

THE NEW REGIME OF THE PORTUGUESE “GOLDEN VISA”



TAX & BUSINESS



This Information is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Information may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact contact@rfflawyers.com.

This Information is sent in compliance with articles 22 and 23 of Decree-Law no 7/2004, of 7 January, regarding unsolicited e-mails. If you wish to be removed from our mailing list and avoid similar future communications, please send an email with "Remove" to the email address newsletter@rffadvogados.com.

INTRODUCTION

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

Under the Golden Visa programme, non-EU citizens need to perform and maintain, at least, one of the investment activities foreseen in the legal regime in order to qualify for a residency permit in Portugal. This residency permit will allow the investor to enter and/or live in Portugal as well as to travel freely within the vast majority of European countries (Schengen Area).

The Golden Visa Programme may provide several advantages to the investors, namely:

- (i) visa exemption for travelling within the Schengen Area;
- (ii) very reduced minimum permanence period;
- (iii) possibility of family reunification;
- (iv) possibility of permanent residency after 5 years of permanence in Portugal under the golden visa status;
- (v) possibility of obtaining citizenship after 6

years of permanence in Portugal under the golden visa status.

This regime, known in Portugal as “ARI – Autorização de Residência para Actividade de Investimento” (which means Residence Permit for Investment Activities) foreseen in Law n.º 23/2007, of July 4, was recently amended (by Law n.º 63/2015, of June 30) and regulated (by Implementing Decree n.º 15-A/2015, of September 2, which amended the Implementing Decree n.º 84/2007, of November 5. The main goal of this amendment was, in one hand, to broaden the scope of the eligible investment activities required to obtain the golden visa and, on the other hand, to widen the range of situations covered by the right to family reunification, within the specific golden visa regime.

THE BROADENING OF THE ELIGIBLE ACTIVITIES

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.

Due to the above mentioned recent amendments, the eligible investment activities, for the purpose of granting “golden visas”, must correspond to one of the following options:

- (i) capital transfer in an amount equal or above € 1.000.000,00, including the investment in the share capital of companies;
- (ii) Creation of, at least, 10 jobs;
- (iii) Purchase of real estate worth, at least, € 500.000,00, which might also be made in co-ownership or by means of a single member limited company of which he/she is the proprietor, with headquarters in Portugal or in EU member;
- (iv) Purchase and rehabilitation works of real estate constructed, at least, 30 years ago or located in an urban rehabilitation area, for a minimum global amount of € 350.000,00, which might also be made in co-ownership or by means of a single member limited company of which he/she is the proprietor, with headquarters in Portugal or in EU member;
- (v) Capital transfer in an amount equal or above € 350.000,00, to be applied in scientific research activities performed by public or private scientific research institutions integrated within the National Scientific and Technological System;
- (vi) Capital transfer in an amount equal or above € 250.000,00, to be applied in the support or investment in artistic production, the defence and restoration of the national cultural patrimony, through central and local administration, public institutes, entities within the business public sector, public foundations, private foundations with public utility, inter-municipal entities, entities that integrate the local business sector, municipal associative entities and

- cultural public associations which purpose is to promote and achieve artistic production, defence and restoration of the national cultural patrimony; or
- (vii) Capital transfer in an amount equal or above € 500.000,00, for investment in the acquisition of participation units in venture capital funds or investment funds specialized in the capitalization of small or medium enterprises with a viable capitalization plan.

FORMS OF INVESTMENT

In accordance with the present regime, as established under the above mentioned Implementing Decree, the minimum quantitative investment requirement can be made individually, or through a single member limited company of which the applicant is the proprietor, with headquarters in Portugal or in EU member (with permanent establishment in Portugal).

On the other hand, and regarding the purchase of real estate, or the purchase and rehabilitation works of real estate, as investment activities for the application of this regime, they may be also (i) acquired in co-ownership, (ii) burdened in the part that exceeds the investment minimum amount and, finally, rent the real estate for commercial, agricultural or touristic proposes.

THE INCENTIVE TO INVESTMENT ACTIVITIES IN LOW DENSITY TERRITORIES

Another innovation in the “golden visa” eligible investment activities is the reduction of the minimum amount of investment, when such investment is applied in a low density territory.

Therefore, in case the investment activities – except for the simple capital transfer in an amount equal or above € 1.000.000 – are made in low density territories (which are specified as level III territories of the common classification of territorial units for statistics – NUTS), where there is less than 100 local habitants per km² or a local average gross domestic product (GDP) *per capita* below 75% of the national average GDP *per capita*, the minimum investment amounts mentioned before may be reduced in 20%.

