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Vieira de Almeida & Associados

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Assessing the tax regimes for real estate investment in Portugal

Mélanie Pereira of Vieira de Almeida & Associados explains the tax regimes applicable for real estate investment in Portugal.

Real estate investment in Portugal represents a significant weight in the Portuguese economy. Despite the impact of COVID-19 in global mobility, the geographical location, the social, political and economic stability, as well as the tax incentive regimes in place, have supported a continuous interest of foreign investors in Portuguese real estate projects.

Portugal has continuously been involved in cross-border real estate transactions and the choice of these structures has been increasingly diversified, with investors opting for structures which are advantageous for legal, regulatory and tax purposes.

The corporate structures most commonly implemented by investors to hold real estate assets in Portugal are still standard corporate vehicles (special purpose vehicles incorporated as limited liability companies) but a new trend is arising as regards real estate investment companies (REIC/SIIMO), real estate investment funds (REIF/FII) and venture capital funds (VCF/FCR).

The Portuguese tax framework and the tax regime applicable will depend not only on the type of entity chosen (REIC/REIF/VCF), but also (1) the legal status of the investor (natural persons versus legal persons) and (2) the tax residence of the investor (resident in Portugal versus non-resident in Portugal).

Taxation of business profits of REIC and REIF

From a tax standpoint, both REIC and REIF are subject to corporate income tax (CIT) at a standard rate of 21%, provided they are incorporated and operate in accordance with Portuguese legislation. Additionally, REIC and REIF benefit from an exemption from municipal and state surtaxes.

REIC and REIF benefit from a special tax regime provided for in the Portuguese Tax Benefits Code (*Estatuto dos Benefícios Fiscais*) which foresees that the following types of income should be excluded from the taxable income for CIT purposes:

i) Investment income, rental income and capital gains (except if derived from blacklisted jurisdictions – as per Ministerial Order 150/2004, of February 13 (as amended));

ii) Expenses related with the type of income detailed in the previous paragraph (i);

iii) Income and expenses related to management fees and other commissions reverting to the REIC/REIF.

This special tax regime does not grant a full CIT exemption to REIC/REIF, but rather provides that REIC/REIF are generally subject to CIT, with the above-mentioned exclusions being exceptions to the standard rule of taxation.

Despite the above, the income qualification is not a straightforward issue insofar as there is no specific clarification as to whether income from (real estate related) services may also qualify as rental income (in this regard, the Secretary of State of Tax Affairs has recently issued guidance – Ordinance no. 107/2020-XXII, of March 9).

Although there are some arguments to consider that all real estate related activities should fall under the CIT exclusion, there is a risk that Portuguese tax authorities and tax courts may take a different view, thus specific attention should be drawn to projects where the real estate assets are used for a business activity and not merely leased.

For stamp duty purposes, both REIC and REIF are subject to stamp duty on their global net asset value at a rate of 0.0125% (per quarter).

Taxation of business profits of VCF

Another alternative to the use of REIC or REIF has been the use of VCF as investment vehicle for real estate projects.

From a tax standpoint, a special tax regime foreseen in the Portuguese Tax Benefits Code is applicable to VCF, which determines that business profits are fully exempt from CIT provided that VCF are incorporated and operate in accordance with Portuguese legislation. Contrary to the regime applicable to REIC and REIF, this exemption applies to all types of income.

Taxation of investors

Depending on whether the distribution is made by REIF/REIC or by VCF and attending to the type of investor, the distribution of dividends and capital gains triggers the following taxes in Portugal:

Non-resident investors

- Distributions of profits made by REIF/REIC to non-resident investors, as well as the capital gains from the redemption/sale of fund units or shares are subject to a final withholding tax at a rate of 10%;
- Differently, distributions of profits made by VCF to non-resident investors, as well as the capital gains from the redemption/sale of VCF units are fully exempt from withholding tax.

The above taxation is applicable to both legal persons and natural persons.

The preferential regimes described above are not available in case the foreign investor is (i) directly or indirectly held, in more than 25%, by Portuguese resident entities or is (ii) resident in a blacklisted jurisdiction (in the latter case, a 35% tax rate will apply).

Resident investors

- Distributions made by REIF/REIC to resident investors are subject to withholding tax at a 25% rate in case of legal persons, or 28% rate in case of natural persons. The withholding tax is generally a final tax for natural persons and a payment on account of the final CIT due by legal persons.
- As for natural persons, the VCF tax regime is also more beneficial as compared to REIF/REIC. In this case, it allows for a reduced withholding tax rate of 10%, both to distributions and capital gains from the disposal or redemption of the VCF units.

Considering the particularities in the tax regime of each of these entities, VCFs have been increasingly used in real estate structures namely with other specific purpose (e.g. golden visa investors).

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