

February 2013  
2013年1月China  
中国

## 通过在葡萄牙投资来获得居留权

在2013年1月28日，“共和党日报”<sup>1</sup>公布了一系列措施，以改善和推动给予第三国国民特许居留权的特别制度<sup>2</sup>，使其在全国进行一定的投资活动(“ARI”)。这些措施从上述日期的第二天起生效。

现在公布的决议修订了以前不合理的法令，应将指示所选择的投资活动，它明确了ARI申请人必须符合一些规定以及在授予和更新特许权的时候提交他们各自的证明，希望这样一来能够配合此系统应用，在我们的国家促进和鼓励投资。

总则：第三国公民在申请临时居留权时，如以个人名义或委托其他机构具体实施以下一项或者数项活动时，不必提前另行申请居留签证：

- (A) 进行总值为100万欧元或以上的资产转移
- (B) 提供10个或以上的就业岗位；或
- (C) 收购价值为50万欧元或以上的不动产

为申请居留权所进行的投资行为必须于申请之前付诸实施，同时自获得居留权之后投资行为持续时间不得少于5年。

机构的参与：如果申请人的投资行为是通过机构进行的，则申请所参考的投资额度将视其在相应机构总资产中ARI申请人所占有的比例而定，同时该机构还必须在葡萄牙本土、其他欧盟成员国国内设有总部，如总部设在欧盟成员国，则必须在葡萄牙本土设有常设机构。

有效期：临时居留权的授权自颁发之日起，有效期为一年，如申请人有实际需要，则可视情况对其申请给予更新，居留权更新后期限为两年。

为保证居留权的授权过程顺利完成，第三国的申请者应在第一次入境葡萄牙时，在境内逗留不超过90日（申请人必须持有由葡萄牙驻所在国领事部门颁发的申根签证），同时准备好所有申请所需的、与投资行为、数额相关的材料和证明。如申请居留权更新，申请人必须在第一次居留权生效期内，在葡萄牙境内至少（i）在第一年内连续或不连续地逗留7天）同时（ii）在随后的两年内分别连续或不连续逗留14天。

资产的转移：在上文中提及的总值为100万欧元（约合800万人民币）或以上的资产转移，申请人应当出示由在葡萄牙运营的金融机构出具的相关证明，用于证明其资本的实际转让（i）给第一或唯一持有人的账户，或（ii）为收购股份或公司股票<sup>3</sup>。在申请人通过委托机构实施投资行为的情况下，必须提交最新的商业注册证明，用于证明其持有的股份总值满足申请所要求的金额。

在涉及永久的、授予的最低价值为EUR 1,000,000.00的资本转让之后，为了ARI的更新，ARI持有人应该证明：（i）有利于他的，至少该数额的一个季度平均余额的存在或（ii）通过更新的商业登记证，拥有公司的股权。在第二种情况下，ARI持有人还必须提交(a) CMVM<sup>4</sup>或金融机构发出的文件，在证券交易所上市股份的所有权证明或（b）在非上市公司的情况下，该公司的行政或管理的声明和认证的会计报告，以便证明完整产权要求的最低投资额。

<sup>1</sup> “共和党日报”，第2版，19号，2013年1月28日，公布了1661-A/2013号决议和修订了9月4日的11,820日-A/2012号决议。

<sup>2</sup> 2012年8月9日的29号法律的批准，修订了2007年7月4日的23号法律（它批准了外国人入境，居留，出境和强制离境的法律制度）。

<sup>3</sup> 葡萄牙“公司股票”特定的股份，是一种私营有限责任公司的类型。

<sup>4</sup> 葡萄牙证券市场委员。

# OBTAINING A RESIDENCE PERMIT BY INVESTING IN PORTUGAL

## 通过在葡萄牙投资来获得居留权

就业岗位的提供：在通过投资行为为葡萄牙创造10个或以上就业岗位的情况下，申请人应出示所聘用人员的社会保险证明，连带出示社保部门出具的相关证明。

目前，在社会保险所需要缴纳的费用中，雇佣单位（ARI申请人）需负担23.75%，同时职工需负担11%，此款项将用于每月社保费用的积累。

不动产投资：对于各种获取金色VISA的方式来说，通过收购价值为50万欧元或以上的不动产而申请并获取居留权是相对快速便捷的方式——申请人应证明其为持有人，即使在合营权制度下（只要各自的联名持有人投资至少EUR500,000.00）或房地产承兑买家（ARI申请人支付作为价格预付款的保证金）。

