

CONTRACT FOR USE OF SPACE IN LOGISTICS PARK

The project *Portugal Logístico* aims at the improvement and efficiency of logistics and transportation chains, by reinforcing the intermodal and rational usage of various methods, as well as integrating international transportation networks. Logistic activity was one of the strategic guidelines set forth by the Portuguese government; Decree-law 152/2008, 5 August, established the legal framework of the National Network of Logistic Platforms (“*Rede Nacional de Plataformas Logísticas*”).

The logistic platforms which comprise *Portugal Logístico*, or others that already exist or will be created, may be aimed at a simple transfer of use of a property for the establishment of a storehouse, the logistic platform. The transfer of use of a property includes a variety of services that are inseparable from the transfer, particularly cleaning services, maintenance, preservation and safety of the parts and equipments for common use.

In this last model, the transfer of use of property, the logistic platform, is inseparable from the provision of a variety of services by the managing entity of the logistic platform

In this last model the transfer of use of property, the logistic platform, is inseparable from the provision of a variety of services by the managing entity of the logistic platform. Indeed, the managing or exploring entity actively participates and controls the global management of the logistic

platform or Logistic Park operation, being responsible for the organization, administration and supervision of its operation.

This model deviates from the typical real property lease by not conforming to the non-residential lease regime, inasmuch as the referred provision of services is inseparable and joint with the transfer of use of property, unlike a simple lease.



REAL ESTATE

This understanding does not conform with the typical lease and has been widely followed by Portuguese doctrine and court decisions regarding contracts of use of shops

A real estate lease specifies the nature of the business, whereas in what concerns the transfer of use of space the typical provision comprises equally the nature of the business as well as the types of services that are provided.

This understanding does not conform with the typical lease and has been widely followed by Portuguese doctrine and court decisions regarding contracts of use of shops in shopping centers and more recently regarding the use agreements of space in office parks.

Thus, the contractual model in question, as the examples above mentioned, does not fall under normal legal schemes; it results in the free regulation by the parties involved according to the particular nature of the transfer of use of a specific space and deviates from the standard rules of a lease. In other words, the parties involved may freely regulate the provisions of their contractual relationship there by avoiding the subjection of the contracts of use of space to the non-residential lease regime which necessarily would entail complexities that are inconsistent with the dynamic reality of the transfer of space, such as the preemptive right of the tenant in the transfer of property or the tenant's right to transfer a business.

This contractual model is not exempt from VAT. The Tax Authority when recently considering a particular case in relation to the models of use of space in shopping centers, in a binding opinion stated that the transfer of use of space in a park or logistics platform associated with the provision of certain services is based on an atypical and unnamed model contract and should be treated as a provision of services (in accordance with the provisions of Article 4 of VAT Code), and therefore is a taxable transaction not covered by the Vat exemption for leases.

This contractual model is not exempt from VAT

The transfer of use of space in a park or logistics platform associated with the provision of certain services is based on an atypical and unnamed model contract and should be treated as a provision of services

In sum, a contract of use of space offers on one hand the possibility of regulating the relations between the parties by not applying a pre-established legal regime, and on the other hand the opportunity to be reimbursed for the VAT paid on the construction or acquisition of the space transferred.

In the future it will be necessary to adapt, apply and develop this new contractual reality and it will be the authors and the courts' job to accept it and evaluate it, being that the option for the transfer of the use of space as an alternative to the traditional lease will become a new solution in the use of logistics parks or platforms where the organization, the administration and the supervision of its operation is attributed to the manager or operator of such logistics park/platform.

Contact
Filipa Arantes Pedroso | fapedroso@mlgts.pt

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA

ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

LISBON

Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

OPORTO

Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Oporto
Telephone: (+351) 226 166 950
Fax: (+351) 226 163 810
mlgtsporto@mlgts.pt

MADEIRA

Avenida Arriaga, Edifício Marina Club, 73, 2º
Sala 212 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt



São Paulo, Brazil (In association)
Mattos Filho, Veiga Filho, Marrey Jr.
e Quiroga Advogados

Luanda, Angola (In association)
Filipe Duarte, Helena Prata & Associados

Maputo, Mozambique (In association)
SCAN – Advogados e Consultores

Macau, Macau (In association)
MdME | Lawyers | Private Notaries