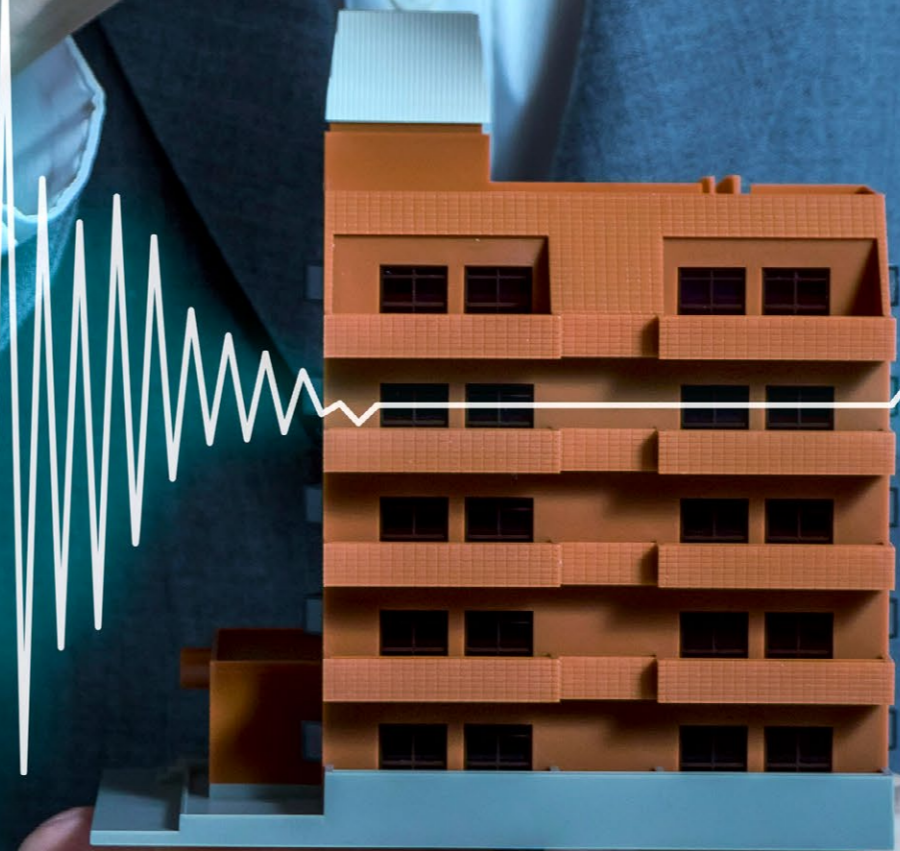


Mais Habitação
(More Housing)
Programme



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Law 56/2023, which approves measures under the *Mais Habitação* (More Housing) programme, was published on 6 October and entered into force the following day.

PLMJ highlights some of the key aspects of Law 56/2023 below¹:

Local lodging

AGREEMENT OF THE CONDOMINIUM

If the local lodging establishment is located in an autonomous unit (apartment) in a building registered as horizontal property and intended for residential use in the deed of incorporation, the registration is subject to the prior unanimous decision of the condominium to allow the use of the unit for the local lodging activity.

Thus, in this case, the prior notification with a deadline for the registration of a local lodging establishment must be accompanied, among other things, by the minutes of the condominium owners' meeting regarding the change of use.

Furthermore, in the case of local lodging establishments operating in an autonomous unit², the condominium owners' meeting may oppose the operation of the local lodging activity with a resolution passed by at least two-thirds of the condominium owners, unless the activity is expressly permitted in the deed of incorporation or by prior resolution). In this case, the cancellation of the registration - which determines the immediate cessation of the operation of the establishment - will take effect within 60 days of the date on which the resolution of the general meeting of the owners is sent to the president of the municipality where the establishment is located.

It is provided that the registration number of the local lodging establishment, whatever its category, is not transferable.

NON-TRANSFERABILITY OF THE REGISTRATION

It is provided that the registration number of the local lodging establishment, whatever its category, is not transferable, even if it is owned by a legal person.

