



**Beneficial Ownership Transparency**  
**SHADY BUSINESS**

**TRANSPARÊNCIA E INTEGRIDADE, ASSOCIAÇÃO CÍVICA**

**Beneficial Ownership Transparency**

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February 2017

# BENEFICIAL OWNERSHIP TRANSPARENCY SHADY BUSINESS TRANSPARÊNCIA E INTEGRIDADE, ASSOCIAÇÃO CÍVICA

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This project has been funded with support from the European Commission. This publication [communication] reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

With financial support from the Internal Security Fund Police Programme European Commission – Directorate-General Migration and Home Affairs.



TIAC - Transparência e Integridade, Associação Cívica is the portuguese chapter of the global anticorruption organization Transparency International. Through information campaigns, investigation of causes and consequences of corruption and the development of practical tools for citizens in partnership with the public sector, private institutions and civil society, our mission is to mobilize an informed citizenship to fight for both public transparency and integrity, on behalf of a more inclusive and participated democracy.

## WHO ARE BENEFICIAL OWNERS?

Law No 25/2008, of June 5 establishes in Portugal, the legal framework of the fight against the laundering of assets of illicit origin and terrorism funding. This law defines beneficial owners as the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. Notably, a beneficial owner can be either a politician using a **FIGUREHEAD** to launder embezzled public money or bribery funds, or someone channeling illicit capital through investments in the in the luxury real estate sector. This is, however, just the tip of the iceberg. Several countries have been trying to stop the misuse of corporate vehicles, such as companies or trusts, as means to conceal the illicit origin of financial flows. The main goal is to fight against money-laundering and terrorism funding, as well as the use of funds obtained illegally as a result of corruption. Thus, beneficial ownership transparency becomes vital.

Beneficial owners' mandatory registration will make it easier for authorities, other companies and general public to identify those who benefit from these obscure and illegal business.

## ENHANCING BENEFICIAL OWNERSHIP TRANSPARENCY (EBOT)

The Enhancing Beneficial Ownership Transparency (EBOT) project gives voice to civil society organisations in the important debate on strengthening prevention and control mechanisms of fiscal fraud and money-laundering.

EBOT aims at focusing the attention on the issue of **SHADY BUSINESS**, growing at the edge of the law, escaping the light projected by the transparency over companies' beneficial ownership. EBOT makes a thorough assessment through the study of the reality and of the legal framework in Portugal and five more EU countries (Belgium, Slovenia, the Netherlands, Luxemburg and Czechia).

After the public outcry caused in Portugal by cases such as **PANAMA PAPERS**, the operation "Monte Branco" (which dismantled the largest tax fraud and money laundering network ever operating in the country) or the BES/GES case, citizens urge authorities and political parties to have a proactive approach and a firm prevention against money laundering and illicit funds flows.

## 4<sup>a</sup> ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM DIRECTIVE

The European Union Fourth Anti-Money Laundering Directive was adopted as a response to the terrorist attacks occurred in Europe in 2015. It represents an important step in this domain and it is vital for governments to quickly transpose it into their national law. Portuguese government still has to present a legislative proposal to the Parliament to transpose the Directive while the process must be concluded by July 2017.

The transposition of the Directive, however, is not enough.

A firm philosophy and best practices are needed to condemn and fight against money laundering, tax evasion and corruption across all sectors of society.

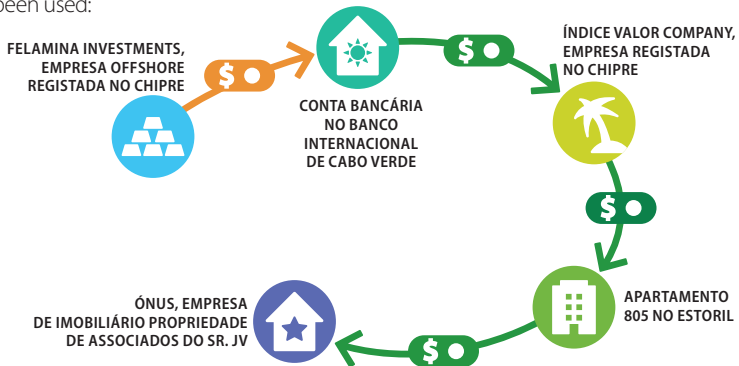
In Portugal, **REAL ESTATE** is one of the most vulnerable sectors. It has been the subject of intense debates and National Risk Assessment on Anti-Money Laundering and Counter Financing of Terrorism identified it as a high-risk sector.

