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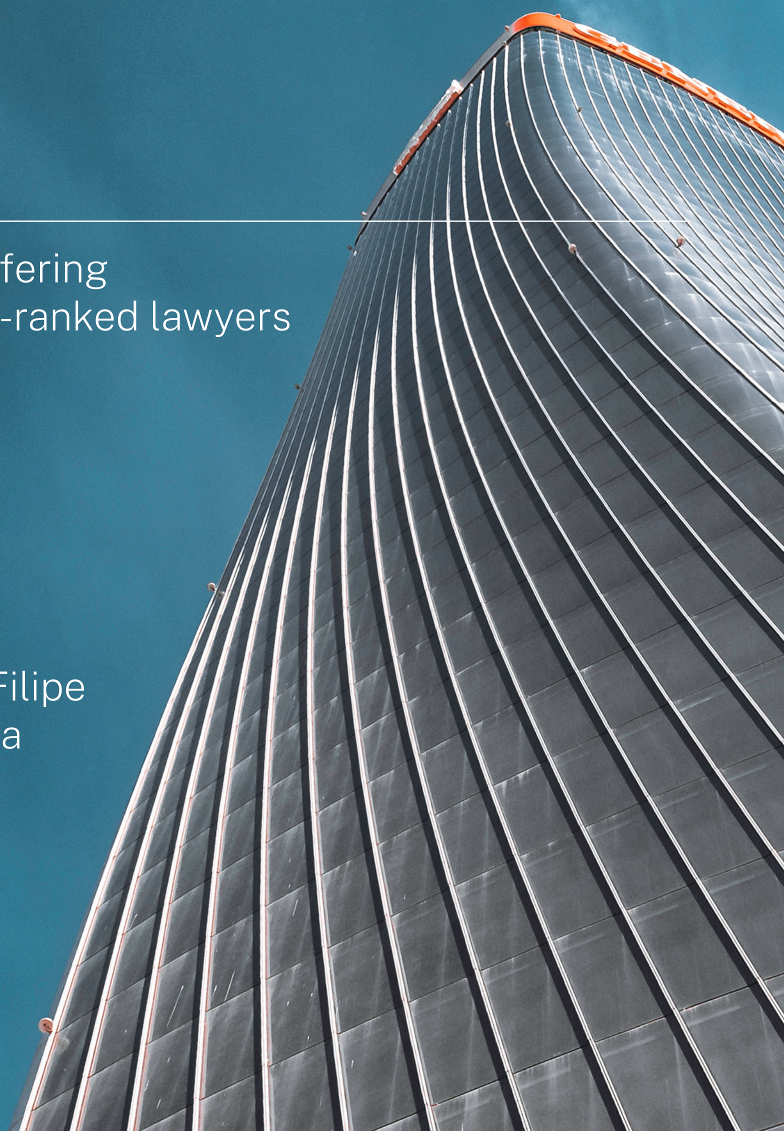

Portugal: Law and Practice & Trends and Developments

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PORTUGAL

Law and Practice

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Carlos Filipe Couto joined VdA in 2011 and is a managing associate in the banking and finance practice, where he has been involved in a number of key transactions, particularly with regard to securities issues in the banking and insurance sectors. Carlos advises asset managers on regulatory and legal issues – including the establishment of collective investment schemes – and offers ongoing counsel to the respective fund managers, assisting them with the sale and purchase of assets under management and respective shares. In addition to advising common representatives and trustees, he is involved in regulatory and contractual matters relating to banking entities, aviation finance and cross-border factoring.

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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 – although independent managers have been increasing their footprint and market share. The market is sought after by investors wishing to establish local partnerships, while 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 (AIFs). A relevant factor in this was the Portuguese "Golden Visa" programme, which attracted substantial interest from investors in Portuguese real estate, as it was 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 invests at least EUR500,000 in units/shares of non-real estate investment funds dedicated to investing in Portuguese companies.

As a result, 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.

1.2 Key Trends

The new UCI Law and CMVM Regulation 7/2023 have been published quite recently and are in force. Therefore, the new regime is being implemented, after a phase-in process undertaken by local players. Moreover, the tax regime applicable to investment funds has also been recently amended to clarify the applicable benefits and tax regime – notably, regarding loan funds.