It is also provided that the local lodging establishment's authorisation to open to the public will lapse if any part of the share capital of the legal entity holding the registration is transferred, regardless of the percentage.

DURATION OF THE REGISTRATION

The registration of a local lodging establishment will now be for a period of 5 years, renewable for equal periods. However, this is subject to an express declaration by the competent municipal council, which may object on the basis of the establishment's operating requirements or, where applicable, the provisions of the Municipal Housing Charter³.

¹ This document is intended to be distributed to clients and colleagues. The information contained in it is provided in general and abstract terms. It should not serve as a basis for any decision without qualified professional assistance tailored to the specific case. The content of this document may not be reproduced, in whole or in part, without the express permission of the publisher. If you would like further information on this topic, please contact Francisco Lino Dias (francisco.linodias@plmj.pt), Teresa Madeira Afonso (teresa.madeiraafonso@plmj.pt) or Isaque Ramos (isaque.ramos@plmj.pt).

² Like the previous wording, – article 9(2) of Law 128/2014 of 29 August – the new law maintains the reference to “part of an urban building that can be used independently”. However, in this case, the building in question will not be established under the horizontal property regime and therefore there will be no condominium owners' meeting.

³ Approved under Law 83/2019 of 3 September, which approves the Framework Law on Housing.

SUSPENSION OF NEW REGISTRATIONS

The registration of new local lodging establishments, in the form of flats and accommodation establishments within an autonomous unit of a building, is suspended. However, there is an exception for properties located in inland areas, properties included in the Revive Nature Fund and in the Autonomous Regions of Madeira and the Azores.

The suspension lasts until the competent municipality approves the Municipal Housing Charter – instrument that defines the appropriate balance between the supply of housing and student accommodation in the area concerned – allowing the suspension to be lifted. The suspension is maintained in the event of a declaration of housing shortage in the municipality.

RE-EVALUATION OF ISSUED LOCAL LODGING REGISTRATIONS

Local lodging registrations already issued when the law comes into force will be reviewed during 2030 and will be renewable for 5 years from the first review. However, the review does not apply to local lodging establishments that constitute a real guarantee for loan agreements signed by 16 February 2023 that have not been fully repaid by 31 December 2029. In this case, the first review will only take place after full repayment of the originally contracted amount.

EXPIRY OF INACTIVE REGISTRATIONS

Within 2 months of the entry into force of the new law, local lodging registration holders are obliged to prove that they continue to operate the local lodging establishment by submitting a tax return. If they fail to do so, the registration will be cancelled by decision of the president of the municipality with territorial jurisdiction. However, this does not apply to the operation of local lodging units in a person's own permanent residence, provided that such operation does not exceed 120 days per year.

EXTRAORDINARY CONTRIBUTION

The extraordinary contribution for apartments and accommodation establishments within an autonomous unit of a local lodging building (ECLL) is created and applies to owners of local lodging establishments. Owners of properties who do not themselves run the local lodging business carried out in their properties are liable on a subsidiary basis for the payment of the ECLL in respect of their properties.

The ECLL is levied on the allocation of residential property to local lodging on 31 December of each calendar year and the taxable base is determined by applying the economic coefficient for local lodging and the urban pressure coefficient to the gross private area of the residential property. The applicable rate is 15%.

However, the ECLL does not apply to:

- properties located in inland areas;
- properties located in civil parishes that, cumulatively:
 - a) are covered by a Municipal Housing Charter in force, which shows an adequate balance between housing supply and student accommodation in the municipality;
 - b) are part of municipalities in which no housing shortage has been declared;
 - c) have no part of their territory classified as an urban pressure zone.



- dwellings which are not autonomous units or parts or divisions capable of independent use; and
- local lodging units in a person's own permanent residence, provided that the operation does not exceed 120 days per year.

The amount of ECLL paid is not deductible in determining taxable profit for Corporate Income Tax (CIT) purposes, even if it is expensed in the tax period.

Property income from lease agreements for permanent housing, is exempt from PIT and CIT – subject to specific conditions.

