

TAX AND LEGAL - INVESTING IN
PROPERTY IN PORTUGAL

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DISCLAIMER

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Chapter I

FORMS OF PROPERTY INVESTMENT

1. Asset deals (aquisição direta)

1.1. Ownership in Portugal

A - “Ownership right” (direito de propriedade) is the broadest and strongest title over real estate in Portugal. It grants its titleholder full and exclusive rights of use, fruition, and disposal of real estate, unlimited in time, within the limits of the law (comparable to “freehold title” in common law systems).

Ownership title may be held individually, or on a co-ownership basis (compropriedade), which is less common. Co-ownership exists when two or more people (designated as “co-owners”) simultaneously hold an ownership right over the same asset. Co-owners jointly exercise all the rights that pertain to an ownership, and participate in the benefits and encumbrances of the property, in proportion of their respective shares.

B - “Horizontal property” ownership (propriedade horizontal) results from the legal division of a property or building into several units subject to separate ownership. Horizontal property confers its titleholder the right to exclusive ownership of one of the units and the right to co-ownership over the common areas of the building (such as the stairs, lifts, lobbies or hallways, etc.). However, both rights are indivisible as they form part of the same right. Horizontal property division is created by formal deed and must be registered at the Land Registry. The Horizontal property deed can only be executed when the autonomous units, besides constituting independent units, are distinct and isolated from each other, each one with its own exit to a common area of the building or on to a public road.

Costs deriving from the management, maintenance and works relating to the common parts of the property are apportioned amongst the coowners in proportion to the relative value of their units. In commercial properties, such costs are usually passed on to the tenants.

C - “Surface right” (direito de superfície) under Portuguese law is the right to erect and maintain a building on land which is owned by a third party. It is a right in rem (and not a mere contractual interest) which is marketable and can also be used as collateral.

Surface right can be temporary (usually granted on a long-term basis) or perpetual. When the right is granted on a temporary basis, the ownership of the building erected on the land shall revert to the land owner at the end of the surface right.

The parties may agree that the consideration for the surface right is payable through a single initial payment or through periodic rental payments.

1.2. Formalities

The sale of (rural or urban) property in Portugal is formalised either in a deed, which is signed before a notary, or in a certified private document, signed in the presence of a lawyer, solicitor, chamber of commerce and industry, recorder or registrar. The sales contract must also comply with other formalities. The mentioned contract may only be signed after the officiator

has examined and confirmed the documents required for its preparation, in accordance with the type of business to be entered into and the property to be conveyed, in addition to proof of payment of the respective fiscal obligations.

Documents required for the transfer of property ownership particularly include the need to produce a permit for the use of the property, or a building permit and proof that the property use permit application was submitted more than 50 days beforehand (unless the construction predates 7 August 1951, in which case these formalities do not apply).

1.3. Land Registry

The purpose of the land registry is to provide information on a property's legal status, guaranteeing the lawfulness of the property transaction and confirming the presumption of the existence of a right to the property. The land registry in Portugal is managed by the State. Based on these principles, the regulations currently in force require any facts determining the constitution, recognition, purchase or changes of in rem rights over property to be filed with the land registry.

The absence of a record may imply a purchaser's lack of protection vis-à-vis third parties in addition to the impossibility of transferring the property.

With the exception of special cases set out in law (e.g. provisional records of purchase which retain priority after their conversion into a definitive record of entry), pursuant to the principle of the priority of registration, the first recorded right is effective vis-à-vis third parties and takes precedence over the other incompatible rights of third parties even if such rights have been established prior to the date of registration.

1.4. Due diligence and preliminary contracts

Purchasers, either directly or using the services of consultants, are advised to check the commercial, legal, urban, environmental and fiscal status of any property they intend to acquire.

It is standard market practice, in such circumstances, for purchasers, to commission a due diligence exercise on all of the mentioned areas, to confirm that the property in question is not subject to any encumbrance, costs/charges or limitations (whether or not registered with the respective Land Registry Office) or that any such impediments have been extinguished before or after the sale (e.g. preference rights or mortgages).

Prior to formalising a sale, it is also common practice for the parties to exchange contracts or similar preliminary agreements, comprising letters of intent, memorandums of understanding or heads of terms, binding to the extent required on a case by case basis.