**GOLDEN VISA** and the advantageous tax system for non-habitual residents attracted a large number of foreigner investors, especially in luxury real estate. Nevertheless, they facilitated as well the circulation of major illicit financial flows in the country and have had serious and evident social repercussions. Lisbon and Porto, for example, have already showed alarming signs of a demographic change. It is quite possible that in the future these cities will be populated exclusively by non or part-time residents able to afford luxury apartments, while middle class families and young people will be forced to live outside city center, making it less and less inhabited.... prey for the shades.

# CASE STUDIES

## CASE STUDY #1: REAL ESTATE SECTOR

In early 2016, a Portuguese citizen, Mr JV, was detained on the grounds of bribery of foreign public officials in international business transactions, fiscal fraud, trading in influence and money laundering.<sup>1</sup> With business volumes amounting to 500 million Euros in the Republic of Congo, Mr. JV is suspected of distributing bribes in order to be awarded public works in the country. Much of his fortune has been transferred to Portuguese bank accounts, but authorities suspect that part of this money belongs to Congolese senior officials, to whom Mr. JV was a frontman.<sup>2</sup> The case shows all the typical elements of money laundering in the real estate sector: a complex network of shell companies, offshore companies and bank accounts in foreign jurisdictions, luxury estate, various intermediaries, politically exposed people and their frontmen.<sup>3</sup> The authorities suspect that Mr. JV bought luxury apartments and mansions in Portugal, through companies created by him and his associates. These companies were registered abroad in Chile and Cyprus and have not conducted any other commercial activity. In addition, payments for these properties were made by offshore companies. According to media reports, these properties may in fact belong to Congolese senior officials and, at least one of them, a mansion in a luxury condo in Cascais, whose owner is yet to be identified, has allegedly been used several times by Gilbert Ondongo, the Congolese finance minister.<sup>4</sup> Here is an example of the payment circuit that may have been used:



1 Judiciary Police, Press Release (3rd February 2016), "Operação Rota do Atlântico". Available at <http://www.policiajudiciaria.pt/PortalWeb/page/%7B70D425CA-96D6-4524-8AA8-9F7BE153CA86%7D>

2 Lima, Carlos Rodrigues (6th February 2016), "José Veiga esteve dois dias a explicar negócios ao juiz", Diário de Notícias. Available at <http://www.dn.pt/sociedade/interior/jose-veiga-esteve-dois-dias-a-explicar-negocios-ao-juiz-5018569.html>

3 PGR (3rd February 2016), "Press Release: Operação "Rota do Atlântico" – Buscas e detenções". Available at [http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/nota\\_comunicacao\\_rota\\_atlantico\\_03-02-2016.pdf](http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/nota_comunicacao_rota_atlantico_03-02-2016.pdf)

4 Rosa, Luís (22nd July 2016), Caso Veiga. O mistério dos 6,9 milhões em notas encontrados na "casa do ministrinho", Observador. Available at: <http://observador.pt/2016/07/22/caso-veiga-o-misterio-dos-69-milhoes-em-notas-encontrados-na-casa-do-ministrinho/>; Darcy, Marie-Lyn (22nd February 2016), "José Veiga, la déchéance du « Monsieur Afrique » portugais", Le Monde. Available at: [http://www.lemonde.fr/afrique/article/2016/02/22/jose-veiga-la-decheance-du-monsieur-afrique-portugais\\_4869705\\_3212.html](http://www.lemonde.fr/afrique/article/2016/02/22/jose-veiga-la-decheance-du-monsieur-afrique-portugais_4869705_3212.html)

The National risk assessment on ML/FT identified real estate as a very high risk sector. In the interviews which touched upon this topic, the interviewees almost unanimously confirmed this trend. Money launderers are attracted by real estate for a number of reasons: it is a prestigious and reasonably safe investment, it requires high amounts of money, allows other financial returns and other ways to place money in clean circuits (ex: rentals) and allows different types of ownership, i.e. the buyers and the sellers in the contract do not necessarily have to be the people who provide or receive the money.<sup>5</sup>

Several investigations that combine money laundering suspicions and the real estate sector point out to the existence of small and discrete real estate agencies and similar businesses already linked to the buyer or his family and associates. This is the case, for instance, of Manuel Vicente, the Angolan Vice-President, who bought and sold an apartment to an investment company linked to his stepson.<sup>6</sup> On another note, one of the largest money laundering investigations in Portugal, the Monte Branco case, involves a Portuguese lawyer, who has been identified as a manager of several companies, many of them owned by offshore companies, and who also holds or has held executive positions in 27 companies directly related to real estate, many of which share the same address as her law firm.<sup>7</sup> These examples suggest that money launderers do not like to take risks and instead of resorting to the services of larger agencies, they prefer to keep it “in the house”, i.e., create their own real estate agencies or funds or use their friends. These companies are rather small and thus harder to monitor by supervisory agencies and criminal authorities.

