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IRS AND REAL ESTATE CAPITAL GAINS OBTAINED BY NON-RESIDENTS

JUDGMENT OF UNIFORMITY OF JURISPRUDENCE - SUPREME ADMINISTRATIVE COURT

In 2019 we published a [newsletter](#) on the same subject in which we concluded that in view of the case law of the Court of Justice of the European Union and national law, we considered possible to question, judicially or through the Arbitration Court, the legality of the taxation of real estate capital gains realised by non-residents and request the taxation of only 50% of the capital gains realised.

The IRS Code provides that the real estate capital gain realised by a non-resident is taxed in full (100%), at the autonomous rate of 28% (with the possibility for the non-resident to opt for a regime of same treatment of residents, whereby the capital gain is considered at 50%, but taxed at the general IRS rates, provided that all income received in the year of sale is declared).

On 9 December 2020, the Supreme Administrative Court handed down a judgment unifying the jurisprudence, which makes clear that **Portuguese tax legislation on capital gains realised by non-residents is incompatible with European law, and this incompatibility has not been resolved by the optional scheme referred above.**

Until the rules of the IRS Code in question are amended and the Tax Authority adjusts internal procedures in accordance with the understanding now standardised in jurisprudence, non-resident taxpayers will continue to be taxed less favourably than residents in Portugal. However, the possibility of taxing only 50% of capital gains realised through a court decision, is now reinforced by this uniformity of jurisprudence by Supreme Administrative Court.

PARES | Advogados is able, and willing to provide any information under the legislation applicable to the taxation of real estate capital gains, as well as to provide all the necessary support to taxpayers who have realised real estate capital gains and wish to ensure that they are being taxed correctly.

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