

October 23, 2023

INFORMATIVE NOTE

MAIS HABITAÇÃO PROGRAMM

Law No. 56/2023, of October 6

On 6 October 2023, Law no. 56/2023 was published, bringing to fruition a relevant part of the "MAIS HABITAÇÃO" Programme, introducing a series of changes and innovations in various aspects related to housing policy. Law 56/2023 came into force the day after its publication.

Of the changes that have now been published, we highlight the following:

1. SECURITY IN RENTAL AND RESPECTIVE TAX INCENTIVE MEASURES

1.1. Limitation on the increase in the amount of rent.

With effect until 31 December 2029, the initial value of the rent of new lease agreements for residential purposes, in relation to properties that have had lease agreements in place in the last 5

years, may not exceed 2% of the value of the last rent practiced in the previous contract.

This limit applies to contracts that exceed the general rent limits provided for under the "Programa de Arrendamento Acessível" (Affordable Rental Program - Ordinance No. 176/2019, of June 6 de Junho).

When the rent of the immediately preceding lease agreement has not been subject to one or more legally permitted updates, the annual coefficients published in the "Diário da República" (Official Gazette) may also be applied to the value of the initial rent, provided that no more than 3 years have passed since the date on which it would have been initially possible to apply it.

In the case of properties that are subject to extensive renovation or restoration works, duly attested by the City Council, to the initial rent of the new lease contracts may be added the amount related to the corresponding expenses borne by the landlord, up to the annual limit of 15 %.

1.2. Housing leases prior to 1990

Lease contracts for housing purposes entered into before 1990, when the tenants have a Corrected Gross Annual Income of less than 5 times the National Minimum Annual Income, and/or are 65 years of age or older or have a disability with a degree of disability equal to or greater than 60%, can no longer be transferred to the “*Novo Regime do Arrendamento Urbano*” (New Urban Lease Regime) (NRAU).

To mitigate the effects of this measure on landlords, the promise of new tax measures is made, including exemption from IRS (income tax) and IMI (municipal property tax), as soon as the report presented by the *Observatório da Habitação e da Reabilitação Urbana* (Observatory of Housing and Urban Rehabilitation) is published with the proposal of measures necessary for the regular functioning of the urban rental market, as well as the rent subsidy.

1.3. Eviction and injunction procedures in rental matters

This law simplifies the procedure for eviction and injunction in rental matters, with the following changes being highlighted:

- i) Creation of the *Balcão do Arrendatário e do Senhorio* (Tenant and Landlord Desk), with jurisdiction throughout the national territory, which now includes the special eviction procedure and the injunction procedure in rental matters;
- ii) Even in the event of frustration of communication of termination of the lease

agreement to the tenant due to late or non-payment of rent, possibility of termination of the lease agreement through the special eviction procedure;

- iii) Clarification of the regime applicable in the event of lack of opposition by the tenant, through greater speed in obtaining a decision to vacate the leased property;
- iv) Standardization of the regime of suspension and postponement of the eviction of the leased property, between the special eviction procedure and the execution regime for the delivery of leased property provided for in the Civil Procedure Code.
- v) The State now assumes the payment of rents that fall due after the end of the opposition period in situations where the tenant maintains the occupation of the leased property (it has a maximum monthly value of 1.5 times, with a total limit of 9 times, the minimum monthly remuneration guaranteed).

1.4. IRS - Reduction of the rate applicable to property income

There is a reduction in the autonomous IRS rate applicable to the taxation of property income arising from housing rentals, from 28% to 25%.

1.5. IRS - Incentives for long-term housing leases

With regard to property income arising from lease contracts for permanent housing with a duration equal to or greater than 5 years, the following reduced rates are applied:

- i) Contracts with a duration of 5 years or more and less than 10 years – 15% (previously it was 23%). For each renewal of the same duration, a reduction of 2% is applied, with reductions relating to the renewal subject to a limit of 10%.
- ii) Contracts with a duration of 10 years or more and less than 20 years – 10% (previously it was 14%).
- iii) Contracts with a duration of 20 years or more – 5% (previously it was 10%).

