KEY ISSUES WHEN BUYING A PROPERTY IN PORTUGAL

Did you know that Portuguese legislation grants several benefits – tax and residence permit benefits are just two – to people who decide to purchase a property in Portugal, if certain conditions are met?

You can purchase your property directly, or acquire shares in a company (offshore or onshore) that owns a property. Each option has different tax consequences that should be carefully analysed, to see which solution suits you best.

If you decide to buy a plot for construction you will have to sign a Works Contract, prepared and revised to avoid any future issues, such as dealing with delays in construction or defective construction, or even insolvency of the contractor and possible retention rights over your property.

We've drawn up a short guide as to what to expect when buying property in Portugal.

STEPS IN THE BUYING PROCESS

· Promissory contract for sale and purchase and final deed (completion)

Before completion, the seller and buyer often sign a promissory contract, a legally binding contract in which seller and buyer establish the conditions of the purchase and undertake to complete and sign the final deed within a given deadline. Carefully prepared and reviewed, the contract should include clear identification of the property, price agreed and terms of payment, date for the final purchase deed to be signed, possible use of the property by the buyer before the signing of the final deed, collateral and compensation for any delays in completion, inventory of furniture, allocation of maintenance costs, etc.

Normally such contracts include a deposit as part payment of the purchase price, i.e. compensation in case of breach, usually stipulated thus: if the buyer defaults, the deposit will remain with the seller; if the seller defaults, he is required to refund the buyer twice the amount of the deposit.

The final contract of sale and purchase is usually made by a public deed before a notary. It can also be made by private deed, authenticated before any entity authorised to do so (such as a lawyer). The balance of the price is paid upon signature of the final deed and the transfer of ownership of the property normally occurs on this date.

· Documents needed

The entire sales process will require the seller to provide documentation, including: the real estate register entry for the property, the tax certificate for the property, the habitation licence and plans of the property as approved by the town council, the technical habitation licence and the energy performance certificate, among other documents which may be of relevance.

· Registration of the property

Registering your purchase of a property at the Land Registry is mandatory. The application for registration should be filed by the entity before which the final deed was executed.

· Costs and taxes

Besides the costs related to the purchase (legal fees, real estate agent's fees, notary costs and registration costs), the buyer may have to pay several taxes related to the purchase of the property

(i) On completion, payment of Municipal Property Transfer Tax (IMT) which is variable and depends on the sale price (or the taxable value of the property), the use to which the property is put and the location; and

(ii) Payment of Stamp Duty.

(iii) Following completion, payment of annual taxes which include Municipal Property Tax (IMI), assessed on the property's taxable value (and any additional IMI tax if applicable); and

(iv) Additional costs may include condominium fees, insurance and utility costs, and also villa management costs, if you choose such a service.

Any income related to your property must be reported to the tax authorities in your annual tax return. Non-residents can normally obtain double taxation relief through a foreign tax credit in their home jurisdiction.

Several requirements will need to be met, and a detailed tax analysis of your specific situation is required if you choose to rent out your property for tourism purposes.

NON-HABITUAL RESIDENCY

The Portuguese authorities have introduced a special tax regime offering individuals attractive tax benefits - non-habitual residency. Becoming a tax resident in Portugal, in this case a non-habitual resident, means you don't have to pay tax on certain types of income of non-Portuguese origin provided that it is taxed in the state of origin or provided that it is not considered as obtained in Portugal. These include employment and pensions, but can include income from self-employment, royalties, investment income, property income and capital gains obtained abroad if certain conditions are met.

Conditions for registering as a non-habitual resident:

(i) become a tax resident in Portugal regarding the year you want to start benefiting from the non-habitual residents regime (for example, if you have remained in Portuguese territory for more than 183 days, consecutive or not; during a 12 month period or having remained in the country for less time, own or rent property that suggests the intention of using it as their permanent residence);

(ii) you have not been taxed in Portugal as a tax resident in the previous five years; and

(iii) if you request your registration as a non-habitual resident with the national authorities when you declare to the tax department that you are resident in Portugal, or up to March 31 of the year after the one in which you became resident in Portugal.

Under this special tax regime, an individual who is classified as a non-habitual resident in Portugal acquires the right to be taxed as such for a period of 10 consecutive years, renewable, provided that, in each year of application of the regime, he/she is considered a tax resident in Portugal. After this period, the individual will be taxed under the general rules of the Personal Income Tax Code.

RESIDENCE PERMITS FOR INVESTMENT PURPOSES – GOLDEN VISAS

Any individual, who is a foreign citizen of a third-party country, can obtain a temporary residence permit in Portugal, if he or she makes certain investments in Portugal (either by means of a company or directly as an individual). These permits are known as RPIs (“Temporary Residence Permits for Investment”).

Qualifying investments include:

(i) Capital transfers of at least EUR 1,000,000;

(ii) Creation of at least 10 jobs; or

(iii) Purchase of EUR 500,000 or more in real estate, which may later be rented out or used for agriculture, commerce or tourism purposes.

To obtain an RPI, foreign nationals must legalise their stay in Portugal within 90 days of entry into the country (obtaining, when required, a short-term Schengen visa issued by the Portuguese consulate of their country of origin) and provide evidence of their relevant investment activity in Portugal.

This regime is very beneficial for individuals who live abroad. This is because, besides providing a temporary residence permit in Portugal, RPIs entitle investors to bring their family and have freedom of movement in the Schengen area.