

# REAL ESTATE & PLANNING

"MAIS HABITAÇÃO" PROGRAM

VdA EXPERTISE



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## TABLE OF CONTENTS

<u>LEASE AGREEMENTS</u>	3
<u>AFFORDABLE HOUSING</u>	6
<u>LOCAL LODGING</u>	9
<u>RESIDENCE PERMIT FOR INVESTMENT - GOLDEN VISA</u>	12
<u>OTHER TAX MEASURES</u>	14

# LEASE AGREEMENTS



## LEASE AGREEMENTS

### Cap to the rents

Regarding properties that have had lease agreements signed in the last five years, the initial rent in new residential lease agreements shall not exceed the value of the last rent charged over the same property in the previous lease, accrued with a coefficient of 1.02 (2%). This cap only applies to agreements that exceed the general income limits set forth under the affordable housing program (Order No. 176/2019, 6 June)

When the rent charged under the previous lease agreements has not been subject to one or more legal updates, landlord may also apply the index published in the Official Gazette in the last 3 years, as published in *Diário da República*, provided that the last rent charged over the same property was not yet updated based on said indexes.

In case of properties subject to major refurbishment works (as certified by the municipality), the costs and expenses incurred by the landlord may be added to the rent value, up to 15% / year.

### Old Residential Leases – executed prior to 1990

Residential lease agreements executed prior to 15 October 1990 cannot be subjected to the New Lease Law (“NRAU”) whenever tenants claim and prove that (i) their gross annual corrected income (“RABC”) is lower than 5 times the annual national minimum remuneration (“RMNA”); and / or (ii) have 65 years or more; or (iii) are disabled with an incapacity equal or higher to 60 %. In practical terms, this means that landlords lose any expectation of being able to freely terminate these contracts (thus maintaining their “no-exit” nature).

Rents may be updated only according to the ordinary index (CPI). On the other hand, landlords benefit from

new tax measures, including exemption from PIT (Personal Income Tax) and MPT (Municipal Property Tax).

### New framework for the eviction (despejo) and order for payment (injunção) procedures in lease-related matters

Simplification of the eviction and order for payment procedures in lease-related matters

Amongst several changes introduced, we highlight the following:

- a) Integration of the order for payment procedure in lease-related matters in one single organism, called “Balcão do Arrendatário e do Senhorio” (BAS);
- b) Clarification of the regime applicable in the event of lack of legal opposition by the tenant;
- c) In case of failure to communicate to tenant the termination of the lease agreement due to late or lack of rent payment, landlords are granted the possibility of termination of the lease agreement by means of the special eviction procedure (*procedimento especial de despejo*), safeguarding the tenant's right to remedy the breach within the legal opposition period;
- d) Clarification that a judicial decision to vacate the leased premises may be postponed in cases where it is evidenced either (i) risk of life; (ii) acute illness (iii) lack of means; or (iv) disability with a degree of incapacity equal or higher than 60%.
- e) Creation of a special rent payment mechanism in which the State assumes responsibility for paying rents that become due after the expiration of the opposition period in situations where the tenant continues to occupy the leased premises.

### Reduction of the Personal Income Tax (PIT) rate applicable to rental income

Reduction from 28% to 25% of the PIT rate applicable to rental income derived from residential lease agreements.

### Tax incentives to long-term residential lease agreements

Application of PIT reduced rates to rental income deriving from residential lease agreements for permanent residential purposes with a term equal or higher than 5 years:

- a) Lease agreements with a term equal or higher than 5 years and less than 10 years – 15% (currently, it is foreseen a PIT rate of 23%);
- b) Lease agreements with a term equal or higher than 10 years and less than 20 years – 10% (currently, it is foreseen a PIT rate of 14%); and
- c) Lease Agreements with a term higher than 20 years – 5% (currently, it is foreseen a PIT rate of 10%)

The above-mentioned reductions do not apply to rental income arising from residential lease agreements which entered into force as of 1 January 2023, if the monthly rent exceeds 50% of the general rent price limits depending on the council in which the property is located.

If the new residential lease agreements foresee a rent that is at least 5% lower than the rent of the previous residential lease agreement on the same property, an additional 5% reduction will apply.

# AFFORDABLE HOUSING



## AFFORDABLE HOUSING

### Financing line and transfer of public property for affordable housing

Within this context, it will be created two support options to promote affordable housing:

- o Approval of a credit line, to be granted by Banco Português de Foment, S.A., in the global amount of EUR 250,000,000.00, with mutual guarantee and interest rate subsidies, to finance affordable housing projects, notably, construction or rehabilitation projects; and
- o Transfer of State-owned lands and public buildings through the establishment of surface rights.