The above mentioned reductions do not apply to property income arising from lease agreements entered into on or after January 1, 2024, whose monthly rent exceeds by 50% the general rental price limits per typology (as set out in Ordinance No. 176/2019, of June 6).

If the lease agreements provide for a rent at least 5% lower than the rent of the previous contract on the same property, an additional reduction of 5% is applied to the IRS rate.

As far as deductible expenses are concerned, rent insurance will now be accepted as a deduction from property income earned.

These changes, in terms of property income taxation, apply to new lease agreements and respective contract renewals, as well as to

renewals of lease contracts in force, verified from the date the law comes into force (7 October 2023).

Whenever contracts cease to have effect before their expiry or renewal dates, for a reason attributable to the landlord, the right to rate reductions is extinguished, and landlords must settle the difference.

1.6. Rent insurance and its deductibility for IRS purposes

Having identified the incipient use of rent insurance for greater protection of landlords and since such insurance can encourage landlords who are more averse to the risk associated with the rental market, the Law determines that the *Associação de Supervisão de Seguros e Fundos de Pensões* (Insurance and Pension Funds Supervisory Association) must assess with the insurance sector the reasons for the existence of disincentives or barriers to contracting this type of insurance, communicating its conclusions to the Assembly of the Republic and the Government by the end of 2023.

The law also clarifies that rent insurance will now be considered a deductible expense from income obtained for IRS purposes.

2. AFFORDABLE RENTAL

2.1. Support for the promotion of affordable rental housing

This support is based on the following modalities:

- i) Approval of a financing line, promoted by Banco Português de Fomento, S.A., in the amount of 250,000,000 euros, with a mutual guarantee and interest rate subsidy, to finance affordable rental housing projects, namely for construction or rehabilitation, including the acquisition of the property for this purpose; and
- ii) State transfer of land and public buildings through the constitution of surface rights, with a view to promoting, making available and managing affordable rentals.

The residences promoted and made available under the aforementioned support modalities are allocated to affordable rental for a minimum period of 90 years, renewable when there is a transfer of the surface right, or 25 years in other cases. At the end of the lease period, and in the event of a sale, the municipalities and the IHRU have the pre-emptive right of purchase.

The following are eligible for support: housing and construction cooperatives, commercial companies engaged in civil construction, in a consortium or in another form of association with commercial companies whose corporate purpose includes housing leases and asset management, which comply with the access conditions provided for in the legal regime of housing development contracts (Decree Law No. 165/93, of May 7) or companies in whose capital they participate, as well as entities dedicated to the promotion and investment of real estate, municipalities, parish councils, *misericórdias*, private institutions of social solidarity and legal persons of administrative public utility or of recognized public interest.

This support is extended to student accommodation, and adherence to its regime is subject to the application of maximum monthly prices for student accommodation, defined in a government ordinance.

2.2. Acquisition and leasing of real estate by public entities

Possibility for public entities to proceed with (i) the acquisition of property rights or other rights *in rem* for affordable rent, or (ii) the lease for subsequent housing sublease.

2.3. Forced rehabilitation works and forced rental of vacant homes

It is established the possibility that, in the continental territory, the autonomous fractions and parts of urban buildings susceptible to independent use, for residential use, when located outside the interior territories, classified as vacant under the terms of the Law, and which have been with this classification for more than 2 years, are subject to forced rehabilitation works or forced lease by the municipalities.

