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Investment Funds in Portugal

A seductive and well-established tax regime



INTRODUCTION

- Investment funds are **Undertakings for Collective Investment (UCI)**, i.e., *institutions, with or without legal personality, whose purpose is the collective investment of capital raised from investors, whose operation is subject to a principle of risk-sharing and the pursuit of the exclusive interest of the participants*¹ and are governed in Portugal by the General Regime of Undertakings for Collective Investment (GRUCI).
- In 2015, aiming primarily at attracting foreign investment and eliminating double taxation of income earned by **non-resident investors in Portugal**, the Portuguese government introduced the Decree-Law Nr. 7/2015, of January 13, reforming the tax regime of UCIs, a designation that includes **Mutual Investment Funds (MIF)**², **Real Estate Investment Funds (REIF)**³, **Securities Investment Companies (SIC)**⁴ and **Real Estate Investment Companies (REIC)**⁵⁶.
- The Portuguese UCI regime is perceived to be one of the most advantageous and stable. Additionally and contrary to Spain, no adverse changes are expected (*e.g.* recent legislative changes to the Spanish regime⁷, leading to stricter and less flexible tax framework for SICAVS⁸).

¹ Cf. General Regime of Collective Investment Organizations, article 1.

² *I.e., Fundos de Investimento Mobiliário (FIM).*

³ *I.e., Fundos de Investimento Imobiliário (FII).*

⁴ *I.e., Sociedades de Investimento Mobiliário (SIM).*

⁵ *I.e., Sociedades de Investimento Imobiliário (SIIMO).*

⁶ Additionally, the Real Estate Investment and Management Companies (REIMC) – so-called SIGI (*i.e., Sociedades de Investimento e Gestão Imobiliária*) – complete the full spectrum of real estate investment vehicles available under Portuguese law. This real estate investment vehicle is similar to the English REIT and Spanish SOCIMI and also benefit from the UCI tax regime.

⁷ Achieved by the Spanish law 11/2021, of 9 July.

⁸ *Sociedades de inversión de capital variable.*

ESTABLISHMENT AND APPROVAL OF A COLLECTIVE INVESTMENT ORGANIZATION

In Portugal, the establishment of a UCI is subject to the following requirements:

- Authorization and approval of the constitutive documents by the Portuguese Securities Market Commission⁹;
- Selection of a depositary;
- Global net value of, at least:
 - € 5.000.000,00, as of the first 12 months of activity, if it is a real estate UCI,
 - € 1.250.000,00, as of the first six months of activity, in the case of a securities UCI;
- (*If needed*) The selection of a Management Company.

INDEBTEDNESS LIMITS

There are legal limits to indebtedness depending on the type of UCI:

- **UCI on Securities**
 - May borrow for a maximum period of 120 days, consecutive or not, within a period of one year and up to a limit of **10%** of their net asset value.
 - Securities Investment Companies (SIC) may also borrow up to **10%** of their net asset value in order to acquire real estate essential for the direct pursuit of their activities.
 - In this case, the aggregate above mentioned amount may not exceed **15 %** of the total net asset value.
- **UCI on Real Estate**
 - Open¹⁰ UCIs:
 - The indebtedness cannot represent more than **25%** of the total assets.
 - Closed UCIs:
 - The indebtedness cannot represent more than **33%** of the total assets.

⁹ Comissão do Mercado de Valores Mobiliários (CMVM).

¹⁰ UCIs may be open or closed, depending on whether the units or shares are variable in number or fixed in number, respectively.

