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GALVÃO TELES, SOARES DA SILVA
& ASSOCIADOS

MORE HOUSING PROGRAMME

October 2023



Housing measures

On 6th October 2023, [Law no. 56/2023](#) was published in the Official Gazette (*Diário da República*) approving the measures regarding the More Housing Programme (*Programa Mais Habitação*), which entered into force the day after its publication (**Law**).

The purpose of this document is to identify the main measures introduced by the Law.



1. Local accommodation (*alojamento local*)

2. Lease agreements

2.1. Limitation on the price of rents in new lease agreements

2.2. Lease agreements prior to 1990

2.3. Tenant and Landlord Desk

2.4. Communication of the lease agreement to the Tax Authorities by the tenant

3. Forced letting of vacant housing

4. Promoting affordable rental housing

5. Golden Visas

6. Other tax measures

6.1. Exemption from Real Estate Transfer Tax on the acquisition of buildings for resale

6.2. Construction and urban rehabilitation (*reabilitação urbana*)

6.3. Exemption from Municipal Immovable Property Tax (IMI) on land for construction

6.4. Increased IMI rate for vacant buildings

6.5. Reinvestment of Real Estate Capital Gains

6.6. Real Estate Income

6.7. Exclusion from taxation of capital gains from the sale of plots of land or residential property

6.8. Promoting affordable rents and the sale of immovable properties to the state

1. Local accommodation (*alojamento local*)

(i) **Registration subject to the approval of the condominium general meeting:** the registration of a “Local Accommodation” establishment (*alojamento local*, hereinafter **AL**) in an autonomous unit of a building constituted in horizontal property – which in the respective constitutive title (*título constitutivo*) is intended to be used for housing – is now subject to a prior unanimous decision of the condominium general meeting authorising the use of the unit for local accommodation. It should be noted that this requirement only applies to new registrations of local accommodation establishments after the date of entry into force of the Law, *i.e.*, 7th October 2023.

In case the AL is carried out in an autonomous unit of a building or part of an urban building that can be used independently, the condominium general meeting – by resolution passed by at least two-thirds of the permillage of the building – now has the option to oppose the exercise of the local accommodation activity (except in cases where the constitutive title expressly foresees the use of the autonomous unit for AL purposes or where there has already been an express resolution of the condominium general meeting authorising the use of the unit for such purposes);

(ii) **Cancellation of registration:** for the purposes of the preceding paragraph, the condominium general meeting shall notify the mayor of the municipality with territorial jurisdiction of its decision, which shall take effect within 60 days of the date of such notification;

(iii) **Non-transferability of the registration:** it is foreseen that the registration number of an AL establishment is not transferable in any form, even if it is owned by a legal person (the title of opening to the public (*título de abertura ao público*) now lapses in case of transfer, of any part of the share capital of the legal person that owns the registration, regardless of the percentage). Prior to the entry into force of the Law, the rule of non-transferability of the registration number of an AL establishment applied only to houses (*moradias*) and apartments (*apartamentos*) located in a containment zone (*zona de contenção*);

(iv) **Term of registration:** the registration of an AL establishment will now last for five years. The registration may be renewed for equal periods, but only with the express authorisation of the mayor of the municipality with territorial jurisdiction;

(v) **Suspension of new registrations:** the issuance of new registrations of AL establishments, in the form of apartments and lodging establishments integrated in an autonomous unit of a building, is now suspended, **with the exception of the inland areas identified in the annex to Ordinance no. 208/2017, of 13 July;**

- (vi) **Re-evaluation of issued registrations:** registrations of AL establishments already issued on the date of entry into force of the Law are subject to re-evaluation, which shall take place during the year 2030. However, the re-evaluation, does not apply to AL establishments that constitute a real guarantee for loan agreements signed by 16th February 2023, that have not yet been fully settled by 31st December 2029. In such cases, the first re-evaluation shall only take place after the full repayment initially agreed;
- (vii) **Expiry of inactive registrations:** holders of AL registrations will have two months from the date of entry into force of the Law to produce evidence of maintaining the AL activity, by means of submitting a tax return. If they fail to do so, the registrations shall be cancelled by decision of the mayor of the municipality with territorial jurisdiction (with the exception of AL establishments operating in permanently owner-occupied houses, provided that such AL activity does not exceed 120 days per year);
- (viii) **Extraordinary Contribution:** an Extraordinary Contribution is created for apartments and lodging establishments installed in autonomous units of a building as local accommodation (*Contribuição Extraordinária sobre o Alojamento Local, CEAL*), which is now levied on the affectation of residential property to AL:

