

October 2023

# “Mais Habitação” Programme

Published measures



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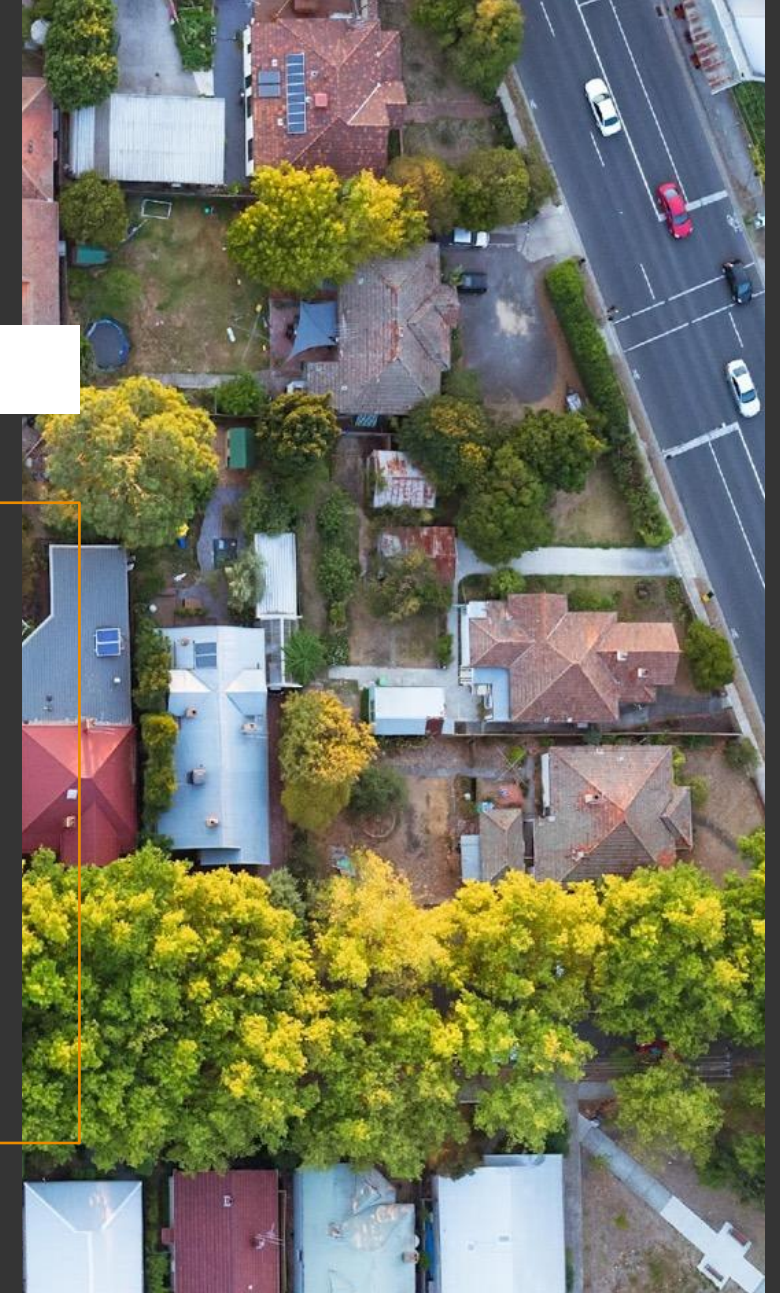
# Residential real estate market in Portugal

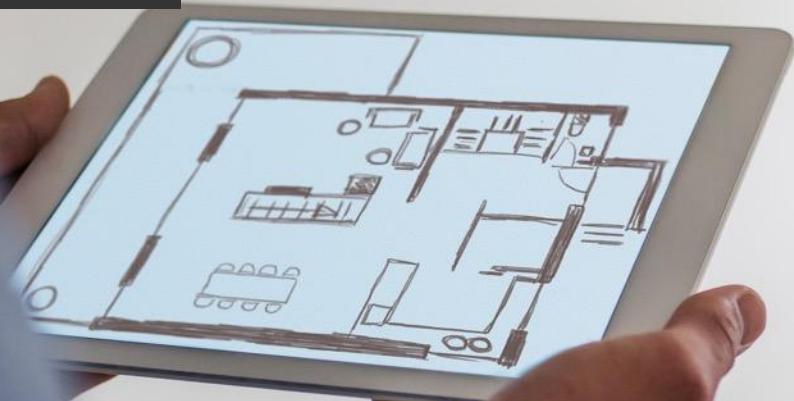
This legislative package has been outlined based on the "Mais Habitação" ("More Housing") Programme, and on October 6th, 2023, the Law no. 56/2023 (the 'Law') was published in the official gazette, *Diário da República*.