If the parties require an immediately binding document, a promissory contract for the sale of the property in question is usually entered into, in which case the signing of the definitive sales contract is usually conditional upon the parties' compliance with several obligations (e.g. building, licensing and leasing of the property) or fulfilment of several conditions (e.g. issue of the respective property's use permit or a tenant's waiving of its lawfully established pre-emption right on the sale of the leased property). The parties may also agree to pay a part of the price on account.

In such circumstances, in the event of a default by the promissory purchaser, the promissory vendor is entitled to keep any amounts already paid and in the event of a default by the promissory vendor, the promissory purchaser is entitled to receive twice the amount it has paid. The parties may also agree to subject the promissory contract to "specific performance" in the event of a default (i.e. obtaining a legal ruling in lieu of the defaulting party's negotiating statement).

In order to provide the promissory purchaser with the necessary legal protection, a provisional record of entry of the property purchase is usually filed at the Land Registry on the date upon which the promissory contract is signed.

1.5. Sales Guarantees

Under the Portuguese Civil Code, a vendor is liable for any defects (flaws or lack of quality assured by the vendor or necessary for the purpose for which the property is intended) for a period of five years starting from the date of the vendor's delivery thereof.

The parties may waive this legal guarantee and specifically agree to sell the property on an "as is" basis.

The purchaser of the property is even entitled to a 5-year legal guarantee covering any defects, vis-à-vis the property's contractor, whether or not it is a party to the construction contract. This will allow the purchaser to challenge the vendor and/or contractor directly in the event of any defect.

The property developer (unless developer and contractor are one and the same) is not liable for any property defects.

In the case of commercial transactions, such as shopping centres, hotels and logistics parks, the vendor (whether or not also the property developer), usually provides the purchaser/investor with a guarantee covering defects for a specific period of time. Such guarantees usually specify different guarantee periods covering structural defects, leaks, technical equipment, façades, windows, roofs, etc. The guarantee may be subsidiary to the guarantees that contractors must lawfully provide or be autonomous (the vendor being jointly liable with the contractor).

2. Share deals (aquisição indireta)

2.1. Share deals

The main reasons for indirectly acquiring property through an equity stake in an investment vehicle owning such property are the fiscal implications. In fact, the incorporation of a foreign or a Portuguese special purpose vehicle (SPV) is the most suitable scheme to hold property rights in Portugal, as it has advantages in the investment and in the divestment process, limits the liability of the investor and has a lower tax impact.

Most Portuguese commercial companies are public limited companies ("Sociedades Anónimas" - "S.A.") or limited liability companies by quotas ("Sociedades por Quotas" - "Lda.") whose common denominator is the fact they are limited liability companies.

Public Limited Companies ("S.A.")

Public limited companies are the format usually adopted by larger Portuguese companies. Their equity capital is divided up into shares, with a minimum initial amount of 50.000,000 and must, initially, have at least five shareholders. The possibility of forming an "S.A." with a sole shareholder is permitted by law, provided that the sole shareholder is a commercial company.

No particular format is required for share transfers although they may be subject to restrictions. Another peculiarity is the fact that information on the respective shareholders is not usually public, thus ensuring a measure of confidentiality on the owners of the respective equity capital.

Limited Liability Companies by quotas ("LDA.")

Limited liability companies by quotas are by far the type of companies mostly found in Portugal. They correspond to a standard small and medium-sized company structure owing to the absence of requirements regarding their initial capital and to the simpler operating structure, enabling their founding partners to exercise greater control.

Equity capital is divided into quotas, with a minimum initial amount of 1,00 per shareholder. The company by quotas should have, initially, at least two quota-holders. The law allows, however, such companies, which are subject to specific conditions set out in the law, to be formed by a sole quotaholder, in which case the corporate name must bear the expression "sociedade unipessoal por quotas" ("sole quotaholder limited liability companies by quotas"). Information on the name of the respective quota-holders and the amount of their respective quotas is filed with the commercial registry. This information is publicly available.

SPV structures also avoid the need for the execution of a public deed for subsequent transfers of the asset, which will not trigger real estate transfer taxes, as the transfer of the shares in the SPV will automatically cause the transfer of property rights to the buyer.

Typically public limited liability companies (sociedade anónima - SA) are better suited for investing in real estate than private limited liability companies (sociedades por quotas - Lda) as:

- The transfer of shares is easier and can be made by transfer of the share title, while the trans-

fer of shares in private limited liability companies requires, as a rule, the consent of the company and the registration of the transfer with the Commercial Registry Office; and - The acquisition of control over 75% or more of the shares or equity in private limited liability companies that hold immovable assets will be subject to real estate transfer tax.

