

OVERVIEW OF THE PORTUGUESE REAL ESTATE MARKET AND THE SALE AND PURCHASE PROCESS

by: **Filipa Arantes Pedroso** | Lawyer

1. General Overview

The year 2016 was an excellent year with some major private international players continuing to invest in real estate in Portugal. The main investments were in office buildings and retail (shopping centres, retail parks, stand-alone units, etc.) and main investors were foreign investors, notably investment funds from the USA, France and United Kingdom. The considerable liquidity in other countries and the still attractive yields in Portugal make Portugal an attractive country to invest in.

2. Type of Vehicles

The vehicles used are mainly commercial companies (special purposes vehicles), notably joint public stock companies (sociedade anónima) for larger companies and private limited liability companies (sociedades por quotas) in the case of smaller companies which want a more flexible structure and fewer corporate government requirements. Other vehicles such as real estate funds and real estate companies have been less in demand lately. However, the change to the tax regime of the real estate funds which is now similar to legislation in other European countries (taxes are paid upon the sale of participation in the funds), may increase investment in real estate funds.

3. Title

Title to real estate is evidenced by a property registry certificate (certidão predial) issued by the Property Registry (Conservatória do Registo Predial). Additionally, according to Portuguese law, all real estate must have a property tax registry certificate (caderneta) issued by the tax authorities (Autoridade Tributária). Both the property registry certificate and property tax certificate are accessible to the public.

4. Sale and Purchase Process

A sale and purchase process starts with an offer, usually non-binding and subject to a legal due diligence concerning the property or land. A technical due diligence in case of a building also takes place to confirm the status of the building and the existence of any relevant defects. As soon as it is clear that the property meets, or can meet the requirements of the purchaser, a promissory sale and purchase agreement is executed between the seller and the purchaser. This agreement is binding and should include all the conditions precedent that are required to be fulfilled before the sale and purchase, notably the pre-emption rights granted to the relevant municipality or the Direção-Geral do Património Cultural ("IGESPAR"). In the case of agricultural land, neighbours may also have pre-emption rights. The promissory sale and purchase agreement usually contains the representation and warranties of the parties which are repeated in the notarial deed. An obligation of specific execution (execução específica) should be included in the promissory sale and purchase agreement, as it will allow either of the parties to request the court to execute the contract instead of paying a penalty or compensation.

The sale and purchase agreement, which can be executed through a private agreement certified by a notary or a lawyer or a notarial deed, takes place within the period of time agreed between the parties which allows for the fulfilment of the conditions included in the promissory sale and purchase agreement. The acquisition of properties in Portugal must be registered with the Property Registry and tax authorities. The registration with the Property Registry is evidence of ownership of the relevant property. The promissory agreement applies between signature of the same and the notarial deed.

5. Real estate taxes

The purchase of real estate (asset deal) is subject to stamp duty (imposto do selo) at a rate of 0,8% of the purchase price or the tax value (valor patrimonial) whichever is higher, which is payable by the purchaser. Furthermore, the purchase of real estate is also subject to property transfer tax (IMT) at the following rates (i) 6% on the acquisition of property intended for housing purposes, (ii) 5% on the acquisition of agricultural property, and (iii) 6,5% on the acquisition of other types properties. IMT also applies to the sale and purchase price or tax value (valor patrimonial) whichever is higher, and also paid by the purchaser.

The acquisition of property for rehabilitation purposes and the acquisition of property by real estate companies for the purpose of reselling may be exempted from IMT provided certain specific conditions are met.

The transfer of shares (share deal) of a joint stock public company (sociedade anónima) which owns property is not subject to property transfer tax, while the transfer of a quota to a partner whose quota after the transfer represents 75% or more of the capital stock of a limited-liability company (sociedade por quotas) is subject to property transfer tax.

Municipal Property Tax (IMI) is levied annually on the tax value of property at a rate which may vary between 0,3% and 0,45%.

An additional tax (AIMI) was introduced by the State Budget Law for 2017 which is applicable to urban property owned by either individuals, undivided inheritances, legal persons, structures or collective bodies without an autonomous legal personality. This new tax is not levied on urban property classified as commercial, industrial or for service purposes or for other purposes of the IMI Code.

Individuals or undivided inheritances may deduct € 600.000,00 on the taxable base.

The tax rate of AIMI is 0,7%. If the tax registration value of the real estate is over € 1.000.000,00, a marginal tax rate of 1% will apply over that amount.

Property owned by residents in a tax haven is subject to a 7,5% tax rate on this additional tax.

6. Secured lending involving real estate

A facility agreement secured by a mortgage is the most common security for real estate financing in Portugal. The loan-to-value ranges between 65% and 80% of the value of the property granted as security. Other security such as assignment of revenues (consignação de rendimentos), pledge of shares in case of share deals, assignment by way of security over receivables and pledge of bank accounts are also common.

Securitization is not as common in real estate finance but sale and leasebacks are very common.

7. Leases

Leases are governed by the Civil Code. Some provisions are mandatory, but others can be freely negotiated by the parties. The most relevant aspects of commercial lease agreements such as term, termination and renewal are freely negotiated by the parties.

It is important to note that a tenant of a property for more than three years has the right of pre-emption in respect of the sale.

8. Expectations for 2017

Some changes are expected to take place in 2017, notably the law applicable to touristic investments and short rentals.

Portugal has not yet implemented the legislation concerning the so-called REITS. The market has been waiting for this legislation for quite a long time but it is not yet clear if it is going to be implemented this year. ■