The properties built under this regime shall be allocated to affordable lease for a minimum period of 25 years, in the first case and 90 years in the second. Upon termination of the lease and in case of sale of the dwellings, municipalities and IHRU (Institute of Housing and Urban Rehabilitation) have a pre-emption right to acquire the properties promoted under this regime

Entities eligible for these supports include (i) construction companies, in consortium or other type of legal association with companies whose corporate purpose includes residential lease and asset management, provided that they comply with the access conditions set forth in Decree-Law no. 165/93, which reviews the legal framework applicable to development agreements for housing purposes ("regime jurídico dos contratos de desenvolvimento para a habitação"); as well as (ii) housing and construction cooperatives, municipalities, parish councils, charitable institutions, private social solidarity organizations, and legal entities of public administrative utility or recognized public interest.

### Compulsory works and compulsory lease of vacant houses

Excluding Azores and Madeira, the properties qualified as vacant pursuant to the Law, and which have held this qualification for more than 2 years may be subject to compulsory works or compulsory lease by the municipalities.

The procedure is triggered by the municipality, by means of notice pertaining to (i) the duty of maintenance, promoting the execution of necessary works in case of non-compliance with that notice, or (ii) the duty to give use to the independent units, possibly along by a leasing proposal to the property owner (where the rent cannot exceed 30% of the general rent price limits per typology in that municipality). In case of denial or lack of response within this deadline and if the property remains vacant for more than 90 days, municipalities may proceed to the compulsory lease of the property.

If the municipality chooses not to proceed with compulsory lease of the property and not requiring the property maintenance works, the municipality will provide all information related to the property to IHRU, allowing it to initiate the compulsory lease procedure under the same terms as municipalities if they wish to do so.

## Acquisition and lease of properties by public entities

It is provided the possibility for public entities to proceed with (i) the acquisition of ownership (or other *in rem* rights) over properties or (ii) the lease for subsequent sublease for affordable housing purposes. The acquisition value will be determined based on appraisal procedures.

acquisition (or, in the case of a renewal of the benefit, within 10 years) (ii) the properties are not leased under the Affordable Housing Program, within 6 months as from the date of acquisition.

A reduced 6% Valued Added Tax ("VAT") rate will be applicable to construction or rehabilitation works for properties under the Affordable Housing Program, provided that at least at least 70%, or the totality of the property, in case of full ownership or unit, is allocated to the Affordable Housing Program, recognized by IHRU.

## Financing line to the municipalities for execution of maintenance works

Approval of a financing line in a global amount of EUR 150,000,000.00, with mutual guarantee and interest rate subsidies, for financing coercive works to be carried out by municipalities.

## Properties covered by the Affordable Housing Program

The following tax benefits are foreseen in connection with properties covered by the Affordable Housing Program:

- a) Exemption from Municipal Property Transfer Tax ("MPPT") applicable to the acquisition of land for construction for construction of urban buildings or units provided that (i) at least 70%, or the totality of the property, in case of full ownership or unit, is allocated to the Affordable Housing Program and (ii) the licensing proceeding is initiated within 2 years as from the acquisition date.
- b) Exemption from MPPT and MPT for a period of 3 years (with the possibility of renewal for another 5 years) applicable to the acquisition and ownership of urban buildings or units acquired or built to be allocated to the Affordable Housing Program.

The tax exemptions will not be applicable if (i) the properties cease to be allocated to the Affordable Housing Program within 5 years from the date of the



# LOCAL LODGING



## Non-transferability of the local lodging registration

The local lodging registration shall not be transferable in all categories and situations, no longer limited to just "houses" and "apartments" categories in "containment areas" (*zonas de contenção*) as it was previously. Additionally, local lodging registrations will expire in the event of any transfer of ownership of any part of the share capital of the legal entity holding the registration, no longer requiring a transfer of over 50% of the capital as was previously the case notably by means of transfer of share capital of legal persons holders of the registration.

### Duration

The local lodging registration shall have a duration of 5 years, renewable for equal periods (with the first renewal counted as from the date of issuance of the registration (*título de abertura ao público*)).

The renewal of the registration is subject to Municipality's authorization.

## Suspension of local lodging registration

The registration of new local lodgings will be suspended, in the "apartments" and "guest house" categories integrated in units, with exception of those operating in areas identified in the annex to Decree No. 208/2017 of 13 July. This rule shall not apply to Azores nor to Madeira. The end of this suspension will be evaluated by the municipalities within the scope of their respective Municipal Housing Charters.