In general, the changes introduced by the Law are as follows:

- establishment of support for the promotion of affordable rental housing;
- development of a New Generation of Cooperativism for the Promotion of Affordable Housing;
- definition of exceptional and transitional rules regarding the rent amounts in new lease agreements, subsequent to agreements entered into in the past five years;
- definition of mechanisms to protect tenants with lease agreements prior to 1990 and to guarantee fair compensation for the landlord;
- integration of the special eviction procedure and of injunction in tenancy matters into the Balcão do Arrendatário e do Senhorio, in order to simplify and optimize its operation and strengthen the parties' guarantees;
- approval of several tax measures to stimulate and to support renting activity;
- to stimulate the transfer of short-term rentals' apartments (local lodgment – "AL") to residential long-term lease agreements;
- creation of an extraordinary contribution on apartments and accommodation establishments integrated into AL buildings;
- revocation of residence permits for real estate investment activities (i.e., termination of the golden visa program for real estate activities);
- extension of the scope of situations exempted from prior supervision by the Court of Auditors.

In the presentation, we will provide an overview of the key measures approved by the Law.





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## 1 Legal aspects

### Revocation of Golden Visas with a focus on real estate

New applications for residency permit based on (i) property acquisition, (ii) transfer of capital, or (iii) acquisition of units or shares in collective investment entities with real estate assets, will no longer be accepted, without prejudice to the possibility of their renewal if they were previously granted under the legal framework applicable until the date of entry into force of the Law.

### Limits on rent increases in new lease agreements

The initial rent for new residential lease agreements for properties that were subject to lease agreements in the 5 years before the entry into force of the Law, shall not exceed the amount of the last rent charged for the same property in the previous agreement, multiplied by a factor of 1.02 (except in cases specified by law).

### Non-transition to the NRAU

Agreements entered into before 1990 that have not yet been transitioned to the New Lease Law (NRAU) cannot be transitioned to this regime on the landlord's initiative.

### Forced rental of vacant housing

Municipalities may, as an exceptional and subsidiary measure, proceed with the forced rental of vacant properties.

Thus, autonomous units and parts of urban properties suitable for independent use, for residential purposes, that have been classified as vacant for more than 2 years, when located outside of inland territories, may be subject to forced rental under certain conditions.

### Suspension of new AL registrations

The issuance of new registrations for AL establishments in the form of apartments and accommodation establishments integrated into an autonomous units or building is suspended throughout the national territory (except in inland territories, Autonomous Regions, municipalities in which a housing shortage has not been declared, or properties included in the Revive Nature Fund).

### Duration and renewal of new registrations and reevaluation of existing AL registrations

The registration of new AL establishments will have a duration of 5 years, renewable for equal periods by decision of the competent Municipality, being the first renewal counted as from the date of issuance of the public opening permit.

The registrations of AL already issued at the time of the Law's entry into force will be reevaluated during the year 2030.

### Expiration of inactive AL registrations

Within 2 months from the entry into force of the Law, holders of AL registrations will be required to provide proof of continued operation. Failure to comply with this duty will result in cancellation of their respective registrations, as decided by the mayor of the competent municipality.

### Transfer of AL registrations

The AL registration, in all its forms, is now personal and non-transferable. This applies even if they are held or owned by a legal entity, and the registration shall expire upon the transfer of any portion of the share capital of the legal entity holding the registration, regardless of the percentage (except in cases of succession).

