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CHAMBERS GLOBAL PRACTICE GUIDES

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# Alternative Funds 2022

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**Portugal: Law & Practice**

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VdA

## Law and Practice

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## 1. General

### 1.1 General Overview of Jurisdiction

The Portuguese alternative funds market remains rather traditional. However, in recent years there has been a discernible trend of new foreign players stepping in, mainly through the acquisition of existing fund managers or through direct investment in alternative funds.

Fund managers integrated into banking groups hold a relevant position in the local market, but independent managers have been increasing their footprint and market share, with the market being sought after by investors wishing to establish local partnerships and at the same time looking for a faster and more flexible decision-making process.

The performance of the real estate market in recent times has helped boost investments in real estate alternative investment funds. A relevant factor for this is the Portuguese “golden visa” programme, which has attracted substantial interest from investors to Portuguese real estate as it is one of the eligible investments to fulfil the visa requirements. The golden visa programme allows a non-EU national to obtain a residency permit in Portugal and to travel in the Schengen area, provided that, among other requirements and investment alternatives, the applicant makes an investment in real estate of EUR500,000, or invests at least EUR500,000 in units/shares of investment funds or venture capital funds dedicated to the capitalisation of Portuguese companies.

As a result, among alternative funds, real estate investment is the leader in assets under management.

Venture capital funds have also been able to take advantage of the golden visa programme by developing vehicles targeted at foreign investors who are required to meet certain eligibility criteria.

## 2. Funds

### 2.1 Types of Alternative Funds

Portugal permits the establishment of alternative funds that invest in:

- securities or financial assets such as undertakings for collective investment in transferable securities that do not comply with the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS) limits (see **2.3 Regulatory Regime**) and are thus classified as alternative funds;
- real estate; and
- long-term, non-financial assets with a determinable value.

According to Regulation No 2/2015, alternative funds investing in securities may adopt the branding of alternative funds investing in bonds, shares, index-trackers, money-market funds, etc, provided that they comply with specific asset allocation limits.

The Venture Capital Law establishes the possibility of setting up venture capital funds, alternative specialised investment funds and social entrepreneurship funds.

Moreover, other laws establish the possibility of specific alternative investment funds being created. However, due to the strict legal limitations, these specific types are seldom used.

From all the types indicated above, the majority of alternative funds in Portugal are venture capital and real estate funds, followed by undertakings for collective investment in transferable securities that do not comply with the UCITS Directive. The remaining types of alternative funds have a residual representation in the Portuguese market.

## 2.2 Fund Structures

Alternative investment funds may take either one of the two forms or structures listed below, both of which are subject to licensing procedures:

- the contractual structure with no legal personality; or
- the collective investment company endowed with legal personality.

The contractual structure is the classic structure and requires that the alternative fund be managed by a separate fund manager. The investors' or participants' interests in these funds are called "units" (*unidades de participação*).

The collective investment company (*sociedade de investimento coletivo*) may be self-managed or may appoint a third party as its manager, which must be a duly authorised investment fund manager. Participants in these collective investment companies will hold shares (*ações*).

In Portugal, alternative funds are usually set up under the contractual structure.

Nevertheless, there has been a recent market trend based on the transformation of commercial companies into collective investment companies, which are externally managed by fund managers. Considering that it needs to have a fund manager in place, this model does not differ significantly from the contractual structure.

Lastly, it should be noted that real estate investment trusts, or SIGIs, are not subject to the UCI Law (see **2.3 Regulatory Regime**), nor do they need to be managed by a fund manager. Even though SIGIs are qualified as real estate collective investment companies endowed with legal personality, they are only subject to the SIGIs Framework, the Companies Code and certain provisions of the Securities Code regarding publicly traded companies.

## 2.3 Funds: Regulatory Regime

Activity involving the management, investment and marketing of alternative funds is mainly regulated by:

- the Undertakings for Collective Investment Law (*Regime Geral dos Organismos de Investimento Coletivo*), enacted by Law No 16/2015 of 24 February 2015 (UCI Law), implemented in the Portugal Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities (UCITS Directive), as amended from time to time;
- the Securities Code (*Código dos Valores Mobiliários* or PSC), enacted by Decree Law No 486/99 of 13 November 1999, as amended from time to time, that came into force on 1 March 2000;
- Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD), which sets out most of the rules relating to alternative funds;
- CMVM Regulation No 2/2015 on Undertakings for Collective Investment (Regulation No 2/2015), which sets forth more specific rules regarding certain aspects of the UCI Law; and
- CMVM Regulation No 3/2015 on venture capital, social entrepreneurship and alternative specialised investment (Regulation No 3/2015).

