

THE PORTUGUESE GOLDEN VISA (CURRENT SITUATION)



TAX & BUSINESS



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INTRODUCTION

Urged by the need to attract foreign investment to Portugal, the Government has created, in August 2012, a new regime for the granting of the so-called "golden visas" to citizens of foreign countries willing to invest in Portugal.

This regime (known in Portugal as "ARI – Autorização de Residência para Actividade de Investimento", which means Residence Permit for Investment Activities) is currently foreseen in Law n.º 23/2007, from June 4th as amended by Law n.º 29/2012, from August 9th.

The process and requirements of the regime are stated in the Order n.º 11820-A/2012, of September 4th, recently simplified by the Order n.º 1661-A/2013, of January 28th.

This legal framework allows citizens of third countries – nonmembers of the European Union or nonmembers of the Convention who implemented the Schengen Agreement – to obtain a Portuguese residency permit allowing them to engage in an investment activity in Portuguese territory. This regime also applies to citizens of third countries who own share capital in companies with head-office in Portugal, or in another European Union

Member-state with a permanent establishment in Portuguese territory.

(iii) real estate leased for commercial, agriculture or touristic purposes;

CONCEPT OF INVESTMENT ACTIVITY

For the purposes of granting the “golden visas”, an investment activity must be performed, directly by the individual or through a company, for a minimum period of five years.

Such investment activity may correspond to one of the following:

- capital transfer in an amount equal or above € 1.000.000,00, including investment in the share capital of companies; or
- Creation of at least 10 jobs, which is to be fulfilled when there is proof of the register of these workers in the Portuguese Social Security system; or
- purchase of real estate worth at least € 500.000,00, which includes the following situations:
 - (i) purchases made in a joint ownership regime as long as each of the co-owners invested at least € 500.000,00, or the signing of promissory-contracts where a non-refundable deposit has been paid for € 500.000,00 or more, provided the final deeds are exhibited before renewing the residence permit;
 - (ii) properties which have encumbrances of more than € 500.000,00;

THE PRESENCE IN PORTUGUESE TERRITORY

For the purpose of renewing the residence permit, it is required that the investor, not only invests for a minimum period of 5 years, counting from the granting of the resident permit, but also provides proof that he remained in Portuguese territory for the minimum period required, which is of 7 days, in a row or not, in the first year, or 14 days, in a row or not, subsequent period of two years.

FILLING OF APPLICATIONS

The filing for the granting or renewal of the “golden visas” must be made in person at the Portuguese Immigration and Borders Service (“Serviço de Estrangeiros e Fronteiras” – SEF) of the applicant's residency area.

At this stage, it will be necessary to present proof that the quantitative and time-based minimum requirements are fulfilled, which should be made by the presentation of the documents and declarations legally required for such purpose.

In addition, it will be necessary to file a statement where the applicant declares, under a commitment of honor, that he will fulfill the quantitative and time-based minimum requirements of the investment activity in Portuguese territory.

THE MONITORING GROUP

For the purposes of the implementation and application of this special regime, a monitoring group has been created. The General Director of Consular Matters and Portuguese Communities, as well as the Director of the Portuguese Immigration and Borders Service and the President of the Business Development Agency (AIECP) are part of such monitoring group.

BROADENING OF THE ACTIVITY CONCEPT

Following an inquiry, in November 2014, regarding the golden visas, the Government decided to reformulate the regime of the residency permits for investment activities into force.

In this respect, as much as has been announced, the legislative amendments proposed by the Government, still subject to discussion and to the approval of the Portuguese Parliament, will be based, essentially, on two pillars:

- the broadening of the concept of investment activity; and
- the increase of the supervision and control in the process of granting “golden visas”

As a preliminary remark, the regime currently into force requires, for the granting of the visa, that an investment activity is developed directly by an individual or through a company for a minimum period of 5 years.

According to the general guide-lines presented by the Government, additional criteria for the granting of the golden visas will now be established, which have as a goal the support of the scientific investigation, the cultural production, the recovery and maintenance of national patrimony and also urban rehabilitation.

Therefore, in addition to the current regime, the investor may still opt for one of the following investment alternatives in order to benefit from this regime:

- capital transfer, in an amount equal to, or above € 350.000,00 to be applied in activities regarding scientific investigation activities developed by both public or private entities, which are integrated within the Nacional Scientific System;
- capital transfer in an amount equal to, or exceeding € 350.000,00, to be applied in investment or to the support to artistic production or to the recovery or maintenance of national cultural patrimony;
- capital transfer in an amount equal to or exceeding € 500.000,00 for the acquisition of real estate and develop urban rehabilitation works.

It is also foreseen a positive discrimination measure, according to which the minimum investment quantitative requirements can be reduced in 20% in case such investment occurs in low density territories (NUTS III with less than 100 inhabitants per km² or PIB per capita below 75% of the national average.)

REINFORCEMENT OF SUPERVISION AND CONTROL

Under the terms of the disclosure made by the Government, granting, in respect with its proceeding and decision-making, of golden visas requires control reinforcement, leaving thus the following proposals been made:

- regular audits of the General Inspectorate of Internal Affairs, to the procedures of residence permits for investment purposes, issuing conclusions and recommendations that will be communicated to the Parliament and published on the Government website;
- creation, by the Foreigner and Border Service, of an internal procedures manual regarding the process of granting the golden visa;
- clarification of the competences granted to the Monitoring Group;
- decentralization of the golden visa process, so that regional Foreigner and Border Service directorates are territorially competent.
- the final decision on the granting of the golden visa made by the Nacional Foreigner and Border Service Director will be preceded by a decision proposal made by the respective Regional Director;
- formal possibility of Consular verification of the proof means when the Foreigner and Border Service finds relevant; and
- mandatory presentation of the real estate tax register, in the case of investment in real estate, in order to allow the comparison between the acquisition value and the patrimonial value.

CONCLUSION

Despite of the recent controversy towards this regime, the Government, with these announced changes, acknowledges the importance of this measure to attract foreign investment to Portugal. Furthermore with the strong fiscalization component of the legislative proposal, the Government intends to prevent abuse risks by the intervenients, thus preserving its objective, which is, afterall, to attract investment to Portugal.

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Rogério Fernandes Ferreira
Francisco Carvalho Furtado
Mónica Respício Gonçalves
Marta Machado de Almeida
Miguel Afonso Archer