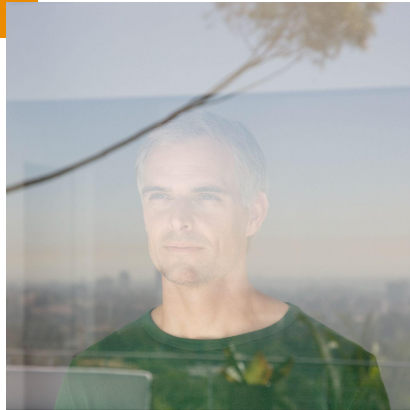
### Role of the condominium assembly

Whenever the establishment of AL is registered in an autonomous unit of a building under horizontal property regime that is intended for residential use in its incorporation title, the AL registration must be preceded by a unanimous decision of the condominium for the use as AL activity.

In cases where the activities of AL are conducted in an autonomous unit of a building or part of an urban property suitable for independent use, the condominium assembly, by a resolution representing at least two-thirds of the building's percentage quota, may oppose to the exercise of AL activity in said unit. However, this will not apply when the incorporation title expressly provides for the use of the unit for such purposes or if there has been an explicit resolution by the condominium assembly authorizing the use of the unit for AL activities.



“ The State will assume the payment of overdue rents under certain conditions provided for in the Law.”



State's payment guarantees for overdue rents:

Maximum monthly amount

**1.5 x**  
minimum monthly wage

Total Limit

**9 x**  
minimum monthly wage

### Support for the promotion of affordable rental housing

Support for the promotion of affordable rental housing is created, accessible to specific entities as outlined in the Law, notably housing and construction cooperatives and commercial companies engaged in civil construction, in consortium or in another form of association with commercial companies whose corporate purpose includes rental housing and asset management, or companies in whose capital they participate, as well as entities engaged in real estate promotion and investment.

Beneficiaries of this program have access to two types of support: (i) the provision of a financing facility, with mutual guarantee and interest rate subsidy, up to a maximum global amount of €250,000,000.00, and (ii) the transfer of public lands and buildings (public real estate assets) through the incorporation of a surface right, for a maximum period of 90 years, renewable by agreement between the parties for the same purpose, and assignable provided that all inherent rights and duties are maintained.

The above-mentioned support is also applicable, with the necessary adaptations, to student accommodation (admission to this regime is subject to the application of capped prices for student accommodation defined by regulation).

### Tenant and Landlord Counter

The *Balcão do Arrendatário e Senhorio* (Tenant and Landlord Counter) is created to ensure the processing of the special eviction procedure and the injunction in tenancy matters.

### State's payment guarantees for overdue rents

The State will assume the payment of overdue rents under certain conditions provided for in the Law, with the State automatically subrogated to the rights of the applicant, which may be accomplished through tax enforcement. The State will only pay due rents corresponding to a maximum amount of 1.5 times the minimum monthly wage, with a total limit of 9 times the minimum monthly wage.

### Cooperativism for the promotion of Affordable Housing

Within the scope of pilot projects to be created and integrated into the so-called "New Generation of Cooperativism for the Promotion of Affordable Housing", it is allowed the transfer of public properties through protocols to be established between the cooperative sector entities and IHRU.

The New Generation of Cooperativism for the Promotion of Affordable Housing is based on several principles, notably, construction from the use of a collectively owned and indivisible plot or building, the transfer of a surface right for a minimum period of 75 years, after which the plot and building revert to the State, and a non-profit economic model and the development of projects focusing on collaborative housing models and shared and/or common organization spaces.

### Acquisition of real estate by public entities for affordable rental

Authorization for the acquisition of ownership or other real estate rights by public entities, for the purpose of affordable rental. The acquisition value must be compatible with the evaluation procedure.

Authorization for the acquisition, in whole or in part, of controlled-cost residential developments, including the units' ancillary parts, whether built or to be built. This regime is applicable, with appropriate adaptations, to residential leasing intended to subsequent subleasing.



## 2 Personal and Corporate Income Tax

### Changes with impact on IRS and IRC

#### Real estate capital gains

An exemption from personal income tax (IRS) and corporate income tax (IRC) was introduced on capital gains arising from the sale of residential real estate to the State, Autonomous Regions or local municipalities, with the exception of capital gains realised (i) by residents in territories with a more favorable tax regime (ii) and those derived from exercising the preference right.

For IRS purposes, exempt income must be aggregated to determine the rate to be applied to other types of income liable to progressive rates.