- a. **Subjective scope:** owners of AL establishments (if they do not coincide with the owners of the properties, they will be subsidiarily responsible for the collection and payment of the CEAL);
- b. **Objective scope:** residential properties used for AL, on 31st of December of each civil year. The term residential properties includes autonomous units and parts or divisions of urban buildings that can be used independently for residential purposes. Excluded from the objective scope of the CEAL are immovable properties located in areas classified as interior territory, as well as immovable properties located in parishes that cumulatively meet the following criteria:
 - to be covered by a Municipal Housing Charter in force (*Carta Municipal de Habitação, i.e.*, a municipal planning instrument for housing), which shows that there is an adequate balance between the offer of housing and student accommodation in the municipality;
 - to be part of municipalities where the housing shortage situation (*situação de carência habitacional*) has not been declared; and
 - to have no part of their territory falling in an urban pressure zone (*zona de pressão urbanística*);

- c. **Exemption:** the CEAL does not apply to: (i) residential properties that do not constitute autonomous units, nor parts or divisions that can be used independently; and (ii) AL units in own and permanent residence, provided that its use as AL does not exceed 120 days per year;
 - d. **Taxable base:** application of the economic coefficient for AL and the urban pressure coefficient to the gross private area of residential properties on which the CEAL is levied. The rate applicable to the taxable base is 15%;
- (ix) **Tax benefit:** real estate income arising from lease agreements for permanent housing is exempt from Personal Income Tax (*Imposto sobre o Rendimento das Pessoas Singulares, IRS*) or Corporate Income Tax (*Imposto sobre o Rendimento das Pessoas Coletivas, IRC*), provided that all the following conditions are cumulatively met:
- a. Transfer of the property used for AL to the residential rental market;
 - b. Registration of the AL establishment has taken place and it is used for that purpose until 31st December 2022; and
 - c. The lease agreement is signed and registered on the Portuguese Tax Authorities' website until 31st December 2024.

This exemption applies to real estate income obtained until 31st December 2029.



2. Lease agreements

2.1. Limitation on the price of rents in new lease agreements

With regard to the legal regime for lease agreements, the Law provides for a limitation on the value of the initial rent applicable to new lease agreements for residential purposes levied on immovable properties that have been subject to lease agreements in the five years prior to the entry into force of the Law. In this case, the value of the new rent may not exceed by more than 2% the value of the last rent applied to the immovable property.

The limitation in question applies to new lease agreements in which the rent exceeds the general rent price limits by typology established in the Affordable Rent Program ([Decree-Law no. 68/2019, of 22 May](#), and [Ordinance no. 176/2019, of 6 June](#)) and remain in force until 31st December 2029.

In situations where rents under previous lease agreements have not been subject to one or more legally permitted updates, the annual rent update coefficients may also be applied – to the values of the initial rents – provided that no more than three years have elapsed since the date on which their application would have been initially possible. The coefficient applicable to 2023 is 1.0543.

In the case of immovable properties that have undergone extensive refurbishment or restoration work the amount of the costs incurred by the landlord may be added to the initial rent, up to the annual limit of 15% and not 2%, provided that this has been duly certified by the Municipality.

2.2. Lease agreements prior to 1990

Lease agreements for residential purposes entered into before 1990, in which the tenant demonstrates that: (i) the household's Annual Adjusted Gross Income (*Rendimento Anual Bruto Corrigido*) is less than five times the Annual National Minimum Income (*Rendimento Mínimo Nacional Anual*); or that (ii) they are aged 65 or over or disabled with a degree of disability equal to or greater than 60%, are not subject to the New Urban Lease Regime.

