

FEBRUARY 2019

REAL ESTATE INVESTMENT AND MANAGEMENT COMPANIES REGIME

Scope and Requirements set forth in Decree-Law no. 19/2019, of January 28th

Attracting direct foreign investment has revealed to be strategic towards the expansion of financial and non-financial resources available in the Portuguese economy. In order to increase competition and market revitalization, Decree Law no. 19/2019 was published on January 28th, opening the possibility to create Real Estate Investment and Management Companies (“SIGI”) since February 1st 2019.

1. SCOPE

The SIGI were inspired in the *Real Estate Investment Trusts* and are a new vehicle created to promote investment and real estate market revitalization, in the form of limited liability companies, whose shares are meant to be negotiated in an opened and regulated market, allowing all persons (natural or legal) to invest in the real estate market by purchasing SIGI’s shares and, indirectly, through these companies, by holding rights over real estate goods to be sold, rented or explored by SIGI’s.

Consequently, the conversion of real estate investment into financial investment was made possible, which became more accessible to investors than direct real estate investment.

2. REQUIREMENTS

In order for a company by shares to acquire the SIGI status, either through its incorporation or through the conversion of a company by shares or of a Corporate Property Investment Undertaking already incorporated, the following requirements must be met:

- The corporate name has to include the expression “Sociedade de Investimento e Gestão Imobiliária, S.A.” or “SIGI, S. A.”;

- The registered offices and effective management must be located in Portugal;
- The company's management bodies must include a Supervisory Board;
- The following activities must be part of the corporate object:
 - i. Acquisition of property, surface or other rights over real estate goods, destined to leasing or other forms of economic use;
 - ii. Acquisition of shares in other SIGI, or shares representing the share capital of companies with registered offices in a country that belongs to the European Union State or the European Economic Area and is bound to equivalent cooperation in terms of taxation;
 - iii. Acquisition of participation unit or shares in Property Collective Investment Undertakings or Real Estate Funds;
- The share capital, fully subscribed and paid, must be of at least € 5.000.000, represented by ordinary shares;
- The company's assets must be predominantly property, surface or equivalent rights over real estate goods;
- The net debt must be lower than 60% of the assets' global value, at all times;
- The company's shares must, within a year, be admitted to trading on a regulated market or multilateral trade system (*Euronext Access* or *Alternext*, in Portugal).

The non-fulfilment of the above-mentioned requirements by any SIGI may result in the loss of such status, preventing the company from re-gaining it in the following three years.

The members of the corporate bodies of a company to which the SIGI status has been withdrawn are directly liable for damages caused to the shareholders by such withdrawal.

3. INCOME

In order to attract investors, the legal framework created for the SIGI sets forth regular income distribution, as dividends, in the following terms:

- i. 90% of the year profits that result from payment of dividends and shares' or participation units' income (when the SIGIs purchase shares of other SIGIs);

- ii. 75% of the other distributable profits (profits from its own real estate activity).

At least 75% of the net product from the sale of assets assigned to the fulfilment of the SIGI's main corporate object must be reinvested in assets with the same assignment within three years from such sale.

The SIGIs' legal reserve must not exceed 20% of the share capital and no other unavailable reserves are allowed to be formed.

4. TAX REGIME

The tax regime set forth in articles 22 and 22-A of the Portuguese Tax Benefits Statute is applicable to the SIGIs. Therefore, these companies are subject to the Corporate Income Tax (IRC) pursuant to the general terms, at the rate of 21%.

The SIGI's distributable profit corresponds to the net income, determined in the terms of the legally applicable accounting standards. However, capital income, real estate income and capital gains are excluded from the calculation of the taxable income, except when they originate from entities with residence or domicile in a country, territory or region subject to a clearly more favourable tax regime, as set forth in the list approved by decree from the Ministry of Finance.

On the other hand, costs related to income excluded from taxation and costs whose deductibility is excluded in the terms set forth in the IRC Code are not tax deductible. The income (including discounts) and costs connected to management and other fees which benefit the SIGI are also excluded when calculating the taxable profit.

The tax losses are deductible from the taxable profit, pursuant to the general legal terms, and these companies are exempted from municipal and state surtax.

As is the case with other collective investment undertakings, they are subject to stamp duty at a rate of 0,0125% on their global net asset, on a quarterly basis.

From the investors' perspective, taxation is carried out as exit taxation. The following situations must be considered:

- **The investor is a natural person resident in Portugal**

The distributable profits are subject to tax withholding, at the rate of 28%; this deduction is permanent when the income is not obtained from a commercial, industrial or agricultural activity.

The income resulting from the transmission of shares is subject to autonomous taxation at the rate of 28%.

- **The investor is a legal person with registered offices in Portugal**

The distributable profits are subject to tax withholding at the rate of 25%, as payment on account, except when the income holder benefits from an exemption in terms of IRC which excludes capital income, in which case the withholding is permanent. If the respective requirements are met, the participation exemption regime may be applied, either regarding dividends distribution or capital gains related to the shares' sale.

- **The investor is a natural or legal person non-resident in Portugal**

If the investors don't have permanent establishments in Portugal, to which the income is attributable, the distributed income is subject to permanent tax withholding, at the rate of 10%.

These rules do not apply if *(i)* the income holders are resident in a country, territory or region subject to a clearly more favourable tax regime, as set forth in the list approved by decree from the Ministry of Finance, *(ii)* the income is paid or transferred to bank accounts opened in the name of one or more holders but on behalf of non-identified third parties, and *(iii)* the holders are non-resident entities whose direct or indirect ownership by natural or legal persons resident in Portugal exceeds 25%.

It should also be noted that, for the purposes of application of this regime, the income resulting from participation units in real estate investment funds and from

shares representing real estate investment companies' capital, including capital gains that arise from its sale, redemption or settlement, are considered real estate income.

PARES | Advogados is available to provide more client-specific information on the Real Estate Investment and Management Companies Regime.

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