
JGSA NEWS

JARDIM GONÇALVES & ASSOCIADOS | ADVOGADOS | LAWYERS

TAX TRANSPARENCY AND CORPORATE PURPOSE IN PROPERTY BROKERAGE

When providing legal advice to companies operating in the property sector, there are frequent doubts about the application of the tax transparency regime and the appropriate wording of the corporate purpose, depending on whether the activity is property brokerage or consultancy.

The regimes are different depending on whether the subject is a real estate agent or a real estate consultant, the former being the one who carries out the primary activity - the broker, the brand, the company that holds the AMI licence - and the latter the one who promotes the collection and sale of properties - the real estate consultants.

Fiscal Transparency

This only applies to the owners of the business, shop, or brand, so property consultants are excluded.

Tax transparency, as outlined in Article 6 of the IRC Code, is a mandatory framework for professional companies, which may or may not include real estate companies.

This regime imputes taxable income to the shareholders of the company in question, even if there has been no distribution of profits. In other words, this regime exempts the company in question from corporate income tax, taxing the shareholders directly on their taxable income.

This means that the mediation company's profits will be taxed directly under the IRS at a much higher rate than they would be if they were taxed under IRC.

The difference, in simple calculations, is huge:

- Corporate income tax: 17 per cent for the first € 25,000 and 21 per cent for the remaining taxable income.
- IRS: the rate is progressive; the average tax rate up to € 80,000 is 35 per cent and from € 80,000 onwards 48 per cent.

It is easy to understand from this demonstration that a real estate brokerage company covered by the tax transparency regime will face a significant tax increase.



JGSA NEWS

JARDIM GONÇALVES & ASSOCIADOS | ADVOGADOS | LAWYERS

Article 6 of the Corporate Income Tax Code states that professional companies, which include real estate brokerage companies (by reference to article 151 of the Personal Income Tax Code and Ministerial Order 1011/2001), will be subject to the tax transparency regime if:

1.All its natural person partners are professionals in this activity ("professionals" being understood to mean partners who carry out this activity),

Or, if not all the partners are professionals,

2.More than 75 per cent of the company's income derives from real estate brokerage, provided that, for more than 183 days of the tax period, the number of partners does not exceed five and at least 75 per cent of the share capital is held by professionals.

In other words, for the company and its shareholders not to be subject to tax transparency, it is necessary that:

1.The overall income obtained in the tax year from the mediation activity is less than 75 per cent, thus not being covered by the tax transparency regime (i.e., having at least one non-professional partner and overall income from mediation being less than 75 per cent);

Or

2.If more than 75 per cent of their income comes from mediation, the number of partners is more than five, but the number of partners is more than five

3.If more than 75 per cent of its income is derived from mediation, and it has five or fewer partners, 26 per cent or more of its share capital is held by non-professional partners.

A final note on the fact that the above criteria are cumulative with other activities classified under the regime for professional companies, which is laid down in Ministerial Order 1011/2001 of 21 August and which includes, among others, architects and engineers; therefore, when reference is made to a non-professional partner, it should be taken to mean a partner who does not carry out any of the activities listed in that Ministerial Order through the company in question).

Another point to note is that the status of a professional partner is measured by whether the partner carries out this activity, which is not compulsory. Therefore, if the company's partners are mere investors, if they do not carry out the mediation activity (namely, if they do not manage the respective company), the transparency regime does not apply to them.



JGSA NEWS

JARDIM GONÇALVES & ASSOCIADOS | ADVOGADOS | LAWYERS

Corporate purpose

For practical reasons, it is common for property consultants - the commercial ones who don't own the brokerage company - to set up commercial companies, often sole proprietorships, to carry out their property consultancy (not brokerage) activity. It often happens that property consultants include "real estate brokerage" in their corporate purpose.

A real estate consultant who sets up a commercial company to carry out his consultancy activity should not include "real estate brokerage" in his corporate purpose, but rather "real estate consultancy".

This is because the activity of real estate brokerage is regulated exclusively by IMPIC (Instituto dos Mercados Públicos, do Imobiliário e da Construção), and requires a license to be issued by that entity.

In addition to licensing, which is not required for real estate consultancy, various requirements and obligations are necessary to obtain this license - for example, holding specific liability insurance for the activity and paying the fees due for licensing.

In addition, IMPIC has inspection and monitoring powers and can initiate administrative offence proceedings.

Thus, having the activity of "real estate brokerage" in a company's corporate purpose without being licensed to do so results in the payment of a fine of up to 30,000 euros.

In conclusion, if the activity you carry out is only "property consultancy", "property brokerage" should not be included in the corporate purpose of the company you own.

**Pedro Leão
Trigo**

Lawyer |
Partner



This information is not public and does not constitute any form of publicity, and its copying or dissemination is prohibited. The content of this information and the opinions expressed are of a general nature and cannot be construed as a substitute for legal advice.

www.jgsa.pt

jgsa@jgsa.pt