



## **CGT ON PROPERTY: *Discrimination against Non-Residents***

The European Justice Court has recently ruled against the Portuguese legislation allowing a 50% exclusion to residents when selling their second homes while taxing non-residents at 100% on the same type of transaction. According to the Court ruling, this discriminatory practice violates article 56° of the European Community Treaty which prohibits restriction of capital movements between member states within the European Union.

Subsequently, the Portuguese Administrative Supreme Court has ruled that the 50% exemption from Capital Gains Tax available to residents - but not to non-residents - is discriminatory and in violation of Article 56° of the European Union Charter. Judging from reactions to similar rulings in the past, Portuguese authorities may attempt to exhaust all possibilities of recourse before instituting modifications to current rules.

This is the second battle that the Portuguese Government has lost on this issue. It remains to be seen how the matter will be resolved: will the exclusion be extended to EU non-residents, eliminated all together or a third alternative found?