2.3. Tenant and Landlord Desk

The “Tenant and Landlord Desk” (*Balcão do Arrendatário e do Senhorio*), created to replace the current “National Rental Desk” (*Balcão Nacional do Arrendamento*), is intended to handle the special rental eviction procedure and injunctions in rental matters, as well as the respective conduct of proceedings. These changes will only take effect 120 days after this Law comes into force.



2.4. Communication of the lease agreement to the Tax Authorities by the tenant

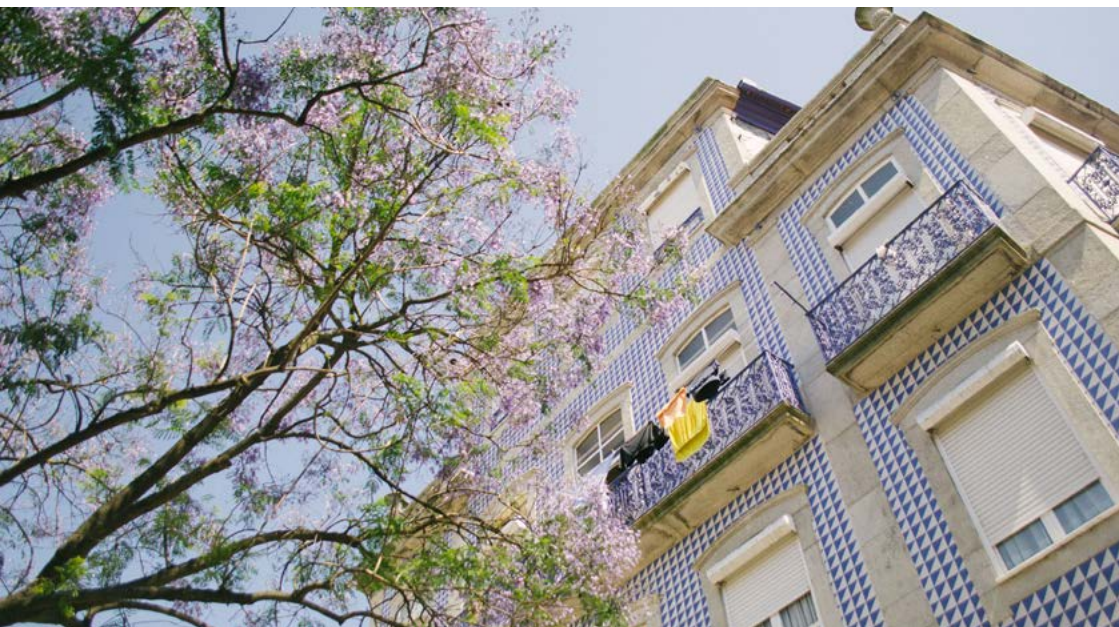
The lease agreement can now be communicated by the tenant and the subtenant to the Tax Authorities (*Autoridade Tributária e Aduaneira*) in case the landlord or sublessor fail to do so.

3. Forced letting of vacant housing

- (i) **General duty to periodically inspect buildings:** it is foreseen that municipalities are given a general duty to periodically inspect buildings with regard to their living conditions, and may also, on their own initiative or at the request of any interested party, order an inspection of the property's conditions of use. Within the scope of such inspection, compliance with the legal rules on living conditions (which constitute irregular residential rental or sub-letting situations) will be checked. If irregular situations are identified, the municipality must summon the owners to restore the use pursuant to the authorised terms;
- (ii) **Forced letting of vacant housing:** the forced rental regime now applies to autonomous units and parts of urban buildings that can be used independently, for residential use, that are classified as vacant (according to [Decree-Law no. 159/2006, of 8 August](#)) and that have been so classified for more than two years, when located outside inland territories. At the end of the two-year period, the municipality with territorial jurisdiction sends the respective owner, depending on the respective case:
 - a. A notification of the duty to carry out conservation works, promoting the execution of the necessary works, in the case of non-compliance; or

- b. A notification of the duty to make use of the autonomous unit and, if it so wishes, submit a rental proposal, provided that the rent does not exceed the general rent price limits set out in the Affordable Rental Programme (*Programa de Arrendamento Acessível*) ([Decree-Law no. 68/2019, of 22 May](#)) by 30%. If the owner refuses the proposal or does not present a statement within 90 days and the immovable property remains vacant, the Municipality may, exceptionally and supplementarily, proceed to a forced letting, whenever it proves necessary to guarantee the social housing function.