The luxury segment is the riskiest one because it allows integration of large amounts of funds in one single purchase. Properties may be kept for investment or sold again to justify the gains of large sums. Therefore, the more expensive, the better. In fact, despite the severe financial and economic crisis that has hit Portugal since 2010, which had dramatic consequences for the traditional real estate sector, the luxury segment saw an increase of 28% just in 2015, by both Portuguese and foreign investors.<sup>8</sup> 51% of investors in this segment are foreign, compared with 20% in lower segments.<sup>9</sup> The Golden Visa and the beneficial tax regime for non-habitual residents have been attracting a high number of foreign investors on real estate whose target segment is high value property. While these programmes are licit and attract honest investors, they also provide a cover of legitimacy to those aiming to invest in real estate for the sole purpose of introducing large amounts of illicit funds in the market.

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5 Ferwerda and Unger (2013)

6 <https://www.publico.pt/sociedade/noticia/compra-e-venda-da-casa-de-luxo-do-vice-de-angola-assinado-pela-mesma-pessoa-1724363?frm=ult>;

7 <http://visao.sapo.pt/actualidade/portugal/os-segredos-da-teia-que-lava-milhoes=f666229>

8 Económico (06-10-2015), Mercado imobiliário de luxo cresce 28% em Portugal, Económico. Available at [http://economico.sapo.pt/noticias/mercado-imobiliario-de-luxo-cresce-28-em-portugal\\_230923.html](http://economico.sapo.pt/noticias/mercado-imobiliario-de-luxo-cresce-28-em-portugal_230923.html)

9 Público (30-05-2016), Novos mercados descobrem segmento de luxo em Portugal, Público. Available at <http://imobiliario.publico.pt/Noticia/Detailhe/novos-mercados-descobrem-segmento-de-luxo-em-portugal-1733504>

The Golden Visa programme, which grants residence visas with access to the Schengen space to individuals from states outside the European Union, offers several options of investment in return for a residence permit, including the creation of at least ten jobs. However, the overwhelming majority of visas under this programme have been granted to individuals buying real estate of value equal or superior to half a million euros. In four years of programme, 3405 visas have been granted through property purchase, while only 199 through capital transfer and 5 for job creation. The top five nationalities with more Golden Visas are Chinese (2143), Brazil (180), Russia (120), South Africa (109) and Lebanon (58).<sup>10</sup> Our interviews suggest that China, for instance, is one of the countries with which international cooperation in these matters is more difficult, which means that Portuguese authorities face serious obstacles when investigating the background of a Golden Visa candidate or the origins of his money. In addition, according to Global Financial Integrity, China and Russia are the two countries with higher average of exit of illicit flows, around 140,000 and 105,000 millions of dollars, respectively.<sup>11</sup>

Although, at first foreign investment in such a relevant sector for the Portuguese economy may seem very welcome and encourage some tolerance over the origins of the funds, this shift on the national real estate market has serious social consequences for Portugal. In Lisbon, the price per square meter in some areas rose more than 20% in 2015. Lisbon and Porto already show trends of change in their population. It is possible that in the near future these cities will be populated by the very rich – those that can afford the luxury apartments of the city centre – and the very poor and old, whose homes are deteriorating. Middle-class families and young people are being pushed out of the city centre and, since foreign investors and non or just part-time residents, city centres are increasingly empty.

