



Investing in Portuguese real estate through a foreign company

Portuguese tax implications



Taxation of capital gains

1. Portuguese domestic tax law

It is considered as Portuguese source income the gains derived by a non-tax resident (either an individual or a company) in Portugal from the disposal of shares, if, in any moment of the previous 365 days, more than 50 percent of their value derives, directly or indirectly, from real estate located in Portugal, excluding real estate allocated to an industrial, commercial or agricultural activity.

2. Double tax treaty between Portugal and the country where the seller is tax resident

If taxation rights are not allocated to Portugal, the sale of the shares should not be subject to taxation in Portugal. However, it should be confirmed on a case-by-case basis.

3. OECD Multilateral Instrument (MLI)

Article 9 of the MLI refers to the tax regime rules applicable to capital gains from disposal of shares of companies deriving their value principally from immovable property. However, as this provision is not regarded as mandatory, the MLI signatory countries may reserve the right not to apply article 9 to their double tax treaties.



Inheritance and gift tax/Stamp Tax

Stamp Tax follows a territorial principle, meaning that the inheritance or gift of the shares of a foreign company should not be liable to tax.



Real estate transfer tax

The disposal of the shares of a foreign company is not subject to real estate transfer tax, even if more than 50 percent of its value derives, directly or indirectly, from real estate located in Portugal.



Ultimate Beneficial Owner

What

This law requires the identification of the Ultimate Beneficial Owner (UBO), who ultimately owns or controls, entities that are subject to this law, namely, Portuguese or foreign entities who exercise their activity in Portugal or perform a legal act or deal, such as the acquisition of Portuguese immovable property.

Who

This register should be made by the board members or by persons that exercise similar functions in the company. Nevertheless, lawyers, notaries, solicitors and certified accountants may represent these persons.

When

The first register should be made within 30 days after the Portuguese tax identification number is obtained. Afterwards, any change of the UBO of the entities should be communicated within 30 days after the change occurs. Lastly, until 15 July of each year, a statement should be submitted to confirm if the information is updated. The obligations regarding the entities that fall under the scope of this new law are yet to be regulated by the Government.

How can we assist?

- Identification of Portuguese tax implications of the acquisition, ownership and sale of real estate (company) in Portugal.
- Tax implications in the country of tax residence.
- Perform a tax Due Diligence of the company owning the real estate in Portugal.
- Prepare calculations of the tax implications of buying real estate vs. buying a company owning the real estate.



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