

Welcome to our 17<sup>th</sup> Sovereign Portugal Newsletter.

We aim to keep you, our client, informed of tax issues that might affect you as a resident or property owner in Portugal and also about Sovereign Group services.

## LAW CHANGES AFFECTING CLIENTS WITH AL LICENSING BUSINESSES

Since August 2014, when the law of Local Lodging (AL) came into force, the number of new Licences issued and related business undertaken has increased dramatically and has represented a great impact in Portugal's economy.

This boom in registrations has now forced the law to be adjusted particularly in some sensitive areas.

The major concerns are to keep the peace and quality of life of the neighbours who share a building with AL units; to avoid some areas of cities become practically devoid of permanent habitation through purchase or long term contracts and to preserve the social structure of some communities.

### Major alterations:

#### Thresholds and limits to the number of AL licences

Each Council will be allowed to specify the limits on the number of AL units per area. This decision will be made by each Town Hall and reviewed every 2 years. This also means that the Town Hall will be allowed to refuse new AL Licence applications.

#### Maximum number of AL licenses per person/company is now 7.

The previous law did not impose a ceiling but under the new regulations one individual or company can only have 7 establishments (AL). The fines imposed can reach 40,000 euros.

This does not apply to those who currently own more than 7, and they will not be forced to close down, however they would not be permitted to open any others.

#### Mandatory Insurance

All property owners operating under the AL business will be obliged by law to have a Civil Responsibility Multi - risk Insurance to cover all damage caused by the guests in the common areas of the building. The owners will be the responsible for any of those damages.

#### An Instruction / Procedures book in several languages will be mandatory

All AL property owners will be obliged to have a book containing all the internal regulations of the common areas, namely the rules regarding garbage disposal and noise. Also the guests must be informed of the Condominium Regulations.

#### Complaints may lead to the closure of the AL unit

Under the new regulations, it is now permitted for neighbours to file complaints against the existence of the AL unit. Obviously the complaints must be substantiated and only with at least 50% of the condominium assembly vote could cause the closure of the business.

Nevertheless the final decision is always given by the Town Hall.

#### AL identification plates will be obligatory also for villas, apartments and rooms

A plaque with the inscription "AL" it is now mandatory also for villas, apartments and rooms, and must be placed at the entrance. The plaques must follow the standard patterns regulated in the AL law.

#### Heavier Fines imposed to those who do not comply with the law

Those who operate illegally, without having a business activity registered and not complying with the law, will be subject to aggravated fines that can go from 2,500 euros to 4,000 euros for individuals and between 25,000 euros and 40,000 euros for companies.

#### Cancellation of AL licence – deadline is now 10 days

The cancelation of a business under AL must be reported to the Town Hall within 10 days. This can only be reported by the owner directly at the Town Hall or electronically by someone with legal powers (usually a power of attorney).

#### International platforms for bookings and reservations – tax implications

Many of the property owners registered with AL use an international platform to advertise, manage the bookings & reservations and collect the payments of the guests.

These companies are not based in Portugal, nevertheless they operate based on a property located in Portugal, charging services and taking commissions on the rents paid to the property owners. According to the Portuguese tax law, any service provided based on a Portuguese located property is considered to be received in Portugal and taxable here not only in terms of IVA (VAT) but also Corporate Income Tax (IRC). ►

▶ However, as these companies do not have a branch in our country, the responsibility for collecting and paying their taxes to the Government is passed to the tax payer who purchases these services.

This means that for each commission, IVA of 23% must be paid to the Government and also Income tax (IRC) of 25%.

Additional compliance is required by the property owner who, regardless of being exempt of under the normal IVA regime, must submit a IVA (VAT) report and also a form Modelo 30 declaring the value of the commissions paid and the tax calculated on those.

### Deadlines & Procedures

The IVA report to pay the 23% IVA on the commissions is due:

- Every quarter along with the usual IVA report, for those who are already registered under the normal IVA regime.
- or
- In the month following the payment of the commissions, for those who are exempt of IVA (under 10,000 euros of income).