In terms of procedure, at the end of the 2-year period, the municipality with territorial jurisdiction sends the respective owner, as the case may be:

- a) Notification of the duty of conservation, promoting the execution of the necessary works, in the event of non-compliance with this notification;
- or

b) Notification of the duty to use the autonomous fraction and, if the owner so wishes, the submission of a rental proposal, whereby the rent may not exceed by 30 % the general rent price limits by typology according to the municipality in which the property is located. If the owner refuses the proposal or does not decide within 90 days after receiving it, and the property remains vacant, the municipalities may, exceptionally and as a supplementary measure, force the property to be rented out.

If the municipalities do not intend to lease the property and it does not require conservation works, they send the information about the property to IHRU, I. P., so that it can, if it so chooses, initiate the forced lease procedure with the owner.

2.4. Financing for municipalities to carry out compulsory works

It is approved a financing line, with mutual guarantee and interest rate subsidy, to support the execution by municipalities of coercive works, in the total amount of a maximum of €150,000,000.

2.5. Tax benefits granted to properties covered by the Rental Support Program (RSP)

It is foreseen that the following tax benefits will be granted in relation to the RSP, provided for in the Decree-Law No. 68/2019, of May 22:

- a) IMT exemption applicable to the acquisition of building land for the construction of residential properties, provided that (i) at least 70% of the

buildings in horizontal ownership or all of the buildings in full ownership or autonomous fractions are allocated to this program and (ii) the prior control procedure of the construction works is started within 2 years after the acquisition;

- b) Exemption from IMT and IMI 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 autonomous fractions acquired or built for allocation to the RSP.

The exemptions provided for in the preceding's paragraphs shall cease if the properties are given a purpose other than that on which the benefit was granted, within 5 years from the date of transfer, or, in the case of renewal of the IMI exemption, within 10 years; or if the properties are not the subject of a lease contract under the RSP within six months of the date of transfer.

Urban buildings classified as residential, included in the RSP, are also excluded from the Additional to IMI.

In addition, the reduced VAT rate of 6% will now apply to construction or rehabilitation contracts for the construction or rehabilitation of affordable housing, cost-controlled housing or affordable rental housing, provided that at least 70% of the buildings in horizontal ownership or all the buildings in full ownership or autonomous fractions are allocated to one of these purposes and certified by the IHRU.

Housing lease contracts included in the RSP and contracts entered into within the scope of public housing programs promoted by the competent entities in the area of housing in the Autonomous Regions are exempt from stamp duty.

3. SHORT TERM LETTING

3.1. Control of the short-term letting activity by the condominium assembly

Whenever the short-term letting establishment is registered in an autonomous fraction of a building in horizontal property that is intended, in the constitutive title, for housing, it is now required that the registration be preceded by a decision of the condominium authorizing the exercise of the short term letting activity.

If the activity carried out in an autonomous fraction of a building or part of an urban building that is susceptible to independent use, the condominium assembly, by resolution of at least two-thirds of the permillage of the building (until now half was sufficient), may oppose the exercise of the activity, except when the constitutive title expressly provides for the use of the fraction for short-term letting purposes or there has been an express resolution of the condominium assembly to authorize the use of the autonomous fraction for that purpose.

Therefore, the need for the resolution to be reasoned is no longer required and the discretion that was granted to the City Council regarding the decision to cancel the registration is removed.

3.2. Non-transferability of the registration

Short-term letting registrations are now personal and non-transferable in all modalities and situations (previously it was only for "houses" and "apartments" in "containment areas"). Even the public opening titles expire in the event of the transfer of any part of the share capital of the legal person holding the registration, regardless of the percentage (previously it was only transfers of capital above 50%).

3.3. Duration

The registration will be for a period of 5 years, renewable for equal periods, with renewals requiring an authorization from the City Council.

3.4. Suspension of new registrations

The issuing of new registrations of short-term letting establishments, in the modalities of apartments and lodging establishments integrated into an autonomous fraction of a building, is suspended throughout the national territory, with the exception of inland territories. The lifting of this suspension must be evaluated and defined by the municipalities, in the respective Municipal Housing Charters.