On the other hand, IRS and IRC benefits related to urban rehabilitation have been revoked (e.g. the application of the 5% IRS rate on capital gains from the sale of intervened properties located in urban rehabilitation areas or the 10% rate on income from real estate investment funds) with the benefits being directed towards affordable rental housing.

“ The benefits related to urban rehabilitation were revoked (...) and directed towards affordable rental housing.”





### Transfer of properties from local lodgment (AL) to residential rental

The transfer of AL properties to the residential rental will benefit from an exemption from IRS and IRC on property income arising from leasing contracts for permanent residence, if the following conditions are cumulatively met:

- the properties are used to operate as AL establishments;
- both registration and use for that purpose took place by December 31, 2022;
- the lease contract is signed and registered on the Portal das Finanças until December 31, 2024.

This exemption applies to property income earned until December 31, 2029.

“ The transfer of properties from AL to residential rental will benefit from an exemption from IRS and IRC.”



### Real estate capital gains – Reinvestment regime

The reinvestment regime now includes two more cumulative conditions to benefit from the exclusion of taxation on capital gains made on the sale of real estate, intended to be used as permanent residence/habitual abode:

- the property has been used as the taxpayer's habitual abode or his family within the 24 months prior to the date of disposal; and
- the taxable person has not benefited from this exclusion regime in the year in which the capital gain was realized, or in the three previous years.

The benefit will not apply if the tax address of the taxable person or his household has not been established on the disposed property.

In addition, capital gains from the sale of land for construction or secondary residential property (i.e. property that is not used as the habitual abode) are excluded from taxation, if the following conditions are cumulatively met:

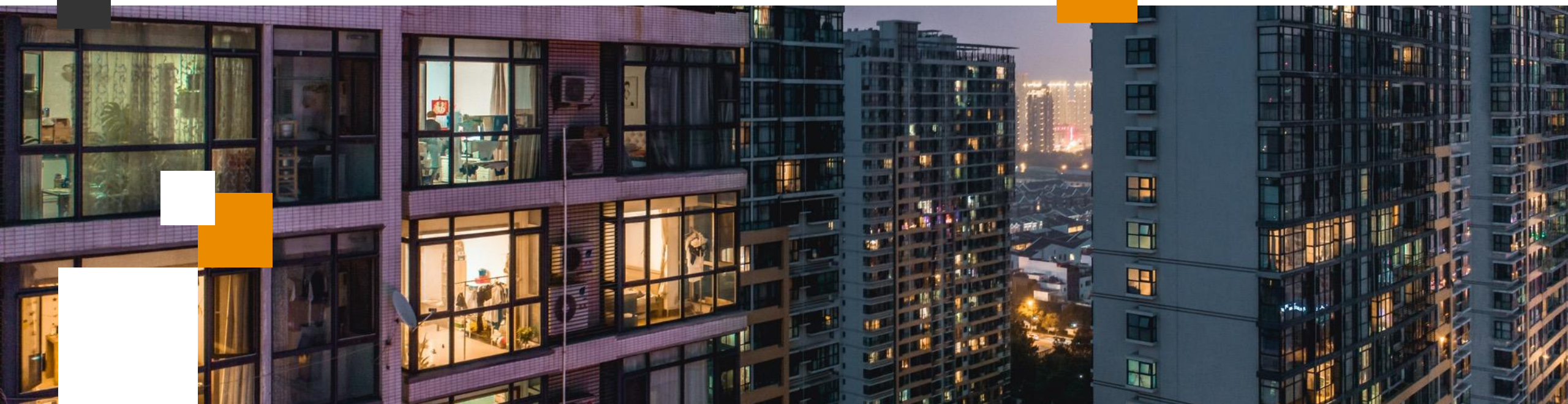
- the disposal value, deducted from the amortization of any loan incurred for the acquisition of the property, is applied on the amortization of the capital owed in mortgage loans of the taxpayer's own permanent residence or his descendants;
- the amortization is made within three months of the date of disposal.

“ **The tax address of the taxable person or his/her household must be established in the property disposed for at least 24 months prior to the date of disposal.**”

The exclusion from taxation of capital gains on land for construction or secondary housing covers sales made between January 1, 2023 and December 31, 2024 and also those made between January 1 and December 31, 2022, provided that the amortization is carried out within three months of the entry into force of this law.