Chapter II

TAX OVERVIEW

3. Property Purchases

3.1. Real Estate Transfer Tax (“IMT”) and Stamp Tax

Property purchases are subject to IMT, levied on the respective price or tax registered value (whichever is higher) at a rate of: (i) 0% to 6% on residential property, (ii) 6,5% on other urban property or land for construction, (iii) 5% on rural property, or (iv) 10% whenever the purchaser, not being an individual, is resident in a country, territory or region benefiting from clearly more favourable fiscal regulations, as set out in the list approved by the Ministerial Order 150/2004 of 13 February (“Listed Tax Haven”).

The most relevant exemptions in this particular are the following:

- The IMT Code establishes that for one determined transaction be exempt (i) the asset should be to resale, (ii) before the acquisition should be presented a declaration proving the exercise of the real estate resale activity by the company, (iii) in the year before the company must have the normal activity of resale at least one property, (iv) the properties acquired must be resale within a period of 3 years (under penalty of revocation), and (v) the properties, although resold within the legal period of 3 years, will not be resold, once again, to resale.

In this particular, the investor should acquire a Portuguese company that has the activity of resale in the year before the property investment will happen.

- It will be also exempt of IMT the acquisitions of urban buildings or apartment of the recovered building located in an “urban recovery area” and destined exclusively as main permanent dwelling of the investor.

Stamp Tax at a rate of 0,8% is also payable on property purchases, levied on the same amount subject to IMT.

In general, both taxes must be paid by the purchaser to the tax authorities before signing the public property conveyance deed.

3.2. Value Added Tax (“VAT”)

In general, the transfer subject to IMT and the lease of property are exempt from VAT. However, as the mentioned exemption does not entitle the vendor of the property to deduct the input VAT borne regarding the relevant property, the vendor may waive it. Waiving the VAT exemption on property transfers may be advantageous, as a vendor waiving said exemption may deduct the input VAT borne within its activity, provided that all the objective and subjective conditions for the exemption are met.

4. Property Ownership

4.1. Property Tax (“IMI”)

IMI is levied on a property’s taxable value and is payable by property owners on 31 December of each year. IMI rates currently vary between 0,3% and 0,5% for urban property and land for construction, being the rate applicable on rural property of 0,8%. The IMI rate on property which is owned by residents, which are not individuals, in a Listed Tax Haven is 7,5%.

The applicable rate within these ranges will be determined by the municipalities on a yearly basis and increase threefold in the case of urban property left vacant for more than a year or of buildings in a state of ruin.

In case of renovation urban of a building the investor can apply the exemption of this tax for a period of 5 years.

5. Taxation of SPVs

Should the investors decide to incorporate an SPV in Portugal, Corporate Income Tax (Imposto sobre o Rendimento de Pessoas Coletivas - CIT) will be charged over its taxable annual returns at the following CIT rates: (i) 17% on taxable profits until € 25.000, provided that the SPV can be considered as a small-medium sized enterprise and is subject to the minimis rules of EU aids regime; the remaining taxable profits above such amount are subject to the standard rate of 21%; (ii) 21%, eventually increased by a municipal surcharge of up to 1,5%, as well as by a state surcharge of: (a) 3% on taxable profit of more than € 1,5 million and up to € 7,5 million; (b) 5% on taxable profit exceeding € 7,5 million and up to € 35 million; and (c) 9% on taxable profit exceeding € 35 million.

The SPV may generally deduct for CIT purposes all costs associated to the property, including depreciation, IMI and any interest expenses related to the financing of the respective purchase and/or construction.

CIT is also payable on capital gains on the sale of property owned by an SPV, at the above-mentioned rates, although favourable reinvestment regulations may apply when the capital gain results from the disposal of tangible fixed assets held for a minimum period of one year. The said regulations allow an SPV to deduct to its taxable profit 50% of the capital gains, provided that the legal conditions are fulfilled.

Dividends paid to non-resident shareholders by an SPV are subject to withholding tax in Portugal, at a definitive withholding tax rate of 28% for individuals and 25% for corporate entities. In both cases the rates are increased to 35% whenever the shareholders are residents in a Listed Tax Haven and may be reduced if a Double Taxation Treaty applies. If such shareholders are corporate entities said dividends may be exempt from tax in Portugal, provided that the legal conditions are met.

