PLMJ ADVOGADOS, SP, RL

50 YEARS By your side.

Real Estate Investment: Main Tax Issues

“All the lawyers know what’s happening on the case and work really well as a team. It sets them apart from others in the market.”

Client reference from Chambers and Partners.

Over the years, this team of lawyers has consistently been considered one of the best and most experienced, and it is one that is recognised both in Portugal and internationally as a leader.

PLMJ, a partner you can trust

PLMJ has been a leader in the legal sector in Portugal and internationally for almost 50 years. The firm is known for its dedication to its clients, dynamism, capacity for innovation and the quality of its services. PLMJ is a highly specialised, full-service firm that focuses on adding value to its clients' activities. It is also a firm with high ethical standards that is cohesive, socially responsible and competitive, and its mission is to provide first-class legal services.

+ 290 LAWYERS

50 YEARS' EXPERIENCE

NATIONAL AND INTERNATIONAL COVERAGE

PREMIUM LEGAL SERVICES

KNOW-HOW & SPECIALISATION

FOCUS ON THE CLIENT

24/7 SERVICE

I. Taxes due on acquisition of property

IMT – MUNICIPAL PROPERTY TRANSFER TAX

MOST COMMON OPERATIONS

Sale and purchase of property, acquisition of shares in companies that own real property located in Portugal (excluding shares in public companies), when the acquiring shareholder comes to hold at least 75% of the share capital; contribution of real property to the capital of commercial companies.

TAXABLE VALUE AND RATES

IMT is calculated in accordance with the declared value or the taxable value of the property, whichever is higher, and the following rates apply:

PROPERTY TYPE	RATES
Rural properties	5%
Urban properties exclusively for residential use	6% (maximum progressive rate)
Urban properties not exclusively for residential use	6.5%
Properties acquired by residents in tax havens	10%

MOST IMPORTANT EXEMPTIONS

Real estate companies – 100% exemption as long as the property acquired is re-sold (i) within 3 years; (ii) in the same physical state in which it was acquired; (iii) without the purpose of being re-sold again. Upon the acquisition of property in the context of urban rehabilitation operations, a 100% exemption is available upon meeting certain conditions.

When it comes to rehabilitation, acquisitions of urban properties destined for urban rehabilitation are exempt from IMT as long as the person who acquires the property begins the works in question within three years of the date of acquisition. The local Municipal Council is responsible for awarding this tax benefit.

"Urban rehabilitation" is the process of transforming developed land, including the execution of construction, reconstruction, alteration, extension, demolition and building conservation works, as defined in the legal framework of development and construction, with the object of improving the conditions of use, while conserving the fundamental character of the property.

The concept also covers the set of development and land division operations aimed at rehabilitating historical areas and areas where rehabilitation and urban redevelopment are critical. That rehabilitation is certified by the Institute of Housing and Urban Rehabilitation (IHRU), or by the Municipal Council, as applicable.

STAMP DUTY

The following rates of stamp duty apply to the taxable events listed:

TAXABLE EVENT	RATES	
Acquisition of property for value or by gift	0.8%	
Letting or sub-letting (on one month's rent)	10%	
Guarantees (except when ancillary to contracts specially taxed under the General Table)	Term < 1 year - for each month or fraction	0.04%
	Term >= 1 year	0.5%
	Without term or term >= 5 years	0.6%
Use of credit (except consumer credit)	Term < 1 year for each month or fraction	0.04%
	Term >= 1 year	0.5%
	Term >= 5 years	0.6%
	Without fixed term (e.g. current account) - per month on the monthly average debt	0.04%
Operations carried out by financial institutions	Commissions for guarantees given	3%
	Interest and other commissions	4%
Right of ownership, usufruct or a surface right over an urban property with a tax value >= €1,000,000	With residential application	1%
	Land for construction when the authorised or planned construction is for housing	
	Held by offshore entities (except when held by individuals)	7.5%

VAT – VALUE ADDED TAX

MOST COMMON OPERATIONS

Sale and purchase, letting and sub-letting of properties.

TAXATION

The sale and purchase, and letting and sub-letting of properties are exempt from VAT. Upon sale and purchase or letting of properties or independent units within properties, it is possible, if certain conditions are met, to waive the VAT exemption and subject the operations to VAT at the rate of 23% (22% in Madeira; 18% in the Azores). The exemption from VAT does not cover "office centre" type contracts, which are subject to VAT under the general terms.

II.Taxes due on ownership and commercial operation of properties

CIT – CORPORATE INCOME TAX

MOST COMMON OPERATIONS

Activities that are commercial, industrial or agricultural in nature, including earning income from property (rent) or from capital gains made on the disposal of properties (if the properties were accounted for as stock, the income is treated as a gain).

TAXABLE PERSONS

Resident or non-resident legal entities (with or without a permanent establishment in Portugal to which the taxable income is attributable).