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10 Governo de Portugal (2016), Autorização de Residência para Actividade de Investimento (ARI), dados de 8 de outubro de 2012 a 30 de junho de 2016. Available at [http://www.séf.pt/documentos/56/Mapa\\_ARI\\_PT\\_junho16.pdf](http://www.séf.pt/documentos/56/Mapa_ARI_PT_junho16.pdf)

11 Global Financial Integrity, Data by country: Average Annual Illicit Financial Outflows: 2004-2013. Available at <http://www.gfintegrity.org/issues/data-by-country/>



## CASE STUDY #2: THE POLITICS OF MONEY LAUNDERING

*"For the past decade, the country [Angola] has had the fastest growing economy in the world; it is the third-largest economy in Sub-Saharan Africa; it ranks among the most corrupt regimes worldwide and has some of the lowest levels of human development. In recent years, the national oil company Sonangol and Politically Exposed Persons (PEP's) have invested billions of euros in the European Union, particularly in Portugal. [...] It is essentially in Europe that African leaders and their families try to emulate and surpass the richest and the vain in everyday spending on luxury goods. For this to happen, Angolan PEP's need, for instance, corrupt banking channels, corrupt European government officials, businesspeople and lawyers to facilitate, partner with and legitimize such operations."<sup>12</sup> [Maka Angola]*

*Portuguese authorities are accused of turning a blind eye to corruption to avoid alienating investors close to dos Santos' regime, and allowing Angolan oligarchs to freely spend dubiously amassed fortunes in Lisbon. [...] Forbes estimates [Isabel] dos Santos's net worth at \$3.4 billion. Besides her share in Banco BPI, her holdings in Portugal include a 42.5 percent share in Banco BIC Portugal, as well as significant shares in the energy company Galp Energia and the leading telecommunications and media group NOS.<sup>13</sup> [POLITICO]*

*"Isabel dos Santos acquired 65% of Efacec Power Solutions in partnership with the National Electricity Distribution Company (ENDE), a company owned exclusively by the Angolan State.[...] [T]he MEPs supplied further information attesting the beneficial ownership of the companies involved in the purchase - Winterfell Industries, established in Malta, whose two shareholders are ENDE and Niara Holding SGPS LDA, a company registered in the Free Zone (Zona Franca) of Madeira, Portugal. Niara Holdings is a limited company owned personally by Ms. Isabel dos Santos, majority shareholder, and Carana Management LTD, a company registered in Cyprus since 2010, whose beneficial ownership is unknown."<sup>14</sup> [European Parliament's Intergroup on Integrity and Transparency, Corruption and Organised Crime]*

Above are excerpts of reports from international sources regarding politically exposed persons that conduct business or possess important financial interests in Portugal and whose profile or wealth origins seem questionable, to say the least. The National Risk Assessment report confirms that many offshore companies and network of companies are owned by PEPs or their representatives are involved in investments, which purpose is of laundering illicit funds. PEPs pose many risks regarding money laundering due to the nature of their

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12 <http://www.makaangola.org/2013/03/corruption-in-angola-money-laundering-in-portugal-and-the-impact-on-human-rights/>

13 <http://www.politico.eu/article/angola-portugal-investment-economy/>

14 <http://www.anagomes.eu/en-GB/news.aspx?newsid=e26d757c-e386-448b-9cbc-5c745829979b>



position and the influence they hold. First, if their fortune has illicit origins, it is likely to have been obtained through stolen public assets from their own country and, thus people, or the payment of bribery linked to public procurement. Secondly, precisely because they are under close scrutiny, they may resort to frontmen, which makes it harder for institutions to identify the true beneficial owner and criminal authorities to track and prove the real ownership of companies, assets or bank accounts. Finally, PEPs are part of domestic and international networks of influential people that may help them escape investigations. Requirements for a PEP apply to family members or close associates, including someone known by to be a close personal or professional associate.

Although PEPs should be subject to enhanced due diligence in business and financial transactions, deriving from the risks mentioned above, it is exactly the fact that they are part of international networks of influence that also may allow them to escape monitoring. On the one hand, they are senior clients with connections with the most senior officers of institutions, who may be willing to take risks to protect PEPs. A few cases of banking institutions that have warned their clients about ongoing investigations or that have altered banking data before handing it to authorities prove that PEPs (as other VIP clients) are in a privileged position when it comes to AML measures. On the other hand, their seniority and influence at the very top of national and international politics may encourage political and policy decisions that benefit them, directly or indirectly. As former Tax Authority Director once suggested, "There is a segment of taxpayers who have easy access, in Portugal or abroad, to legislators and clearly influences them. Through the contacts made with the politicians, these people can easily lobby and create mechanisms that are aimed at protecting them."<sup>15</sup> There are indeed worrying signs of political choices that may benefit PEPs and VIPs.