TRANSFER OF LOCAL LODGING PROPERTIES TO LEASE

Property income from lease agreements for permanent housing is exempt from Personal Income Tax (PIT) and CIT, provided that the following cumulative conditions are met:

- the income arises from the transfer of real estate allocated to a local lodging activity to lease for permanent housing;

- the local lodging establishment is registered and used for this activity until 31 December 2022;
- the lease agreement is signed and registered on the website of the Tax Authority by 31 December 2024.

This exemption applies to property income received until 31 December 2029.

Residential leases

COMPULSORY RESIDENTIAL LEASES

The compulsory lease regime - provided for in the Legal Framework of Urban Development and Construction for situations in which the sums owed by the owner in the case of coercive works are not paid⁴ – are extended to situations of vacant residential properties.

Thus, in the case of autonomous units or parts of an urban building that can be used independently, for residential use and classified as vacant for more than 2 years, if they are not located in areas of the interior, the municipality will send to the owner (i) a notice of obligation of preservation, providing for the execution of the necessary works in case of non-compliance with the notice; or (ii) a notice of obligation to put the autonomous unit into use and, if desired, to submit a lease proposal. In this case, and if the owner refuses to submit such a proposal or fails to do so within 90 days, and the property remains vacant, the municipality (or IHRU, IP if the municipality does not wish to do so) may proceed with the compulsory lease of the property. However, this option will only be possible in exceptional and complementary cases and when it proves necessary to guarantee the social function of housing, as provided for in the Framework Law on Housing (not applicable to the Autonomous Regions of Madeira and the Azores).

⁴ Article 108-B of the Legal Framework of Urban Development and Construction, approved by Decree-Law 555/99 of 16 December.

RENT LIMIT IN NEW AGREEMENTS

It is stipulated that the initial rent for new residential leases for properties for which there have been lease agreements signed in the 5 years prior to the entry into force of the law may not exceed the value of the last rent charged for the same property in a previous agreement, with a coefficient of 1.02 applied.

The annual rent adjustment coefficients that have not been applied will be added to this limit (provided that no more than 3 years have passed since the date on which it would have been possible to apply them initially), and the coefficient for 2023 is 1.0543.

In addition, in the case of properties that undergo major renovation or restoration work, certified by the Municipal Council, the amount of the costs borne by the landlord may be added to the initial rent, up to an annual limit of 15%.


This limit does not apply to agreements that do not exceed the general rental price limits per type applicable under the Lease Support Programme⁵.

This limit applies until 31 December 2029.

LEASE AGREEMENTS MADE BEFORE 1990

The transition to the New Urban Lease Rules will not be applied to lease agreements in cases where the tenants claim and prove that (i) their household's Gross Adjusted Annual Income (RABC) is less than five times the National Minimum Annual Income (RMNA) or (ii) they are 65 years of age or older or disabled with a degree of incapacity equal to or greater than 60% (or in cases where the tenant's spouse, de facto partner or relative in the first degree in the direct line, who is in these same conditions, has resided in the tenancy for more than 5 years, and the household's RABC is less than 5 x RMNA).

⁵ Provided for in Tables 1 and 2 of Annex I to Ordinance no. 176/2019, of June 6, which regulates the provisions regarding the rent limits applicable under the Lease Support Program (formerly known as the Affordable Rental Program), approved by Decree-Law no. 68/2019, of May 22.



In the case of properties that have undergone major renovation or restoration work, the amount of the costs borne by the landlord may be added to the initial rent, up to an annual limit of 15%.

In such cases, the rent will be updated according to the annual coefficients approved by the law (instead of indexing it to the value of the property and the tenant's income, as previously provided), unless, in the case of (ii) above, the tenant accepts the rent proposed by the landlord, or the tenant proposes a new amount and the landlord accepts it.

The law also provides for the establishment of tax measures, including an exemption from PIT and Municipal Property Tax (MPT), of the amounts and limits of the compensation to be granted to the landlord and the rent to be fixed for the tenant, to be applied from 2024.

AFFORDABLE LEASE

A scheme will be created to support the development of housing for affordable rental and student accommodation, by creating lines of funding lines and by concession of public land and buildings.

