

23 Portugal

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23.1 Local Authorities and Planning System

The Portuguese planning system is mainly designed with a top-down approach. The National Spatial Planning Policy Program (*Programa Nacional da Política de Ordenamento do Território* – PNPO) sets the national policy framework. Based on this framework, local governments – municipalities – devise a municipal director plan (PDM) which is a strategic zoning plan covering the whole municipal territory. The PDM is the key planning instrument at this administrative level. It is both compulsory and binding. It includes, for example, the qualitative and quantitative specification of urban and planning reference indices, indicators and parameters. On the one hand, PDMs are integrated with higher-level spatial plans (inter-municipal, regional and national), that is to say include for instance ecological and agricultural reserve areas. On the other hand, the PDMs are the base for the urban development plans and the detail local plans, which are more detailed municipal plans that regulate, among other, infrastructures and buildings.

23.2 Recurring Forms of public value capture

In Portugal, recurring public value capture instruments are the real estate tax, the real estate transfer tax and the capital gains tax.

23.2.1 Economic Value (*valor patrimonial*) of the Properties

Both the real estate tax and the real estate tax transfer are based on their economic value (*valor patrimonial tributável* – VPT).

Before 2004, new properties were taxed according to their economic value (*valor patrimonial*), while older properties were taxed according to their original economic value, even though that value did not correspond to current market prices. Hence, new properties paid much higher taxes. In 2004, a new system tried to put an end to this inequality, with an updated valuation process. The property assessment for tax purposes (VPT) differs according to the type of property, namely, urban (e.g. villas, townhouses and apartments) and rural property (land), and according to consistent criteria.

The valuation of existing urban properties takes into consideration as many aspects of differentiation as possible to establish fair comparable taxable values in the same areas as well as from one area or municipality to another. The assessment of new urban properties is established by the authorities on construction completion and licensing information. The taxable value of rural properties is based on their potential annual production income.

The VPT is automatically updated by the Ministry of Finance every 3 years. Several elements are included in its calculation¹. One of the elements used to determine the VPT of properties purchased since December 2003 is the location coefficient, which varies in range from 0.4 to 3.5, as stated in Paragraph 1 of Article 42 of the IMI Code, and may, in situations of dispersed housing in rural areas, be reduced to 0.35. The location coefficient depends on several accessibility factors (distance from schools, hospitals, public transportation, and so on), quality and variety of maritime, road and railway routes, and the value of the real estate market. Therefore, properties located in large urban centers usually have a higher location coefficient than those located on the periphery or in areas where the offer of accessibility, equipment and services is lower.

23.2.2 Recurring Forms (Annual Payments): Real Estate Tax

The Portuguese real estate tax, *Imposto Municipal sobre Imóveis* (IMI), substituted the *Contribuição Autárquica* in 2003. The IMI is levied on the VPT of rural and urban properties; it is due annually. The tax rate is as follows: rural properties – 0.8%; urban properties – 0.3% to 0.45%; rural or urban properties owned by entities residing in a territory subject to a clearly more favorable tax regime – 7.5%. Tax rates for urban properties can triple in case of vacancy or dereliction longer than 1 year. Municipalities may set a reduction of up to 50% of the IMI rate for public interest properties, municipal value or cultural heritage properties, provided that they do not benefit from other exemptions. In 2016, a so-called Family IMI was created, allowing municipalities to offer reductions to families with children (20% – 1 child, 40% – 2 children, 70% – 3 or more children), for permanent and own housing properties coincident with the owner's tax domicile.

To promote urban rehabilitation, urban properties built more than 30 years ago and located in urban rehabilitation areas are exempt from IMI for a period of 3 years from the issuance of the construction license.

Low VPT properties are exempt if the taxable persons or their household's gross income, in the year prior to the purchase, does not exceed 2.3 times the annual value of the social support indexer (*Indexante dos Apoios Sociais* – IAS) and the global VPT of all the household's rural and urban properties does not exceed 10 times the annual IAS. This exemption also applies to properties ceded by housing and construction cooperatives or residents' associations to their members.

Urban residential properties intended for permanent or rental housing, except in certain cases, when the property is owned by an entity subject to a privileged tax regime, are exempt from IMI for a period of 3 years, provided the household's taxable income from the previous year's IRS (*Imposto sobre o Rendimento sobre as Pessoas Singulares*) does not exceed € 153,300.

¹ VPT (tax equity value) = V_c (base value of built plots/property) \times A (sum of the gross construction area and the area exceeding the implantation area) \times C_a (allocation coefficient) \times C_l (location coefficient) \times C_q (quality and comfort coefficient) \times C_v (obsolescence coefficient).