In accordance with the last data provided by the National Statistics Institute (INE) regarding the population density (n.^o/Km²) *per* local residency (NUTS-2013), for the year 2014, the local habitants *per* level NUTS III territory averages are the following:

- (i) High Minho – 107,3;
- (ii) Cávado – 327;
- (iii) Ave – 289,3;
- (iv) Metropolitan Oporto Area – 848,2;
- (v) High Tâmega – 30,9;
- (vi) Tâmega and Sousa – 232,4;
- (vii) Douro – 48,9;
- (viii) Trás-os-Montes – 20,2;
- (ix) West – 161,4;
- (x) Aveiro Region – 215,3;
- (xi) Coimbra Region – 102,4;
- (xii) Leiria Region – 118,2;
- (xiii) Viseu Dão Lafões – 80,3;
- (xiv) Beira Baixa – 18,3;
- (xv) Médio Tejo – 71,5;
- (xvi) Beiras and Serra da Estrela – 35,5;
- (xvii) Metropolitan Lisbon Area – 931,7;
- (xviii) Alentejo Litoral – 18,1;
- (xix) Low Alentejo – 14,3;
- (xx) Tejo's Lezíria – 57;
- (xxi) High Alentejo – 18,4;
- (xxii) Central Alentejo – 21,6;
- (xxiii) Algarve – 88,4;
- (xxiv) Autonomous Region of Azores – 106,1;
- (xxv) Autonomous Region of Madeira – 322,7.

On the map beside, and in accordance with the presented data, the areas with less than 100 local habitants *per* Km² are coloured in yellow (which benefit from the 20% reduction on the minimum investment amount), and the areas with more than 100 local habitants *per* Km² are coloured in grey (where the reduction does not apply):



Regarding the local average GDP *per capita* below 75% of the national average GDP *per capita* criterion the INE has not yet provided data concerning the GDP of each region, considering the most recent NUTS III delimitation.

THE PRESENCE IN PORTUGUESE TERRITORY

For the purposes of renewing the residence permit, it is required that the investor maintains the investment for a minimum period of 5 years, counting from the granting of the residence permit, and also to provide proof that he has remained in Portuguese territory for the required minimum period:

- (i) 7 days, consecutive or interpolated, in the first year;
- (ii) 14 days, consecutive or interpolated, subsequent period of two years.

EVIDENCE REQUIREMENT FOR PURPOSES OF GRANTING AND RENEWING GOLDEN VISAS

The evidence that the golden visa applicant holds the minimum investment requirement, to obtain or renew a residence permit, depends on the investment activity carried out.

Thereby, according to the type of investment activity, it is required that the following documents are presented:

a) Capital transfer with a value equal to or above € 1.000.000,00

For the purpose of granting and renewing the golden visa, the applicant must present:

- (i) statement issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming the sole ownership of bank accounts with a balance equal to or above € 1.000.000,00, in which the funds were actually transferred from abroad (in case of renewal, confirming the burden-free ownership of bank accounts with a quarterly average balance of € 1.000.000,00 or more), or the ownership of a share in the same value in omnibus accounts; or
- (ii) for the Purchase of Portuguese Public Debt Instruments, namely Treasury bonds, savings certificates and ordinary Treasury bills, supporting documents of the sole burden-free ownership of such instruments in value equal to or above € 1.000.000,00, issued by the Agency for the Management of the Public Debt [Agência de Gestão de Tesouraria e Dívida Pública – IGCP, E.P.E] and, in case of renewal, confirming the burden-free ownership of Portuguese Public Debt Instruments with a quarterly average balance of €1.000.000,00 or more); or
- (iii) for the purchase of book-entry securities, supporting documents of burden-free ownership issued by the relevant registering entity; or

- (iv) for the purchase of securities held individually deposited with a Safekeeper, supporting documents of the sole burden-free ownership, issued by the Safekeeper; or
- (v) for the purchase of securities held individually and not integrated in a central securities depository, supporting documents of the sole burden-free ownership, issued by the securities issuer; or
- (vi) for the purchase of securities integrated in a central securities depository, supporting documents of the sole burden-free ownership, issued by the financial intermediary holding the account; or
- (vii) for the purchase of share capital not included in the former items, certificate issued by the Commercial Register [Registo Comercial], confirming the ownership of the share capital, acquisition contract, and indication of acquisition value;
- (viii) certificate by the Commercial Register [Registo Comercial], for investment in a single member limited company certifying that the applicant is the sole owner;
- (ix) In cases of an investment activity as an alternative to the international capital transfer, declaration issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer for this investment.

