OCTOBER 19TH, 2023

SUBJECT	LAW "MAIS HABITAÇÃO" (MORE HOUSING) ***New Tax Rules***
RELEVANT LEGISLATION	Law no. 56/2023, of October 6th Personal Income Tax (IRS) Code, Property Tax (IMI) Code, Transmission Tax (IMT) Code and Tax Benefit Statute

CONTEXT

Law no. 56/2023 was published in the Portuguese Republic Gazette on October 6th approving the package of legislative changes known as "*Mais Habitação*" (More Housing) which introduces relevant new measures to the Personal Income Tax (IRS), Corporate Income Tax (IRC), Property Tax (IMI), Transfer Tax (IMT) and Stamp Duty.

The changes to the IRS, which came into force on October 7th , aim to create a reinvestment scheme for real estate gains arising from the sale of building plots or secondary housing.

In the same field, there are now more requirements for the purposes of the current regime of reinvestment of real estate gains arising from the sale of own permanent housing.

It was also created a favorable regime to the taxpayer, in which the sale of property used for own and permanent housing that occurred until January 1st 2020 and, between that date and January 1st 2022, can still be reinvested.

In terms of IRS, it is also important to highlight the reduction in the rate for property income from residential lease contracts to 25% (previously 28%) and the new reduced rates for permanent lease contracts, depending on the duration of the contract.

An extraordinary contribution on short-term leases (*Alojamento Local*) is created.

The benefits that have applied to urban rehabilitation to date have been mostly revoked, and there are now a series of tax incentives applicable to properties under the Rental Support Programme (*Programa de Apoio ao Arrendamento*).

Finally, the changes to the IMT exemption regime for purchases for resale are also worth highlighting, among which is the reduction in the resale period for properties from 3 to 1 year.

IRS

Real Estate Gains

Secondary Housing Sale

Reinvestment

Real Estate gains arising from the sale of (i) plots for construction or (ii) residential property, which is not for the purpose of own permanent housing of the owner or his/her family, will not be subject to IRS, provided that:

a. The value of the sale of the property, deducted from the amortisation of any loan for its purchase, is applied to the amortisation of an outstanding mortgage loan for the owner's own permanent housing or for his/her descendants;

b. The amortisation of the outstanding mortgage loan is made within 3 months of the date of the sale;

This regime only applies to the property sales made **between January 1st 2023 and January 1st 2024**.

With regard to the property sales made before the entry into force of this Law, the loan repayment referred to above must be made by **January 7th 2024**.

IRS

Real Estate Gains

Own Permanent Housing

Reinvestment

New Requirements and

Suspension of the Reinvestment Deadlines for Properties already Sold

In relation to the current regime for reinvesting gains in the case of the sale of own permanent housing, two additional conditions have been created:

a. The property sold must have been used as the owner's own permanent housing or his/her family **within the 24 months prior to the date of sale** (previously, there was no legally set deadline);

b. The taxpayers may not have benefited from this reinvestment scheme in the same year or in the previous 3 years (except in duly proven exceptional circumstances).

Furthermore, a favorable suspension period is created for taxpayers with regard to real estate gains on properties used for own permanent housing and which have been sold:

(i) Until January 1st, 2020; or

(ii) Between January 1st, 2020 and January 1st, 2022.

In this context, for properties sold before December 31st, 2019, the 36-month period for reinvesting these gains starts counting from January 2nd, 2022, for the time not completed.

As for properties sold between January 1st, 2020 and January 1st, 2022, the 36-month period for reinvesting these gains ends on **December 31st, 2024**.

IRS/IRC

Real Estate Gains

Exemption

Property Sales to the State

Gains from the sale of residential property to the State, Autonomous Regions, public housing companies or local authorities are exempt of IRS and IRC. This exempt income should be included in the IRS tax return for the purposes of determining the tax rate to be applied to other income.

IRS

Rental Income

Rate Reduction

Housing

Property income from residential lease contracts will now be taxed at the autonomous rate of 25% (instead of 28%).

When the lease contract is signed for the **tenant's own permanent housing**, the following rate reductions are applied to the rental income:

a. 5 to 10 years lease contracts: **15%** (for each renewal of the same duration, a reduction of 2% is applied, up to a limit of 10%);

b. 10 to 20 years lease contracts: **10%**;

c. 20 years or more lease contracts: **5%.**

These reductions do not apply whenever the monthly rent exceeds by 50% the general rent price limits by type set according to the municipality of the property.[1]

The reductions apply to new lease contracts as well as renewals of contracts in force from the date this law enters into effect.

An additional 5% reduction applied whenever the rent is 5% lower than the previous rent for the same property.