Considering the aforementioned legal changes as well, the local legal and regulatory regime is currently in a consolidation stage.

2. Funds

2.1 Types of Alternative Funds and Structures

Portugal permits the establishment of alternative funds that invest in:

- securities or financial assets, such as Undertakings for Collective Investment in Transferable Securities (UCITS) that do not comply with the Portugal Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities (the "UCITS Directive") limits (see **2.2 Regulatory Regime for Funds**) and are thus classified as alternative funds;
- real estate assets (real estate, units in real estate AIFs, and shareholdings in real estate companies);
- venture capital;
- securities or other financial or non-financial assets, including the assets permitted for the types of AIF; and
- loans.

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.

Moreover, other laws establish the option of specific AIFs being created. However, due to the strict legal limitations, these specific types are seldom used.

Of all the above-mentioned fund types, the majority of alternative funds in Portugal are venture capital and real estate funds, followed by UCITS that do not comply with the UCITS Directive. The remaining types of alternative funds have only a residual representation in the Portuguese market.

Fund Structures

AIFs may take either one of the following two forms or structures, 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, a recent market trend is based on the transformation of commercial companies into collective investment companies, which are externally managed by fund managers. Considering that this requires there to be 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 (*sociedades de gestão e investimento imobiliário*, or SIGIs) are not subject to the UCI Law (see **2.2 Regulatory Regime for Funds**), nor do they need to be managed by a fund manager.

2.2 Regulatory Regime for Funds

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

- the Undertakings for Collective Investment Law (*Regime da Gestão de Ativos*), enacted by Decree Law No 27/2023 of 28 April 2023 (the "UCI Law"), implemented in the UCITS Directive, as amended from time to time;
- the Portuguese Securities Code (PSC) (*Código dos Valores Mobiliários*), 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;
- the Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD), which sets out most of the rules relating to alternative funds; and
- CMVM Regulation No 7/2023 on the Undertakings for Collective Investment Law (Regulation No 7/2023), which sets forth more specific rules regarding certain aspects of 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.

2.3 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 disclosing 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, which are subject to less public disclosure, without prejudice to the ongoing reporting made directly to the investors.

2.4 Tax Regime for Funds

UCITS and Real Estate Funds

UCITS and real estate 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. However, 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 also disregarded for profit assessment purposes. Non-deductible expenses under the CIT code, as well as income and expenses relating to management fees and other commissions earned, are also disregarded for taxable profit assessment purposes. In addition, income received is not subject to withholding tax – although autonomous tax rates established in the CIT code will apply.

Investment funds that exclusively invest in money-market instruments and bank deposits are also subject to stamp tax applicable over their global net asset value at a rate of 0.0025% (per quarter). Other funds (notably, real estate funds) are subject to stamp tax on their global net asset value at a rate of 0.0125% (per quarter).

Venture Capital Funds and Loan Funds

Venture capital funds and loan funds are CIT-exempt pursuant to the Tax Benefits Code and are not subject to stamp tax on their global net asset (unlike ordinary investment funds).

2.5 Loan Origination

Loans funds are AIFs that can originate loans. Loan funds were introduced into national legislation by Decree Law No 144/2019 of 23 September 2019, with a view to boosting the capital market and diversifying sources of financing for companies. This type of fund fills a market gap in the demand for and supply of financing, improving complementarity between the banking sector and the venture capital and securitisation sectors. They are an alternative way of granting credit to companies and increasing competition and the chances of obtaining more attractive and appropriate financing conditions.

Under the UCI Law, loan funds maintain their purpose but cannot grant credit to individuals or a group of entities. They can be managed by a management company that falls below the AIFMD's thresholds.

In the granting of credit by these funds, the framework applicable to the granting of bank credit applies, depending on the type of operation (particularly with regard to information on interest). In its relationship with borrowers, the management company complies with the information duties of financial intermediaries, with the necessary adaptations – namely, on the special risks of the operations to be carried out and the costs of the service. In order to mitigate credit risk, these funds participate in the credit liability centre (*Central de Responsabilidades de Crédito*).

Alternative funds of this type are able to borrow money for the purpose of granting loans of up to 60% of the fund's assets. The regulatory framework of loan-originating funds is further detailed in Regulation No 7/2023.

Venture capital funds may also grant loans to companies in which they hold equity or in which they intend to hold equity.