Since 2005, the country has launched three tax amnesties, known as RERTs, applicable to assets located outside Portugal and income that had not been declared to the Tax Authority, including bank accounts and assets invested in funds or trusts. The payment of a small penalty and the return of funds guaranteed no criminal procedures regarding the source of the funds or assets. In the 2012 RERT, contrary to what had happen in previous tax amnesties the payment of the penalty was sufficient, with assets being allowed to remain abroad. The penalty became known as the "legal laundering tax". In fact, the tax amnesty run along a major investigation on fiscal fraud and illicit funds based in Switzerland, the Monte Branco case. The media exposure of this affair in the last weeks of the amnesty application dramatically increased the number of individuals who resort to RERT III. Interestingly, investigations on corruption, fiscal fraud and Money laundering that followed touched several individuals who had taken advantage of RERT III, such as Ricardo Salgado, former CEO of GES/BES, the financial group which collapsed in 2014, and who is now

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15 SIC Notícias (15 Dec 2015), Negócios da Semana. Available at: <https://www.youtube.com/watch?v=xDhLxia01A>

known to having hidden personal and the group offshores and shell companies.<sup>16</sup> Another individual that allegedly took advantage of RERT in 2010 was Carlos Santos Silva, under investigation for suspicions of being the frontman of former PM José Sócrates, also suspect of corruption and whose government launched that RERT.<sup>17</sup>

Another sign that might have future developments are the government and the Homeland Security Superior Council plans to create a new body, the Single Point of Contact that, under the direct tutelage of the Secretary General of Internal Security, will gather SIRENE, INTERPOL and EUROPOL National Offices, Liaison Officers and the Police and Customs Cooperation Centres, among other judicial international cooperation agencies. The major concern is the concentration of international cooperation in an office under direct influence of the PM may put in jeopardy separation of powers and create an opportunity for undue political influence.

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16 Guerreiro, Pedro Santos, Miranda, Elizabete and Gago, Maria João (30th January 2013), "RERT e "processo electrónico" explicam correcções fiscais", *Jornal de Negócios*. Available at: <http://www.jornaldenegocios.pt/empresas/banca---financas/detalhe/rert-e-processo-electronico-explicam-correccoes-fiscais>

17 Villalobos, João (25th November 2014), "Maior parte do dinheiro que entrou com o perdão fiscal de 2010 veio da Suíça", *Público*. Available at <https://www.publico.pt/2014/11/25/economia/noticia/maior-parte-do-dinheiro-que-entrou-com-o-perdao-fiscal-de-2010-veio-da-suica-1677350>; Rosa, Luís (29th October 2015), "Como eu fiquei rico: a versão de Santos Silva", *Observador*. Available at <http://observador.pt/2015/10/29/santos-silva-explica-fortuna-na-suica-premios-do-grupo-lena-negocio-angola/>

## CASE STUDY #3: CASINOS AND GAMBLING

Considered as a category of DNFBPs, casinos have been subject for a long time to AML/CFT obligations. The business of casinos can be seen as quite similar to that of financial institutions, involving diverse, frequent and big financial transactions (e.g. money exchange and transfers, foreign currency exchange, stored value services, debit card cashing facilities, cheque cashing)<sup>18</sup> Combined with an intense use of cash and less stringent regulatory measures than for financial institutions, such sectoral characteristics contribute to making casinos particularly exposed and vulnerable to AML risks. . Indeed, it is known that cash intense economies or sectors are by nature more prone to money laundering, since contrary to bank transfers, it does not leave a trace. It is one of the easiest ways of concealing the identity of those conducting business. More recently, online game and sport-related bets have increased the opportunities for laundering large sums of illicit funds, while hiding their origins and ultimate beneficiary.

Despite regulatory improvements aimed at overcoming these difficulties, persisting loopholes and technical obstacles paired with a general lack of willingness and proactivity in adopting CDD make the gambling sector one of the most attractive for criminals.

The Portuguese Judiciary Police has identified three methods used to launder money in casinos.<sup>19</sup> The most common way to launder money is to buy large amounts of chips in cash, just gamble a small amount of them and then redeem the entire amount of chips back in a casino cheque or bank transfer, claiming that those were the result of gambling prizes. In order to make the money tracing more complex and transactions of large sums less suspicious, some criminals also exchange chips from different casinos owned by the same company, since the chips look the same.<sup>20</sup> Other methods used in casinos are the purchase of chips from other players for a higher price than what is sold by the casino or the use of chips as currency (for instance, as payment for drugs). Another easy way for criminal organisations to circumvent regulatory obligations or reduce detection risks is to simply acquire and manage their own casinos or gambling sites.