If the municipalities do not intend to lease the property and it does not need any conservation works, they send the information on the immovable property to the Institute for Housing and Urban Rehabilitation (*Instituto da Habitação e da Reabilitação Urbana, IHRU*), so that it can, if it so wishes, notify the owner in the same manner as the municipality.



4. Promoting affordable rental housing

As part of the creation of support for the promotion of affordable rental housing, in addition to tax incentives and a financing line, the transfer of surface rights over immovable properties of the public real estate assets for a maximum period of 90 years is foreseen, with no transfer of ownership rights in favour of the beneficiaries (as set out in Article 3 of [Law no. 56/2023, of 6 October](#)).

The surface rights over immovable properties of the public real estate assets enshrined through this support are transferable, provided that all the inherent rights and duties are safeguarded, in particular the duty to allocate the dwellings to the development of affordable rental housing.

5. Golden Visas

The possibility of submitting residence permit applications for investment activities based on: (i) the transfer of capital in an amount equal to or greater than 1.5 million euros; and (ii) the acquisition of real estate is revoked.

However, both the possibility of the renewal of authorisations granted under the legal regime in force until then, and the validity of pending applications are safeguarded.

6. Other tax measures

6.1. Exemption from Real Estate Transfer Tax on the acquisition of buildings for resale

The exemption from Real Estate Transfer Tax (*Imposto sobre as Transmissões Onerosas de Imóveis*, **IMT**) on purchases for resale now requires that the property be resold within one year (previously three years) of its acquisition.

Thus, buildings acquired for resale no longer benefit from exemption from IMT (tax becomes due from the time of acquisition accrued with compensatory interest) in the following cases:

- (i) The buildings acquired for resale have been given a different use, considering as such the completion of works or other alterations that may lead to a change in the property's patrimonial tax value;
- (ii) The buildings have not been resold within one year; or
- (iii) The buildings are resold again for resale.

6.2. Construction and urban rehabilitation (*reabilitação urbana*)

The reduced rate of Value Added Tax (*Imposto sobre o Valor Acrescentado*, **IVA**) from 6% now applies to:

- (i) Construction or rehabilitation works for affordable housing, controlled-cost housing or housing for affordable rent, regardless of the promoter, provided that at least 700/1000 of the buildings in horizontal ownership or all of the buildings in total ownership or autonomous units are used for one of these purposes (provided they are certified) (new item 2.18); and
- (ii) Works for the rehabilitation of buildings and works for the construction or rehabilitation of public collective use facilities located in urban rehabilitation areas (new item 2.23).

However, the new item 2.23 will not apply either: (i) to cases pending on the date of entry into force of this Law; or (ii) to licensing or prior communication requests (*pedidos de licenciamento ou de comunicação prévia*) that have been submitted under the existing favorable prior information (*informação prévia*).



6.3. Exemption from Municipal Immovable Property Tax (IMI) on land for construction

The following are now exempt from IMI: *(i)* plots of land for which the prior control procedure for construction work on residential properties has been initiated before the competent authority; and *(ii)* buildings for which the prior control procedure for residential use has been initiated before the competent authority and for which there has not yet been a final, express or tacit decision on the procedure.

However, this exemption does not apply to taxpayers who: *(i)* use the building for something other than residential purposes, being the IMI due for the entire period since its acquisition; *(ii)* have acquired the building from an entity that has already benefited from the exemption; *(iii)* have their tax domicile in a country, territory or region subject to a more favorable tax regime; and *(iv)* are dominated or controlled, directly or indirectly, by an entity that has its tax domicile in a country, territory or region subject to a more favorable tax regime.