b) Creation of, at least, 10 job positions

For the purpose of granting and renewing a resident permit, the applicant must present Social security certificate issued within the prior 45 days, confirming that the employees are registered, together with the respective individual employment contracts. In case of renewal, certificate issued by the Portuguese Social Security confirming the maintenance of the minimum number of job positions required.

c) purchase of real estate worth, at least, € 500.000,00

For the purpose of granting and renewing a resident permit, the applicant must present:

- (i) final Deeds of purchase, or Promissory Contract;
- (ii) declaration issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer for purchasing or for payment as initial deposit of the sale agreement, amounting to € 500.000,00 or more (not required in cases of renewal);
- (iii) Certificate of the Land Registry Office, comprising the registrations, endorsements and entries in force and proving the ownership of the real estate, free of any encumbrances, or certificate of registry comprising the provisional record of purchase, when legally feasible, with an initial deposit of € 500.000,00 or more;
- (iv) Official Tax Description of the real estate, when legally feasible;

- (v) Excerpt of the Commercial Register issued in case the investment is made by means of a single member limited company of which the applicant is the proprietor.
- d) purchase and rehabilitation works of real estate constructed, at least, 30 years ago or located in an urban rehabilitation area, for a minimum global amount of € 350.000,00,**

For the purpose of granting a resident permit, the applicant must present:

- (i) final Deeds of Sale;
- (ii) statement issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming the actual international transfer of funds (into an unencumbered deposit bank account, in the sole name of the applicant, or the share of which in the name of the applicant corresponds to the minimum required investment amount), for the purchase of the property;
- (iii) Certificate of the Land Registry Office issued within the prior 45 days, comprising the registrations, endorsements and entries in force and proving the ownership of the real estate, free of any encumbrances;
- (iv) Official Tax Description of the real estate, when legally feasible;
- (v) Documentary evidence of having applied for previous feasibility, or having obtained previous feasibility or having applied for planning consent together with a

statement by the entity managing the urban regeneration appropriately accredited to conduct that operation of urban regeneration; or

- (vi) Works contract for the carrying of rehabilitation works in the real estate property acquired, signed with entity appropriately accredited by the Institute of Construction and Real Estate [Instituto da Construção e do Imobiliário, I.P.];
- (vii) Excerpt of the Commercial Register, in case the investment is made by means of a single member limited company, certifying that the applicant is the proprietor of that company.

For the purpose of renewing a resident permit, the applicant must present:

- (i) in the case of a project which is subject to licensing for purposes of realisation of the reconstruction/rehabilitation projects, Building Permit when legally feasible, and declaration of the entity managing the urban regeneration, certifying that the operation of urban regeneration is under way or completed, in cases where the real estate is located in urban recovery areas.
- (ii) in the case of a project which is subject to previous communication, declaration of the entity managing the urban regeneration, certifying that the operation of urban regeneration is under way or completed, in cases where the real estate is located in urban recovery areas.
- (iii) Receipt for the settlement of the contract value, where a total or partial payment has been made, and where the correspondent receipt has been issued.

e) Capital transfer in an amount equal or above € 350.000,00, to be applied in scientific research activities

For the purpose of granting and renewing a resident permit, the applicant must present:

- (i) Statement issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming the actual international transfer of funds, in a value equal to or above € 300.000,00, into a bank account in the name of the applicant;
- (ii) Declaration issued by a public or private scientific research institution integrated in the national scientific and technologic system, attesting the actual transfer of the capital invested;
- (iii) Certificate issued by the Commercial Register for investment in a single member limited company, attesting that he applicant is the sole owner.

f) Capital transfer in an amount equal or above € 250.000,00, to be applied in the support or investment in artistic production, the defence and restoration of the national cultural patrimony

For the purpose of granting and renewing a resident permit, the applicant must present:

- (i) statement issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming the actual international transfer of funds, in a value equal to or

above € 250.000,00, into a bank account in the name of the applicant;

- (ii) Statement issued by the Cultural Strategy, Planning and Assessment bureau after consultation to the competent authority for this cultural sector, confirming the actual transfer of funds or, in case of renewal confirming the actual transfer of funds, attesting that there have been no subsequent changes attributable to the applicant compromising the support granted;
- (iii) Certificate issued within the prior 45 days by the Commercial Register for investment in a single member limited company, certifying that he applicant is the sole partner.

g) Capital transfer in an amount equal or above € 500.000,00, for investment in the acquisition of participation units in venture capital funds or investment funds specialized in the capitalization of small or medium companies with a feasible capitalization plan

For the purpose of granting and renewing a resident permit, the applicant must present:

- (i) Declaration issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer, in a sum equal to, or above, 500 thousand Euros, into a bank account in the name of the applicant (not required in cases of renewal);

- (ii) Certificate attesting the burden-free ownership of the shares purchased, issued by the relevant registering entity ;
- (iii) Declaration issued by the Fund's Managing Company, attesting the feasibility of the respective capitalization plan (not required in cases of renewal);
- (iv) Excerpt of the Commercial Register, in case the investment is made by means of a single member limited company, certifying that the applicant is the proprietor of that company.