3.5. Review of existing registrations

Registrations issued on the date of entry into force of this law will be reviewed during the year 2030 and will be renewable for periods of 5 years from the first review.

Short-term letting establishments that constitute a real guarantee of loan agreements entered into

until February 16, 2023, which have not yet been fully settled on December 31, 2029, will not be subject to review. In such cases, the first revaluation takes place only after the full depreciation initially contracted.

3.6. Expiry of inactive registrations

Until December 8 of this year, registrants must provide proof, by submitting a contribution statement, of the maintenance of the operating activity, at the risk of having their registration cancelled.

3.7. Extraordinary contribution on short-term letting apartments

An extraordinary contribution is created on apartments and lodging establishments integrated in an autonomous fraction of a building in local accommodation (“CEAL”).

CEAL focuses on the allocation of residential properties to short-term letting, on December 31 of each calendar year.

CEAL's taxable base is constituted by applying the economic coefficient of the short-term letting accommodation and the urban pressure coefficient to the gross private area of residential properties, on which CEAL is levied. The rate applicable to the taxable base is 15%.

The owners of the operation of short-term letting establishments will be taxable.

The assessment must take place by the June 20 of the year following the tax event, through the

presentation of a declaration whose model is yet to be approved.

3.8. Exemption from IRS/IRC on property income associated with the transfer of real estate from short-term letting accommodation to residential rental

Property income obtained until December 31, 2029 resulting from lease agreements for permanent housing is exempt from IRS and IRC taxation, if the following conditions are cumulatively met:

- i) The income results from the transfer to rent, for permanent housing, of properties previously allocated to short-term letting;
- ii) The short-term letting establishment has been registered until December 31, 2022;
- iii) The conclusion of the lease agreement and its registration on the Tax Authority Portal takes place until December 31, 2024.

3.9. Increase in the IMI Rate for buildings that are totally or partially used as short-term letting establishments

The coefficient of obsolescence [which is one of the variables used in the determination of the VPT (Taxable Asset Value) for IMI purposes, which can range from 0.40 to 1 depending on the number of years that have elapsed since the date of issuance of the use license, if any, or the date of completion of the building works] of the buildings that constitute, in whole or in part, short-term letting establishments will always be 1.

4. RESIDENCE PERMIT FOR INVESTMENT – GOLDEN VISA

As of October 7, 2023, new applications for residence permits for investment activity (Golden Visas) will no longer be accepted, in the following modalities:

- i) Transfer of capital in an amount equal to or greater than 1,500,000.00 €;
- ii) Acquisition of real estate with a value equal to or greater than 500,000.00 €, and
- iii) Acquisition of real estate, whose construction has been completed at least 30 years ago or located in an urban rehabilitation area and carrying out rehabilitation works of the acquired real estate, in a total amount equal to or greater than 350,000.00 €;

However, it doesn't prejudice:

- i) Applications for renewal of residence permits for investment activity when such permits have been granted under the legal regime applicable until 7 October 2023.
- ii) Applications for granting or renewing residence permits for family reunification.
- iii) Applications for the granting of a residence permit for permanent investment activity to citizens holding a residence permit for investment activity and their family members, subject to the fulfilment of certain requirements.

In all the cases mentioned above, the renewal determines the conversion of the residence permit

into a residence permit for entrepreneurial immigrants, and its holders must comply with the minimum period of stay of seven days, consecutive or interpolated, in the first year and 14 days, consecutive or interpolated, in the subsequent periods of two years.

On the other hand, applications for the granting and renewal of residence permits for investment activities that are awaiting a decision from the competent authorities or that are awaiting a decision from the competent authorities or pending prior control procedures in the City Councils remain valid.