The form to declare the value of commissions and the tax withheld of 25% (modelo 30), regardless of the IVA(VAT) regime, is always due in the month following the payment and the tax calculated must be paid by the 20th of that month.

However if the international platform is a company based in EU, such as Airbnb for example, this company can provide a Certificate of Residency and the TIN or VAT number in the country of residency to exempt it from retaining 25% of income tax.

Nevertheless the evidence of this certificate does not wave the obligation of submitting the Modelo 30 and the IVA (VAT) form and payment of IVA (VAT).

Due to the increasing number of AL licences, publicity and bookings under these platforms the Tax authorities are now more alert to these situations starting to enquire of many of the tax payers to make sure that they are compliant.

### Long term rental income versus Short term touristic lettings

Another issue that it is interesting to bring to light is the difference between what can be considered a long term rental and a touristic business (short term).

Many AL property owners use local agencies or resorts to rent out and develop all the touristic activity and receive a rent according to an agreement between the resort and themselves.

Despite being registered with a business activity and being the holder of their own property AL, if all the rental invoices are issued to the same entity (resort) the Tax Authority might consider this income as Long Term letting rather than short term.

The consequences in terms of taxation are huge:

- Under the simplified regime the Income for touristic lettings is 35% taxable at a rate of 25%; the long terms rental income under the simplified regime is 95% taxable at 25%.
- Let's not forget that the tax payer is already registered under a business activity and continues to comply with all the tax obligations regardless of the final taxation.
- To mitigate this eventual assumption, we can only suggest that the AL owners also rent to private guests to be able to avoid issuing the total of the letting invoices to one and the same company (the resort).





# REGISTRATION OF EFFECTIVE BENEFICIAL OWNERSHIP

Following the enactment of European legislation, the pursuit of money laundering and tax fraud has taken shape in Portugal.

Law 83/2017 and Law 89/2017 emerged at the end of last year and are complementary to each other. Law 89/2017 established a mandatory regime for the registration of beneficial ownership but, relegated to an Ordinance to be issued in the future, the details and the rules for the immediate fulfillment of such registration.

This Ordinance - 233/2018 - was finally published on August 21st 2018 and as foreseen regulates the form of declaration, the deadlines for registration, the information that will be made available and the possibility of extracting certificates by those who are able.

## WHO:

Registration of the details of beneficial ownership is primarily the responsibility of the;

- a. Trustee in case of ownership of the entity by a trust;
- b. The administrator/manager/director of the entity concerned.

## HOW:

The form will be made available on the internet site, and whoever submits the declaration/registration must be authenticated by one of the means indicated in the law, namely:

- a. The Citizen Card digital certificate;
- b. A Digital mobile key;
- c. Professional authentication;
- d. Authentication with the Tax Department – this is not yet available and depends on a protocol to be signed with the Finance Department and the Notary's and Registry Institute (IRN);
- e. Professional attributed certification system – again not yet available.

The entities subject to the registration of beneficial ownership are obliged to register through the individual authentication of their representative in one of the above means of authentication.

## NON-COMPLIANCE:

As a consequence of non-compliance with the registration of beneficial ownership (among several others) we have that the exemption regarding profits and distribution of reserves foreseen in art. 14 (3) of the Corporate Tax Code is not applicable (income and reserves distributions of a resident company are exempt from IRC when they are made to the company or permanent

establishment with headquarters in the EU, EEA, or country with which Portugal has celebrated a Double Tax Treaty, or in certain cases in Switzerland).

It is also not possible to benefit from such an exemption if it is found that the beneficial owner has a residence or domicile in a country listed as a preferential tax regime ("offshore blacklist") unless it is able to demonstrate that the company that is distributing the profits/reserves has economic substance and it was not simply a means to obtain a tax advantage.

In order to obtain the information to effect the exemption (or its refusal), the competent entities will have access to the registry of beneficial ownership in real time when in the scope of an investigation or a criminal process.