为了证明符合这个投资活动有关的最低要求，ARI申请人在申请时必须提交购买所有权或承诺购买该物业的文件——它应包含金融机构发布的一份在葡萄牙开展业务的声明以便以此证明实际的资本转让（最终收购或为有效押金）- 以及更新土地登记证书（其中包括收购注册以及在可能的情况下有利于ARI申请人的销售承诺）。在用于作为ARI营业权基础的购买和销售承诺情况下，更新申请前，应提交其最终的合同。

需要注意的是，若购买ARI名下的不动产，至少需要50万欧元的资金，以及租赁和开发商业、农业或旅游业的资料。

不动产投资的征税：在葡萄牙本土对不动产进行收购时，投资者应当考虑到购买行为相关的收费项目以及不动产的产权问题，与之相关的问题将与高额资产转换市政税（IMT），印花税（IS）以及不动产市政税（IMI）密切相关。

——高额资产转换市政税（IMT）是适用于高额产权转换时所征收的税费，针对普通高额产权转换或用于居住的不动产的产权转换，税率为6.5%（当不动产的价值为50万欧元时，税率将约为6%），而在针对合同及其他形式所产生的产权转换时，相应的税率将会提高。<sup>5</sup>

——不动产市政税（IMI）是适用于每年至12月30日为止，不动产产权持有人所需要缴纳的税费，税率不定，针对所有市政建筑（根据建筑的所在地），税率将在0.3%至0.5%之间浮动；针对所有乡镇建筑，税率则为0.8%，征收的税基将为不动产的净资产额；

——印花税（IS）则是根据高额资产转换市政税（IMT）对资产进行清算的数据基础，对不动产每年增值的部分征收0.8%的税费。

我们还呼吁关注，在最近的立法变化中，对于价值等于或高于100万欧元的市政建筑（其使用权以及面积的使用权），IS税率调整为1%。

税务制度：申请居留证的申请人，若打算将他们的正式居民税务权转移到葡萄牙，在提出申请时，由税务机关以具体案例为基础逐一处理，从而从非常住居民的制度中获益（只要他们在此前任意5年中在葡萄牙没有被作为征税居民征收过税款）。这样的话，他们将获得连续10年作为非常住居民被征收税款的权利，在该段时期终结时，他们将根据IRS代码的一般规则（个人所得税）被征收税款。

在诸多情况中，出于税收的目的，当应税人在葡萄牙停留多于183天时，无论连续与否，或当他们停留的天数少于183天，但是在相应年份的12月31日，他们在葡萄牙拥有居留权，从而使得可以假定他们具有保留和获得其常住居民的意图，则他们可能在任意一年获得葡萄牙的居留权。

在此我们提醒您，葡萄牙目前已经通过了各类的重复征税法，此类税法也应当引起注意，许多国家的企业或机构与葡萄牙境内常驻机构间相互流通的经常性款项也将被纳入双重征税的范围之内。<sup>6</sup>

申报范围：任何形式葡萄牙居留权持有人可以出入申报国家（德国、奥地利、比利时、丹麦、斯洛伐克、斯洛文尼亚、爱沙尼亚、西班牙、芬兰、法国、希腊、匈牙利、冰岛、意大利、拉脱维亚、列支敦士登、立陶宛、卢森堡、马耳他、挪威、捷克、荷兰、波兰、葡萄牙、瑞典和瑞士）。

<sup>5</sup> 在专门用于非永久居留的情况下，从550836.00欧元起的物业将适用6%的单一税率。

<sup>6</sup> 要查看信息由葡萄牙签订双重征税协议，请访问：

[http://info.portaldasfinancas.gov.pt/pt/informacao\\_fiscal/convencoes\\_evitar\\_dupla\\_tributacao/convencoes\\_tabelas\\_doclib/](http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/)

此资讯简介用于一般发送给客户和同事之用且此处包含的信息是一个一般的抽象的综述。它不应该被用作作出决定的依据并在特定的情况下应寻求专业的法律意见咨询。在没有明确获得作者同意此资讯简介的内容的情况下，不得全部或部分转载。如果您需要了解关于这一主题的进一步信息，请联系Rita Assis Ferreira (rita.assisferrerira@plmj.pt)。

## OBTAINING A RESIDENCE PERMIT BY INVESTING IN PORTUGAL

On 28 January 2013 the «Diário da República» (official gazette) published a set of measures<sup>1</sup> - that came into force the following day - to improve and streamline the special scheme<sup>2</sup> for granting a Portuguese 'investment residence permit' ("IRP") to foreign nationals to enable them to make certain investments in the country.