The beneficiaries of this support include:

- Housing and construction co-operatives that meet the legal requirements necessary to be granted funding; and
- Commercial companies engaged in the construction industry, in a consortium or in another form of association with commercial companies whose corporate purpose includes residential lease and property management. These must also meet the legal requirements necessary to be granted funding, or companies in whose capital they hold a stake, as well as entities engaged in property development and investment.

A line of funding from *Banco Português de Fomento, S.A.*, with a mutual guarantee and subsidised interest rate, is available for affordable housing projects, for construction or renovation, including the acquisition of the property for this purpose and subsequent lease, for a total amount of €250,000,000.

A line of funding with a mutual guarantee and an interest rate subsidy is available for affordable housing projects.

Housing built using this line of funding is subject to the parameters and values in force for cost-controlled housing, including the development cost per square metre.

Applicants who meet the eligibility criteria under the programmes in question are allowed to lease to public bodies, for subsequent sublease, in the context of programmes organised by the latter in the area of affordable housing.

In addition, it is established that the government may transfer the public real estate assets it identifies for this purpose, under a surface right regime, for a maximum period of 90 years, renewable by agreement of the parties. The aim of this is to promote, make available and manage affordable rental. The surface right is transferable, provided that all the inherent rights and duties are safeguarded. These include the duty to allocate the dwellings to develop housing for affordable rental.

The dwellings provided using these forms of support are allocated to affordable rental for a minimum period of (i) 90 years, renewable, in the case of the transfer of the surface right and (ii) 25 years in other cases. When these periods come to an end, and in the event of a sale, the municipalities and the IHRU, IP have a pre-emptive right to purchase the dwellings in question. However, the reference for this purpose is the value calculated in accordance with the legislation applicable to the provision of housing at controlled costs, reported on the date of completion of the development and updated by the monetary correction factor.

The terms and conditions of this support for affordable rental will be regulated by a ministerial order issued by the member of the Government responsible for housing, within 90 days of this law coming into force.

From a tax perspective, rental income obtained under the municipal programmes for affordable housing leases and student accommodation is exempt from PIT and CIT for the duration of the contracts.

LANDLORD AND TENANT DESK

The Landlord and Tenant Desk (*Balcão do Arrendatário e do Senhorio*) (BAS) is created to replace the current National Letting Desk (*Balcão Nacional do Arrendamento*) (BNA), to handle the special eviction procedure and injunctions in the field of leased property, and provision is made for the respective procedures.

The changes in this area take effect 120 days after the law comes into force.

In addition, with effect from 1 January 2024, the State will guarantee the payment of rents – up to a maximum monthly amount of 1.5 times, with a total limit of 9 times, the guaranteed minimum monthly wage – that fall due after the end of the objection period with the BAS, i.e., when the residential lease is terminated due to the tenant’s default and the tenant continues to occupy the premises. In this case, the State will take on the rights of the landlord, which can then be exercised by means of tax enforcement.

TAX CHANGES

Deductible expenses

The cost of rent insurance is now deductible from gross rental income for PIT purposes.

Reduction of tax rates for property income from residential leases

Income from residential leases will now benefit from a reduced PIT rate of 25% (compared to the previous rate of 28%).

The reduced PIT rates applicable to rental income from residential leases, determined according to the duration of the contracts, are revised as follows:

Duração dos contratos	Taxa reduzida
=/> 5 years and < 10years	15% (additional reductions of 2% apply, up to a limit of 10%, for each renewal of equal duration)
=/> 10 years and < 20years	10%
=/> 20 years	5%

However, the reduced tax rates are not applicable in the following cases:

- whenever the lease agreements are terminated before the end of the term (or renewal), for reasons attributable to the landlord or by agreement of the parties in the case of the right of permanent residence (the taxpayer is obliged to pay the PIT in proportion to the period that has elapsed); and
- in residential leases entered into after 1 January 2024, when the rent exceeds by 50% the general rent price limits of the municipality where the property is located.



Purchases of land for construction to build residential properties will now be exempt from RETT.