If the entity does not register, when it is subject to commercial registration, its registration will include information on its non-compliance.

Other consequences apply under the terms of Law 89/2017.

## DEADLINES:

The initial declaration provided for in Art. 22, paragraph 1 of Law 89/2017 is now implemented as follows:

- a. Companies already incorporated and subject to commercial registration must register from January 1 to April 30, 2019;
- b. Entities not subject to commercial registration in Portugal, will have to register between May 1 and June 30, 2019.

## WHAT:

The information provided through the registry of beneficial ownership will be accessible to the interested party who hold the mobile digital key or through a form of authentication (professional digital certificate attributed to lawyers, solicitors and notaries).

The information that may be accessed through the above form comprises the following:

- a. Commercial Registration Number, Name, Head Office, Commercial Activity designation (CAE) of the entity
- b. Name, month and year of birth, nationality, country of residence and economic interest held by the beneficial owner.



## DEFINITION OF EFFECTIVE BENEFICIARY

The effective beneficiary is defined by Article 30, and Article 34 refers to consulting a central registry that is regulated by Law 89/2017 of August 21 2017.

It is of interest, however, to discern who is considered an effective beneficiary under the money laundering law:

(a) The individual person or persons who ultimately own or control, directly or indirectly, more than 25% of the share capital in a incorporated entity;

(b) The individual person or persons exercising control by other means over that incorporated entity;

(c) The individual person or persons holding the top management if, after all possible means have been exhausted and provided there is no reason to suspect that:

- (i) There has not been identified any person in accordance with the preceding paragraphs; or
- (ii) There are doubts that the person or persons identified are the beneficial owners.

And yet, in a version different to that of the Anglo-Saxon concept of what a trust actually is (read discretionary trust), the law defines as an effective beneficiary:

a) The Founder (Settlor);

b) Trustees or trustees of trust funds;

c) The curator, if applicable;

(d) The beneficiaries or, if they have not yet been determined, the category of persons in whose main interest the trust fund was set up or carries on its business;

(e) Any other individual person who has the ultimate control of the trust through direct or indirect participation or by other means.

Such effective beneficiaries shall be subject to registration to be carried out in accordance with the Regulation of the Central Registry of Effective Beneficiaries.

---

## CHANGES IN TAXATION OF SHARE TRANSFERS OF PROPERTY COMPANIES

There have been some changes in law recently which can affect owners of corporate held property and of which you should be made aware.

Firstly, in the 2018 State Budget, there was a change which made non-resident shareholders, or even the beneficial owners of shares, of non-resident ("offshore") property companies potentially liable to a capital gains tax (CGT) charge on any gain made by a transfer of shares, or the beneficial ownership of shares. Tax residents have always been liable for CGT on the transfer of shares but this has now been extended to non-residents.

In order to make it possible for the authorities to know that a change of ownership has taken place there is also now in place a Register of Effective Beneficial Owners and it is implicit upon the management of any company that holds at least 50% of the shares of a Portuguese property company to report details of that beneficial ownership. The reporting requirements include that of companies held by Trust or other fiduciary structures.

The duty to report goes potentially beyond the management of the company and includes lawyers, solicitors and other professionals who may be involved performing some service to the company.

Thus, a transfer of ownership of shares, or even your beneficial right to shares, whether you are Portuguese tax resident or not, may lead to a calculation of any gain made and the corresponding tax applied.

A problem occurs as it has not been made clear within the law how such a gain may be calculated. There are three potential scenarios affected by these changes;

Firstly, where a person has acquired the shares of an existing company that holds a property;

Secondly where a new company was set up specially to acquire a property and

Thirdly where the shares were received by way of inheritance.

In the first case the base value will be that value paid for the transfer of the shares on acquisition which would normally be set out in a share purchase agreement, a private legal document between the buyer and seller. That value would include the share capital of the company, the loan made to the company by the shareholder to initially acquire the property and then often a premium to reflect the current market value of the property held by the company and agreed between the parties. None of those values would be in the possession of the tax department, who are only interested in the value paid for the shares or the transfer of beneficial ownership of the shares and they will require sight of the share purchase agreement to establish that. In the second scenario, it seems that the acquisition value would be the nominal value of the shares of the Company.