2.6 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. The CMVM also considers that, in the case of investments in crypto-assets, it is necessary to have adequate identification of the investment policy, an acceptable definition of the valuation rules, and satisfactory management of the risk associated with such type of investment.

Other types of assets, such as cannabis-related investments (cannabis is currently only legal 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 (see **2.5 Loan Origination**).

2.7 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 and venture capital funds do use subsidiaries to rationalise the management of assets.

2.8 Local/Presence Requirements for Funds

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.

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, see **3.8 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 Service Providers

The custodian of the alternative fund must be established in Portugal – ie, either be incorporated 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 on 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 who do not speak Portuguese, in terms of understanding the local regulatory environment and may 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 Anticipated Changes

The new UCI Law and CMVM Regulation 7/2023 have been published quite recently and are in force. As such, no new legal amendments are anticipated in the foreseeable future.

3. Fund Managers

3.1 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 the USA, 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 utilised by nationals of those countries to qualify for the Portuguese Golden Visa.

3.2 Legal Structures Used by Managers

The UCI Law distinguishes between large fund managers and small fund managers.

In the case of large fund managers:

- assets under management (AUM) exceed EUR100 million and include assets acquired through leverage; or
- AUM exceed EUR500 million and do not include assets acquired through leverage; and
- no redemption rights are exercisable for a period of five years from the date of the initial investment.

In the case of small fund managers, the above-mentioned limits should not be exceeded, in line with the de minimis exemption foreseen in the AIFMD.

3.3 Regulatory Regime for Managers

See **2.2 Regulatory Regime for Funds**.

In Portugal, large fund managers are subject to prior authorisation from the CMVM, whereas small fund managers are subject to simplified prior authorisation from the CMVM.

Depending on the type of AIFs the fund manager intends to manage (ie, AIFs investing in securities or financial assets, non-financial assets, real estate, venture capital, etc), additional requirements will need to be met – notably, as regards internal policies.

It should also be emphasised that control of the suitability of the members of the board of directors and audit board of the alternative fund manager lies with the supervisory authority (the CMVM).

3.4 Tax Regime for Managers

If the fund is endowed with legal personality and is self-managed, the tax regime referred to in **2.4 Tax Regime for Funds** applies.

In the case of a third-party managed fund, income derived by the manager 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 fund manager is located in. (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.

3.5 Rules Concerning Permanent Establishments

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

3.6 Taxation of Carried Interest

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

3.7 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 75–82 of the Delegated Regulation (EU) No 231/2013. This type of work can only be outsourced to other alternative fund managers or individual portfolio managers (Markets in Financial Instruments Directive (MiFID) firms).

Notwithstanding the general rule described in the foregoing paragraph, where 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 third party’s compliance with the asset allocation criteria defined by the fund manager.

Although subject to the above-mentioned rules, business operations and similar non-investment management functions can be outsourced to a non-regulated entity.

3.8 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/CFT, 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 HR 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.

3.9 Change of Control

Changes in the ownership of qualifying shareholdings of fund managers authorised to manage UCITS are subject to the prior authorisation of the CMVM. The authorisation process involves the prior assessment of the suitability of new qualifying shareholders by the CMVM. Changes in the ownership of qualifying shareholdings of fund managers that are not authorised to manage UCITS are not subject to prior authorisation from the CMVM, but still need to be notified to the regulator.

3.10 AI and Use of Data

No particular local requirement or limitation applies in this respect, apart from the European Artificial Intelligence Act and complementary legal documents.

3.11 Anticipated Changes

The new UCI Law and CMVM Regulation 7/2023 have been published quite recently and are in force. As such, no new legal amendments are anticipated in the foreseeable future.

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 real estate 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 Side Letters

The use of side letters that set out particular terms and conditions in respect of governance, investment, etc, of the AIF is not specifically addressed by the UCI Law.

However, in the case of open-ended AIFs, considering that they tend to target retail investors and/or a broader unrestricted scope of investors, the use of side letters that alter any relevant provision of the legal documents should deemed illegal – given that, as a general principle, the fund manager needs to abide by the AIF's legal documents during the provision of its activity and treat all investors equally. In closed-ended AIFs (notably, those that are privately subscribed or that target only professional investors), there is a wider margin to set out – namely, through a side letter, specific provisions in respect of certain matters. However, in general terms, the provisions of the UCI Law are imperative; therefore, any side letter providing for actions in breach of such legal provisions will be deemed illegal and may subject the fund manager to administrative offence proceedings.

