



BERNARDINO, RESENDE E ASSOCIADOS  
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**IMOBILIÁRIO, URBANISMO  
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## BUYING PROPERTY IN PORTUGAL

Having to deal with different legal and practical issues, it's important that you have a clear notion of what you can expect from the entire process.

### Preliminary aspects

The future owner of a Portuguese property must start by getting a Portuguese Fiscal Number (“número de contribuinte”), which can be obtained at the local tax office (“Serviço de Finanças”), or by his lawyer acting with a power of attorney. This document will be his personal identification for payments related to the property, taxes, opening a bank account and so on.

### Previous Due Diligence

Before signing any commitment concerning any property, we access all relevant entries in the Land Registry (Conservatória do Registro Predial), in and the Tax Office (“Serviço de Finanças”), and at the local council (Câmara Municipal), assuring first and foremost that the seller has clear title and that there are no other rights or charges on it. This procedure also assures the correspondence between the official description of the property and the existing one, discharging future inconveniences.

Having confirmed through our services that all the relevant aspects concerning the property are correct, you are in condition to go to the next stage – settling the final terms and subjecting to contract.

### Promissory Contract of Purchase and Sale

The promissory contract (“Contrato Promessa de Compra e Venda”) represents the first real commitment binding the seller and buyer's will. This document must obviously be signed by both parties or someone acting on behalf of the buyer with a power of attorney and as a promissory contract, it must not only include full details of the competent deal, identities of the seller and purchaser, full details of the property, the agreed price, and any special terms or conditions. A first deposit (we use the legal expression of “sinal”) must be paid at this time and its value usually varies between 10 and 30%.

Portuguese law protects both intervenients in the process. According the Portuguese Civil Code if the buyer changes his mind he will loose the deposit, if it is the seller the one who changes his mind he has to return the deposit in double. This contract should be signed in the presence of the Notary (notário) or Lawyer, although, under particular terms, this notary recognition can be legally exempted.

## Property Papers

### Property Registration Certificate (Certidão Permanente de Registo Predial)

On the local Land Registry (“Conservatória do Registo Predial”), and through the analysis of the property registration certificate document, it’s checked if the seller has the ownership of the property and also if the property is free of any other rights, liabilities or charges of any kind (mortgages, etc).

### Property Tax document (Caderneta Predial)

On the local tax office it is obtained an official tax document, which certifies the registration of the property for fiscal purposes and also identifies the owner, his fiscal number and the description of the property (areas, number of rooms, area and type of plot, history etc.). This informations should match the details registered in the Land Registry. It also identifies the property with a unique fiscal number (“matriz predial”) and mentions how much the owner will pay in local yearly taxes.

This certificate is always necessary in the transaction of the property. If the property is new this will be replaced by a form while the certificate is not issued.

## License of Use (Licença de Utilização)

The copy of the usage license can be obtained in the Local Town Hall (Câmara Municipal). This document allows us to verify if the property is approved under the purpose of the original building permission. For residential properties it is necessary a habitation license, for non-residential it is necessary a commercial or industrial license. It is also necessary to present this document in the buying and selling contract when signed in the presence of the Notary.

**The license of use of the property may be legally exempted**, provided that the property was built before the 7<sup>th</sup> of August of 1951(entry into force of the **General Regulation of Urban Buildings (“RGEU”)**, approved by Decree-Law 38382, of August 7, 1951), and that the property has not suffered any reconstruction, enlargement or alteration works, or resulting in significant changes in the characteristics of the building.



### **Housing technical Document (Ficha Técnica de Habitação – “FTH”):**

The Housing Technical Document (FTH) is a descriptive document of the main technical and functional characteristics of an urban building for residential purposes, reported at the time of completion of the construction, reconstruction, expansion or alteration works.

It was created by the Decree-Law no. 68/2004, of 25 March, and aims to strengthen consumers' rights to information and protection of their economic interests, in the context of the acquisition of urban property for housing.

It is a legal obligation of the Real Estate Developer to prepare the **Housing Technical Document (“Ficha Técnica de Habitação” - “FTH”)** to be delivered to the Buyers of the property, complying with a set of legal requirements and sufficient information to support the decision of the buyers.

The “FTH” Model approved by Administrative Rule N.º 817/2004 of 16 July 2004, entered into force on 16 August 2004.

As of this date, it is necessary to present the **Housing Technical Document (“FTH”)** when performing the purchase and sale deeds of the urban property for habitation purposes.

The legislation provides, however, two exceptions to this legal obligation, **where presenting the “FTH” can be legally exempted:**

Buildings already built and for which a housing permit was issued or requested, prior to 30<sup>th</sup> March 2004;

Buildings constructed before the entry into force of the **General Regulation of Urban Buildings (RGEU)**, approved by Decree-Law 38382, of August 7, 1951.

### **e) Energy Certificate of the building (“Certificado Energético”):**

The Energy certificate is a document that evaluates the energy efficiency of a property on a scale **from A + (very efficient) to F (not very efficient)**.

The certificate is issued by engineer experts authorized by the Agency for Energy (“ADENE”). It contains information on the energy consumption characteristics related to air conditioning and domestic hot water. It also Indicates improvement measures to reduce consumption, such as the installation of double glazing or reinforcement of insulation, among others.