In the third scenario, at this stage, we are assuming that the value considered on acquisition would be either the value declared for obtaining Probate or the nominal value of the shares.

The sale value of course in all three scenarios will be that value shown in the share purchase agreement.

This will obviously be of some concern to non-resident shareholders who might not previously have been liable to tax in

- ▶ Portugal on a transfer of ownership even though they may have been liable to declare the transaction in their home country.

In certain cases, the double tax agreements celebrated by Portugal, state that the tax due will be levied in the country of residence of the vendor of the shares and that would override

the right of Portugal to tax the transaction. That is true of the agreements that Portugal has signed between Luxembourg and the UK and thus in those circumstances the tax effect may be more favourable if the shareholder is tax resident there.

Expert advice is necessary in each case.

## PROPERTY TAX BILLS

IMI Property tax bills will now be issued by the tax department as follows:-

Total IMI per person less than €100 – one bill issued in May.

Total IMI per person less than €500 – two bills issued May and November.

Total IMI per person over €500 – three bills issued May, August and November.

AIMI bills are issued as follows:-

For individual property owners this is applicable only to those whose sum of all property tax values equal or exceeds 600,000 euros.

Individual property owners will pay an additional 0,7% on the amount over 600,000 euros up to 1 million euros and 1% on the amount over 1 million euros.

Properties held by Companies will pay an additional bill of 0.4% on the full property tax value.

Properties held by a blacklisted jurisdiction company will continue to pay an IMI of 7.5% plus the additional AIMI of 7.5%.

## ARE YOU INFORMING BORDER CONTROL OF YOUR PAYING GUESTS?

Under the new rental laws it is a legal obligation for all paying guests staying in AL touristic licence properties to be reported to SEF - the Immigration and Border control authority. This is in order to come in line with hotel check in/out regulations.

This report must be submitted within three days of guests' check in or fines may be applied ranging between 100 – 2,000 Euro! Whilst this is not a fiscal matter, due to client demand, Sovereign are offering the service of SEF reporting for our clients.

The reporting process is fairly straightforward but it is time consuming to complete and we are keeping our fees for this service to the absolute minimum of 27.50 Euro (inc. IVA) per booking. Contact Cristina on [cxavier@SovereignGroup.com](mailto:cxavier@SovereignGroup.com) for further details.

## ASAE AL TOURIST LICENCE INSPECTIONS

ASAE the authority for Food and Economic Safety are now conducting checks on AL licensed properties to ensure everything complies with the AL Touristic licence applications. If you are renting out your Portuguese Property for short term lets and you do not have an AL licence to do so, you are breaking the law for which fines start at 2,500€. Ask Sovereign for more advice!

## IRS TAX RETURNS FOR RESIDENTS OR LONG TERM RENTALS

Do not forget that Sovereign should have received your documents, by the end of February, for the preparation of your 2018 tax return. Please forward them as soon as possible if you have not already done so.



# THE SOVEREIGN ART FOUNDATION STUDENTS PRIZE ALGARVE 2019

Once again Sovereign in Portugal has been organizing a Prize competition to promote the art of the young students of the Algarve. Exhibitions of the work of the twenty one finalists are being held around the Algarve and the grand final prize giving event will take place on the 11th May at the Lady in Red Art Gallery in Lagoa. After the three prizes have been awarded to the students and their schools all the art will be auctioned with the funds raised being divided between the artists themselves and a charity project.

For the 2019 Prize we have chosen to once again support the Rotary Clube de Silves but for the funds to be used directly to support the School Art Projects workshops organized by artists David Trubshaw and Gudrun Bartels who work with children of all ages in schools in the Algarve.