6.4. Increased IMI rate for vacant buildings

The IMI rate applicable to urban buildings and autonomous units that have been vacant for more than one year, buildings in ruins, and plots of land on urban building soil whose classification attributes suitability for residential use (whenever they are located in areas of urban pressure) is increased tenfold and by a further 20% in each subsequent year (the previous rate for urban buildings was between 0.3% and 0.45%). This increase is capped at 20 times the applicable rate.

In cases where the urban building or autonomous unit is intended for residential purposes and, in the year to which the tax relates, is not rented out for residential purposes or used for the taxable person's own permanent residence, this limit may be increased by 50%, by resolution of the competent Municipal Assembly. It can be increased by 100% whenever the taxable person is a legal person or other tax equivalent entity.

6.5. Reinvestment of Real Estate Capital Gains

In addition to the requirements already laid down in the law, taxpayers are now required to: *(i)* be tax domiciled in the immovable property transferred within the 24 months prior to the date of the transfer; and *(ii)* not have benefited from the tax exclusion in the year in which the gains were obtained, or in the previous three years.

The time period for reinvesting the capital gain generated between 24 months prior to and 36 months after the date of the onerous transfer of the

immovable property intended for the taxpayer's own permanent residence, or that of his family, is suspended for a period of two years, with effect from 1st January 2020.

6.6. Real Estate Income

Real Estate Income will now be taxed at an autonomous rate of 25% in terms of IRS (instead of the previous rate of 28%), which may also be reduced depending on the length of the lease:

- (i) **Term equal to or greater than five years and less than 10 years:** the autonomous rate becomes 15%, with a reduction of 2% for each renewal of the same period (with a limit of 10%);
- (ii) **Term equal to or greater than 10 years and less than 20 years:** the applicable autonomous rate is 10%; and
- (iii) **Term equal to or greater than 20 years** (real estate income arising from contracts of real rights to permanent housing, in the part relating to the payment of the monthly financial benefit): the applicable autonomous rate is 5%.

Whenever these rental agreements cease to produce effects before the expiry of their duration or renewal periods, for reasons attributable to the landlord (or, in the case of a right *in rem* of permanent housing, by

agreement of the parties), the right to the rate reductions provided for therein is extinguished, with effect from the beginning of the contract or renewal, whereby, in the year of termination of the contract, those entitled to the income must declare this fact in order to settle the difference between the amount of tax paid each year and the amount that should have been paid based on the rate applicable to the period actually elapsed, accrued with compensatory interest.

These new measures do not apply, however, to real estate income stemming from lease agreements for residential purposes entered into on or after 1st January 2024, where the monthly rent exceeds by 50% the general rent price limit by type and municipality.

New lease agreements that benefit from the regime are subject to an additional 5% reduction in the respective autonomous rate whenever the rent is at least 5% lower than the rent of the previous lease on the same property.