Portugal has 11 casinos, most of them based in touristy areas, such as Lisbon, Madeira or the Algarve. Touristy regions also show increased risks of money laundering, due to the high number of people that circulate, making it more difficult for authorities to detect and trace criminal activities. It is possible for individuals to exchange cash right below the CDD threshold several times, many days in a row. If this is done by a group of people, it becomes impossible to detect.

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18 AGP and FAFT, FAFT Report: Vulnerabilities of Casinos and Gambling Sector, March 2009, p.25

19 Unidade De Informação Financeira, Métodos, Indicadores E Casos Tipo De Branqueamento e de Financiamento Do Terrorismo No Setor Não Financeiro, s/d

20 AGP and FAFT, FAFT Report: Vulnerabilities of Casinos and Gambling Setor, March 2009

Thanks to a mutual information platform, the sector regulator has permanent access to the casinos' data. However, monitoring essentially relies on the automatic communications sent to the Financial Intelligence Unit for every transaction above EUR 2 000, known as "mass communications". In practice, according to interviewees, casinos do not identify their customers in any other way, despite FIU having listed a number of suspicious behaviour or transactions that could signal ML in gambling sites.<sup>21</sup>

Online gambling has been also calling the attention of authorities, as it has only been recently regulated in Portugal (the current year). The new law has provisions that aim at ensuring the gambler is identified, as an AML measure, and, for instance, gives the sector regulator the power to close a gambling website without a judicial order. Since the law came into effect, there have been 200 notifications to gambling websites, 170 to the ISPs and 10 to the Public Prosecutor. However, though in what concerns online gambling the referred law represented an anticipation to the forthcoming directive, the risks remain significant. For instance, while in a bank account or a shell company it might be possible to somehow identify those individuals who have the ultimate control through, for instance, finding who has permission to access the funds or sign important documents, in online gambling it is harder to do so. Despite being compulsory to open an account with personal data (and that information must be held in a safe for a period of 10 years) and the obligation of using the euro, it is quite simple to use a frontman and use its credentials to access the account.

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21 Unidade De Informação Financeira, Métodos, Indicadores E Casos Tipo De Branqueamento e de Financiamento Do Terrorismo No sector Não Financeiro, s/d

## CASE STUDY #4: MADEIRA OFFSHORE

Similarly to other EU member states, there is also a tax haven within the Portuguese territory - the Madeira Free Trade Zone. Most offshore activity in Madeira takes place in and around the International Business Centre, which comprises the Free Trade Zone, and its associated services, together with financial institutions and the Shipping Registry. Companies here registered benefit from substantial tax reductions and exemptions, on what the European Commission has considered legal state aid. In an exceptional regime, trusts can be established there, while they do not exist in the rest of the Portuguese territory. The Madeira Free Trade Zone has multiple advantages to those wanting to open offshore companies: it is not officially considered a tax haven, thus is not internationally blacklisted; it is part of the EU and the Eurozone, which reduces costs and facilitates transactions; and political and economic stability. In addition, it is the 69th territory with more secrecy in the world, according to the Financial Secrecy Index, which measures the level of secrecy and the weight of financial services in the territory have globally.<sup>22</sup> From the point of view of the laws, Madeira has a moderate level of secrecy, but fails in the existence of a commercial register with accurate data about the owners of the companies or require that these data and accounting firms are public.<sup>23</sup> In fact, some financial consultancy websites, underline the fact that in Madeira (as in the entire Portuguese jurisdiction) it is possible to maintain confidentiality in regard to beneficial owners. In addition, trusts do not exist in the Portuguese law, except in Madeira, which enjoys an exceptional regime in this matter. As long as both settlor, trustee and assets are not linked to Portugal, trusts can be created and registered in Madeira. There are, however, two major sources of concern. The first has to do with the access to beneficial owner information, which can only be disclosed after a judicial decision. A second source of concern is what it seems to be a loophole in the law: only trusts with a duration period of over a year are required to register.