On a different note, the AIFMD has also been partially implemented in Portugal by Law No 18/2015 of 4 March 2015, relating to Venture Capital, Social Entrepreneurship and Specialised Investment (Venture Capital Law). The Venture Capital Law has a specific regime applicable to alternative funds investing in equity instruments for a limited period of time as well as other structures, which in spite of sharing similar features with the UCI's framework is perceived under Portuguese law as being an autonomous subject in relation to the UCI Law.

The Portuguese Securities Exchange Commission (*Comissão do Mercado de Valores Mobiliários* or CMVM) is the competent regulatory body in relation to the aforementioned matters.

## Investment Limitations

Investment limitations vary greatly depending on the type of alternative fund. However, as a rule, real estate alternative funds need to have two thirds of their portfolio invested in real estate or analogous assets, eg, shares in real estate companies and units or shares of other real estate investment funds.

Alternative funds investing in transferable securities that do not comply with the UCITS Directive limits may only invest in financial instruments; an alternative fund investing in long-term non-financial assets with a determinable value, among other limitations, needs to have 30% of its net asset value invested in long-term non-financial assets and no more than 25% of its net asset value invested in real estate or analogous assets.

A venture capital fund can only invest up to 33% of its assets in a single company or group of companies, except where the fund has a mandatory minimum ticket of EUR500,000 or only targets professional investors. Likewise, venture

capital funds cannot invest more than 50% of their assets into securities admitted to trading on a regulated market.

## 2.4 Loan Origination

As a rule, loans originating from alternative funds are not allowed under Portuguese law. Therefore, in general, only credit and certain financial institutions authorised by the Bank of Portugal may extend credit on a professional basis.

Nevertheless, since 1 January 2020, the setting-up of so-called "loan-originating funds" has been allowed. These funds are able to grant loans to companies but not to natural persons, credit institutions or other entities with close ties, such as the depositary of the fund or companies within the group of the fund manager. Alternative funds of this type are able to borrow money for the purpose of granting loans up to 60% of the fund's assets. The regulatory framework of loan-originating funds is further detailed in Regulation No 3/2015.

Venture capital funds may also grant loans to companies in which it holds equity or in which it intends to hold equity.

## 2.5 Non-traditional Assets

The CMVM accepts that funds may invest directly in crypto assets if they are an alternative fund investing in non-financial assets or a specialised alternative investment fund. The CMVM also considers that, in the case of investments in crypto assets, it is necessary to have an adequate identification of the investment policy, an acceptable definition of the valuation rules and a satisfactory management of the risk associated with such type of investment.

Other types of assets, such as cannabis-related investments (cannabis is currently only legalised



in Portugal for health and industrial purposes, ie, non-recreational use) and crypto-assets, may also be included in the portfolio of a venture capital fund under a special purpose vehicle.

The granting of contractual loans by an alternative fund, when allowed, will likely subject it to the regime of the loan-originating funds (please see 2.4 Loan Origination).

## 2.6 Regulatory Approval Process

Alternative funds established in the UCI Law are subject to previous authorisation and/or registration with the CMVM and must abide by the following phases.

- Formal assessment phase:
  - (a) the CMVM has 15 working days to notify the applicant of the lack of obligatory information;
  - (b) the applicant has ten working days (or a longer period, if granted by the CMVM) to file the missing information; and
  - (c) if it fails to file the missing information, the application is preliminarily rejected.
- Material assessment phase:
  - (a) after the 15 working days referred to above have elapsed without the CMVM having served any notification or after receipt of the missing information referred to above, the CMVM has 20 working days to notify the applicant of its decision;
  - (b) during that 20 working-day period, the CMVM may request any clarifications it deems necessary, with no suspension or interruption of the deadlines; and
  - (c) in the absence of notification of a decision within that 20 working-day period, the authorisation is deemed to have been granted.

- The funds established in the Venture Capital Law are subject to prior registration with the CMVM, with the decision of the regulator being notified to the applicant 15 working days after the filing is completed. The funds established in the Venture Capital Law that have a mandatory minimum ticket of EUR500,000 or that only target professional investors are merely subject to previous filing with the CMVM without any further action from the regulator being required.