In addition to the applicability of the reduced PIT rates, changes are also made to the reductions in the taxable base through the application coefficients to rental income from residential leases, net of specific deductions, as follows:

Applicable rate	26%	24%	23%	22%	21%	20%	19%	18%	16%	15%	14%	10%	5%
Coefficient	0,90	0,89	0,89	0,88	0,87	0,87	0,86	0,85	0,82	0,81	0,79	0,70	0,45

The 5% PIT rate applicable to rental income earned by residents is repealed when it derives from the lease of real estate:

- o located in an urban regeneration area; and
- o which are subject to a phased updating of rents under the terms of the New Urban Lease Rules.

Building land and urban buildings for the Lease Support Programme

Acquisitions of land for construction to build residential properties will now be exempt from Real Estate Transfer Tax (RETT) provided they fulfil the following requirements:

- o at least 700/1000 of the buildings in horizontal property, or the whole of the buildings in full ownership or autonomous units are allocated to the Lease Support Programme, regardless of the promoter, provided that they are certified by the IHRU, IP or are promoted by the competent authorities in the Autonomous Region of Madeira and the Autonomous Region of the Azores; and

- o the prior control procedure for construction work on residential property has been started with the competent authority within 2 years of acquisition.

Urban buildings (or autonomous units) acquired, renovated or built for use in the Lease Support Programme will now benefit from the following:

- o RETT exemption; and
- o MPT exemption for 3 years from the year of purchase, inclusive, which can be renewed at the owner’s request for a further 5 years.

The above RETT and MPT exemptions are withdrawn if:

- o the property is given a different use from that on which the benefit was based, within 5 years of the date of transfer, or, in relation to the MPT exemption and in the case of renewal of that benefit, within 10 years; and
- o the property does not have a lease agreement signed under the Lease Support Programme within 6 months of the date of purchase.

Residential lease incentives for property investment funds and companies

Holders of units in funds and property investment companies whose assets are made up of at least 75% real estate for affordable residential leases will now benefit from the reduced rate of 10% on the positive balance between capital gains and capital losses resulting from the sale of those units, if they are:

- o non-resident entities to which the exemption provided for in Article 27 of the Tax Benefits Statute does not apply; or
- o PIT taxpayers’ resident in Portugal who obtain income outside the scope of a commercial, industrial or agricultural activity and which do not opt for aggregation.

Sale of property to the State and to public bodies

Gains from the sale of residential property to the State, the Autonomous Regions, public housing companies or local authorities are now exempt from PIT and CIT, with the exception of the following:

- gains made by residents with tax residence in a country, territory or region subject to a more favourable tax regime;
- gains arising from onerous disposals through the exercise of pre-emptive rights.

Indirect taxation

A Stamp Tax exemption is introduced for agreements that are:

- housing leases under the Lease Support Programme; and
- signed under public housing programmes organised by the bodies responsible for housing in the Autonomous Regions.

The MPT surcharge will also no longer apply to urban buildings classified as housing under the Lease Support Programme.

Residence Permit for Investment (ARI) – “Golden Visa”

It is no longer possible to apply for this type of residence permit through the following types of investment: a) transfer of capital in an amount of €1,500,000 or more; b) acquisition of real estate with a value of €500,000 or more; c) acquisition of real estate whose construction has been completed for at least 30 years or located in an urban rehabilitation area and carrying out rehabilitation works on the real estate acquired, in an overall amount of €350,000 or more.

The new law will not be applied retroactively, and the right to renewal, family reunification and applications for permanent residence permits will be safeguarded.

The new law does not apply retroactively, and the right to renewal, family reunification, as well as applications for permanent residence permits are safeguarded in cases started on the basis of the above types of investments before the new law came into force. However, such grants and renewals will now be analysed under the Residence Permit for Entrepreneurial Emigrants⁶ arrangements – without the 183-day/year stay requirement, while the special 7-day/year requirement is maintained.

⁶ Integrated into Law no. 23/2007 of 4 July.