4.3 Marketing of Alternative Funds to Investors

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 passported 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 both to professional and non-professional investors.

4.4 Rules Concerning Marketing of Alternative Funds

Besides the Securities Code and the UCI 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, the Guidelines on Marketing Communications Under the Regulation on Cross-Border Distribution of Funds is also applicable.

4.5 Compensation and Placement Agents

The use of placement agents is common in the Portuguese jurisdiction in relation to private equity/venture capital funds.

The UCI Law lists the entities that can market units in funds, including the option of fund managers – for marketing purposes – being represented by tied agents (to whom the Securities Code applies).

Although the placement agent is not expressly regulated in the national legal framework, there is nothing to prevent the placement agent from putting potential investors in contact with a fund manager, provided that the fund managers ensure that the activity of the placement agents does not conflict with the rules that reserve the marketing of fund units to the respective marketing entities provided for in the UCI Law (as well as to tied agents, if any).

Therefore, the CMVM recommends in a circular letter that the fund manager enters into a written contract with the placement agent, which clearly and explicitly establishes – among other requirements – the scope of its activities, that its remuneration is exclusively provided by the fund manager itself (even if upon charging the fund a set-up fee) and that its activities do not amount to pre-marketing.

4.6 Tax Regime for Investors

The tax regime applicable to investors depends on:

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

UCITS and Real Estate Funds

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

Distributions received by individual investors not resident in Portugal for tax purposes are exempt from PIT in Portugal in the case of UCITS, and subject to a final 10% withholding 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"); and
- the income is not paid or made available to accounts in the name of one or more account holders acting on behalf of undisclosed third parties and the beneficial owner of the income is not disclosed.

In such cases, distributions are subject to PIT at a final 35% withholding tax 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 UCITS and subject to a final 10% withholding tax rate in the case of real estate funds, provided that:

- they are not directly or indirectly held in more than 25% of the share capital of Portuguese resident entities (except for non-resident investors that are legal entities resident in (i) another EU member state, (ii) a European Economic Area (EEA) member state that is bound to co-operate with Portugal under an administrative co-operation arrangement in tax matters similar to the exchange of information schemes in relation to tax matters existing within the EU, or (iii) any country with which Portugal has a double tax treaty);
- they have provided proof of non-residence in a timely manner;
- they are not resident in a blacklisted jurisdiction; and
- the income is not paid or made available to accounts in the name of one or more account holders acting on behalf of undisclosed third parties and the beneficial owner of the income is not disclosed.

If the corporate investor is resident in a blacklisted jurisdiction or the income is paid or made available to accounts in the name of one or more account holders acting on behalf of undisclosed third parties, distributions are subject to CIT at a final 35% withholding tax rate. In all other cases, distributions are subject to CIT at a final withholding tax rate of 25%.

In Portugal, income resulting from the redemption or sale of units is regarded as a capital gain. As mentioned in **2.4 Tax Regime for Funds**, 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 obtained from the redemption of units by individual investors resident in Portugal for tax purposes are subject to a final PIT withholding tax at a rate of 28%.

According to a tax measure recently introduced in the PIT Code, the annual balance between capital gains and losses realised on the redemption of units in open-ended investment vehicles –

when positive or negative – is partially excluded from taxation, in the following terms:

- 10% exclusion of the income, when resulting from the redemption of units held for a period longer than two years and shorter than five years;
- 20% exclusion of the income, when resulting from the redemption of units held for a period equal to or longer than five years and shorter than eight years; and
- 30% exclusion of the income, when resulting from the redemption of units held for a period equal to or longer than eight years.

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).

The positive balance between the capital gains and capital losses arising from the redemption or sale of the securities is mandatorily accumulated and taxed at progressive rates if the assets have been held for less than 365 days and the taxable income of the taxpayer, including the balance of the capital gains and capital losses, amounts to or exceeds EUR80,000.

Capital gains resulting from the redemption or sale of units obtained by individuals not resident in Portugal for tax purposes are exempt from PIT in the case of UCITS and subject to a final 10% withholding tax rate (for redemptions) or a 10% rate (for sales) 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 final 35% withholding tax rate (for redemptions) or at a 28% rate (for sales).