Should the disposal value, already deducted from the loan amortization, be higher than the unpaid capital, the remaining amount is subject to taxation under the terms of the IRS Code.

Furthermore, the counting period for reinvestment (“previous 24 months and the following 36 months from the date of realization”) was suspended for two years, with effect from January 1, 2020.



## Property income – Rate decrease

- Property income from residential rentals will now be taxed at 25% (previously 28%).

This provision does not cover rental income from permanent residence leases with a duration of less than 5 years that benefit from an IRS rate lower than 25%.

- A 10% reduction of the respective rate is applied to income arising from permanent residential lease contracts with a duration of 5 years or more and less than 10 years, i.e. a rate of 15% is applied for to the income. For each renewal of the same duration, a 2% reduction is also applied, with a limit of 10%.
- A 15% reduction is applied to income arising from permanent residential leases lasting 10 years or more and under 20 years, i.e., applies a 10% rate to the income.
- A reduction of 20% is applied to income arising from permanent residence lease contracts with a duration of 20 years or more and from contracts “direito real de habitação duradoura”, in the part relating to the monthly pecuniary payment, to which a rate of 5% is applied to the income.

The reductions provided above (10%, 15% and 20%) cease to apply when the lease contracts end their effects before the respective periods of duration and underlying renewals have elapsed, for reasons attributable to the landlord.

Residential lease agreements signed from January 1, 2024, where the rent exceeds 50% the general limit of the price of rents by type and municipality, do not benefit from the aforementioned reductions. On the other hand, rents that are 5% lower than the rents in the previous contract benefit from an additional 5% reduction.

Regarding deductible expenses, rent insurances will now be accepted as a deduction against the received rents.

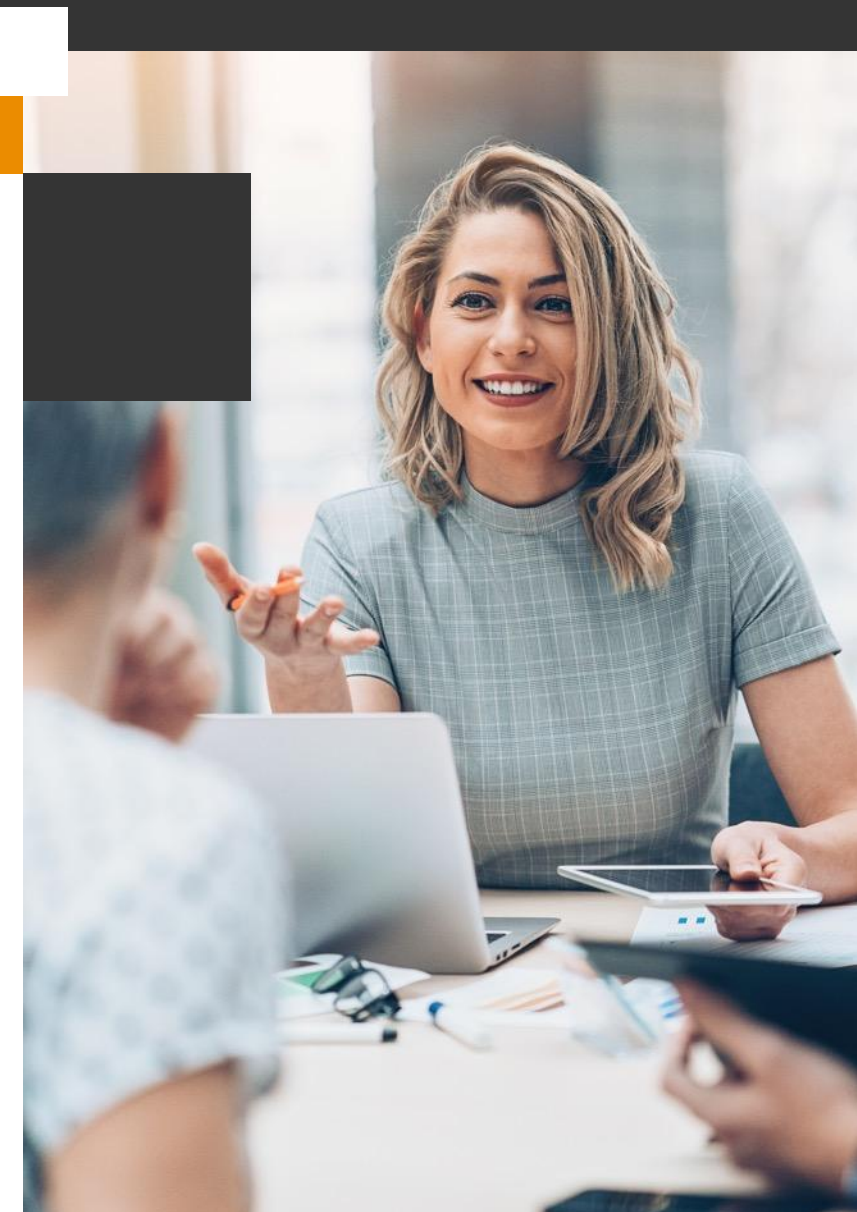
As a result of the limitation imposed on the updating of rents for 2023, landlords will be taxed on 90% of property income from residential leases with a duration of less than 5 years, with this percentage decreasing with the longevity of the contract.

