REIMBURSEMENT OF TAXES, TAX LITIGATION AND TAX COMPLIANCE IN GENERAL

Key contacts



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“It is a pleasure to work with these lawyers; they have deep expertise and provide clear and structured advice.”

Client reference from Chambers and Partners.

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PORTUGUESE LAW FIRM OF THE YEAR

Who's Who Legal 2015, 2011-2006

Chambers European Excellence Awards 2014, 2012, 2009, Top Ranked 2015



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