Capital gains obtained by non-residents on the disposal of shares in an SPV are, in general, exempt from tax in Portugal. If the conditions for the application of such tax exemption to capital gains are not fulfilled, and in the event that there is no applicable Double Taxation Treaty, the capital gains will be taxed: (i) at a rate of 28%, when obtained by non-resident individuals; or (ii) at a rate of 25%, when obtained by corporate entities.

6. Taxation of the investors

Personal Income Tax (Imposto sobre o Rendimento de Pessoas Singulares - PIT) and CIT are charged over the worldwide income obtained by individuals and companies resident of Portugal and on any income obtained by non-resident individuals or companies which is attributable to a permanent establishment in Portugal of the latter or is deemed to having been obtained in Portugal.

In general, income obtained by non-resident companies is taxed at a rate of 25%. Income obtained by non-resident individuals will be taxed at a rate of 25% or 28%.

In principle, it is possible to exclude (fully or partially) the taxation of certain incomes under the applicable double tax treaty, the Parent Subsidiary Directive and the Interest and Royalties Directive.

However, in order to benefit from these exemptions the SPV and/or the investors may have to comply with certain conditions (e.g. minimum holding and minimum holding period).

7. Sale of Property

Capital gains obtained by non-residents on the sale of property in Portugal are subject to taxation at a rate of 28% for individuals and of 25% for corporate entities. Such capital gains, may, however be excluded from taxation in Portugal in the event a Double Taxation Treaty applies.

Property sales are generally exempt from VAT. However, the VAT exemption may be waived, provided that the necessary conditions are met.

Chapter III

PROPERTY FINANCE

9. Mortgage-backed-loans

Mortgage-backed loan contracts are one of the most commonly used means of financing property projects in Portugal.

Bank loans, i.e. contracts in which the lender is a credit institution, must always be set out in writing.

Notwithstanding the fact that the law permits total freedom of form regarding commercial loan contracts (except for the definition of interest rates, which must always be set out in writing), in practical terms they are usually set out in writing.

10. Mortgages

A mortgage is an in rem guarantee (unlike a personal guarantee as described below). It entitles the creditor to enforce its rights against a property with priority over other creditors of the owner of the property who do not enjoy any special privilege or priority in terms of registration. Unlike a pledge, it does not imply the dispossession of assets provided as guarantees, which must always remain in possession of their owner. The following assets and rights may be mortgaged: (a) property ownership; (b) surface rights (“direito de superfície”) and (c) a share in an item or a shared right (e.g., an undivided share of the co-ownership of assets).

Mortgages accompany the changes affecting the asset. Accordingly, and without prejudice to the rights of third parties, a mortgage will be automatically extended to all improvements and constructions realised on property provided as a guarantee.

Mortgages on immovable assets are formalised or amended in the form of a public deed or certified private document, which should be filed with the relevant land registry – otherwise the mortgage is not validly created. The land registry is, therefore, an essential part of the procedure for setting up a guarantee. In addition to ensuring the effectiveness thereof, it establishes the extent to which it takes preference over other similar guarantee instruments on the same asset.

The determination of the maximum amount to be guaranteed by the mortgage (including the amount of principal, interest and costs associated with its execution and foreclosure) is mandatory, as well as filing it with the land registry. With regard to interest (both loan interest and default interest), pursuant to the Portuguese Civil Code, a mortgage may only cover up to three years of interest.

11. Other Common Guarantees

11.1. Pledge and sureties in particular

The financing of a property project always entails the borrower granting a complete “security package” comprising in rem and personal guarantees to ensure the repayment of the loan principal, respective interest and default interest thereon under the terms of the loan contract.

Among the guarantees typically executed to ensure financings of real estate projects, the pledge, in particular the financial pledge – e.g. over shares or other shareholdings, or over credit rights – and the surety shall be highlighted.

As in the case of a mortgage, a pledge is an in rem guarantee giving creditors preferred payment status over other creditors, for the value of a specific movable asset or amount of other credits or asset rights which cannot be mortgaged. Excluding exceptional cases, the creation of a pledge always implies surrendering the asset to the creditor, who then becomes the guardian and administrator of the pledged asset, as set out in law.

