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# Update

## Tax

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## Mais Habitação Package - Key Tax Aspects

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Law no. 56/2023, published on 6 October, and which came into force the day after its publication, contains a range of tax provisions with implications for the real estate market.

Below we highlight the main changes foreseen in this legislative package:

### Taxation of capital gains

#### New requirements to benefit from the reinvestment regime

The personal income tax exclusion regime for capital gains generated through the sale of the taxpayer's or their family's own permanent home, when the proceeds of the sale are reinvested, now contains a double time limitation:

- 1) The property transferred has to have been used as the taxpayer's or their family's own permanent home for the 24 months prior to its sale, a fact that must be proven through the respective tax address;
- 2) Taxpayers have not benefited, in the year in which the gains were made or in the previous three years, from this exclusion regime, although it is possible to prove, in the course of the tax assessment procedure, that failure to fulfil this condition was due to exceptional circumstances.

In addition to this double time limitation, there is also the requirement that both the first property (i.e., the property sold) and the second property (acquired with the proceeds of the sale of the first property) constitutes the tax address of the taxable person. The legislator expressly incorporated into the letter of the law a formal requirement the Tax Authorities had been demanding, albeit unsuccessfully.

#### Exclusion from taxation of capital gains generated through the sale of land for construction or secondary housing

Gains from the sale of land for construction or residential property that is not intended for the taxpayer's or their family's own permanent home may also be excluded from personal income tax, provided that the following conditions are cumulatively met:

- 1) The proceeds of the sale are used to amortise the outstanding capital on mortgage loans for the taxpayers' or their descendants' own permanent homes; and
- 2) Such amortisation takes place within three months from the sale of the property.

This tax exclusion applies to transfers made between 1 January 2022 and 31 December 2024. For transfers made before the entry into force of this legislative package (i.e., before 7 October 2023), the amortization must be made within three months.

### **Exemption from taxation of capital gains from the sale of property to public entities**

Capital gains arising from the sale of residential property to the State, the Autonomous Regions, public corporate entities in the housing sector or local authorities are exempt from personal income tax and corporate income tax, except:

- a) Gains received by tax residents in a country, territory or region subject to a more favourable tax regime, included in the Portuguese blacklist for tax purposes;
- b) Gains arising from sales for consideration through the exercise of the rights of preference.

### **Reduced PIT rate applicable to capital gains generated from the sale of rehabilitated properties revoked**

The application of the personal income tax rate of 5% on capital gains from the sale of rehabilitated properties located in urban rehabilitation areas is revoked.

### **Taxation of rental income**

#### **Reduction of PIT rates**

The tax rate of 28% will now exclusively cover non-residential rental agreements.

The autonomous tax rate applicable to property income from residential rental agreements will be 25%, which may also be reduced depending on the duration of the agreements:

- 1) If equal to or greater than 5 years and less than 10, a 10% reduction is applied, and for each renewal of equal duration, a 2% reduction is applied. However, these reductions are subject to the 10 per cent limit;
- 2) If equal to or greater than 10 years and less than 20 years, a 15 per cent reduction is applied to the respective autonomous rate;
- 3) If it is equal to or greater than 20 years and the property income derives from contracts for real rights to permanent housing, a 20% reduction in the respective autonomous rate is applied to the part relating to the payment of the monthly cash instalment.

These new measures do not apply, however, to property income arising from residential rental agreements entered from 1 January 2024, whose monthly rent exceeds by 50% the general rent price

limits by typology depending on the municipality where the property is located, as set out in tables 1 and 2 of the annex to Order no. 176/2019 of 6 June.

New rental agreements benefiting from the regime are subject to an additional 5 per cent reduction in the respective tax rate whenever the rent is at least 5 per cent lower than the rent of the previous rental agreement on the same property.

### **Exemption for property income from rental agreements under municipal programs**

Property income from rental agreements obtained under municipal programs offering affordable housing and student accommodation is exempt from personal income tax and corporate income tax. However, this exemption is subject to recognition by the Minister of Finance.

### **Transfer of real estate from local accommodation (“Alojamento Local”) to rental for permanent housing**

A tax exemption from personal income tax and corporate income tax has also been introduced for property income arising from the transfer of real estate allocated to the exploitation of local accommodation (“Alojamento Local”) for rental to permanent housing.

This exemption applies when the following conditions are cumulatively met:

- a) The local accommodation establishment was registered and used for such purpose by the end of 2022;
- b) The rental agreement is signed and registered on the Tax Authorities’ website by 31 December 2024.

This exemption applies to income earned until 31 December 2029.

### **Communication of rental agreements by tenants/subtenants**

As far as stamp duty is concerned, it will now be possible for the respective tenants or subtenants to communicate their rental or sub-rental agreements if such obligation is not fulfilled by the lessors or sub-lessors.