Existing registrations will be subject to reevaluation during the year 2030 and can be renewed for periods of 5 years from the first reevaluation. Local lodging that serves as collateral for loan contracts concluded by 16 February 2023, and have not been fully repaid by 31 December 2029, are not subject to reevaluation. In these cases, the first reevaluation will only take place after the full initial amortization originally contracted.

## Expiration of existing local lodging registration

Holders of local lodging registration shall provide proof of the continued operation of their business within a period of 2 months, by submitting a tax declaration. Failure to do so may result in the cancellation of their registration.

## Cancellation of the registration by the condominium

Whenever a local lodging is operating in an unit intended for residential purposes in the horizontal property title, it is now required that the registration be preceded by a decision of the condominium authorizing the operation of this activity.

On the other hand, if local lodging is operated in an independent unit or part of an urban building not subject to the horizontal property regime, the condominium's general meeting may oppose the exercise of the lodging activity, which shall be expressed by resolution of 2/3 of the building's relative value (*permilagem*) - previously, only a majority of the property share was required. There is no longer a need to justify in the resolution the reasons connected with the opposition, and the discretion granted to Municipalities regarding the decision to cancel or not the registration has been removed. The cancellation of the registration causes the immediate termination of the operation of the local lodging.

These resolutions cannot be taken in two exceptional situations: (i) when the horizontal property title expressly provides for the use of the property for local lodging purposes or (ii) when there has been an express resolution of the condominium general meeting authorizing the use of the unit for local lodging.

## Extraordinary contribution on local lodging

It is foreseen an extraordinary contribution on local lodging, the taxable basis of which will be determined by reference to indicators related to the average value of fees charged and the urban pressure of the area in which the local lodges are located. The entities that own the exploration of local lodgings will be subject to the mentioned contribution, at the rate of 15%, and should submit a tax declaration (that will be approved) and pay the extraordinary contribution, until 20 June of the year following the taxable event.

## PIT and Corporate Income Tax (CIT) exemption for rental income arising from properties transferred from local lodging to residential lease agreements

A PIT and CIT exemption is applicable to rental income arising from leasing agreements for permanent residential purposes, provided that:

- a) Such income is derived from a property which has been transferred from the local lodging to the residential lease
- b) The registration of the local lodging has been concluded until 31 December 2022; and
- c) The execution of the lease agreement and its registration before the PTA is concluded until 31 December 2024

The PIT and CIT exemption will be applicable to rental income received until 31 December 2029.

## Increase of MPT rate

The aging coefficient – a relevant variable for the determination of the taxable value for MPT purposes – applicable to properties that are totally or partially allocated to local lodging establishments shall always be 1 (irrespective of the number of years that have elapsed since the date of the issuance of the use permit or the date of conclusion of the construction works). Before this amendment, the aging coefficient may be reduced up to 0.40, depending on the age of the property.

# RESIDENCE PERMIT FOR INVESTMENT - GOLDEN VISA



## RESIDENCE PERMIT FOR INVESTMENT - GOLDEN VISA

The following investment activities cease to qualify as a criterion to obtain a residency title:

- o Transfer of capital in the amount equal to or greater than EUR 1,500,000.00;
- o Acquisition of real estate with a value equal to or greater than EUR 500,000.00; and
- o Acquisition of real estate, whose construction was completed at least 30 years ago or located in urban rehabilitation areas, and execution of rehabilitation works on the acquired real estate with a total value equal to or greater than EUR 350,000.00.

New applications for obtaining a residence title for investment are not allowed, with the following exceptions:

- a) Renewal applications for residence titles for investment when these titles were granted under Law No. 23/2007, which approves the legal regime for the entry, stay, departure, and removal of foreigners from Portuguese territory;
- b) Applications for the granting or renewal of family reunion residence titles when these titles were granted under Law No. 23/2007;
- c) Applications for the granting of a permanent residence title for investment activity to citizens holding residence titles for investment activity and their family members, subject to certain requirements;
- d) Applications for the granting of residence titles related to investments or support for artistic production, recovery, or maintenance of national cultural heritage for which a declaration was issued by the Office of Strategy, Planning, and Cultural Evaluation, after consulting the relevant cultural authorities, confirming the nature of the investment or support for artistic production, recovery, or maintenance of national cultural heritage prior to the law's entry into force.

Pending applications for the granting and renewal of residence titles for investment activity that are either awaiting a decision from the competent authorities or are undergoing prior control procedures at the Municipalities remain valid.