The changes will apply to new rental contracts and respective contract renewals, as well as to renewals of rental contracts in effect verified from the date of entry into force of this law.

Rate

**15%**  
of the income

“ A 10% reduction in the respective rate is applied to income arising from permanent residence leases with a duration of 5 years or more and under 10 years.”





## 3 Real estate

## taxes

# Main changes to the REMT and RETT Codes

“ Properties acquired for resale must be sold within a period of one year.”

### Real Estate Transfer Tax (“RETT”) on the acquisition of properties for resale

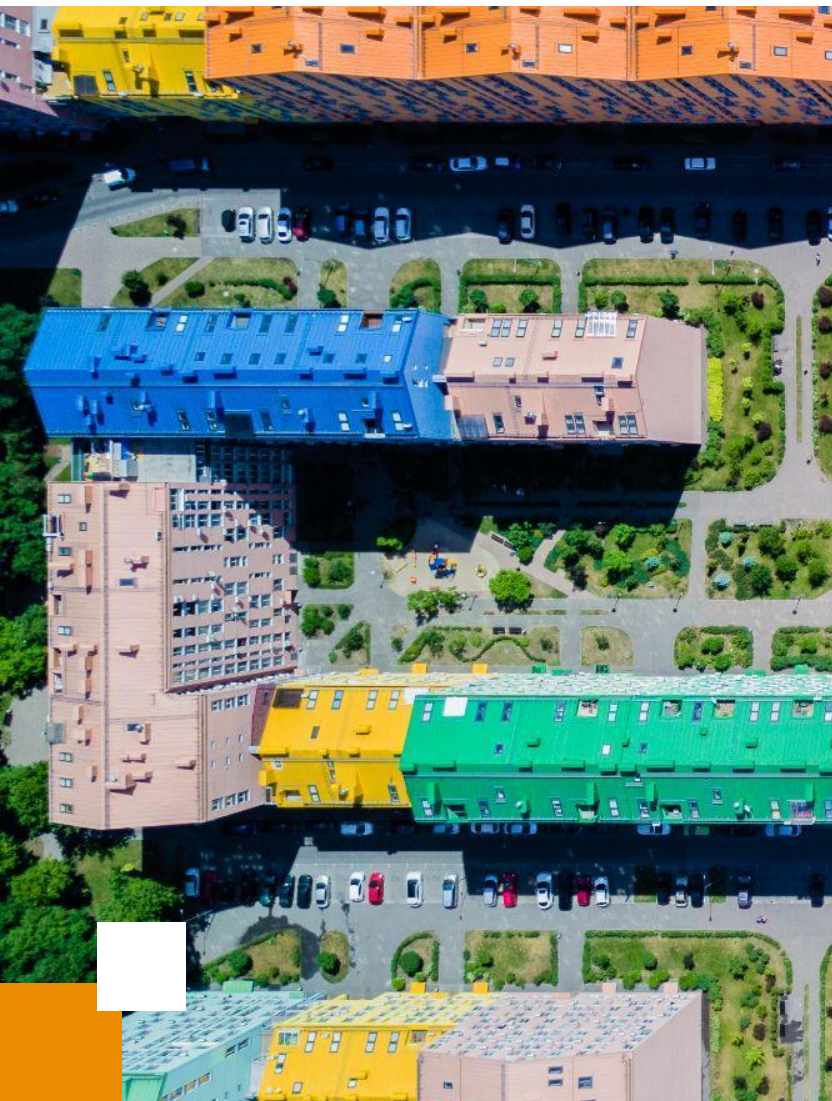
The properties acquired for resale must be sold within one year, instead of three years, in order to maintain the RETT exemption or, when RETT has been paid, to request the refund.