The formalities regarding the execution of a pledge may vary depending on the asset subject to pledge. For instance, the pledge over shareholdings is not subject to a special form but it must comply with the formalities prescribed for said purpose in the Portuguese Securities Code (“Código de Valores Mobiliários”). These vary depending on whether the shares are book-entry shares or represented by certificates, in which case there are different formalities to be complied with depending on whether such shares are nominative or bearer.

The financial pledge is subject to special provisions, different from the provisions applicable to the civil pledge and which simplify its enforcement.

Sureties are guarantees provided by a third party (usually the debtor's partners or, if applicable, the parent company of the group to which it belongs) on the creditor's behalf.

As it is a personal guarantee, the guarantor, whose personal assets guarantee that the creditor's credit rights are met, is liable before the creditor. Unless the parties agree otherwise, the full amount of the guarantor's assets will be held accountable for compliance with the obligations undertaken by the debtor.

11.2. Stamp Tax

It should be noted that financing and guarantees granted in Portugal or herein presented for any legal purposes are subject to Portuguese Stamp Tax, at the following rates levied on the amount financed or the maximum amount of each guarantee, as the case may be: (i) 0,04% for each month or part thereof for finance or guarantees with a maturity of less than one year; (ii) 0,5% for finance or guarantees with a maturity of one year or more and less than five years; (iii) 0,6% for guarantees without any time limit and for finance or guarantees for a period of five years or more; and (iv) 0,04% on the average outstanding monthly balance of finance in the form of a current account, bank overdraft or any other form whose period of use has not been specified or cannot be ascertained.

No Stamp Tax is due on a guarantee which is accessory to and granted simultaneously with a contract already subject to Stamp Tax (such as a loan contract).

Chapter IV

LEASES

12. Property leases

12.1. General issues

Property leases are regulated by the Portuguese Civil Code since 2006, under the New Urban Lease Regulations approved by Law no. 6/2006, of 27 February ("NRAU"), which must be applied to all contracts involving the temporary lease of a property for a consideration.

- Form: A lease contract must be entered into in writing and identify the parties, the leased premises, the purpose, the rent and the property's use permit certifying its suitability for the desired purpose.

- Purpose: Reference should also be made to the fact that leases for a purpose that differ from the licensed one (e.g. if the property has been licensed for housing and is used for commerce) are null and void.

- Transfer of ownership: In the event of the sale of the property by the landlord, the new owner automatically assumes the landlord's respective position, with the terms of lease in force between the tenant and the property's new owner remaining unchanged without the need to formalise an assignment of the contractual position for the said purpose.

The Portuguese applicable urban lease regulations divide leases into two types: (i) leases for commercial purposes and (ii) leases for housing purposes.

12.2. Leases for commercial purposes

- Freedom of contract: the most relevant aspects of lease contracts for commercial purposes may be freely stipulated by the parties who are, accordingly, free to agree on issues related to length, termination and opposition to the renewal of lease contracts, with subsidiary application of the rules of leases for housing purposes.

- Period: the law states that lease contracts may be entered into for fixed term or be of non-specified duration. The latter option is not commonly used in the property market. If entered into on a fixed term basis, the duration may be freely agreed between the parties requiring only complying with the legal maximum limit of 30 years. Moreover, the contract will be automatically renewable for equal and successive periods, unless the parties agree otherwise.

- Maintenance: this subject matter is freely regulated between the parties. In this particular

case, if no provision is made by the parties, the landlord is responsible for the property's maintenance.

- Rent and other expenses: costs and expenses related with the property (such as condominium expenses) are freely agreed between the parties, who are also free to agree the criteria for updating them.

- Transfer of tenant's contractual position: the transfer of a tenant's contractual position requires permission from the landlord except for the following situations: (a) transfer of a commercial or industrial business ("trespasse") when including the right to lease; or (b) if the new tenant continues to perform, at the property, the same profession as the tenant assigning its contractual position or if the new tenant is a company of professionals with an equivalent object to the activity performed by the assigning tenant.

- Transfer of Business ("trespasse"): the tenant's right to the transfer of business where the lease is included is mandatory and cannot be eliminated by the parties or be waived in advance by the tenant. However, and unless otherwise agreed by the parties, the landlord is lawfully entitled to a pre-emption right in case of business transfer (including the lease right) by the tenant, or in case the business (including the lease right) is given as payment in kind by the tenant.

- Tenant's pre-emption right on sale of leased property: if a landlord intends to sell a property which has been rented out to third parties, the tenant of the property for more than three years has the pre-emption right in respect of the said sale. This pre-emption right is mandatory and cannot be eliminated by the parties nor be waived in advance by the tenant of the establishment, where the right to lease embraced.

