



LEGAL & REAL ESTATE// ISSUE: TOP IBERIAN INVESTORS

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# SIGI “BE WELCOME AND STAY LONG”

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This year of 2019 became, so far, a year of important achievements in Portuguese real estate market, with the creation of the “so-called” *Sociedades de Investimento e Gestão Imobiliária* (“SIGI”), through Decree-Law 19/2019, of 28 January 2019 (“Decree-Law”), that has entered into force on 1 February 2019. This regime has introduced the long-awaited framework for Portuguese Real Estate Investment Trusts (“REIT”), placing Portugal again in line with the best real estate investment policies and practices.



The regime originally approved through the Decree-Law did not contain any tax rules, since the same was approved by decree-law and the parliament had not granted an authorization to Government to legislate on tax matters.

Nevertheless, the original regime has been recently subject to Parliamentary scrutiny and, as a result, the Portuguese Parliament has approved several amendments to the Decree-Law, which should now be enacted by the Portuguese President and published in the Official Gazette in order to be in force.

These amendments have the merit of reinforce the alignment of SIGI legal regime with the best international practices on REIT, as well as to clarify certain aspects that were not clear under the initial legal regime, strengthening the legal certainty for the investors and preventing any fear of having an overcomplicated legal regime.

In a nutshell, the Portuguese Parliament has introduced amendments in the following matters:

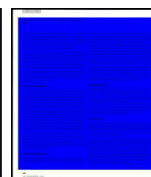
- i) Tax regime;
- ii) Corporate purpose;
- iii) Asset composition; and
- iv) Free float rules.

For the sake of clarity, we will address each of these amendments separately.

## i) Tax regime

Bearing in mind the main purposes outlined by the Portuguese Government in the Decree-law, i.e., the expectation to foster the Portuguese lease market, Portuguese capital markets and foreign investment, tax clarity is the key in order to create an appealing “playground” for the investors and the required environment in the development of this new investment vehicle which have already proven to be successful across the world and, it is fair to say, is already well known for the most sophisticated investors who are now looking to the Portuguese real estate market.

Considering the foregoing, the approval of a favorable tax regime applicable to SIGI (similar to the one applicable to Collective Investment Undertakings) is particularly relevant, as it is now expressly foreseen that the tax regime applicable to SIGI is the one set-in articles 22 and 22-A of the Tax Benefits



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Code (Estatuto dos Benefícios Fiscais). Consequently, the investment income, the rental income, and the capital gains obtained by a SIGI are expressly excluded from corporate income tax taxation. However, this tax regime also foresees that the income arising from the transfer of real estate properties will only be excluded from taxation when such properties have been held by a SIGI for at least three years.

At the shareholders level, the relevant tax regime establishes that the income distributed by a SIGI to individuals that are resident for tax purposes in Portugal should be subject to withholding tax at the rate of 28%, while resident corporate entities should be subject to withholding tax at the rate of 25%. In what concerns non-resident shareholders, the same should be subject to withholding tax at the reduced rate of 10%.

Furthermore, please note that the capital gains obtained by shareholders with the sale of their shares, will be subject to taxation pursuant the general terms established by either the Personal Income Tax Code or the Corporate Income Tax Code.

### ii) Corporate purpose

Regarding the rules which govern the corporate purpose of SIGI, a broader concept of leasing has been introduced, in accordance with the best international practices. Therefore, the new regime foresees that SIGI must have as a main corporate purpose the acquisition of property ownership rights, surface rights or other equivalent rights including properties for leasing purposes, including atypical contractual forms under which are rendered services related with the use of the property. Moreover, the new regime expressly allows SIGI to hold equity participations in other corporate entities with registered office in Portuguese territory, and which do not qualify as SIGI, provided that such corporate entities fulfill the following requirements: (i) have an equivalent corporate purpose to SIGI; (ii) the asset composition is in line with the indebtedness limit foreseen in the Decree-Law; (iii) the share capital is entirely represented by nominative shares; and (iv) are subject to an income distribution framework similar to the foreseen in the Decree-Law.

As a result of these amendments, SIGI's legal regime now allows a very broad scope in terms of investment structuring as the Portuguese legislator has clarified that SIGI may hold subsidiaries (other than SIGI companies), allowing SIGI (acting as parent companies) to set up a more flexible corporate group, as well as to structure more investment transactions through "share deals".

### iii) Asset composition

The rules regarding the composition of SIGI's assets have also been subject to amendments in order to put such composition in line with

the broader concept of leasing that has been established by the new regime. Thereby, it is now established that SIGI's assets shall be mainly composed of property ownership rights, surface rights or other equivalent rights over properties, for leasing purposes, including atypical contractual forms under which are rendered services related with the use of the property. These assets shall also respect the following cumulative thresholds: (i) the value of the said rights over properties and shareholdings must represent at least 80% of SIGI's asset value; and (ii) the value of the rights over properties subject to lease agreements, including atypical contractual forms under which are rendered services related with the use of the property, must represent 75% of the total value of SIGI's assets.

An additional compliance rule for controlling that these requirements are effectively met was also introduced. Under this new rule, SIGI shall request an evaluation of the assets held by the company each seven years. Such evaluation must be made by an independent auditor registered before the Portuguese Securities Commission (CMVM).

### iv) Free float rules

Finally, and with the same purpose of clarification of the free float requirements, the new regime establishes more flexible rules to meet the current minimum 20 % free float threshold and, simultaneously, establishes a new minimum free float limit of 25% which is applicable from the fifth year after the admission to trading of SIGI's shares. Thus, it is now foreseen the following minimum free float thresholds: (i) 20% since the final of the third complete civil year after the admission to trading of SIGI's shares; and (ii) 25% since the final of the fifth complete civil year after the admission to trading of SIGI's shares.

### Final remarks

All things considered, the introduction of this real estate instrument clearly puts Portugal again in line with the best international practices regarding REIT, namely with the Spanish jurisdiction where over the last years the real estate sector has been boosted by boom in SOCIMI and increased residential development activity.

Furthermore, these last amendments introduced to the Decree-Law demonstrate that Portugal is on the right track to achieve the main purposes that have led to the introduction of this regime and still on time to take advantage of the good moment the Portuguese real estate market is facing, which is well perceived by global investors. Moreover, it is also expected that this investment vehicle can attract a large number of private investors, given the simplicity of the investment, the guarantee of the income distribution and the current reduced remuneration of the fixed-term deposit by the Portuguese banks. ■