The CMVM tends to request further information from the applicant, which results in the legal term for granting the authorisation being extended, so it may take up to two months for the process to be completed. In the case of self-managed collective investment companies, the process usually takes several months, considering the stricter legal requirements that are applicable.

The documents to be submitted to CMVM by the applicant include:

- the application form duly completed;
- the fund's management regulations;
- the key information document;
- the articles of association of the fund (if it is incorporated as a company);
- the drafts of the agreements to be executed with the depositary, the real estate appraisers, the chartered accountant, the marketing entities and other service providers, as applicable; and
- the statements issued by all the entities and persons involved in the filing accepting their respective functions.

## 2.7 Requirement for Local Investment Managers

The alternative fund may also be managed by a fund manager from another EU member state

that is passported under the AIFMD regime, based on the freedom of services or the freedom of establishment.

Third-country entities may also request the CMVM to authorise their management of alternative funds in Portugal. However, it is unlikely that the CMVM will grant authorisation unless the fund manager has at least a minimum local presence.

## 2.8 Other Local Requirements

In Portugal, it is not permitted to create an alternative fund under the general partner/limited partner structure. In this sense, all alternative funds are either set up under the contractual form or incorporated as a limited liability company by shares.

For externally managed alternative funds or funds set up under contractual form, please see **3.7 Local Substance Requirements** regarding the requirements applicable to the fund manager.

In the case of self-managed alternative funds, the requirements applicable to the fund itself will follow very closely the requirements established in respect of the external fund manager. The number of personnel involved in this type of fund will largely depend on the nature, size and complexity of its activities. In any case, this type of alternative fund must have business premises in Portugal and at least some staff located in Portugal with knowledge and experience of the local regulatory framework.

## 2.9 Rules Concerning Other Service Providers

The custodian of the alternative fund must be established in Portugal, ie, either be incorporat-

ed and authorised by Portuguese supervisors or have a branch in Portugal.

As for the roles of administrator, money laundering reporting officer, etc, there is no carved-in-stone provision stating that these need to be resident in Portugal.

Nevertheless, from experience and without prejudice of a case-by-case analysis, the fact of such roles being undertaken by non-residents may jeopardise the effective performance of the functions or may create serious difficulties for personnel that do not speak Portuguese in terms of understanding the local regulatory environment, and thereby impact the performance of the relevant tasks.

The personnel in charge of vital roles within the alternative fund and/or the fund manager must have the necessary competence, experience, suitability, availability and independence to carry out the tasks at hand.

## 2.10 Requirements for Non-local Service Providers

Please see **2.9 Rules Concerning Other Service Providers**.

## 2.11 Funds: Tax Regime

### Alternative Funds (Not Venture Capital Funds)

Alternative funds (that are not venture capital funds) are subject to corporate income tax (CIT) at the general rate – currently set at 21% – but are exempt from municipal and state surcharges. Taxable income corresponds to the net profit assessed in accordance with their respective accounting standards. Passive income, such as investment income, rental income and capital gains (except when sourced in a tax haven), is disregarded for taxable profit assessment purposes. In this respect, it should be noted that

Instruction 107/2020-XXII issued by the Secretary of State for Tax Affairs confirmed that real estate disposals should fall within the scope of capital gains. Costs incurred in connection with the referenced passive income (including funding costs) are disregarded for profit assessment purposes. Non-deductible expenses under the CIT code and income and expenses relating to management fees and other commissions earned by alternative funds are also disregarded for taxable profit assessment purposes. Also, income received is not subject to withholding tax, although autonomous tax rates established in the CIT code will apply.

Alternative funds that exclusively invest in money market instruments and bank deposits will also be subject to stamp tax applicable over their global net asset value at a rate of 0.0025% (per quarter). Other alternative funds will be subject to stamp tax on their global net asset value at a rate of 0.0125% (per quarter).

## Venture Capital Funds

Venture capital funds are CIT-exempt pursuant to the Tax Benefits Code.

## 2.12 Double-Tax Treaties

Alternative funds established in Portugal qualify for benefits under double-tax treaties, except for venture capital funds.