TAXABLE VALUE

- Resident and non-resident legal entities with a permanent establishment in Portugal to which the taxable income is attributable are subject to CIT taxation depending on the taxable profit calculated in accordance with the accounting rules, adjusted by the rules set out in the CIT Code.
- Non-resident legal entities without a permanent establishment in Portugal subject to CIT taxation in accordance with the rules set out in the CIT Code.

TAX DEDUCTIBILITY OF EXPENSES

Expenses related to the activity of the CIT taxable person can, as a general rule, be deducted for tax purposes.

DEDUCTIBILITY OF FINANCIAL EXPENSES

Financing expenses, net of income of an identical nature, are only deductible up to the following limits: €1,000,000 or 30% of EBITDA (40% in 2016 and 30% as from 2017). Net financing expenses that exceed the above limits may be carried forward for the purposes of deduction in the following 5 tax years. If the net financing expenses are below 30% of EBITDA, the difference is added to the maximum deductible amount in each of the following 5 tax years, until it has been used in full.

CAPITAL GAINS

Capital gains and capital losses made on the transfer for value of properties are calculated taking into account the difference between the proceeds of sale (transfer), net of any charges inherent to them, and the acquisition value, less depreciations and amortisations acceptable for tax purposes, and less any impairment losses and other corrections in value provided for in the law, as well as any values recognised as tax costs. The acquisition value may be updated by applying the monetary depreciation coefficients whenever, on the date of sale, at least two years have passed since the acquisition. Taxable capital gains will only be considered as to 50% of the respective amount when the sales proceeds are re-invested in full by the end of the second financial year following the year of sale, in accordance with the provisions of the CIT Code.

RATES

- Non-resident legal entities without a Portuguese permanent establishment: CIT rate of 25%.

- Resident legal entities and non-resident legal entities with a permanent establishment in Portugal: CIT rate of 21%, plus the Municipal Surcharge, at the maximum rate of 1.5% on the taxable profit, and the State Surcharge, which is calculated in accordance with the following limits and rates: taxable profit exceeding €1,500,000 and not exceeding €7,500,000 - 3%. Taxable profit between €7,500,000 and not exceeding €35,000,000 - 5%. Taxable profit exceeding €35,000,000 - 7%.

TAX LOSS CARRY FORWARD

12 tax years following the loss (the deduction is limited to 70% of the taxable profit assessed in the relevant tax year).

Under the 2016 Draft State Budget Law, the tax loss carry forward period is reduced from 12 to 5 years (the deduction limit of 70% is maintained) for losses suffered in taxation periods beginning on or after 1 January 2017.

PAYMENT OF INTEREST ABROAD

Taxed at the rate of 25% with possibility of reduction or exemption if a double taxation agreement applies or the conditions set out in the Interest and Royalties Directive and included in the CIT Code are met.

VAT

MOST COMMON OPERATIONS

Construction, recovery and rehabilitation of properties for sale or letting.

TAXATION

Construction and other provisions of services are subject to taxation at the general rate of VAT of 23% (22% in Madeira; 18% in the Azores).

REDUCED RATE

A reduced VAT rate of 6% (5% in Madeira and the Azores) may be applied to (i) urban rehabilitation works contracts on properties or public spaces located in areas of urban rehabilitation defined in legal terms, or in the context of reclassification and rehabilitation in projects of recognised national public interest; (ii) works contracts for rehabilitation of properties contracted directly by the Institute of Housing and Urban Rehabilitation (HRU) or carried out under programmes supported by it; and (iii) works contracts for improvement, conversion, renovation, restauration, repair or conservation of properties or independent units in properties used for housing, with the exception of cleaning works, maintenance of green spaces and works contracts for properties that cover the whole or part of the elements that make up swimming pools, saunas, tennis courts, golf or mini-golf or similar installations (in the latter case the reduced VAT rate does not cover the materials incorporated, except if the respective value does not exceed 20% of the total value of the provision of services).

PLMJ NETWORK

IMI – MUNICIPAL PROPERTY TAX

MOST COMMON OPERATIONS

Ownership of urban and rural properties as well as usufruct (use and profit) or surface rights over them.

TAXABLE PERSONS

Individuals and legal entities that, on 31 December of the year in question, are the owner, the usufructuary, or the holder of the surface right, whether or not they are resident in Portugal.

TAXABLE VALUE AND RATES

IMI is charged on the taxable value and is calculated using the rates in the table below:

PROPERTY TYPE	RATES (WITHOUT TAXABLE VALUE)
Rural properties	0.8%
Urban properties	0.3% to 0.5%
Property owned by residents in offshores	7.5%

MOST IMPORTANT EXEMPTIONS / DEFERRAL OF TAXATION

(i) 100% exemption from IMI in the case of properties classified as national monuments and properties individually classified as being of public interest or municipal interest; (ii) deferral of IMI taxation for 4 years in the case of land for construction and to be used to construct buildings for sale; (iii) deferral of IMI taxation for 3 years in the case of properties for re-sale; (iv) exemption from IMI for 3 years, in the case of urban properties subject to urban rehabilitation, including exemption from the issue of the respective municipal licence; (v) exemption from IMI for 5 + 5 years in the case of urban properties subject to rehabilitation work, including the exemption from conclusion of rehabilitation begun after 1 January 2008 and concluded by 31 December 2020 (in this case, the urban properties have to be located in urban rehabilitation areas or must be properties that are rented out and be subject to updating of the rents in stages under the NRAU or 'New Urban Letting Rules').