The Legislative Order now published introduces changes to the rules that define the requirements that applicants for the IRP must meet, with reference to the chosen investment activity. It also makes changes to the respective means of proof to be presented upon application for the issue of the IRP or its renewal. The aim is to adjust the scheme to make it more flexible and to stimulate investment in Portugal.

■ **General Principles:** It is now possible for a temporary residence permit to be granted without the need to first obtain a residence visa if the foreign national, personally or through a company, makes an investment that leads to the creation of at least one of the following situations in Portugal:

- (A) Transfer of capital in an amount equal to or greater than **EUR 1 000 000**;
- (B) Creation of at least **10 jobs**; or
- (C) Acquisition of real estate of a value equal to or greater than **EUR 500 000**.

The investment chosen by the applicant for the residence permit must have been made at the time the application for the residence permit is presented and must be maintained for a minimum period of five years from the date the residence permit is granted.

■ **Investment through companies:** If the investment is made through a company, the respective value is determined by reference to the stake the applicant for the IRP holds in the respective share capital of a company with its registered office in Portugal or in another European Union Member State but with a permanent establishment in Portugal.

■ **Validity Periods:** The temporary residence permit is valid for the period of one year from the date of issue and may be renewed for successive periods of two years as long as the conditions necessary for it to be granted remain in place.

For the residence permit to be granted under these terms, foreign nationals must regularise their stay in Portugal within 90 days of their first entry into the country (obtaining, in cases in which it is necessary, a short term visa – Schengen visa – issued by the Portuguese Consulate in the country of origin) and prove they have met the minimum quantitative requirements for the chosen investment activity. For the purposes of renewal, applicants may have to demonstrate that they have remained in Portugal for at least (i) 7 consecutive or interrupted days in the first year and (ii) 14 consecutive or interrupted days in each subsequent period of two years.

**(A) Transfer of capital:** In the case of a transfer of capital in an amount equal to or greater than EUR 1 000 000, the applicant must present a declaration issued by a financial institution operating in Portugal confirming the actual transfer of the capital (i) to an account for which the IRP applicant is the sole or first holder or (ii) for the acquisition of shares or quotas<sup>3</sup> in companies. In the case of an investment made by a company, it is also necessary to present an up to date commercial registration certificate declaring the stake held in the company, valued at the amount of the investment required for this purpose.

For the purposes of the renewal of an IRP granted as a consequence of a transfer of capital, the IRP holder must – in each case with reference to a minimum value of EUR 1 000 000, (i) demonstrate the existence of an average quarterly bank

balance in their favour of at least the said amount, or (ii) prove that they hold a stake in a company valued at least the said amount, by means of a commercial certificate. In the latter case, the IRP must also produce either (a) a document issued by the CMVM<sup>4</sup> or by a financial institution confirming the ownership of shares listed on the Portuguese stock market, or (b) in the case of an unlisted company, a declaration from the board of directors or management of the and the certified accounts of the company confirming the ownership and integrity of the minimum required investment.

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<sup>1</sup>Diário da República, 2nd series, No 19 of 28 January 2013 publishing Legislative Order 1661-A/2013 amending Legislative Order 11820 -A/2012 of 4 September.

<sup>2</sup> Approved by Law 29/2012 of 9 August amending Law 23/2007 of 4 July (which approved the legal rules on entry and stay of foreign nationals in Portugal).

<sup>3</sup> The share specific to the Portuguese sociedade por quotas, a type of private limited company.

<sup>4</sup> The Portuguese securities market commission.

## OBTAINING A RESIDENCE PERMIT BY INVESTING IN PORTUGAL

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**(B) Job creation:** In the case of investment activity that leads to the creation of at least 10 jobs, the applicant must demonstrate that he or she has registered the employees for social security purposes by presenting an up to date certificate issued by the social security authorities.

Currently social security contributions for most employers are 23.75% to be paid by the employer [the applicant for the IRP] and 11% to be paid by the employee. These contributions are calculated on the gross value of the monthly salary.