## 2.13 Use of Subsidiaries for Investment Purposes

It is not common practice for alternative funds to resort to subsidiaries for investment purposes. However, certain real estate alternative funds do use subsidiaries to rationalise the management of assets.

The use of subsidiaries may be particularly useful in the case of alternative funds set up under

the contractual form, which cannot directly hire employees. Conversely, a subsidiary that is fully held by an alternative fund would be able to hire personnel.

## 2.14 Origin of Promoters/Sponsors of Alternative Funds

Besides the local sponsors/promoters who still represent a significant share of the market, foreign players (from countries such as US, Turkey and Brazil, as well as from the Middle East and Portuguese-speaking African countries) are also searching the Portuguese market for investment opportunities that can be obtained by their countrypersons to qualify for the Portuguese golden visa.

## 2.15 Origin of Investors in Alternative Funds

Investors in Portuguese alternative funds (apart from Portuguese nationals, who still represent a significant proportion of the investors) typically come from countries such as US, Turkey and Brazil, and from the Middle East and Portuguese-speaking African countries. Many of these investors search local alternative funds to find an eligible investment for the purposes of applying for the Portuguese golden visa.

There are also a number of investors from other EU member states, notably France, who use real estate alternative funds as a means to invest in the local real estate market.

## 2.16 Key Trends

In the case of real estate alternative funds, there is a trend for investors to convert existing commercial companies into externally managed collective investment companies, subject to the UCI Law, to benefit from a more favourable tax regime.



Venture capital funds represent a very dynamic segment of the local alternative funds market, being primarily set up to take advantage of public programmes and tax benefits granted for innovation and R&D, and to address the demand by foreign investors for local vehicles that qualify as eligible investments for the purposes of obtaining a Portuguese golden visa.

## 2.17 Disclosure/Reporting Requirements

In accordance with the CMVM's regulations and instructions, all alternative funds and their fund managers are required to report to the CMVM on the items referred to in Annex IV to Delegated Regulation (EU) No 231/2013, among others, on an ongoing basis, by electronic means.

Furthermore, fund managers need to disclose their qualifying shareholders to the public on the CMVM's website, as well as the composition of the portfolio, the legal documents of the alternative funds under management, the accounts and report, and the unit/share value.

These obligations do not apply to venture capital funds, specialised alternative investment funds and social entrepreneurship funds, which are subject to less public disclosure, without prejudice of the ongoing reporting made directly to the investors.

## 2.18 Anticipated Changes

A general reform to the UCI Law and the Venture Capital Law is currently underway, which will lead to both legal documents being repealed and replaced by a single legal instrument.

The new regime is expected to be published somewhere during 2022, but the exact timeline for the implementation of the new regime and its specifics remain unknown.

## 3. Managers

### 3.1 Legal Structures Used by Fund Managers

If the alternative fund is not a collective investment company that is self-managed, it will need to be managed by an investment fund manager, which will be allowed to register with the CMVM to manage different types of collective investment structures, including alternative investment funds.

Credit institutions are no longer allowed to manage any type of collective investment structure.

Venture capital, social entrepreneurship and specialised alternative investment funds are generally managed by a venture capital fund manager.

### 3.2 Managers: Regulatory Regime

See 2.3 Regulatory Regime.

In Portugal, all fund managers are subject to regulatory approval and ongoing supervision. Only venture capital fund managers are eligible to benefit, to a limited extent, from the de minimis exemption foreseen in the AIFMD.

Depending on the alternative fund, different requirements will apply. However, control of the suitability of the members of the board of directors and audit board of the alternative fund manager carried out by the supervisory authority (the CMVM) should be emphasised.

### 3.3 Managers: Tax Regime

If the alternative fund is endowed with legal personality and is self-managed, the tax regime referred to in 2.11 Tax Regime applies.

In the case of a third-party managed alternative fund, income derived by the manager (including capital gains earned on transfer of fund units) will be subject to CIT at a rate of 21%, to which a municipal surcharge of up to 1.5% may be applicable on taxable profits, depending on which municipality the alternative fund manager is located (the municipalities have the right to decide if and at what rate a municipal surcharge will be levied).

Taxable profits are also subject to a progressive state surcharge at the following rates:

- 3% on the part of the taxable profits exceeding EUR1.5 million up to EUR7.5 million;
- 5% on the part of the taxable profits exceeding EUR7.5 million up to EUR35 million; and
- 9% on the part of the taxable profits exceeding EUR35 million.