In addition, real estate properties valued above € 600,000 have to pay an additional to the Municipal Tax on Real Estate (AIMI). For the AIMI the following rates are applied: 1) individual taxation: 0.7% on the overall real estate values (VPT) in excess of € 600,000, up to € 1,000,000, and 1% on the overall VPT in excess of € 1,000,000; 2) Spouses or unmarried couples with joint taxation: 0.7% on the overall VPT in excess of € 1,200,000, up to € 2,000,000, and 1% on VPT in excess of € 2,000,000; 3) Undivided inheritance: 0.7% on the overall VPT that exceeds € 600,000; 4) Corporate: 0.4% of the overall VPT.

In 2019, the total real estate tax revenue raised by the municipalities in Portugal reached € 1,488,978 thousand (DGO/IME, PORDATA 2021).

23.2.3 Recurring Forms (in Case of Sale/Purchase)

23.2.3.1 Real Estate Transfer Tax

In general, the purchase of real estate is subject to a legal transaction tax (*Imposto Municipal sobre a Transação de Imóveis* – IMT) and stamp duty². The IMT is levied on the value of the act/contract or on the property's VPT, whichever is higher. In Portugal, properties are excluded from real estate transfer tax liability when purchased for resale; classified as being of national, municipal or public interest; acquired by credit institutions in execution proceedings, bankruptcy/insolvency or in payment in fulfillment; or located in business location areas.

As an incentive for urban rehabilitation, purchases of urban properties with that purpose are exempt from IMT, provided the works begin within 3 years. In addition, urban properties purchased exclusively for own and permanent housing are exempt from IMT, for the first transfer of the rehabilitated properties and when located in a defined urban rehabilitation area. The real estate transfer tax rate varies from 1 to 10%, according to the table.

Table 23.1: Portuguese Real Estate Transfer Tax (IMT) Rates.

Rural		
5%		
Urban – own and permanent housing		
Property assessment	Marginal rate	Subtracted value (€)
0–92,407	0%	0
> € 92,407 a € 126,403	2%	1,848.14
> € 126,403 a € 172,348	5%	5,640.23
> € 172,348 a € 287,213	7%	9,087.19
> € 287,213 a € 574,323	8%	11,959.32
> € 574,323	6%	

² Stamp duty on property acquisition has a fixed rate of 0.8%, which is levied on the higher of the two values: value of the property declared in the deed/ or VPT (the same value that serves as basis for the settlement of the IMT).

Urban – housing		
Property assessment	Marginal rate	Subtracted value (€)
0–92,407	1%	0
> € 92,407 a € 126,403	2%	924.07
> € 126,403 a € 172,348	5%	4,716.16
> € 172,348 a € 287,213	7%	8,163.12
> € 287,213 a € 550,836	8%	11,035.25
> € 550,836	6%	
Urban – not exclusively intended for housing and other onerous purchases		
6,5%		
Urban or rural purchaser is resident in a territory subject to a clearly more favorable tax regime		
10%		

The total real estate transfer tax revenue raised by the Portuguese municipalities in 2019 was € 1,010,412 thousand (DGO/IME, PORDATA 2021).

The revenues collected from property taxes (IMI and IMT) are the main source of income for the Portuguese coastal municipalities. This type of revenues has comparatively a small relevance for the municipalities located in the hinterland, whose local budgets largely rely on subsidies from the central government. The weight of property taxes in the budget of municipalities located in the littoral has somewhat contributed to the phenomenon of suburbanization and for the abandonment of buildings in the city centers, constraining urban rehabilitation policies.

23.2.3.2 Capital Gains Tax

In Portugal, 50% of the capital gains from the sale of real estate (after 1 January 1989) is taxed at progressive rates varying from 14.50% to 48%, in 2019³. The capital gains tax base is calculated from the sale of real estate and the purchase price, reevaluated with an official coefficient to account for inflation. Acquisition costs, costs incurred during the transfer of ownership and also any property improvement costs incurred within 5 years prior to the sale are also deductible from the taxable gain. The gain may be totally or partially exempt if the property sold is the taxpayer's primary residence and the sale proceeds, reduced by the value of any unsettled loans relating to the purchase of the property being sold, are reinvested in the acquisition, improvement or construction of another primary residence in Portugal or in another country of the European Union within 36 months after the sale or in the 24 months preceding it.

³ Land for construction is subject to tax irrespective of the date of acquisition by the seller.

For non-residents, 100% of the capital gain is taxed at a 25% or 28% autonomous rate, for companies and individuals.