**(C) Real estate investment:** The most accessible investment activity leading to obtaining a residence permit is a real estate investment made by acquiring property of a value equal to or greater than EUR 500 000. In this case, the applicant must demonstrate that they are the owner of such a property (even as a joint owner, as long as each one of the joint owners invests at least EUR 500 000) or promissory purchaser of real estate (as long as the deposit paid by the IRP applicant as an advance payment on the purchase price is at least EUR 500 000).

In order to prove compliance with the minimum requirements associated with this type of investment activity, the IRP applicant must, upon making the application, present the document that proves the purchase or promise to purchase the real estate. This document must also include a declaration from a financial institution operating in Portugal confirming the actual transfer of the capital for this purpose (definitive purchase or payment of deposit). The applicant must also present an up to date land registry certificate including registration of the purchase and, if possible, of the promissory sale and purchase contract in favour of the IRP applicant. In cases in which a promissory sale and purchase serves as the basis for the granting of the IRP, the respective definitive contract must be presented prior to the application for renewal.

It should be noted that properties acquired for the purposes of obtaining an IRP may be mortgaged or charged on any part of their value over and above the required minimum of EUR 500 000, and may also be leased or assigned for commercial, agricultural or tourism purposes.

■ **Taxation of real estate investments:** when acquiring a property in Portugal, the investor must take into consideration the charges associated with such a transaction. These charges include Imposto Municipal sobre as Transmissões Onerosas (“IMT”), which is the municipal tax on transfer of real property for value, Imposto do Selo (“IS”), which is stamp duty and Imposto Municipal sobre Imóveis (“IMI”), which is the annual municipal property tax:

■ **IMT** is charged on transfers of rights in property for value and the applicable rate is 6.5% or, in the case of residential property there is a progressive rate (which, for a property valued at EUR 500 000, will be approximately 6%). The rate is calculated on the basis of the value that appears in the contract or other transfer document (or on the valor patrimonial tributário - the official valuation of the property for tax purposes, if greater);<sup>5</sup>

■ **IMI** is payable by whoever owns the property on 31 December of the year for which the tax is due. The rate varies between 0.3% e 0.5% for urban buildings (according to the location of the property) and 0.8% for rural buildings. These rates are applied to the official valuation of the property for tax purposes;

■ The rate of **IS** (stamp duty) is 0.8% and is charged on the value that serves as the basis for assessment of IMT.

We would also draw attention to the fact that, as a result of the recent changes to the legislation, IS (stamp duty) at the rate of 1% will be charged on the ownership of (as well as any right to use or enjoy) urban buildings with an official value for taxation purposes (valor patrimonial tributário) equal to or greater than EUR 1 000 000.

■ **Tax Regime:** Applicants for a residence permit who intend to move their official tax residence to Portugal, may – upon making an application, to be considered on a case-by-case basis by the tax authorities – benefit from the non-habitual residents’ regime (as long as they have not been taxed as tax residents in Portugal in any of the preceding 5 years). In doing so, they acquire the right to be taxed as non-habitual residents for a period of 10 consecutive years at the end of which they will be taxed in accordance with the general rules of the IRS (personal income tax) Code.

Residence in Portugal for tax purposes may be acquired in any year, among other situations, when the taxable person has remained in Portugal for more than 183 days, whether consecutive or not, or when they have remained for fewer days but, on 31 December of the year in question, they have a residence in Portugal in conditions that make it possible to presume the intention to maintain and occupy it as their habitual residence.

<sup>5</sup> A single rate of 6% will apply from EUR 550 836 in the case of a property used exclusively as a non-permanent residence



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We should also highlight the fact that Portugal has entered into a number of double taxation agreements the provisions of which should be taken into consideration in the taxation of income earned from operations between entities resident in Portugal and entities resident in other states.<sup>6</sup>

■ **Schengen Area:** Like any other holder of a residence permit in Portugal, persons with a residence permit through an investment in Portugal may travel around the Schengen Area (Germany, Austria, Belgium, Denmark, Slovakia, Slovenia, Estonia, Spain, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Norway, the Czech Republic, the Netherlands, Poland, Portugal, Sweden and Switzerland).

<sup>6</sup> To see information on Double Taxation Agreements entered into by Portugal please visit:  
[http://info.portaldasfinancas.gov.pt/pt/informacao\\_fiscal/convencoes\\_evitar\\_dupla\\_tributacao/convencoes\\_tabelas\\_doclib/](http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/)

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