### 3.4 Rules Concerning Permanent Establishments

In Portugal, there are no exemptions or other rules regarding “permanent establishments”.

### 3.5 Taxation of Carried Interest

The amount of carried interest on the date of a transfer qualifies as interest rather than capital gains for tax purposes.

### 3.6 Outsourcing of Investment Functions/Business Operations

Alternative fund managers can outsource investment management functions to third parties, subject to filing the draft of the outsourcing agreement with the CMVM and subject to compliance with Articles 75 to 82 of the Delegated Regulation (EU) No 231/2013. Furthermore, this type of outsourcing can only be done to other alternative fund managers or individual portfolio managers (MiFID firms).

Notwithstanding the general rule described in the paragraph above, in case the outsourcing arrangement relates to an alternative investment undertaking exclusively targeting professional investors, the investment management functions may be outsourced to a non-regulated third party, subject to the prior authorisation of the CMVM and to the compliance by the outsourced entity of the asset allocation criteria defined by the fund manager.

Even though subject to the rules described above, the outsourcing of business operations and similar non-investment management functions can be executed with a non-regulated entity.

### 3.7 Local Substance Requirements

Local substance requirements are not set in stone.

Nevertheless, the fund manager will need to have a board of directors with at least two executive members, a statutory auditor and a replacement. Additionally, at least one person should be allocated to internal control functions, such as compliance, AML/CTF, risk management and internal auditing, as needed.

Furthermore, there is usually a department tasked with evaluating the assets of the funds, a department tasked with financing and accounting, a fund manager assigned to each fund under management, and a department tasked with human resources or administration. It is possible to combine some roles, provided that the general principle that the person who assumes management functions or day-to-day business tasks cannot be responsible for control functions is respected.

## 3.8 Local Regulatory Requirements for Non-local Managers

Non-local managers will be subject to the same requirements that apply to local managers, except for when the non-local manager is passported to Portugal under the AIFMD. In this case, the Portuguese supervisors will mainly focus on enforcing local market conduct rules, leaving the prudential supervision of the non-local manager to its home-state supervisor.

## 4. Investors

### 4.1 Types of Investors in Alternative Funds

In Portugal, real estate and venture capital funds are the most sought-after types of alternative funds.

In the case of real estate alternative funds, the trend is for investors to convert existing commercial companies into externally managed collective investment companies, subject to the UCI Law, to benefit from a more favourable tax regime.

Venture capital funds represent a very dynamic segment of the local alternative funds market, being set up mainly to take advantage of public programmes and tax benefits granted for innovation and R&D, and to address the demand by foreign investors for local vehicles that are an eligible investment for the purposes of obtaining a Portuguese golden visa.

### 4.2 Marketing of Alternative Funds

Local alternative funds can be marketed to both professional and non-professional investors, depending on the limitations provided under the fund's legal documents. An alternative fund

passport to Portugal under the AIFMD may only be marketed to professional investors.

Nevertheless, the Portuguese national private placement regime allows for alternative funds to obtain local authorisation from the CMVM to be marketed to both professional and non-professional investors. However, due to the strict applicable requirements, this route has not been used frequently by foreign players.

### 4.3 Rules Concerning Marketing of Alternative Funds

Besides the Securities Code and the UCI Law and/or Venture Capital Law, the marketing of alternative funds is subject to the general rules and good practices applicable to advertising in general, particularly if the investor is a natural person.

In the case of alternative funds (that are not venture capital funds), pursuant to Regulation No 2/2015, if the marketing materials disclose return data, they must also contain at least the following:

- the identification of the alternative fund and its manager;
- the warning that “the disclosed returns represent past data and do not guarantee future returns”;
- the reference period for the return figures indicated;
- confirmation on whether or not the return figures disclosed already include the applicable taxation;
- information on where and how the key investor information document and other legal documents may be obtained;
- in cases where the alternative fund's units/shares are admitted to trading on a regulated market, identification of the relevant market

and whether the values disclosed are calculated on the basis of the asset value or on the market value of the units/shares;

- a warning that investment in the alternative fund may lead to the loss of the principal invested, in cases where the alternative fund does not guarantee payment of the principal invested;
- if the data disclosed is annualised, but has a reference period greater than one year, the information disclosed shall also contain the reference according to which the reference return could only be obtained if the investment was performed during the entire period of the reference; and
- the risk level, with identical emphasis on the return figure, for an identical period of reference.