Capital gains resulting from the redemption or 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 redemption or sale of units obtained by legal entities not resident in Portugal are exempt from CIT in the case of UCITS and subject to CIT at a final 10% withholding tax rate (for redemptions) or a 10% rate (for sales) 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 CIT at a final withholding tax rate of 35% (for redemptions) or at a 25% rate (for sales); and
- they are not directly or indirectly held in more than 25% of the share capital of Portuguese resident entities (except for non-resident investors that are legal entities resident in (i) another EU member state, (ii) an EEA member state that is bound to co-operate with Portugal under an administrative co-operation arrangement in tax matters similar to the exchange of information schemes in relation to tax matters existing within the EU, or (iii) any country with which Portugal has a double tax treaty).

In such a case, capital gains are subject to CIT at a 25% rate.

An exemption may be applicable in case of the sale of units if certain requirements are met –

notably, that the legal entity is not domiciled in a blacklisted jurisdiction.

Venture Capital Funds and Loan Funds

Distributions or income resulting from the redemption of units and received by individuals resident in Portugal for tax purposes are subject to final PIT withholding at a rate of 10%.

In Portugal, distributions or income resulting from the redemption of units and received by individuals not resident in Portugal for tax purposes are exempt from PIT, provided that proof of non-residence is submitted in a timely manner and such individuals are not resident in a blacklisted jurisdiction. The distributions or the amounts redeemed in such a case are subject to PIT at a final withholding tax 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 or the amounts redeemed forms part of the taxable profits and the withholding tax will be credited against the CIT assessed at year end.

Distributions or income resulting from the redemption of units and received by legal entities not resident in Portugal are exempt from CIT, provided that:

- no more than 25% of their share capital is, 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 or the amounts redeemed 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 resident individuals are subject to PIT at a rate of 10% over 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 the individuals are not resident in a blacklisted jurisdiction. In such cases, capital gains will be subject to PIT at a rate of 10%.

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:

- more than 25% of the share capital of the legal entity is 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 EU or in the EEA 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 Portuguese CIT (*Imposto sobre o Rendimento das Pessoas Coletivas*, or IRC) 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 arrange-

ments 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 rate of 10%.

4.7 Double Tax Treaties

UCITS and real estate funds are subject to CIT (and only exempt for certain types of income). As such, the Portuguese tax authorities consider such entities resident for tax purposes and issue the respective tax residence certificate.

Given that venture capital funds and loan funds are fully exempt from CIT, they do not benefit under double tax treaties.

Despite the foregoing, the recognition of a Portuguese fund as resident in Portugal for tax purposes will also depend on the perspective in terms of treaty eligibility of non-resident funds by the source state where the paying entity is resident.

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

FATCA

Portugal signed the International Group Agreement (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 to the USA through Law No 82-B/2014, enacted on 31 December 2014. The IGA was ratified by Portugal on 5 August 2016 and came into force on 10 August 2016.

The Portuguese government approved the complementary regulation required to comply with FATCA through Decree Law No 64/2016 of 11 October 2016 (as amended by Decree Law No 98/2017 of 24 August 2017 and Law No 17/2019 of 14 February 2019) and 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 Inland Revenue Service.

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, as amended by Decree Law No 98/2017 of 24 August 2017 and Law No 17/2019 of 14 February 2019. Under this law, the issuer is required to collect information regarding certain account holders and to report such information to the Portuguese tax authorities using forms that, 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 a 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, Order No 302-C/2016, Order No 302-D/2016 and

Order No 302-E/2016 of 2 December 2016 – all of which are amended from time to time.

4.9 Anti-Money Laundering (AML) and Know Your Customer (KYC) Regime

The applicable framework for Portuguese fund managers on AML-related duties is in line with the AML Directive. As such, the applicable law is Law 83/2017 of 18 August 2017, which establishes measures to combat money laundering and terrorist financing and partially transposes Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015, and Directive 2016/2258/EU of the Council of 6 December 2016.

As mentioned in **3.8 Local Substance Requirements**, the AML/CFT officer role is a key function to be performed by a human resource with adequate knowledge of the EU and national applicable provisions.