In case RETT has not been paid, but becomes due as a result of the expiry of the exemption, RETT is due from the acquisition date, plus compensatory interest.

Additionally, it is clarified the meaning of “different destination”, considering as such the completion of works or other changes that may determine a variation in the tax registration value of the property.

### Real Estate Municipal Tax (“REMT”) suspension on the acquisition of properties for resale

It was revoked the REMT suspension foreseen for properties acquired for resale.



### REMT exemption applicable to land for construction of residential buildings

A REMT exemption applies to land for construction of residential buildings in the following situations:

- the prior control procedure for construction works in the case of land for construction has been initiated with the competent entity, and for which there has not yet been a final decision, express or implicit; and
- the prior control procedure for residential use of buildings, as defined in the Legal Regime of Construction and Land Development, has been initiated with the competent entity, and for which there has not yet been a final decision, express or implicit.

In order for the exemption to be applied, taxpayers must communicate the properties' situation to the relevant tax department, by presenting a document proving the start of the prior control procedure, and may benefit from the exemption from the date of the communication.

However, taxpayers cannot benefit from the exemption if they (i) have acquired the building from an entity that has already benefited from it, (ii) have a tax domicile in a tax haven or (iii) are an entity controlled, directly or indirectly, by an entity that has tax domicile in a tax haven.

It is also foreseen that, in case the building is not used for residential purposes, the tax will be paid for the entire period that has elapsed since its acquisition.



## Urban properties under Lease Support Programme (“LSP”)

Under the LSP, the acquisition of land for construction intended for the construction of residential buildings is exempt from RETT if the following requirements are cumulatively met:

- **at least 700/1000 of the buildings in horizontal property**, or the entire property in case of total ownership or a autonomous unit is allocated to the LSP, regardless of the promoter, provided they are certified by the Housing and Urban Rehabilitation Institute, I.P., or when organised in the autonomous regions by Investimentos Habitacionais da Madeira, EPERAM or by the Regional Direction of Housing of the Azores;
- **the prior control procedure for construction works of residential properties** is initiated with the competent entity within two years after the acquisition.

Additionally, urban properties or autonomous units acquired, refurbished or built to be allocated to the LSP, may benefit from the RETT and REMT exemption.

Regarding REMT, the exemption can be granted for a period of three years, including the acquisition year of the building, with the possibility of renewal for an additional period of five years.

These exemptions do not apply in case:

- **the properties are no longer allocated to the LSP**, within a period of five years from the transfer date, or, in case of renewal of the REMT exemption, within a period of ten years; or
- **the properties are not leased under the LSP** within six months from the transfer date.



For the purposes of these periods, the property maintains its allocation to the LSP in case the lease agreement ceases, if a new lease agreement is signed (within the scope of the LSP) within a period of three months.

It is also foreseen that the residential properties under the LSP are exempt from Additional to REMT and, the lease agreements concluded under the same programme (or within the scope of public housing programs in the autonomous regions), will be exempt from Stamp Duty (“SD”).

## Tax registration value of vacant or in ruins properties

It is established that municipalities can request that vacant urban properties that are not a autonomous unit, as well as urban properties in ruins, are appraised as land for construction. However, it shall prevail the appraisal with the highest tax registration value.

“ Possibility of municipalities increase the aggravated REMT rates.”