#### 4.4 Local Investors

In general terms, all types of local investors may invest in alternative funds established in Portugal, subject to the specific limitations established in the alternative fund's legal documents.

#### 4.5 Investors: Regulatory Regime

Prior to the marketing of alternative funds in Portugal, the relevant fund needs to:

- be previously authorised or registered by the CMVM, as applicable, if it is a Portuguese fund;
- complete the AIFMD passport procedure to Portugal, if it is an EU fund intended to be marketed to professional investors; or
- complete the national private placement regime, if it is a third-country fund or an EU fund intended to be marketed to non-professional investors.

Thereafter, periodic reports must be filed with the CMVM in respect of the marketing and sub-

scription of the alternative fund in Portugal by local investors.

#### 4.6 Disclosure Requirements

For each alternative fund, the fund manager must prepare and publish annual and biennial accounts, as applicable. At the request of investors, these must be made available free of charge.

The marketing entity must send or make available to the investors a statement informing them of:

- the number of units such investor holds; and
- their value and the aggregate value of the investment.

In addition to this information, the marketing entity may provide any additional information regarding the investor's financial situation. For example, if the marketing entity of the alternative fund is a bank of which the investor is a client, it could provide the above information together with the investor's bank statement.

#### 4.7 Investors: Tax Regime

The tax regime applicable to investors depends on:

- the type of alternative fund;
- whether the investor is an individual or a legal entity; and
- whether or not the investor is resident in Portugal.

#### Private Equity Funds and Real Estate Funds

Distributions received by individual investors resident in Portugal for tax purposes are subject to final Portuguese Income Tax (PIT) withholding at a 28% rate.

Distributions received by individual investors not resident in Portugal for tax purposes are exempt from PIT in Portugal in the case of private equity funds and subject to a 10% tax rate in the case of real estate funds, provided that proof of non-residence is submitted in a timely manner and the investors are not resident in a country, territory or region with a clearly more favourable tax regime, as identified in the list of the Ministerial Order 150/2004 of 13 February 2004 (as amended) (ie, a “blacklisted jurisdiction”). In such cases, distributions are subject to PIT at a 35% rate.

Distributions received by legal entities resident in Portugal for tax purposes are subject to CIT withholding tax (25%) on account of the final tax due. The distribution constitutes part of the taxable profits, and the withholding tax will be credited against the CIT assessed at year end.

Distributions received by legal entities not resident in Portugal for tax purposes are exempt from CIT in the case of private equity funds and subject to a 10% tax rate in the case of real estate funds, provided that:

- more than 25% of their share capital is not, directly or indirectly, held by Portuguese resident entities (except for non-resident investors that are legal entities resident in another EU member state or any country with which Portugal has a double-tax treaty);
- they have provided proof of non-residence in a timely manner; and
- they are not resident in a blacklisted jurisdiction.

If the corporate investor is resident in a blacklisted jurisdiction, distributions are subject to CIT at a 35% rate. In all other cases, if the exemption

above is not applicable, distributions are subject to CIT at a rate of 25%.

In Portugal, income resulting from the sale of units is regarded as a capital gain. As mentioned in **2.11 Tax Regime**, Instruction 107/2020-XXII issued by the Secretary of State for Tax Affairs confirmed that income arising from any disposal of real estate should be qualified as a capital gain.

Capital gains resulting from the sale of units obtained by individuals resident in Portugal for tax purposes are subject to PIT at a 28% rate over the positive difference between the capital gains and capital losses of a given year (ie, tax is levied on the net capital gains).

Capital gains resulting from the sale of units obtained by individuals not resident in Portugal for tax purposes are exempt from PIT in the case of private equity funds and subject to a 10% tax rate in the case of real estate funds, provided that they are not resident in a country, territory or region with a clearly more favourable tax regime identified in the list of the Ministerial Order 150/2004 of 13 February 2004 (as amended). In such a case, capital gains are subject to PIT at a 35% rate.

Capital gains resulting from the sale of units obtained by legal entities resident in Portugal form part of the taxable profits for the relevant year.

As a rule, capital gains resulting from the sale of units obtained by legal entities not resident in Portugal are subject to CIT at a 10% rate, though an exemption may be applicable if certain requirements are met, notably, that the legal entity is not domiciled in a blacklisted jurisdiction.