Despite these changes, the programme will remain active with 5 different investment options (which, however, cannot be used, directly or indirectly, for real estate investment). These are:

- Transfer of capital in an amount of €500,000 or more, intended to acquire shares in non-real estate collective investment undertakings, which are set up under Portuguese law, whose maturity, at the time of the investment, is at least 5 years and at least 60% of the value of the investments is realised in commercial companies based in Portugal;
- Transfer of capital in an amount of €500,000 or more, intended to incorporate a commercial company with its registered office in Portugal, combined with the creation of five permanent jobs, or to increase the share capital of a commercial company with registered office in Portugal, already incorporated, with the creation of at least five permanent jobs, or the maintenance of at least ten jobs, with a minimum of five permanent jobs, and for a minimum period of 3 years;
- Creation of at least 10 jobs;
- Transfer of capital totalling €500,000 or more, invested in research activities carried out by public or private scientific research institutions that are part of the national scientific and technological system.
- Transfer of capital of €250,000 or more, which is invested in or supports artistic production, recovery or maintenance of the national cultural heritage, through central and peripheral direct administration services, public institutes, entities that are part of the public business sector, public foundations, private foundations with public utility status, inter-municipal entities, entities that are part of the local business sector, municipal associative entities and public cultural associations, which pursue objectives in the area of artistic production, recovery or maintenance of the national cultural heritage.

The programme will remain active with 5 different investment options that are not, directly or indirectly, used for real estate investment.

Finally, Law 23/2007 of 4 July, as amended by this law, is currently regulated by Regulatory Decree 84/2007 of 5 November. It is therefore hoped that this Regulatory Decree will also be updated, with a view to clarifying and regulating new concepts and practices imposed by the new law, as well as clarifying open questions of interpretation. Such questions do exist, especially with regards to the conversion of renewals to the entrepreneur regime and the concept of indirect property investment.

Other tax changes

PURCHASE FOR RESALE

The deadline for reselling properties that have been exempt from RETT on purchase for resale is reduced from 3 years to 1 year.

The concept of “different use” given to a property other than its purchase for resale, which is relevant to determining the expiry of the above RETT exemption, is clarified. It is provided that the property must be considered to have been given a different use whenever building or improvement works are completed, or other changes are made that may determine a variation in its official taxable value.

If the RETT exemption on purchase for resale lapses because the property has been put to another use, there has been no resale within 1 year or there has been a new transfer for resale, compensatory interest will be added to the tax paid from the date of acquisition.

TAXPAYER’S OWN PERMANENT RESIDENCE

The current 3-year MPT exemption for urban dwellings built, extended, improved or acquired against payment for the taxpayer’s own permanent residence may now be extended for a further 2 years, subject to the decision of the municipalities, provided that:

- the total gross income of the household in the previous year did not exceed € 153,300;
- the property is actually used for this purpose within 6 months; and
- the official taxable value of the property does not exceed € 125,000.

There is also a reduction in the MPT rates applicable to urban buildings intended as the taxpayer’s own permanent residence, depending on the number of dependants, by increasing the fixed deduction from the tax due, as follows:

No. of dependants	Fixed deduction
1	€ 30 (previously € 20)
2	€ 70 (previously € 40)
3 or more	€ 140 (previously € 70)

PIT CAPITAL GAINS REINVESTMENT REGIME

Under the PIT regime for reinvesting capital gains from real estate intended as the taxpayer’s own permanent residence, in addition to the requirements already applicable, taxpayers are now obliged to:

- have had their (and their family unit’s) tax residence in that property for the 24 months prior to the date of transfer;
- not have benefited from an exclusion from taxation in the year in which the gains were made, or in the previous 3 years, unless it can be proved that this was due to exceptional circumstances.

CONSTRUCTION AND URBAN RENEWAL

The reduced Value Added Tax (VAT) rate of 6% is now also applicable to the following works:

- the construction or renovation of affordable housing, cost-controlled housing or housing for affordable rental, regardless of the promoter, provided that at least 700/1000 of the buildings in horizontal ownership or the whole of the buildings in full ownership or autonomous units are used for one of these purposes and are certified by the IHRU, the IP or the competent authorities, if promoted in the Autonomous Region of Madeira and the Autonomous Region of the Azores (amendment to point 2.18); and



- the renovation of buildings and the construction or renovation of public facilities located in urban regeneration areas or carried out as part of reclassification and renovation operations of recognised national public interest (amendment of point 2.23).