The energy certificate of a building depending on the type of building is **valid for: 10 years for residential buildings and small commercial buildings and service;**



### In the case of large commercial and service buildings

- **6 years** for certificates “SCE” that are issued **until 30<sup>th</sup> April 2015**;
- or
- **8 years** for certificates “SCE” that are issued **after 30<sup>th</sup> April 2015**;

According to the Law (Decree-Law 118/2013), of 20<sup>th</sup> August, which entered into force on 1<sup>st</sup> December 2013, **the energy certificate is mandatory in new and old buildings from the time that they are put on the market for sale or rent by the owners or real estate agents.**

**The document must be presented at the conclusion of the purchase and sale deed, or lease contract, attesting the information disclosed about the energy class to which the property belongs.**

**Also, buildings that are subject to interventions exceeding 25% of their value are required to request the issuance of the energy certificate.**

### Taxes and expenditures

#### **Transfer Property Tax (IMT- Imposto Municipal sobre Transacções) and Stamp Duty**

This is a property purchase tax that must be **paid before the Final purchase and sale deed**. As the payment takes place, a document is issued by the Local Tax Office, which proves its payment.

The tax to pay depends on the price of the property or, if higher, on the ratable value that is registered on the Property Tax document. A sliding scale applies, and a maximum of **6% to 6,5%** is applied to values over approximately 500.000 Euros. **Rustic property (without building permission)** will be charged at a flat rate of **5%** and commercial property or land for construction will be charged at a flat rate of **6.5%**.

The purchase of properties for **permanent and own residence of the buyer** until the amount of **92 407 €** are **legally exempt** from payment of the “IMT” transfer property tax.

When signing the purchase and sale deed, the purchaser must also pay the **stamp duty**, which varies according to the type of deed or operation. For real estate property, the stamp duty is assessed at **0.8% of the price**.

## Final Deed (Escritura), Registration (Registo) and Utilities

### Final Deed (Escritura)

The title of the property is transferred to the buyer at the time of the deed of conveyance (“Escritura pública”) signed in the presence of an **official Notary**, or alternatively in a presence of a **Lawyer** with legal powers to perform notary acts and authenticate the purchase and sale contracts by means of a private authenticated document (**“Documento Particular Autenticado”**), which legal document has the same value as the public deed signed at the Notary, according to the legal provisions established under the Decree-Law N.º 116/2008, of 4 of July.

All the mentioned documents herein are necessary and legally required when purchasing a property in Portugal.

The contract is read loudly before the parties involved and may be translated into English.


### Registration (Registo)

Finally, the title deed must then be entered into the Land Registry office and also in the Local Tax Office so that your ownership is fully protected against third parties. This procedure should be done with no delay.

### Utilities

Once the property is in your name, you will have to register with the various utility companies - electricity, gas, water, telephone, cable and so on.





## Ownership of your new property

**Annual Property Tax (“Imposto Municipal de Imóveis – IMI”)** are at the lowest levels, approximately 0.5%. There are significant tax breaks for Portuguese residents:

### **If you sell the property ... capital gains?**

Portuguese residents selling property pay tax on 50% of the gain. Inflation relief is available after two years. The gains are added to your other income for the year and taxed at the income tax scale rates.

**Gains on disposal of the main habitation are exempt for residents**, providing the entire proceeds (net of any mortgage taken out to acquire the property) are reinvested in another main home in Portugal or the EU/EEA within 36 months after date of disposal or 24 months before. **You will have to live in the property within six months.**

**Non-residents pay tax on the whole gain at the rate of 28%.** An EU resident may opt to be taxed as a resident in Portugal on such a gain - but you will have to declare your worldwide income in Portugal to calculate the marginal rate of tax that will apply to the gain.

For UK residents, the gain would also be taxable in the UK, but as with rental income, under the terms of the double tax treaty, any tax paid in Portugal by UK residents can be credited against the tax due in the UK.

### **Inheritance tax to direct family members**

Also there are exemptions of **inheritance tax to direct family members**. All family members (spouse, children, grandchildren, parents and grandparents) **are exempt from tax on gratuitous transfers** due to either Gift or Inheritance. **Please note that all the non-European residents must now have a fiscal representative which has an annual cost.**





### The special tax regime for non-habitual tax residents in Portugal:

The special tax regime for **non-habitual tax residents** is applicable for a period of **10 (ten) consecutive years**, provided that, in each year, the individual meets the criteria to qualify as a tax resident in Portugal.

The regime will apply to individual taxpayers who become Portuguese tax residents under Portuguese domestic law, provided they **have not been taxed as tax residents in Portugal in any of the previous five years.**

Individuals, who meet these legal requirements, will be considered as non-habitual residents upon their registration as such with the tax authorities, or at the latest **until 31st of March of the following year in which the latter registered as a tax resident in Portugal.**

**The main benefits of being registered as a non-habitual tax resident in Portugal, are the following:**

**Portuguese sourced employment and self-employment income** shall be liable to a **special 20% flat rate**, added of an **extraordinary surtax** between 1% to 3.5%, depending on the taxable income, and if derived from high value added activities of scientific, artistic or technical nature

**performed in Portugal**, as listed in a governmental Ministerial Order. Examples: Architects, doctors, university teachers, designers, IT technicians, engineers, researchers, liberal professions, investors and managers under certain conditions.

Additionally,

- **General tax exemption for foreign-source employment income, self-employment income if deriving from high value added activities**, rental income, interest, dividends as well as other investment income, provided certain conditions are met.
- **For pensions**, the exemption is granted provided **one of the following conditions is met: (i)** the income is taxed in the country of source based on the double tax treaty rules, or **(ii)** is not obtained in the Portuguese territory under Portuguese domestic rules.