## Venture Capital Funds

Distributions received by individuals resident in Portugal for tax purposes are subject to final PIT withholding at a 10% rate.

In Portugal, distributions received by individuals not resident in Portugal for tax purposes are exempt from PIT, provided that such individuals are not resident in a blacklisted jurisdiction. The distributions in such a case are subject to PIT of 10%.

Distributions received by legal entities resident in Portugal are subject to CIT withholding tax (10%) on account of the final tax due. The distribution forms part of the taxable profits, and the withholding tax will be credited against the CIT assessed at year end.

Distributions received by legal entities not resident in Portugal are exempt from CIT provided that:

- more than 25% of their share capital is not, directly or indirectly, held by Portuguese residents or by individuals resident in Portugal;
- they have provided proof of non-residence in due time; and
- they are not domiciled in a blacklisted jurisdiction.

If the CIT exemption does not apply, distributions will be subject to a final withholding tax of 10%.

In Portugal for tax purposes, capital gains resulting from the sale of units obtained by individuals resident are subject to PIT at a 10% rate of the positive difference between the capital gains and capital losses of the relevant year.

Capital gains resulting from the sale of units obtained by individuals not resident in Portugal are exempt from PIT, provided they are not resident in a blacklisted jurisdiction. In such cases, capital gains will be subject to PIT at a 10% rate.

Capital gains resulting from the sale of units obtained by legal entities resident in Portugal form part of the taxable profits for the relevant year.

Capital gains resulting from the sale of units obtained by legal entities not resident in Portugal are exempt from CIT, unless:

- the share capital of the legal entity is more than 25% held by Portuguese resident entities, directly or indirectly; this 25% threshold is not applicable when the following cumulative requirements are met by the seller:
  - (a) it is an entity resident in the European Union or in the European Economic Area or in any country with which Portugal has a double-tax treaty in force that foresees the exchange of information;
  - (b) such entity is subject to and not exempt from IRC (Portuguese corporate income tax), or a similar tax with a rate not lower than 60% of the Portuguese IRC rate;
  - (c) it has held at least 10% of the share capital or voting rights of the entity subject to disposal for at least one year without interruption; and
  - (d) it does not intervene in an artificial arrangement or a series of artificial arrangements that have been put in place with the main purpose of, or having as one of their main purposes, obtaining a tax advantage; or
- the legal entity is domiciled in a blacklisted jurisdiction.

If the CIT exemption does not apply, capital gains will be subject to CIT at a 10% rate.

## 4.8 Foreign Account Tax Compliance Act (FATCA)/Common Reporting Standard (CRS) Compliance Regime

### FATCA

Portugal signed the IGA with the USA on 6 August 2015 and has implemented the legal framework based on the reciprocal exchange of information regarding financial accounts subject to disclosure with the USA through Law No 82-B/2014, enacted on 31 December 2014. The IGA came into force on 10 August 2016, and the Portuguese government approved the complementary regulation required to comply with FATCA through Decree Law No 64/2016, of 11 October 2016, Ministerial Order (*Portaria*) No 302-A/2016, of 2 December 2016 as amended by Ministerial Order No 169/2017, of 25 May 2017, and Ministerial Order No 302-E/2016, of 2 December 2016. Under this legislation, the issuer is required to obtain information regarding certain account holders and to report such information to the Portuguese tax authorities, which, in turn, will report such information to the IRS.

### CRS

The Council Directive 2014/107/EU of 9 December 2014 regarding the mandatory automatic exchange of tax was transposed into Portuguese law by Decree Law No 64/2016, of 11 October 2016. Under this law, the issuer is required to collect information regarding certain account holders and to report such information to the Portuguese tax authorities under forms which, in turn, will report such information to the relevant tax authorities of EU member states or states that have signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information for the Common Reporting Standard.

In view of the regime enacted by Decree Law No 64/2016 of 11 October 2016, all information regarding the registration of the financial institution, the procedures to comply with the reporting obligations arising therefrom and the forms to use to that end was provided by the Ministry of Finance, through Order No 302-B/2016, of 2 December 2016, Order No 302-C/2016, of 2 December 2016, Order No 302-D/2016, of 2 December 2016, and Order No 302-E/2016, of 2 December 2016, all of which are amended from time to time.

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