FILLING OF APPLICATIONS

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

For this purpose, the applicant must present:

- (i) Statement, where the applicant declares, under an honour commitment, that the minimum quantitative investment requirement, as well as the minimum presence period requirement are fulfilled;
- (ii) declaration issued by the Portuguese Tax Authorities and by the Portuguese Social Security confirming the non-existence of any debts to those authorities, and where that is not applicable, declaration confirming that the applicant is not registered by those authorities;
- (iii) the forms of proof above mentioned, according to the type of investment activity.

THE AMPLIFICATION OF THE FAMILY REUNIFICATION ELIGIBLE SITUATIONS

The right to family reunification is granted to the citizen with a valid residency permit, regarding (i) the family members living outside the Portuguese territory and that have lived with that citizen in another country, (ii) the family members that depend or cohabit with the citizen, as well as (iii) those who have legally entered in the Portuguese territory and are dependant or live together with that citizen.

The law defines the concept of family members and the circumstances under which they may benefit from the right to family reunification. With the above mentioned legal amendment to the "golden visa" regime, a new particular situation is envisaged in the scope of the family reunification, specifically for the "golden visa" permit regime.

Thus, for the purposes of granting the family reunification right, the concept of family members of the golden visa holder includes their descendants who are:

- (i) legal of age;
- (ii) dependent of the couple or of one of the spouses;
- (iii) single; and,
- (iv) studying in an educational establishment in Portugal, or abroad.

THE MONITORING GROUP

Under the golden visa regime, a monitoring group has been created, embodied by the Director of the Foreign and Boarder's Service, the General Director of Consular Matters and Portuguese Communities, the President of the Business Development Agency (AIECP), the delegate of the member of the government responsible for culture, as well as the delegate of the member of the government responsible for education and science are part of such monitoring group.

This group has the following competencies:

- (i) to discuss and to present solutions or clarification for any possible uncertainties that may arise, for this effect, with the possibility to request technical advice from experts, regarding the discussion of such matters;
- (ii) to discuss, coordinate and present proposals concerning internal and external promotion of the golden visa regime, in order to attract potential new investors;
- (iii) monitoring the statistical information about the ARI regime, presenting reports to the responsible authorities and making any proposals that may be adequate.

REINFORCEMENT OF SUPERVISION AND CONTROL

Under the terms of the new Residence Permit for Investment Activities regime that has been achieved by Implementing Decree n.º 15-

A/2015, of September 2, which amended the Implementing Decree n.º 84/2007, of November 5, was reached control reinforcement, in respect with golden visa proceeding and decision-making, translated itself into the following measures:

- (i) 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 reported to the Parliament and published in the Government website;
- (ii) creation of an internal procedures manual regarding the process of granting the golden visa;
- (iii) clarification of the competences granted to the Monitoring Group;
- (iv) final decision on the granting of the golden visa made by the Nacional Director of SEF will be preceded by proposal made by the respective Regional Director;
- (v) formal possibility of Consular verification of the evidence requirements when SEF finds relevant; and
- (vi) mandatory presentation of the real estate tax registration, in the case of investment in real estate, allowing the comparison between the acquisition value and the patrimonial value.

GOLDEN VISA REGIME CONSOLIDATION

Law n.º 63/2015, of June 30 has repealed the legal reference to the regulation of the ARI regime implementation, which was formerly made through the Foreign Affairs and Internal

Administration Ministry Orders n.º 11820-A/2012 and n.º 1661-A/2013.

The regulation of the new regime was depending on the recent publication of the new version of the Implementing Decree n.º 84/2007, of November 5, which includes the procedures and requirements needed to obtain the golden visas, as above described.

With the ratification by the President of the Republic and the publication of the Implementing Decree n.º 15-A/2015, of September 2, which amended the Implementing Decree n.º 84/2007, of November 5, the regime is finally consolidated and into force

Lisbon, September 10th, 2015

Rogério Fernandes Ferreira
Mónica Respício Gonçalves
Marta Machado de Almeida
Miguel Afonso Archer
Gonçalo Grade Monteiro