## Properties located in areas of urban pressure and abandoned rural properties

Urban buildings or autonomous units that have been vacant for more than one year, buildings in ruins, as well as land for construction located, whenever are located in areas of urban pressure, are subject to an increased REMT rate, which is ten times the regular REMT rate (currently varying between 0.3% and 0.45%), aggravated in each subsequent year by a further 20%, up to a maximum value of 20 times.

However, it is foreseen that the maximum limit can be increased (by decision of the municipality) in:

- **50% whenever the property is intended for residential purposes** and, in the year to which the tax relates, it is not leased for housing or allocated to the taxpayer's own permanent housing; or
- **100% whenever the taxpayer is a corporation or other tax equivalent entity.**

Municipalities can also increase the REMT rate up to three times to rustic buildings with forest areas that are in a state of abandonment.

### Assessment of the taxable value of the Additional to REMT

The deduction of €600,000 provided for in no. 2 of article 135.<sup>o</sup>-C of the REMT Code is no longer applicable to the sum of the tax registration values of urban buildings that have been vacant for more than one year, buildings in ruins and urban buildings partially vacant.

### Buildings owned by taxpayers with dependants

It was increased the deduction applied by the municipalities to reduce the REMT rate, in case of buildings allocated to the taxpayer's own permanent housing or his household, varying according to the number of dependants.

### Communication of changes to the lease agreement for SD purposes

If lessors or sublessors do not communicate to the Portuguese Tax Authorities ("PTA") the lease, sublease agreements and respective promises, as well as their changes and termination, lessees and sublessees will now be able to make the aforementioned communications, within the deadlines and terms to be established by the Government.

### Extraordinary contribution for apartments in AL (CEAL)

CEAL is an extraordinary contribution that focuses on apartments and accommodation establishments integrated in an autonomous unit of a building allocated to AL, with reference to December 31st of each calendar year.

The tax basis is computed by applying the AL economic coefficient and the urban pressure coefficient to the private gross area of residential properties, on which CEAL is levied. The applicable rate is 15%.

“ CEAL is an extraordinary contribution that focuses on apartments and accommodation establishments integrated into an autonomous unit of a building allocated to AL.”

However, the following are excluded from CEAL (i) properties located in inland territories, (ii) residential properties that are not autonomous units, nor parts or divisions capable of independent use, (iii) AL units in own permanent housing, as long as it does not exceed 120 days per year, (iv) as well as properties located in parishes that meet a certain criteria, namely, that are part of municipalities in which a situation of housing shortage has not been declared.

CEAL is not deductible for the purposes of determining taxable income in CIT, even when recorded as an expense during the tax period.

### Age coefficient of buildings allocated to AL

For the purposes of liquidation, it is expected that the age coefficient of buildings that constitute, totally or partially, AL establishments will always be 1, regardless of the age of the building, under the terms set out in article 44 of the REMT Code.

### Land for construction concept

The concept of land for construction was changed, in order to include not only land for construction for which a license or prior favorable communication of subdivision or construction operation has been granted, but also land which has been communicated by the municipalities to the PTA as suitable for construction in accordance with applicable territorial management instruments.

However, it continues to not be part of the concept of land for construction the land for which the granting of a license or communication of subdivision or construction operations is prohibited, as they are located in green zones, protected areas or which, according to municipal plans of territory are related to public spaces, infrastructures or equipment.

### REMT exemption for residential properties

It is possible to extend for a further 2-years period the REMT exemption applied to properties whose tax registration value does not exceed €125,000, provided that the conditions set out in no. 1 and 3 of article 46 of the Tax Benefits Code are met.



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VAT

# Changes to the VAT Code

## Application of the reduced rate

The reduced VAT rate is now applicable to:

- rehabilitation contracts of economic housing properties and cost controlled housing properties (point 2.18 of List I);
- construction and rehabilitation contracts of housing properties for affordable rental, upon fulfillment of certain conditions (point 2.18 of List I);
- construction and rehabilitation contracts of equipment for collective use of a public nature, located in urban rehabilitation areas (point 2.23 of List I);
- according to the transitory rule, the reduced rate provided for in point 2.23 will not be applicable to the requests for permits, of prior notification, or of prior information submitted before the date of entry into force of the law, and to the requests for permits, or of prior notification submitted after the date of entry into force of the law, if submitted under an existing favourable prior information.





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