23.3 Non-recurring Forms of public value capture

Municipalities can establish municipal fees and collect the respective amounts with a large autonomy, for the land subdivision license, for the construction license and for the construction of infrastructure (from € 100s to € 1000s, depending on the dimension of the construction/development).

Decree-Law no. 555/99, as amended by Law no. 60/2007, foresees that land subdivision projects must provide areas for green spaces and public spaces, road infrastructures and public equipment, whose dimensioning parameters are those defined in a municipal spatial plan, or in its absence, the parameters defined in Ordinance no. 216-B/2008. When there is no transfer to the public domain, compensation in cash or in kind may be provided for in municipal regulations.

In Portugal, the issue of compensation (*perequação*) of unearned increments and outlays as a result of spatial planning entered the agenda after the approval of the Land Use Policy Law (Law no. 48/1998). The law established the legal obligation for the binding spatial plans to provide for equitable mechanisms of compensation aiming at ensuring the redistribution among interested parties of the resulting benefits and outlays. The new legal regime of territorial management instruments (Decree-Law No. 380/1999) specified further the possibilities to be adopted.

However, the law only lists mechanisms available to the municipal administration in the preparation of its plans, namely, an average utilization index; an average cession area; distribution of development costs. The average utilization index corresponds to the average buildability determined by the construction allowed for each property or set of properties in the local spatial plan and reflects the abstract right to build held by the owners. The average cession area must be established together with the average utilization rate to equitably share the outlays resulting from the execution of the spatial plan. The distribution of development costs is based on the definition of a calculation criterion for the co-payment of infrastructure and urban services provided for in the plan, taking into account the type or intensity of urban development allowed in each property.

Table 23.2: Compensation of Unearned Increments in Portugal.

Compensation of unearned increments	Between property owners	With the municipality
In land	Owners association	Land concessions for construction
In cash	Index transfer	Fees Compensation

Source: Based on Carvalho and Oliveira (2003).

Thus, municipalities have discretionary powers to devise their system of compensation of unearned increments using the tools listed in Table 23.2, which range from compensation in cash to land concessions for construction.

Public value capture tools of increasing property values due public infrastructures are rare in Portugal, although they were used in a few cases. A special contribution to the municipalities of Lisbon, Porto and Loures and to the entity EXPO98 was implemented due to the property valorization emerging from investment in public infrastructures (e.g. road and rail systems, science and technology parks).

The Decree Law 43/1998 establishes that the investments made in the highways CRIL (Regional Internal Circular of Lisbon), CREL (Regional Outer Circular of Lisbon), CRIP (Regional Internal Circular of Porto), CREP (Regional Outer Circular of Porto) and their accesses and the railroad crossing of the Tagus Park (a science and technology park), complementary rail sections as well as the extensions of the Lisbon metro and the realization of light rail systems, substantially increased the value of rural properties and surrounding building land.

It was considered that such valuation justified the creation of a special contribution. It constitutes state (national government) revenue and has a duration of 20 years. 30% of the amount charged thereon is annually transferred to the municipalities of the areas where the special contribution is levied. The tax incidence is calculated based on the value of the property after and before the construction of the infrastructure.

Similar legislation was applied when the EXPO 98 was built (Decree Law 54/95). The 1998 Lisbon International Exhibition (EXPO 98) caused a substantial value increase in the rural properties and the surrounding land. The construction of the bridge over the Tejo River (Vasco da Gama bridge) also considerably enhanced the value of the rural properties and surrounding construction land. The Decree Law 51/95 defined the rules for the special contribution in this case.

23.4 Interim Conclusion for Portugal

The non-recurring forms in Portugal are based on the increase in land value. As in Germany, neither connection to utilities nor private activities are considered. For example, to get a connection to the water supply network, the property owner has to apply to the local water provider, either public or private, and to pay a defined price.

The Portuguese spatial planning legislation has taken a step forward in the process of building a more solidary and fair city by providing for compensation mechanisms; however, without powers to impose the legal duty of urban development and construction on private properties⁴ and without direct equalization mechanisms, public administration and the success of municipal spatial plans are dependent on the will of private owners (Carvalho and Oliveira 2003, Monteiro 2006)

⁴ Except through expropriation for public interest.

This dependency makes the model adopted in Portugal mainly suitable for promoting equitable distribution of burdens and unearned increments resulting from spatial plans when there is an agreement between all parties to promote its execution. When this agreement does not exist, or when it is necessary to overcome inertia or resistance of one or more landowners, public administration cannot put into practice the compensatory equalization mechanisms set in a given plan (Monteiro 2006).

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