The responsible regulator for supervising fund managers in AML-related matters is the CMVM, which – within the scope of its powers – requests and analyses the annual report submitted by fund managers (and other operators) for statistical purposes and applies sanctions for non-compliance with AML-related regulatory duties.

It is worth noting that a different regulator, the Institute of Public Markets, Real Estate and Construction (*Instituto dos Mercados Públicos, do Imobiliário e da Construção*, or IMPIC) supervises specific real estate transactions carried out by funds.

4.10 Data Security and Privacy for Investors

General data protection regulations apply to fund managers when processing personal data. These include the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, which repealed Directive 95/46/EC (the "General Data Protection Regulation") and the Law 58/2019 of 8 August 2019 (the "Portuguese Data Protection Law").

In addition, more specific requirements are applicable to fund managers, such as the European Securities and Markets Authority (ESMA) Guidelines on outsourcing to cloud service providers and the national financial supervisory authorities' (*Banco de Portugal* (BdP), *Autoridade de Supervisão de Seguros e Fundos de Pensões* (ASF) and CMVM) Recommendations on Business Continuity Management (revised) approved by the National Council of Financial Supervisors (*Conselho Nacional de Supervisores Financeiros*, or CNSF) on 20 September 2021.

4.11 Anticipated Changes

The new UCI Law and CMVM Regulation 7/2023 have been published quite recently and are in force. As such, no new legal amendments are anticipated in the foreseeable future.

Trends and Developments

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VdA

VdA is an international law firm with more than 40 years of experience providing corporate legal services. The firm is recognised for its established track record and innovative approach. To meet the increasingly complex challenges faced by its clients, it has a highly specialised legal service offering, covering a range of industries and practice areas. In addition to providing robust solutions, it adheres to consistent standards of excellence, ethics and professionalism. The firm's work is recognised by its peers, clients and stakeholders, and is acknowledged by professional associations, legal publications, and academic institutions. VdA has also received several international awards and accolades from the legal industry in recognition of its work and contributions. Through the VdA Legal Partners network, clients have access to seven jurisdictions (Angola, Cabo Verde, Equatorial Guinea, Mozambique, Portugal, São Tomé and Príncipe, and Timor-Leste) – in addition to broad sectoral coverage throughout all Portuguese-speaking African countries, as well as Timor-Leste.

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Changes in the Portuguese Collective Investment Undertakings Scene

After many years of relative stability, the Portuguese Undertakings for Collective Investment (UCI) scene has been hit by new developments that opened up several options to fund managers wanting to tap into the Portuguese market. These developments range from legal amendments (both from the regulatory and tax perspectives) to new programmes aiming to incentivise the UCI ecosystem and the Portuguese economy, as well as an ever-growing concern with the adoption of sustainability-driven approaches by fund managers.

New Asset Management Regime and CMVM Regulation No 7/2023

On 28 May 2023, the new Asset Management Regime came into effect. This consolidated in one legal act the regime applicable to UCITS (Undertakings for the Collective Investment in Transferable Securities) and to alternative investment funds (AIFs).

Besides streamlining the legal regime, the new Asset Management Regime inaugurated a different regulatory approach. On the one hand, the regime was stripped of almost all local gold-plating provisions, which added additional limitations to the ones resulting from the European legislation. On the other hand, the supervision carried out by the Portuguese Securities Market Commission (*Comissãodo Mercado de Valores Mobiliários*, or CMVM) shifted from a prior analysis basis to an ex post approach, thus substantially reducing the time that the CMVM has to deal with several types of administrative procedures.

Indeed, the regime is now simpler to navigate and imposes less constraints on fund managers and funds. Notably, it is now possible to incorporate fund managers under a light-touch regime that can manage a wide range of types of AIFs, and previously existing legal requirements were removed or extensively reduced.

The new Asset Management Regime was complemented by the entry into effect of CMVM Regulation No 7/2023 on 1 January 2024. This reinforced the paradigm introduced by the former and clarified and organised the reporting obligations to which Portuguese fund managers are subject.

The new legal framework is already being fully implemented by Portuguese fund managers. It has also propelled the decision of new players to enter the UCI management market.

Amendments to Portuguese Golden Visa Regime

Law No 56/2023 of 6 October 2023 brought changes to the legal regime for the entry, stay, exit and removal of foreigners from national territory (the “Golden Visa Regime”) – namely, revoking the option to grant Golden Visas for real estate investment activities. Thus, to obtain a Golden Visa, all investment options related to the acquisition of real estate were excluded.