The 2015 NRA considered the MFTZ a source of concern and attraction of ML activities because "it develops its activity in accordance with EU rules, the OECD and WTO, which, paradoxically, can make appealing a strategy of diversification of investments and minimizing risks of criminal organizations".<sup>24</sup> In Madeira, it is also common for intermediaries to open bank accounts for clients, which has also been identified a ML method by the NRA.<sup>25</sup> Besides these risks, there are other reasons for concern. The MFTZ has been considered by an expert a public-private partnership, since 75% of the company that manages it and by

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22 Financial Secrecy Index, <http://www.financialsecrecyindex.com/introduction/fsi-2013-results>

23 Financial Secrecy Index, Portugal (Madeira),

24 NRA, June 2015, p. 15

25 Idem, p. 17

extension the tax benefits, is owned by private capital.<sup>26</sup> In addition, the island's tax authorities are not accountable to the central tax administration, but to the regional government. In the Panama Papers database, there is a total of 31 companies registered in Madeira, 17 of which listed in the same mailbox, Room 605. The president and the vice-president of Madeira's parliament have also appeared in the Mossack Fonseca records linked to offshore companies based in other jurisdictions.<sup>27</sup>

In this context, it is worth mentioning that Madeira is a small island and has been ruled by the same political party for over 30 years, which has created a strong patronage network around it. In 2013, the Madeira Free Trade Zone granted around 168 million euros in tax benefits to companies based there. This is more than the cash inflow the government expected to receive for the increase of fuel taxes in the 2015 (160 million euros).<sup>28</sup> Despite these evidences, politicians in both central and regional institutions are not willing to let go of the Madeira offshore. Official discourse opposes any changes in its status based on the argument that one single country on its own cannot end tax havens.

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26 Jornal de Notícias (17 April 2016), Entrevista a João Pedro Martins. Available at <http://www.gestaode-fraude.eu/wordpress/wp-content/uploads/2016/04/20160417JN.pdf>

27 <http://observador.pt/2016/04/22/ha-politicos-da-madeira-envolvidos-nos-panama-papers/>

28 Autoridade Tributária e Aduaneira (2014), Despesa Fiscal Agregada por benefício, available in [http://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/Contribuintes\\_com\\_benef%C3%ADcios\\_fiscais\\_2013.htm](http://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/Contribuintes_com_benef%C3%ADcios_fiscais_2013.htm) [consulted in 29th March of 2015]; Lusa (2014), Principais medidas do Orçamento do Estado 2015, DN, 15th of October of 2014, available in [http://www.dn.pt/inicio/economia/interior.aspx?content\\_id=4181670&page=-1](http://www.dn.pt/inicio/economia/interior.aspx?content_id=4181670&page=-1) [consulted in 29th March of 2015]

# RECOMMENDATIONS

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1. More investment in technical and human resources and officer, notably assigned to tax and criminal investigation authorities.
2. Regular review the National Risk Assessment regarding anti-money laundering and combating terrorist financing and the ongoing work of the Anti-money laundering commission. Their working report should be made publicly available.
3. Create a beneficial owners' public register in order to centralise the information on the natural person(s) who ultimately controls the companies and other entities. The register should make use of open data and user friendly search engines.
4. Create automatic reports on real estate transactions to the Institute for Public Markets, real estate and building (IMPIC), the sector regulator.
5. Stronger commitment to preventive measures, most notably regarding compliance with the anti-money laundering duties of the non-financial entities subject (DNFBPs), namely:
  - i) Information and educational campaigns on anti-money laundering prevention and supervision targeted, respectively, to the non-financial entities subject to obligations (DNFBP) and its regulators;
  - ii) Compliance and stricter sanctions against the financial institutions and the DNFBPs which do not fulfil their Anti-money laundering obligations.
6. Redefinition of the residence permits for investment (ARI/Golden Visa) framework and strength of its monitoring through:
  - i) A risk assessment of the program, as well as the design of a risk mitigation action plan, such as rejecting capital coming from conflict areas or from non-compliant banking systems;
  - ii) Periodic publication of better and more detailed quantitative data on the allocation of Golden Visa, notably AML/CFT alerts on visa applicants, the fulfilment by the authorities of the due diligence regarding the origin of the capital;
7. Redefinition of the legal framework of the Madeira low tax business centre (ZFM) and of transparency instruments through:
  - i) A cost-benefit analysis made by Portuguese authorities including an assessment of the expected impact on global economic, social and fiscal impact of the ZFM
  - ii) An assessment of the integrity system of the ZFM, coordinated by an independent international body.

Compulsory registration of every trust fund created in the Free Zone of Madeira, regardless of duration



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