- Termination of lease: either party may cancel the lease contract on the basis of a serious default committed by the other which makes the maintenance of the rental impossible. The Portuguese applicable lease regulations provide a non-exhaustive list of cases of default justifying a landlord's decision to terminate the lease contract.

- Termination form: The landlord's termination must be declared judicially except when based (i) on the tenant's opposition to works ordered by public authorities (ii) on the delay of more than 2 months in the payment of the rent, charges/costs or expenses or (iii) on the delay of more than 8 days in the payment of the rent, for more than four times, continuously or not, within a period of 12 months. In such cases, the contract is terminated by means of a written communication sent by the landlord to the tenant. The landlord's termination based on the grounds referred to under (i) and (ii) above is ineffective if, within a period of one month, the tenant remedies the delay of payment of the amounts owed or ceases to oppose to the execution of the works ordered by a public authority. However, the tenant may only benefit from the possibility of remedying the delay of payment once.

12.3. Leases for housing purposes

- Freedom of contract: Lease agreements for housing purposes, unlike the lease agreements for commercial purposes, have a minor degree of contractual freedom. Some of the most relevant matters are imperatively established in the law. That is the case of the rules regarding the early termination and the opposition to the renewal of the lease agreements which were nevertheless softened in 2012, favouring the landlord.

- Term: Lease agreements for housing purposes may also be entered into for a fixed term or be of non-specified duration. The information provided above on leases for commercial purposes is also applicable here. Regarding the fixed term lease agreements, the tenant is entitled to oppose to the renewal of the lease, by means of a notice sent with a prior notice that may vary depending on the initial term or on the term of its renewal, as well as to terminate the lease agreement at any time and without justification, provided that 1/3 of the lease duration has elapsed, by means of a written communication sent to the landlord with a prior notice provided in the applicable law.

In case the landlord prevents the automatic renewal of the agreement under the applicable law, the tenant is allowed to terminate the agreement, at any time, by means of a communication sent to the landlord with a prior notice of 30 days regarding the intended termination date.

As to non-fixed term agreements, the law provides the conditions and the prior notices that the landlord and the tenant must comply in order to legally terminate the agreement.

- Maintenance: Similarly to the regime of leases for commercial purposes, this matter is freely regulated between the parties. In case no provision is made by the parties, the landlord is responsible for the property's maintenance.

- Rent and other expenses: the aforementioned rules concerning leases for commercial purposes also apply here.

Transfer of tenant's contractual position: as a general rule, the transfer of the tenant's contractual position may only be carried out with the landlord's consent. However, if the lease agreement concerns the family residence ("casa de morada de família"), in the event of divorce or judicial separation of persons and goods, the transfer or concentration of the contractual position in favour of one of the spouses is admissible, without the landlord's consent. In case of the tenant's death, the lease does not cease and the transfer will occur in favour of the person who lived with the tenant, provided that, at the time of the tenant's death, said person does not own or rent another house in the district areas of Lisbon or Oporto and neighbouring municipalities, or in the respective municipality, regarding the remaining part of the country.

- Tenant's pre-emption right on sale of leased property: the aforementioned rules concerning leases for commercial purposes also apply here

- Termination of lease due to breach of contract: the aforementioned rules concerning leases for commercial purposes also apply here.

12.4. Use of shops agreements

Contracts for the use of shops in commercial complexes (such as shopping centres, retail parks, retail galleries or outlets) are neither subject to the urban lease regulations nor to any other regulations provided by law.

Both the majority of the Portuguese scholars and case-law (including the Supreme Court of Justice) consider that contracts entered into between owners or the respective operators of commercial complexes and shop users should be construed as atypical, entered into within the scope of the freedom of contract principle provided in the Portuguese Civil Code. This legal classification grants the parties great amplitude to the contractual freedom, allowing the parties to freely stipulate the contract's content and the fact that said contracts are not subject to the urban lease regulations benefits the landlord's contractual position.

It is therefore commonplace for contracts for the occupation and use of areas in commercial complexes not to be entered into pursuant to the scope of any of the types of lease provided for under the Portuguese law on leases.

Many Supreme Court of Justice decisions have ruled in favour of the validity and lawfulness of such contracts, which are not subject to the general Portuguese law on leases. It is understood that such contracts are not lease contracts but instead atypical contracts, governed by the general contract regulations and only alternatively by the relevant rules on leases.