Nevertheless, provided that the above-mentioned “no real estate” rule is complied with, it is still possible to obtain a Portuguese Golden Visa through the transfer of capital in the amount of EUR500,000 or more – provided it is intended for the acquisition of shares/units in non-real estate UCI that are set up under Portuguese law and whose maturity, at the time of the investment, is at least five years and at least 60% of the value of the investments is realised in commercial companies based in Portugal.

These legal amendments are already having an impact on the structuring of new UCI targeting investors seeking to obtain a Portuguese Golden Visa. There has been a clear reduction in the number of new UCI (notably, private equity/venture capital funds) that invest in the construction, promotion and development of real estate projects or that are dedicated to buying and selling real estate.

Conversely, it is noticeable that the amendments to the Golden Visa Regime are rerouting new UCI targeting investors seeking to obtain a Portuguese Golden Visa to other more innovative sector (such as biotech, pharma and technologies), as well as to sectors that incorporate real estate within their broader non-real estate activities (eg, hospitality, co-working spaces and the like).

Restrictions to tax incentives system for business R&D

The System of Tax Incentives for Business Research and Development (*Sistema de Incentivos Fiscais em Investigação e Desenvolvimento Empresarial*, or SIFIDE) allows companies to deduct from their Corporate Income Tax the amount corresponding to expenses related to R&D activities or contributions to private equity/venture capital funds.

Law No 21/2023 of 25 May 2023 introduced several changes to the SIFIDE, which came into force on 1 January 2024. The new legislation brings some changes to the scope of expenditure on shareholdings in R&D institutions and of contributions to investment funds that make equity and quasi-equity investments in companies dedicated mainly to R&D.

Notably, expenditure on contributions to private equity/venture capital funds (ie, SIFIDE funds) is subject to the following changes.

- Units/shares in eligible investment funds must now be held for a period of ten years from the date of acquisition (previously the period was 5 years).
- The minimum investment to be made by the SIFIDE fund in companies dedicated mainly to R&D is now 85% (previously 80%) and the deadline for making this investment is now three years (previously it was five years).
- The deadline for companies dedicated mainly to R&D to realise the investment in R&D activities is now three years (previously it was five years).
- The tax deduction applicable to total R&D expenditure is now 32.5% (it was 82.5%).

The increase in the constraints of the SIFIDE regime and the lower tax deduction now granted to companies investing in those funds are having a clear impact in the Portuguese private equity/venture capital funds ecosystem, with a noticeable decrease in the setting up of SIFIDE funds. Nonetheless, there are some signs that the interest of the industry and investors in the SIFIDE is not over, even though a lower volume of money is expected to be raised in the coming years.

Public investment programmes through private equity/venture capital funds

Banco Português de Fomento – a Portuguese state-owned banking institution created in 2020, whose mission is to promote the modernisation of companies and Portugal’s economic and social development, as well as to create solutions for competitiveness and innovation that promote Portugal’s sustainability and economic and social development – has made significant public investments in the Portuguese economy, particularly through private equity/venture capital funds. The contributions made by Banco Português de Fomento to private equity/venture capital funds in an amount exceeding EUR1 billion, with matching investments made by private investors, has boosted the local ecosystem and granted firepower to fund managers to expand their footprint and target new opportunities.

Considering that much of the money invested by Banco Português de Fomento is to be deployed in the next couple of years, it is anticipated that both fund managers and funds will be busy in the foreseeable future and that M&A transactions will increase as the money flows to the real economy. Indeed, the expected acceleration in the absorption of funds associated with the programmes led by Banco Português de Fomento – the implementation of which should reach its peak in 2026 – is mitigating constraints to the growth of the Portuguese economy and contributing to its sound upwards trajectory.

Tax incentives for investment in Portuguese loan funds

The tax regime applicable to loan funds was finally approved in June 2024, further to the enactment of the regulatory framework back in 2019. Until now, the fact that the loan funds' regulatory framework did not include a clear and comprehensive tax regime had been stalling the setting-up of these vehicles.