Therefore, the Golden Visa remains valid for the following investments:

- i) Creation of at least 10 jobs;
- ii) Transfer of capital in an amount equal to or greater than 500,000.00 euros, that must be applied in research activities carried out by scientific research institutions or private companies, integrated in the national scientific and technological system;
- iii) Transfer of capital in an amount equal to or greater than 250,000.00 euros, that must be applied in investment or support for artistic production, recovery or maintenance of national cultural heritage;
- iv) Transfer of capital in an amount equal to or greater than 500,000.00 euros, intended for the acquisition of shares in non-real estate collective investment undertakings;

- v) Transfer of capital in an amount equal to or greater than €500,000.00, intended for the incorporation of a commercial company with head office in Portugal, combined with the creation of five permanent jobs, or for the reinforcement of the share capital of a commercial company with head office in Portugal, already incorporated, with the creation of at least five permanent jobs or maintenance of at least ten jobs, with a minimum of five permanent jobs, and for a minimum period of three years.

5. OTHER TAX MEASURES

5.1. IRS

5.1.1. Taxation of capital gains associated with the sale of real estate intended for own and permanent residence

The following conditions have been added to the regime for the reinvestment of real estate capital gains for the purposes of obtaining IRS exemption on gains from the transfer of real estate intended for the taxpayer's own permanent residence or that of their family:

- i) The transferred property has been intended for the taxpayer's or his family's own permanent residence, or that of his/her household, as evidenced by the respective tax address, in the 24 months prior to the date of transfer; and

- ii) Taxpayers have not benefited from the exclusion regime in the year in which the gains were made or in the previous 3 years (without prejudice to the possibility of proving that the non-fulfilment of this condition was due to exceptional circumstances).

In addition, this exemption will not apply when the taxpayer or their family have not established their tax residence in the property.

5.1.2. Exemption applicable to capital gains allocated to loan amortisation

According to the transitional rule provided for capital gains arising from the transfer of land for construction or residential real estate that is not intended for the taxpayer's own permanent residence or that of his family, made between 1 January 2022 and 31 December 2024, are excluded from IRS taxation, provided that the following conditions are cumulatively met:

- i) The realisation value, deducted from the amortisation of any loan taken out to acquire the property, is applied to the amortisation of the capital due on a mortgage loan for the taxpayer's own permanent home or that of their descendants; and
- ii) The repayment is made within a period of three months from the date of completion.

In this sequence, whenever the realisation value, deducted from the amortisation of any loan taken out for the acquisition of the transferred property, is greater than the outstanding capital in the

housing loan taken out for the acquisition of the property intended for the taxpayer's own and permanent residence or that of his family, the remaining amount is subject to taxation, under the terms of the general provisions of the IRS (Personal Income Tax) Code.

For transfers covered by the exemption that were made until October 7 2023, the repayment must be made by January 7 2024 (i.e. within three months of the entry into force of Law n.º 53/2023).

5.2. IRS / IRC

5.2.1. Elimination of benefits associated with urban rehabilitation

IRS or IRC withholding tax at the rate of 10% of income related to units of real estate investment funds is eliminated.

It is eliminated the 5% autonomous IRS tax rate applicable to:

- i) Capital gains earned by taxpayer's resident in Portuguese territory arising from the first sale subsequent to the intervention in a property located in an urban rehabilitation area;
- ii) Property income earned by taxpayer's resident in Portuguese territory when resulting from the rental of properties located in an 'urban rehabilitation area', recovered under the terms of the respective rehabilitation strategies and leased properties subject to phased updating of rents under the terms of the

NRAU, which are subject to rehabilitation actions.

5.2.2. Exemption applicable to the sale of property to the State or local authorities

Gains arising from the sale of residential real estate to the State, the Autonomous Regions, public business entities in the area of property or local authorities are exempt from IRS and IRC taxation, with the exception of gains made by residents with tax residence in a country, territory or region subject to a more favourable tax regime, and gains arising from onerous disposals through the exercise of pre-emptive rights.

5.3. IMT

5.3.1. Reduction of the resale period

With regard to properties acquired for resale, the period in which the resale must take place is reduced from 3 years to 1 year in order to maintain the IMT exemption or, when IMT has been paid at the time of acquisition, for the cancellation of the latter.

