

Portugal introduces Real Estate Investment Trusts (REITs)

Portugal: February 2019

In Brief

Following the enactment of Decree-Law No 19/2019 of 28 January, the Portuguese Government has introduced REITs with effect from 1 February 2019, following similar REIT models implemented in Europe. The 'Sociedade de Investimento e Gestão Imobiliária', or SIGI, the Portuguese REIT, is intended to promote real estate investment and to develop the real estate market in Portugal, in particular the letting market.

Key characteristics of Portuguese REITs

- It is a joint-stock company (*Sociedade Anónima*, or SA) with its residence and effective management in Portugal, which has a minimum share capital of €5m.
- It is governed by Decree-Law No 19/2019 of 28 January and company law.
- Its shares must be listed on a regulated market in Portugal, in an EU Member State or in an EEA Member State (which has committed to administrative cooperation in tax matters similar to those in the EU), within one year following its incorporation date.
- At least 20% of its share capital must be listed and held by investors whose holdings are less than 2% of the voting rights per investor.
- It can acquire real estate and other real estate rights for letting or other forms of commercial exploitation.
- It can also acquire interests in real estate entities, such as:
 - shares in the capital of SIGIs;
 - shares in the capital of companies resident in another EU Member State, EEA Member State (committed to administrative cooperation in tax matters similar to those in the EU), meeting the SIGIs object, portfolio composition and profit distribution requirements;
 - units or shares in collective investment vehicles governed by Portuguese law having similar profit distribution rules;
 - a real estate investment company specialising in residential letting.
- The conditions that both have to be met regarding SIGIs' portfolio are:
 - real estate and investments in real estate entities must account for at least 80% of their total assets; and,
 - real estate let or allocated to other forms of commercial exploitation must account for at least 75% of their total assets.

For this purpose, real estate let and its use in other forms of commercial exploitation includes the development of construction projects and urban renovation works as well as its allocation to the use of space contracts in shopping centres or offices.

SIGIs can directly manage its own assets or subcontract such services from other entities.

- Real estate and participations in real estate entities must be held for at least three years from their acquisition date.
- SIGIs indebtedness cannot exceed, at any time, 60% of their total assets.

Tax regime

The starting point is that SIGIs are subject to corporate income tax at 21% but not to local and State surtaxes.

However, SIGIs are exempt from corporate income tax on investment income, rental income and from capital gains tax which it would otherwise suffer calculated as for personal income tax purposes. Expenses related to these income categories are not deductible.

Income from profit distributions is subject to withholding tax at a final 10% rate for non-resident investors and 25% and 28%, as payment on account, for resident entities and resident individuals, respectively.

Income or gains arising from distributions, share redemption and sale and purchase of shares are deemed to derive from immovable property located in Portugal, so Portugal may retain its taxing rights under double tax treaties.

SIGIs, as well as its investors, are subject to the same tax regime as applies to real estate investment companies (including contractual funds) established and operating under the collective investment vehicles legislation.

No full or partial exemption from real estate taxes, on acquisition and ownership, are specifically given to SIGIs.

Other aspects of the Portuguese REITs regime

Profit distribution requirements

SIGIs must distribute 75% of their annual profits and 90% of their annual profits that derive from dividends and other income from shares held in real estate entities.

Reinvestment mechanism

At least 75% of the proceeds from the sale of assets attributable to the SIGIs main activity must be reinvested in the acquisition of assets also attributable to the SIGIs main activity within a three-year period.

Conversion of certain real estate entities into SIGIs

The following real estate entities can be converted into SIGIs, if having similar characteristics and adapted accordingly to the SIGIs legislation:

- a joint-stock company;
- a real estate investment company governed by the collective investment vehicles' legislation;
- a real estate investment company specialising in residential letting.

Our view

The long-awaited introduction of REITs in Portugal provides a specialist investment vehicle for the real estate market, particularly in the letting market.

The fact that this regime allows, under certain conditions, existing joint-stock companies and certain types of real estate investment companies to convert into SIGIs broadens out the opportunities for their use.

In addition, the fact that the SIGIs are subject to the tax regime applicable to real estate investment companies (including contractual funds), that is, collective investment vehicles means that there will be no tax differentiation in the choice between these investment vehicles.

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