According to the tax regime recently introduced, as foreseen in Law 31/2024 of 28 June 2024 (which entered into force as from 29 of June) and transposed into Portuguese tax law in Article 23 of the Portuguese Tax Incentive Code, loan funds will qualify for the same tax treatment as private equity/venture capital funds, which is the most favourable tax regime available in Portugal for funds structures.

At the level of the fund, loan funds will be fully exempt from Corporate Income Tax on any income or gains and are not subject to stamp duty (unlike ordinary investment funds, which are subject on a periodic basis to stamp duty on the respective net asset value), operating as tax-neutral UCI.

For investors, the tax regime applicable on income obtained from units or shares in loan funds will essentially depend on the nature of the income obtained as well as on whether the holder is resident or non-resident in Portugal. Indeed, non-resident investors without a permanent establishment in Portugal benefit as a rule from a full withholding tax exemption on distributions made by the loan funds, as well as on capital gains realised upon the redemption or disposal of participation units in the loan fund. This favourable tax regime only does not apply to:

- investors (legal entities) more than 25% directly or indirectly owned by Portuguese-resident investors; and
- entities resident in blacklisted jurisdictions.

The enactment of this favourable tax regime for foreign investment in units or shares in loan funds – introduced in the context of the recent approval of several tax incentives by the Portuguese government for developing the capital markets – will certainly represent a very competitive funding mechanism, especially when compared to the tax measures currently in place on cross-border financing structures.

Tax incentives for UCITS that invest in properties for affordable rental housing

In order to promote and encourage investment in UCITS that pursue certain real estate investments intended for housing rentals or sublets under the Affordable Rental Programme (according to Decree-Law 68/2019 of May 22 2019), a more attractive tax regime for resident and non-resident investors has been introduced through the recently added Article 24-A of the Portuguese Tax Incentive Code – under which, distributions or income obtained from the redemption of units benefits from a partial exclusion from taxation in terms of Personal Income Tax and Corporate Income Tax, determining the application of lower effective tax rates when compared to the standard withholding tax rates applicable (28% and 25% for individual and legal entities, respectively).

Under this regime, the exempt income percentage – ranging between 2.5% and 10% – depends on the proportion of the UCITS' eligible assets in its total assets, as follows:

- exclusion of 2.5% of the income, if the eligible assets are more than 5% up to 10% of the total assets;
- exclusion of 5% of the income, if the eligible assets are more than 10% up to 15% of total assets;
- exclusion of 7.5% of income, if the eligible assets are more than 15% up to 25% of total assets; and
- exclusion 10% of the income, if the eligible assets are more than 25% of total assets.

In order to benefit from this tax regime, the following conditions should be met by UCITS.

- They must have been incorporated by 31 December 2025 (or have had their incorporation documents amended until such date).
- Their assets are made up of at least 5% of property rights (or other equivalent rights) over real estate intended for rentals or sublets under the Affordable Rental Programme.

Finally, at the level of the UCITS, tax law also provides for a 25% reduction in the stamp duty standard rate applicable to UCITS, due over the overall net value – provided that eligible assets in the fund are greater than 25% of the UCITS' total assets.

Sustainability

The adherence of Portuguese fund managers and funds to the EU sustainability regime in order to accommodate the growing demand from investors for more environmentally and socially friendly financial products – as well as to adapt to the disclosure obligations provided for under the Sustainable Finance Disclosure Regulation (SFDR), as interpreted by the CMVM – is also a clear trend in the Portuguese UCI market.

On the one hand, the CMVM is starting the scrutinise more incisively the disclosures made by local fund managers to investors both on their websites and in the financial products' pre-contractual documentation.

On the other hand, after an initial stage more focused on the formalities associated with the new disclosures under the SFDR, it is expected that the CMVM will now turn its attention to the greenwashing conducts in order to tackle concerns that entities might be using the new sustainability framework to make false claims on their actual levels of compliance with the EU framework on this matter.

Considering all the key drivers described here, it is expected that the UCI sector in Portugal will continue in a dynamic trend, as this sector establishes itself as one of the backbones of the investment and financing of Portuguese companies. This trend shall follow the soundness of fundamentals of the Portuguese economy that – after a slowdown in economic activity to 1.6% in 2024 (from 2.3% in 2023) – should go back in recovery to 1.9% and 2.1% in 2025 and 2026, respectively, in accordance with the forecast by the Portuguese Public Finance Council.

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