In all these cases, the renewal of the residence title will be converted into a residence title for immigrant entrepreneurs, and its holders must meet the minimum stay requirement of seven days, consecutive or non-consecutive, in the first year and fourteen days, consecutive or non-consecutive, in subsequent two-year periods.

Therefore, the following investment activities remain eligible for obtaining residency title:

- o Creation of at least 10 job positions;
- o Transfer of capital in the amount equal to or greater than EUR 500,000.00, to be invested in research activities carried out by public or private institutions of scientific research, integrated into the national scientific and technological system;
- o Transfer of capital in the amount equal to or greater than EUR 250,000.00, to be invested in artistic production, the restoration or maintenance of national cultural heritage, or support for these activities;
- o Transfer of capital in the amount equal to or greater than EUR 500,000.00, intended for the acquisition of shares in non-real estate collective investment entities, constituted under Portuguese law, whose maturity at the time of investment is at least five years, and at least 60% of the investment value is realized in commercial companies based in national territory; and
- o Transfer of capital in the amount equal to or greater than EUR 500,000.00, intended for the establishment of a commercial company based in national territory, combined with the creation of five permanent job positions, or for the capital reinforcement of an existing commercial company based in national territory, with the creation of at least five permanent job positions or the maintenance of at least ten job positions, with a minimum of five permanent positions, for a minimum period of three years



# OTHER TAX MEASURES



## OTHER TAX MEASURES

### PIT

#### Taxation of capital gains arising from the sale of permanent residence

Currently, the PIT Code foresees a PIT exemption applicable to gains derived from the sale of the taxpayer's or his/her household's permanent residence as long as the selling price of the property is reinvested in the new permanent residence of the household. The following conditions are added to the list of conditions already foreseen for the application of the PIT exemption:

- a) The property transferred has been used as for the taxpayer's or his/her household's permanent residence, as evidenced by the tax domicile in the 24 months prior to the date of transfer; and
- b) The taxpayer has not benefited from the PIT exemption in the year in which property has been transferred, nor in the three previous years (it is possible to prove that this condition was not met due to exceptional circumstances)

The PIT exemption will not be applicable if the taxpayer's or his/her household's tax domicile is not registered in the property.

#### PIT exemption applicable to capital gains arising from the sale of secondary residential properties and allocated to the amortization of loans

A PIT exemption is foreseen to the capital gains arising from the sale of real estate properties made between 1 January 2022 and 31 December 2024, provided that:

- a) The property is not the taxpayer's or his/her household's own and permanent residence; and

- b) The sale price, deducted from the amortization of the loan contracted for the acquisition of the property, is applied, within 3 months from the sale date/entry into force of this regime, in the amortization of unsettled capital on mortgage loans destined for acquisition of the taxpayer's or his/her descendants' own and permanent residence.

#### PIT and CIT exemption applicable to the sale of property to the State or Municipalities

It is foreseen a PIT and CIT exemption applicable to the capital gains arising from the sale of real estate properties for residential purposes to the State, Autonomous Regions, Public Business Entities or to Municipalities. The PIT exemption will not be applicable to (i) capital gains obtained by non-resident taxpayers who are tax resident in a country, territory or region subject to a more favorable tax regime and (ii) gains arising from sales made in connection with the exercise of pre-emption rights.

#### Revocation of the reduced PIT rate

Elimination of the reduced PIT rate of 5% applicable to:

- o capital gains received by resident taxpayers in connection with the sale of a property which has been subject to rehabilitation works and is located in an "urban rehabilitation area";
- o rental income received by resident taxpayers deriving from the leasing of (i) real estate properties located in "urban rehabilitation areas", rehabilitated under the terms of the respective rehabilitation strategies or (ii) real estate properties subject to phased updating of rents under the NRAU, which are subject to rehabilitation works.

## MPT

### Revocation of the MPT suspension rules

Revocation of the following MPT suspension rules:

- a) 3-year suspension of MPT applicable to properties acquired for resale purposes that figure in the company's inventory; and
- b) 4-year suspension of MPT applicable to land for construction that is included in company's inventory which corporate purpose is the construction of buildings for sale.

Exemption applicable to building plots for construction for residential purposes

MPT exemption applicable to the parcels of land destined to construction in relation to which:

- a) A residential construction project has been filed with the Municipality and no final decision has been granted;
- b) A residential use permit request has been filed with the Municipality and no final decision has been granted.

If the building is used for other than residential purposes, the exemption will not apply and the MPT will be assessed for the whole period since its acquisition.

Taxpayers who (i) have acquired the building from an entity which has already benefited from the MPT exemption and (ii) are tax resident in a country, territory or region subject to a more favorable tax regime will not benefit from the MPT exemption



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