1. TAXATION OF CORPORATE AND PERSONAL INCOME EARNED IN PORTUGAL

INCOME TAX	UNDERTAKINGS FOR COLLECTIVE INVESTMENT (UCIs)	INVESTORS		
		<i>Residents</i>	<i>Non-residents</i> ¹¹	
			<i>Real Estate</i>	<i>Securities</i>
Rate	0% / 21% ¹²	25% (Corporate) 28% (Personal)	10%	Exempted ¹³
Tax basis	<p><i>Excludes:</i></p> <ul style="list-style-type: none"> Capital income (e.g. interest and dividends), property income and capital gains¹⁴ (and associated expenses); Income, including discounts, and expenses relating to management fees and other fees that accrue to UCIs; The expenses foreseen in article 23-A of the Portuguese Company Income Tax Code (some non-business related expenses). 	<ul style="list-style-type: none"> Quantified under the general rules, with the some exemption (e.g. participation exemption). 	<ul style="list-style-type: none"> Distributed income and income from the redemption in REIF or REIC. 	N/A.
Deductions	<ul style="list-style-type: none"> Carry forward of tax losses from previous years. 	N/A.	N/A.	N/A.
Withholding Tax	<ul style="list-style-type: none"> Not mandatory. 	N/A.	Definitive	N/A.
Exemptions	<ul style="list-style-type: none"> Municipal Surtax; State Surtax. 	N/A.	N/A.	N/A.
Additional notes	<ul style="list-style-type: none"> Exempt from payments on account, additional payments on account, or special payments on account. Merger, spin-off and asset contribution transactions involving UCIs may benefit from the tax neutrality regime. 	N/A.	N/A.	

¹¹ Non-residents must provide proof of their status to the paying entity required to withhold taxes. Are excluded from the exemption: residents in a country, territory or region subject to a clearly more favorable tax regime, included in the list approved by an Executive Order and non-resident entities directly or indirectly held in more than 25% by individuals or entities resident in Portugal.

¹² The standard 21% CIT rate applies to the remaining taxable income, not excluded from taxation.

¹³ Capital gains resulting from the disposal of units or shareholdings in UCIs do not benefit from this exemption. Capital gains may, however, also be tax exempt, by application of article 27 of the Portuguese Tax Benefits Statute.

¹⁴ Except when arising from entities domiciled or resident in a country, territory or region listed as being subject to a clearly more favorable tax regime.

2. TAXATION OF ASSETS/NET CAPITAL IN PORTUGAL

STAMP DUTY	UNDERTAKINGS FOR COLLECTIVE INVESTMENT (UCIs)	INVESTORS	
		<i>Residents</i>	<i>Non-residents</i>
			Real Estate
Rate	<ul style="list-style-type: none"> If the UCI invests exclusively in money market instruments and deposits: 0,0025%. In the remaining cases: 0,0125%. 	N/A.	N/A.
Tax basis	<ul style="list-style-type: none"> Global net value of assets under management. <i>Excluding</i>: value of units or shares held in other CIOs. 	N/A.	N/A.
Period & Deadline	<ul style="list-style-type: none"> Quarterly. Must be settled by the last day of the month following the quarter in question. 	N/A.	N/A.

3. UCIs TAX REGIME IN SOME EUROPEAN UNION MEMBER STATES

MEMBER STATES	UNDERTAKINGS FOR COLLECTIVE INVESTMENT (UCIs)		ASSETS / NET CAPITAL	INVESTORS		
	Real Estate	Securities		Residents	Non-residents	
					Real Estate	Securities
PORTUGAL	Not-subject ¹⁵		0,0025% - 0,0125%	25% (CIT) / 28% (PIT)	10%	Exempted
SPAIN	0-19%-25% ¹⁶	1-25% ¹⁷	N/A.	19%	19% ¹⁸	19%
GERMANY	Exempted	15,825% ¹⁹	N/A.	26,375% - 26,4%	15%	Exempted
BELGIUM	29,58% ²⁰		0,01% - 0,0925% ²¹	30%	30%	30%

¹⁵ The standard 21% CIT rate applies to the remaining taxable income not excluded from taxation.

¹⁶ Under the new rules, each participant must invest at least 2,500 euros in the REIT (Real Estate Investment Fund) and comply with the holding periods for their qualified investments in order to benefit from the low tax rate. If that condition is met, the tax rate is reduced to 0%.

¹⁷ Under the new rules, each participant must invest at least 2,500 euros in the SICAV to benefit from the low tax rate. If that condition is met, the tax rate is reduced to 1%.

¹⁸ With some particularities, namely in terms of investment restrictions and minimum asset retention period.

¹⁹ A rate of 15% to which an additional solidarity tax of 5.5% is added. If the UCIs pursues a business activity, they are also subject to *trade tax*.

²⁰ Rate levied on a limited taxable basis.

²¹ Annual tax.

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