III. Exit taxes

CIT

MOST COMMON OPERATIONS

Sale of real estate assets by a Portuguese company or branch and repatriation of the gains through the distribution of profits and/or reserves, or sale by shareholders of their shareholdings in the Portuguese company.

SALE OF REAL ESTATE ASSETS BY A PORTUGUESE COMPANY OR BRANCH

On the tax treatment of profits or capital gains obtained by the selling company or branch, see Point II above.

■ SALE OF A STAKE IN A PORTUGUESE REAL ESTATE COMPANY

- Capital gains made by shareholders, legal entities that are tax residents in Portugal, or by non-resident legal entities that have a permanent establishment in Portugal to which such capital gains are attributable, are subject to CIT taxation at the rate of 21%, plus the Municipal and State Surcharges (see Point II above).
- Capital gains made by shareholders, legal entities that are non-resident in Portugal for tax purposes and do not have a permanent establishment in Portugal to which such capital gains can be attributed, are taxed at 25%. However, in the latter case, when a double taxation agreement to which Portugal is a party applies and which provides for taxation of the same capital gains exclusively by the State of residence in the beneficiary, such gains are not subject to taxation Portugal.

■ PAYMENT OF PROFITS AND RESERVES

- By a Portuguese company to non-resident legal entities without a permanent establishment in Portugal: 25% withholding tax, with the possibility of reduction when a double taxation agreement applies, or exemption, as long as certain conditions are met (shareholding => 5% held for more than 24 months. Under the 2016 Draft State Budget Law, these limits change to 10% and 12 months, respectively).
- By a Portuguese company to resident or non-resident legal entities with a permanent establishment in Portugal: subject to CIT taxation with the possibility of a withholding exemption and a tax credit to apply.
- By a branch in Portugal to the parent company: not subject to CIT.

STAMP DUTY

The transfer of shareholdings is not subject to stamp duty.

VAT

The transfer of shareholdings is not subject to VAT.

The tax matters described above apply, in general terms, to companies and branches that operate in Portugal that are not subject to tax transparency rules for CIT.

How can PLMJ help?

The lawyers of PLMJ's tax practice are skilled and experienced in providing legal advice and assistance on:

THE DESIGN AND STRUCTURE OF THE INVESTMENT

ASSISTANCE IN THE CREATION OF A BUSINESS PLAN, TAKING INTO ACCOUNT THE EXPECTED MATURITY OF THE PROJECT

THE IMPLEMENTATION OF EVERY STAGE OF THE PROJECT TAKING INTO ACCOUNT THE VARIOUS PARTIES INVOLVED

THE DUE DILIGENCE PROCESS AND THE PROCESS OF CALCULATING PAYMENT AND REIMBURSEMENT OF TAXES, TAX LITIGATION AND TAX COMPLIANCE IN GENERAL

Key contacts

NUNO CUNHA BARNABÉ
Partner, Head of Tax Practice - Lisbon
Tel.: (+351) 213 197 343
ncb@plmj.pt

JOÃO MAGALHÃES RAMALHO
Partner, Tax Practice - Lisbon
Tel.: (+351) 213 19 7 369
jmr@plmj.pt

SERENA CABRITA NETO
Partner, Tax Practice - Lisbon
Tel.: (+351) 213 197 567
scn@plmj.pt

MIGUEL C. REIS
Partner, Tax Practice - Oporto
Tel.: (+351) 226 074 235
mjcr@plmj.pt

"It is a pleasure to work with these lawyers; they have deep expertise and provide clear and structured advice."

Client reference from Chambers and Partners.

Awards and Recognitions

IBERIAN LAW FIRM OF THE YEAR
The Lawyer European Awards 2015, 2012

PORTUGUESE LAW FIRM OF THE YEAR
Who's Who Legal 2016, 2015, 2011-2006
Chambers European Excellence Awards 2014, 2012, 2009, Top Ranked 2017-2015

TOP 50 - MOST INNOVATIVE LAW FIRMS IN CONTINENTAL EUROPE
Financial Times - Innovative Lawyers Awards 2016-2011

The Lawyers of this team are internationally recognized as leaders in tax pratice.

THE WORLD OF PLMJ ON ONE SITE

Visit www.plmj.com and register to have access to informative notes, investment guides, seminars, conferences, business breakfasts, exhibitions and other news and events of interest.