The Sovereign Art Foundation (SAF), a non-profit organization and registered charity, was established in 2003, initially in Asia, to recognise the growing wealth of contemporary art talent and bring the proven benefits of expressive arts to underprivileged children. The Foundation has so far raised more than US\$ 6 million for artists and charities worldwide, using the funds for their charity work with disadvantaged children in using art as a means of education, rehabilitation and therapy.

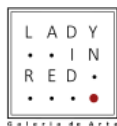
We do hope that you will be able to join us at our auction and who knows you may even be tempted to bid on one of these amazing pieces of art from the artists of the future!

Visit [www.SovereignArtFoundation.com](http://www.SovereignArtFoundation.com) for information on the Foundations work and see the Algarve finalists' work.

## OUR EXHIBITIONS

Event	Date	Address	Tel.
Albufeira	2 <sup>nd</sup> – 26 <sup>th</sup> February 2019	<b>Galeria de Arte Pintor Samora Barros</b> Tv. Cândido dos Reis 2 Albufeira 8200-064	289 542 867
Faro	1 <sup>st</sup> – 19 <sup>th</sup> March 2019	<b>IPDJ</b> Rua do PSP, 8400-408 Faro	289 891 820
Lagos	22 <sup>nd</sup> March – 15 <sup>th</sup> April 2019	<b>Receção Marina de Lagos</b> Edifício de Administração 8600-780 Lagos	282 770 210
Lagoa	17 <sup>th</sup> April – 10 <sup>th</sup> May 2019	<b>Lady in Red – Galeria de Arte</b> Edifício Adega de Lagoa EN 125 Lagoa	282 913 130
Prize giving and Auction	11 <sup>th</sup> May 2019	<b>Lady in Red – Galeria de Arte</b> Edifício Adega de Lagoa EN 125 Lagoa	282 913 130

## SPONSORS



Organized by Sovereign – Consultoria Lda, Parque Empresarial Algarve, Bloco 8 Porta 21, Lagoa 8400-431 Algarve  
Tel: 00351 282 340480 Email: [icosta@SovereignGroup.com](mailto:icosta@SovereignGroup.com)



# THE SOVEREIGN PORTUGAL OFFICE

Different members of staff have different responsibilities so you may be contacted by any one of us. The majority of our contact is via email and therefore we request that you ensure that Sovereign emails are accepted by your spam programs. The tax department often only gives ten days for clients to reply to their notifications and therefore we need to be sure that you are easily contactable. Please keep us updated on any address or contact changes.

Andreia Vieira - Managing Director  
Nigel Anteney-Hoare – Director  
Cristina Xavier - Assistant to the Directors  
Marina Dutra - Head Accountant - clients  
Isobel Costa - Head of fiscal representations  
Laura Lourenço - Head Accountant - internal accounts  
Sonia Duarte - Accountant  
Sónia Bispo – Accountant  
Bruno Vieira – Accounts Assistant  
Andreia Pereira – Accounts Assistant  
Monica Gonçalves - Credit control  
Amélia Jacinto - Administrative assistant - IMI's and related correspondence  
Julia Alves – Receptionist

Sovereign - Consultoria Lda is part of the worldwide Sovereign Group.

Visit [www.SovereignGroup.com](http://www.SovereignGroup.com) for more information on consultancy on tax planning structures using companies and trusts.

Whatever the nature of your enquiry, contact Sovereign by telephone, fax or email. We will assist you to maximise the benefits and minimise the liabilities from your investment in Portugal.

## **Sovereign - Consultoria Lda**

Parque Empresarial Algarve

8400-431 Lagoa, Algarve

Tel: +351 282 340480 Fax: +351 282 342259

Email: [icosta@SovereignGroup.com](mailto:icosta@SovereignGroup.com)



The information provided in this document does not constitute advice to clients or any third party and no responsibility will be accepted for any loss occasioned directly or indirectly as a result of persons acting, or refraining from acting, wholly or partially in reliance upon it other than for its intended purpose.

© Sovereign Media (IOM) Limited, 2019