If the exemption ceases to apply, the tax shall be deemed to be due from the moment of acquisition, plus compensatory interest.

5.4. IMI

5.4.1. Repealing of rules suspending taxation

The following rules have been repealed:

- i) The one that provided for the absence of taxation from the 1st to the 3rd year following the year in which a building plot of land has been included in the inventory of a company whose object is the construction of buildings for sale;
- ii) The one that provided for the suspension of taxation in the 1st and 2nd year following the year in which a building has been included in the inventory of a company whose object is the construction of buildings for sale.

5.4.2. Exemption applicable to land for the construction of dwellings and buildings intended for residential use

Land for construction is exempt from IMI:

- i) For which the prior control procedure for construction works of residential properties has been initiated with the competent authority, and for which there has not yet been a final decision, express or tacit, of the procedure.
- ii) In which the prior control procedure for residential use has been initiated with the competent authority, and for which there has not yet been a final decision, express or tacit, of the procedure.

If the building is used other than for residential purposes, the tax is paid for the entire period that has elapsed since its acquisition.

The exemption does not apply to: i) taxpayers who have acquired the building from an entity that has already benefited from it; ii) taxpayers whose tax residence is in a country, territory or region subject to a more favourable tax regime; iii) taxpayers who are an entity dominated or controlled, directly or indirectly, by an entity that is resident for tax purposes in a country, territory or region subject to a more favourable tax regime.

5.4.3. Extension of the exemption applicable to buildings intended for the taxpayer's own and permanent residence

The 3-year exemption provided for by law for buildings or parts of urban residential buildings built, extended, improved or acquired for a price, intended for the taxpayer's own and permanent residence or that of their household, can now be extendable for a further 2 years, by resolution of the municipal assembly.

5.4.4. Determination of VPT of vacant buildings or buildings in ruins

Municipalities are now able to request that vacant urban buildings that do not constitute an autonomous fraction of a building under horizontal ownership, as well as urban buildings in ruins, be evaluated as land for construction, by indicating the gross areas provided by the municipality, with the one with the highest VPT prevailing among the evaluations.

5.4.5. Rate increase for vacant buildings or buildings in ruins

Urban buildings or autonomous fractions that have been vacant for more than one year, buildings in ruins and building land inserted in the urban land and whose qualification in the municipal land use plan attributes suitability for residential use, whenever they are located in areas of urban pressure, are subject to an increase in the rate, replacing the increase already provided for by law (triple), the rate will be 10 times more, increased in each subsequent year, by an additional 20%, always with a maximum limit of 20 times the normal rate.

5.5. VAT

5.5.1. Urban rehabilitation

In the context of urban rehabilitation, the amendment to item 2.23 of List I Annex to the VAT Code stands out. The reduced VAT rate of 6% is now applicable to building rehabilitation contracts and contracts for the construction or rehabilitation of public collective use facilities, located in urban rehabilitation areas delimited under the terms of the law, or carried out within the scope of rehabilitation and requalification operations of recognised national public interest.

New construction contracts in urban rehabilitation areas are definitely excluded from the reduced VAT rate.

In accordance with the transitional rule laid down, the new wording of item 2.23, does not apply to: i) requests for licensing, prior communication or

prior information regarding urban planning operations submitted to the municipality with territorial jurisdiction before the date on which the law comes into force; and ii) requests for licensing or prior communication submitted to the territorially competent City Council after the entry into force of the law, provided that they are submitted under the terms of a favourable prior information in force.

5.6. STAMP DUTY

5.6.1. Contracts communication

In terms of Stamp Duty, the new law provides for the possibility for lessees to notify the Tax and Customs Authority of the lease agreement entered into, as well as its amendments and termination, within the deadlines and terms to be regulated by ordinance, if the lessors or sublessors do not make such communications.

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