Capital gains earned by PIT taxpayers resident in Portugal from the first sale following the intervention of a property located in an urban regeneration area will no longer be taxed at the rate of 5 per cent.

LAND FOR CONSTRUCTION

The concept of land for construction has been substantially reduced, so that only land located inside or outside an urban agglomeration is covered:

- for which a licence or prior favourable communication of licensing or construction operations has been granted; or
- for which notice has been given by the municipality to the Tax Authority as suitable for construction.

An exemption from MPT is introduced for land for the construction of houses and buildings intended for residential use, which is applicable when:

- land for construction for which the prior control procedure for construction work on residential properties has been started with the competent authority, and for which there has not yet been a final decision; and
- buildings for which the prior control procedure for residential use has been started with the competent authority and for which there has not yet been a final decision.

However, this exemption does not apply to taxable persons who:

- use the building for something other than residential purposes, in which case the MPT referring to the entire period since its acquisition becomes due;

- have acquired the building from an entity that has already benefited from the exemption;
- are resident for tax purposes in a country, territory or region subject to a more favourable tax regime;
- are an entity owned or controlled, directly or indirectly, by an entity that is tax resident in a country, territory or region subject to a more favourable tax regime.

The MPT rates applicable to urban buildings or autonomous units that have been vacant for more than a year, buildings in ruins, and some building plots are increased.

VACANT OR ABANDONED BUILDINGS

There is an increase in the MPT rates applicable to urban buildings or autonomous units that have been vacant for more than a year, buildings in ruins, and land for construction inserted in urban soil whose qualification attributes aptitude for residential use, whenever they are located in areas of urban pressure. The increases are as follows:

- the rate of 0.3% to 0.45% applicable to urban buildings is increased tenfold and increased by a further 20% in each subsequent year (in the previous wording, the rate was increased sixfold and increased by a further 10% in each subsequent year);
- the increase is capped at 20 times the applicable rate.

In addition, dependent upon resolution of the municipality, this limit can now be increased by:

- 50% (compared to the previous 25%) in the case of an urban property or autonomous unit intended for housing and not leased out for housing or used as a permanent residence; or
- 100% (compared to the previous 50%) when the taxable person is a legal person or a tax equivalent entity.

The possibility of increasing the MPT rate applicable to rural properties with forested areas that are in a situation of abandonment has been increased, and municipalities can now decide to increase the applicable rate by up to three times (in the previous wording, the increase was up to two times), although it cannot result in a tax collection of less than €20 for each property.

REVOCAÇÃO DE BENEFÍCIOS PARA FUNDOS DE INVESTIMENTO IMOBILIÁRIO

The tax incentives for investment in real estate investment funds set up between 1 January 2008 and 31 December 2013, in which at least 75% of their assets are real estate subject to renovation works carried out in urban regeneration areas, are revoked:

- the CIT exemption applicable to the income obtained;
- the 10% withholding tax rate applicable to income from units of these funds; and
- the rate of 10% on the positive balance between capital gains and capital losses resulting from the sale of investment units.

Tax incentives for investment in real estate investment funds set up between 1 January 2008 and 31 December 2013 are revoked in certain situations.

To be noted that, on 28 August 2023, Law 50/2023 was published to authorise the government to reform and simplify licensing in the field of town and country planning. It is expected that, within 180 days of that date, the authorised decree-law will be approved by the Council of Ministers, being afterwards, and without prejudice of his right of veto, promulgated by the President of the Republic and subsequently published in the official gazette, *Diário da República*.



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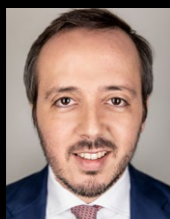
About the Real Estate and Tourism team

→ What we do

About the Tax team

→ What we do

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