



MUNICIPAL PROPERTY TRANSFER TAX (IMT) ON VAT IN REAL ESTATE TRANSACTIONS

On 27 August 2009, the Portuguese Directorate-General of Taxation (DGCI) approved Circular no. 21/2009, revoking the previous administrative instructions concerning VAT as a basis for charging Municipal Property Transfer Tax (IMT), whenever the parties waive that tax in real estate transactions.

The issue in question dates back to the time of the previous property transfer tax, known as SISA, and focused on the interpretation of the IMT Code and the provision which states that IMT is charged on the contract price, including all charges that the buyer is obliged to pay, statutorily or contractually.

After years of the tax authorities persisting with the view that VAT constitutes a “statutory charge” for the aforementioned purpose, this Circular clarifies – subsequent to a ruling handed down by the Supreme Administrative Court in April 2009 – that if there has been a waiver of the exemption in the buying and selling of real estate, VAT does not constitute consideration for the rateable value of the sold and transferred property and, consequently, does not form part of the taxable value on which IMT is charged. This is furthermore in line with what has already happened with regard to stamp duty and notary charges.

In a similar move to what previously happened in relation to the refund of charges due on transactions to increase capital, it is now possible to recover the portion of IMT that has been

improperly charged and paid because VAT has been included in the basis for calculating that tax. As such, it is now possible to challenge the decision in the courts within 90 days, or to file an internal appeal within 120 days. Given the favourable interpretation of this principle by the Portuguese higher courts, it is even possible to request an ex officio review within 4 years.

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