Occupiers of spaces in commercial complexes enjoy more than the mere use of the areas contracted for. The business operated therein also benefits from all of the common amenities and services provided by the owner and/or manager of the commercial development and made available to all its customers and workers.

Although the new Portuguese urban lease regulations currently allow a large margin of freedom for the definition of the contents of commercial leases, the owners of commercial complexes, in which retail establishments operate, may still benefit from the fact that the use of shop agreements are not subject to the mentioned law on leases.

The fact that this type of contract is not governed by the Portuguese urban leases law signifies the non-application of the tenant's pre-emption right on a property's sale; the nonexistence of a tenant's right to the transfer of business where the lease is included, the impossibility of pledging the right of use of the property covered by the use of shop agreement (as opposed to the possibility of a pledge over the tenant's rental right, in the event of enforcement proceedings brought against the tenant by a third party); the non-application of the typical eviction procedures for terminating the contract and vacating the property (despite

the fact that the owner, in this case, must still go to court to enforce the tenant's eviction).

12.5. Taxation

- VAT

The lease of real estate is exempt from VAT, unless the landlord opts to waive such exemption, which can only occur where both parties are VAT taxable persons in Portugal and the tenant uses the leased premises for VAT taxable activities, amongst certain other conditions that also need to be met. In that case, the rents are subject to VAT at the standard rate (currently 23%), and no stamp duty is payable. In shopping centre leases, rents are always subject to VAT and no stamp duty is payable, as such agreements are treated as service agreements for VAT purposes.

Service charges, and any other form of payment in consideration for services supplied in the context of lease arrangements, are also subject to VAT in any type of lease.

- Stamp Tax

Standard commercial lease agreements are subject to stamp duty when they are exempt from VAT, payable by the landlord and charged at 10% of the first rent.

12.6. Local housing regime

Decree-Law no. 128/2014, of August 29, regulates local housing which has been regulated since 2008. The previous regime required the registration of house rentals to tourists, the declaration of rental income to the finance authorities and submitted the local housing to a set of requirements and penalties; however, the regime became too bureaucratic and outdated.

This new regime aims to respond to the increase in demand for such housing and the various offers and new realities, giving to this category of housing proper legal treatment.

Legal framework: All services related to temporary housing fall under this Decree-Law. Only those establishments that do not meet the requirements for tourism undertakings but meet the requirements of the Decree-Law are included. Under the current regime there are three types of housing created in 2008, namely apartments, houses, and lodging establishments (which include "hostels"). Regarding apartments, although private initiative is important, the new Decree-Law regulates these as services to avoid tax evasion. Furthermore, this regime relates only to the maximum operation of nine units per building; if this is exceeded, the applicable law is the law applicable to touristic undertaking (Decree-Law no. 39/2008, 7 March, amended by Decree no. 15/2014, 23 January). Decree-Law no. 128/2014 requires "hostels" to be mainly dormitory; units with a minimum of four beds (or a required equivalent in bunk beds). With the exception of these cases, all other forms of local housing require a maximum of nine bedrooms and thirty users.

Another aspect of this Decree-Law concerns the principle of competition, in order to ease its supervision and ruling to enable fair competition. There was also a decrease in the access requirements, the elimination of service obligations and the creation of a process of registry without licensing. This is done exclusively through a notification to "Balcão Único Eletrónico" with no obligation to pay a fee. The holder of the right to operate the establishment must sign a term of responsibility ensuring the integrity and quality of the building and the compliance with the applicable laws and regulation. Within 30 days after the above mentioned notification, the competent municipality will inspect the facility to confirm compliance with the obligations and the information contained in the notification. At the same time, the current legal regime does not foresee obligations regarding services rendered, leaving this type of regulation to the market, and it allows, as long as authorised, the operation of an establishment of local housing by a tenant in a leased building.

This new regime has two main concerns: establish a framework and the requirements for the operation of the local housing establishments and the supervision of the activity. This law seeks to find a balance between the absence of limitations or restrictions and an increased freedom for anyone who wishes to lease his or her house but implements supervision. Notwithstanding the fact that the legal regime on local housing does not contain specific tax rules, services rendered should be treated as such in relation to Personal Income Tax (IRS), Corporate Income Tax (IRC) and VAT (IVA).

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