### **Properties acquired for resale**

#### **Reduction in the period for resale**

The period in which properties acquired for resale must be effectively resold is reduced from three years to one year in order to be exempt from property transfer tax (“IMT”) or, in cases where the tax has been paid, enable its reimbursement.

On the other hand, this type of acquisition ceases to benefit from the exemption as soon as the buildings acquired for resale are used for a different purpose which, within the meaning of the new law, means the conclusion of construction, edification or improvement works, or other modifications that may lead to a change in its tax value.

## **Suspension of Property Tax ("IMI") on properties acquired for resale revoked**

The suspension of taxation up to and including the 3rd year following that in which a building has become part of the inventory of a company whose purpose is to sell it is revoked.

## **Property Tax exemption for land for housing construction**

The "*mais habitação*" package created a new property tax exemption for housing land and buildings intended for residential use.

This exemption applies to building land when the prior control procedure has been initiated with the competent authority for building works for residential use and for which a final decision, express or tacit, has not yet been issued.

With regard to buildings intended for residential use, it is required that the prior control procedure for residential use has been initiated with the competent authority and that no final decision, express or tacit, has yet been issued.

Taxpayers who intend to benefit from this exemption shall submit the document proving the start of the prior control procedure to the tax office of the area where the buildings are located.

## **Reduced VAT rate on construction services**

This legislative package amends items 2.18 and 2.23 of List I annexed to the VAT Code (supplies of goods and services subject to the reduced rate of 6%).

Item 2.18 now includes construction or rehabilitation contracts for *i)* affordable housing, *ii)* controlled-cost housing, or *iii)* housing for affordable rent under the terms defined in an order issued by the member of the Government responsible for housing, regardless of the developer. It is required, however, that at least 700/1000 of the buildings in horizontal ownership or the totality of the buildings in total ownership or autonomous fractions are allocated to one of the aforementioned purposes and certified by IHRU, I. P., or, when promoted in the Autonomous Region of Madeira or the Autonomous Region of the Azores, by IHM - Investimentos Habitacionais da Madeira, EPERAM, or by the Regional Housing Directorate of the Azores, respectively.

Item 2.23, in turn, now provides for the application of the 6% rate to building rehabilitation contracts and contracts for the construction or rehabilitation of public facilities for collective use, located in urban rehabilitation areas (critical areas for urban recovery and conversion, intervention areas for urban rehabilitation societies and others) delimited under the legal terms, or carried out as part of requalification and rehabilitation operations of recognized national public interest.

However, the latter will not apply in the following cases:

- a) requests for licenses, prior notices or requests for prior information regarding urban planning operations submitted to the territorially competent municipal council before the entry into force of this package;

- b) licensing or prior communication requests submitted to the territorially competent town hall after the entry into force of this package, provided that they are submitted under the terms of a favorable prior information in force.

### **Extraordinary contribution on local accommodation (“alojamento local”)**

An extraordinary contribution on flats and lodging establishments integrated in an autonomous fraction of a building in Local Accommodation - CEAL - was also created.

#### **Taxable persons:**

Owners of the local accommodation establishments, within the meaning of article 2 of Decree-Law no. 128/2014, of 29 August. Property owners are subsidiarily liable for the payment of CEAL, even if they are not the holders of the local accommodation license.

#### **Taxable event:**

The CEAL is levied on the assignment of residential properties - *i.e.*, properties whose autonomous fractions and parts or divisions of urban buildings are susceptible to independent use of a residential nature - to local accommodation, on 31 December of each year.

To this end, residential properties with a valid local accommodation license are deemed to be used for local accommodation.

Properties located in interior areas, as identified in the annex to Ministerial Order no. 208/2017, are excluded from CEAL and on the other hand, properties located in parishes that cumulatively fulfil the following conditions:

- a) They are covered by a Municipal Housing Charter in force that shows an adequate balance of housing supply and student accommodation in the municipality;
- b) They are part of municipalities in which a housing shortage has not been declared; and
- c) Do not have any part of their territory as an urban pressure zone.

#### **Exemption:**

Residential properties that do not constitute autonomous fractions, or parts or divisions susceptible to independent use, as well as local accommodation units also used as own permanent housing, provided that the operation does not exceed 120 days per year, are exempt from this new contribution.

#### **Tax Base and Rate:**

The CEAL tax base is made up of the application of the economic coefficient for local accommodation and the urban pressure coefficient to the gross private area of residential properties on which CEAL is levied - the coefficients will be published annually by ordinance, with the coefficients applicable to 2023 being published by Ordinance within 60 days of the publication of this legislative package.

The applicable rate is 15 per cent.

**Assessment and payment of CEAL:**

The assessment is made based on an official model to be submitted by 20<sup>th</sup> June of the year following the taxable event, with the payment deadline ending on the 25<sup>th</sup> of the same month.

**Non-deductibility for corporate income tax purposes**

CEAL will not be deductible for corporate income tax purposes, even when accounted as an expense in the tax period.