IRS and IRC

Transfer of Properties from New Short-Term Lease to Lease

Property income arising from rental contracts is exempt from IRS or IRC, provided that the following conditions are cumulatively met:

[1] See tables 1 and 2 of Annex I of Order no. 176/2019 (see *link*).

Rental income exemption

a. The income results from the transfer to lease contracts of real estate previously used as Short-Term Lease establishments (AL);
b. The AL establishments was registered and used for this purpose before December 31st, 2022;
c. The lease contract is registered in the Tax Authorities website for this purpose before December 31st, 2024.

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

IRS

Urban Rehabilitation

Cancellation of Benefits

The tax benefits to incentivise urban rehabilitation are revoked, namely the 5% IRS rate applied to real estate gains, as well as to rental income from properties subject to urban rehabilitation operations.

Short-Term Leases

Extraordinary Contribution on Short-Term Leases (CEAL)

An extraordinary levy on AL establishments has been created: CEAL.

CEAL is levied on residential properties used for AL on December 31st of each calendar year (i.e. those with a valid AL license).

A rate of 15% will be applied to a tax base that will be determined by two coefficients: (i) the "economic coefficient" and (ii) the "urban pressure coefficient".

These coefficients are based on reference values and averages published annually, depending on the location of the property and its area.[2]

This CEAL is paid by the taxpayer using an official model declaration, annually submitted to the Tax Authorities in June of the year following the taxable event.

The owners of AL establishments are liable for CEAL. However, property owners are subsidiarily liable for the payment of CEAL in respect of their property.

IMT / IMI / Stamp Duty / IRS

Acquisitions of building plots for the construction of residential properties are exempt from IMT, provided that (i) they are allocated to the Rental Support Programme; and (ii) the prior control procedure for construction works on residential properties

[2] The coefficients for 2023 should be published until December 5th 2023..

Rental Support Programme

Affordable Rental Housing

Tax Incentives

is initiated with the competent authority within 2 years of the acquisition.

The following tax benefits apply to urban buildings purchased, rehabilitated or built for use in the Rental Support Programme:

- Exemption of **IMI**, for a period of 3 years from the year of acquisition, inclusive, which may be renewed, at the owner's request, for a further 5 years; an
- Exemption of **IMT**;
- Exemption of **Stamp Duty**.

These tax benefits are cancelled if:

a. The property is put to a different use, within 5 years of the purchase date;

b. The property is not leased under the Rental Support Programme within 6 months of purchase.

Property investment funds and property investment companies benefit from these incentives, provided that at least 75% of their assets are property used for affordable housing.

Rental income obtained within the scope of the municipal programmes for affordable housing rental and student accommodation is exempt from IRS and IRC taxation for the duration of the respective contracts.

IMT

Amendment to the Purchase for Resale

Exemption Scheme

The deadline for reselling property acquired for this purpose is reduced from 3 years to **1 year**.

If the resale does not occur within this period, IMT is due from the date of purchase, plus compensatory interest.

This exemption expires if (i) the taxpayers do not resell the property within the aforementioned period, (ii) if they sell it again for resale or (iii) if the property is given a different use.

The law now states that a "*different use*" is considered to be "*the conclusion of construction or improvement works, or other alterations that may lead to a change in the property's taxable value*".

IMI and Additional to IMI (AIMI)

It will now be compulsory to **update the land registry** when the property is used for something other than housing.

Municipalities will now be able to increase the rate applicable to rustic properties with forest areas that are in a state of abandonment by **up to three times** (previously it was only up to two times).

The **deductions** to be made by each municipality, to be applied to properties intended for the taxpayer's **own permanent housing** and that of their families, **have been increased**.

Regarding the rules for determining the taxable value applicable to **AIMI**, it is now stipulated that the deduction from the taxable value of € 600,000, when the taxpayer is an individual or an inheritance, is not applicable to the sum of the taxable values of urban buildings that have been vacant for more than a year, or buildings in ruins.

Building plots **are exempt of IMI** if the prior control procedure for construction work on residential properties has been initiated with the competent authority and for which has not yet been a final decision, express or implied, on the procedure.

Buildings in which the prior control procedure for residential use has been initiated with the competent authority, and for which there has not yet been a final decision, express or implied, of the procedure, **are exempt from IMI**.

VAT Urban Rehabilitation
Amendment to item 2.23 of List I annexed to the VAT Code

The wording of **item 2.23** of List I annexed to the VAT Code, relating to the application of the reduced VAT rate to **urban rehabilitation works** has been amended to apply only for buildings rehabilitation or rehabilitation of public collective use facilities, thus reducing its scope of application.

The new item 2.23 will apply to license or prior notice applications submitted the municipal council with territorial jurisdiction after the entry into force of this law.

Maria Norton dos Reis
mnr@paresadvogados.com
Patrícia Ribeiro Lopes
prl@paresadvogados.com