6.7. Exclusion from taxation of capital gains from the sale of plots of land or residential property

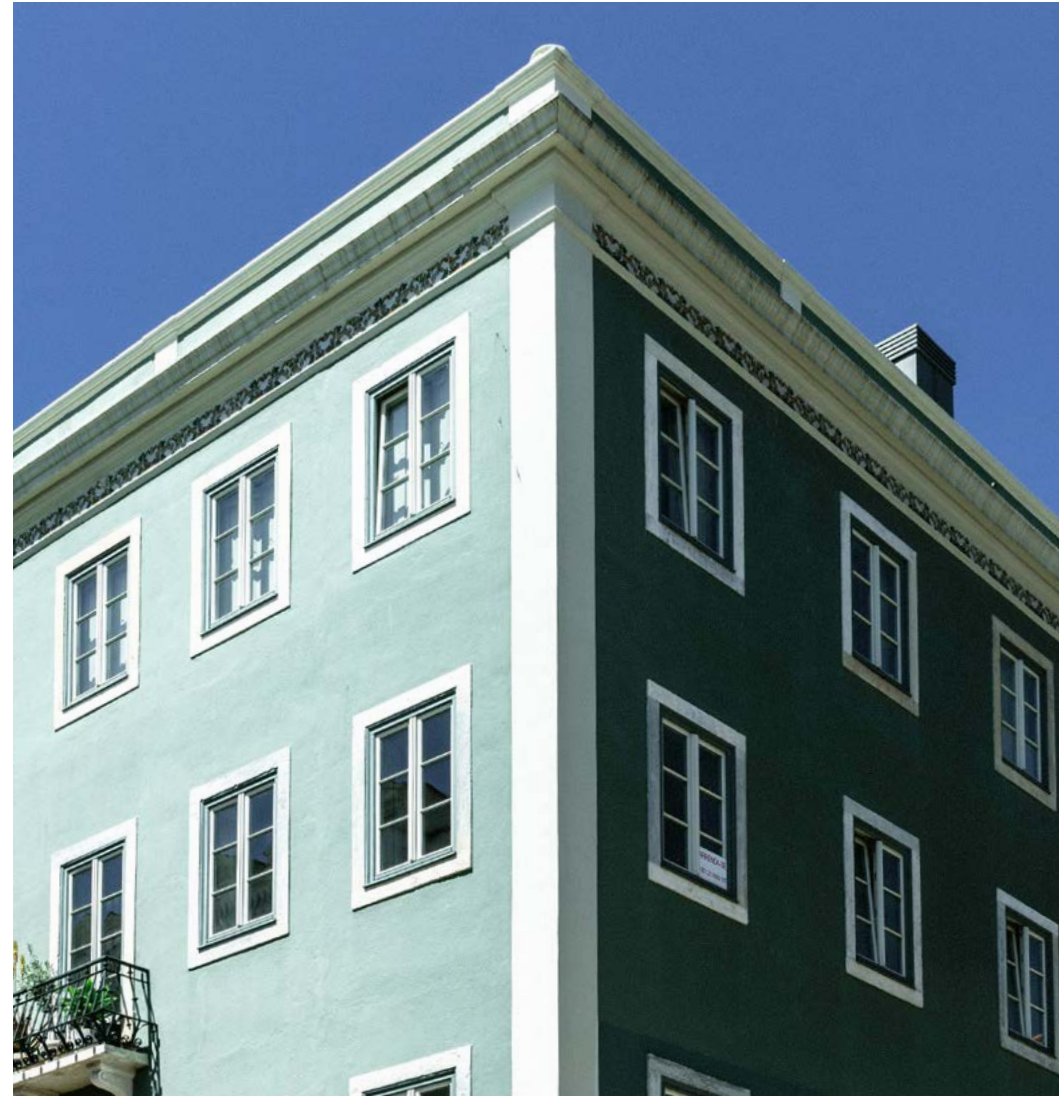
Capital gains from the onerous transfer of land for construction or residential property which is not intended for the taxpayer's own permanent residence (or that of the respective family) are excluded from IRS taxation, provided that the realisation value is used to repay the outstanding principal on the

taxpayer's own permanent residence loan, or that of their descendants, within three months of the date said transaction.

This tax exclusion only applies to transactions made between 1st January 2022 and 31st December 2024, under the terms above mentioned.

6.8. Promoting affordable rents and the sale of immovable properties to the state

Real estate investment funds and real estate investment companies operating in accordance with domestic legislation, whose assets are made up of at least 75% of real estate for affordable housing rental, benefit from taxation at a rate of 10% on the positive balance between capital gains and losses resulting from the sale of investment participation units, provided that their holders are: (i) non-resident entities to which the exemption provided for in Article 27 of the [Portuguese Tax Benefits Statute](#) (*Estatuto dos Benefícios Fiscais*) does not apply; or (ii) private person taxpayers subject to IRS that are resident in Portugal who obtain the income outside the scope of a commercial, industrial or agricultural activity and do not opt for the respective aggregation.



Contacts

Morais Leitão is available to clarify any specific questions and to provide assistance with any related subject.

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