



Mestre Associate Lawyers  
Sociedade de Advogados, SP, RL

Building projects over strong relationships

MAY 2023

# The "*Mais Habitação*" Policy



# What will change?

As a result of several press conferences, public consultations, meetings of the Council of Ministers and public discussion, the Government has finally sent to Parliament the Bill that aims to fight the real estate crisis in Portugal.

The main goals of this new legislation are to increase the offer of real estate intended for habitation, to simplify the licensing procedures, to increase the number of houses in the renting market and to fight speculation.

The biggest and most felt changes will occur in the fields we will analyse below:

- 1. Residence permits for investment (Golden Visa)**
- 2. Construction licensing**
- 3. Local accommodation**
- 4. Renting market**
- 5. Tax incentives**

## GOLDEN VISA

# 1 | Residence permits for investment

A Golden Visa is a residence permit for investment purposes. This visa is very beneficial for the investor and his/her family due to the exemption from having to obtain a prior residence visa and due to the reduced minimum mandatory periods of stay in Portuguese territory.

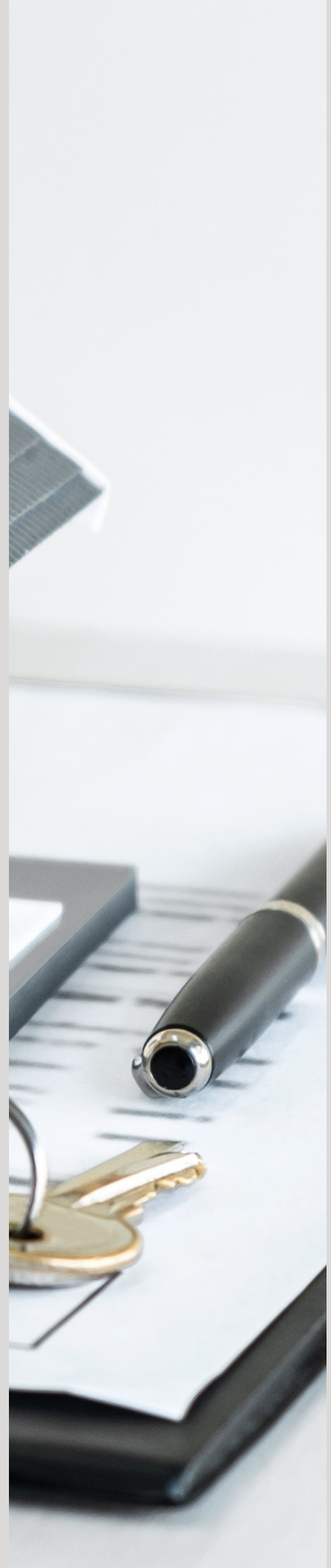
This subject was the one that suffered more changes after the public consultation of the initial version of the diploma that contained the measures announced by the Government, as a result of the several controversies it raised and the worries of violation of constitutional principles such as legal security principle.

In the initial version of the diploma it was foreseen the end of the Golden Visa program with retroactive effects to 16 February 2023, date in which the measures of the Mais Habitação package were announced in the media for the first time.

However, given the risks of unconstitutionality and the potential of litigation against the State arising from the measure in question, the Government ended up changing the initial version of the bill, ending its retroactivity.

According to the latest version made available and sent for discussion and approval to the Parliament, **it is possible to submit applications to grant a Golden Visa until the new law comes into force** (i.e. after approval by the Parliament and promulgation by the President of the Republic).

The applications awaiting for a decision on the date of entry into force of the new bill will be converted into a residence permit for entrepreneurial immigrants.



## GOLDEN VISA

# 1 | Residence permits for investment

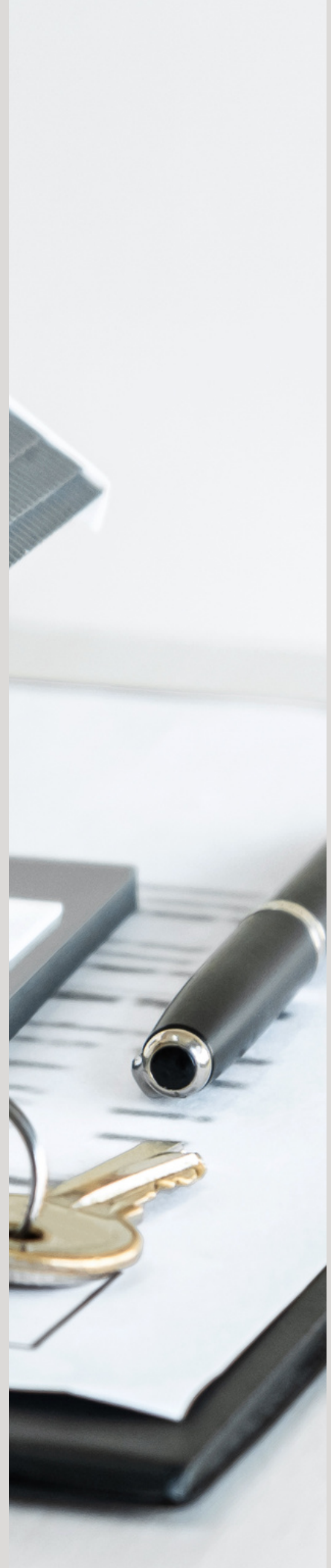
Nevertheless, **holders can still benefit from the regime of mandatory stay of 7 days in the first year, or 14 days in the following two years.**

This conversion of the residence permit for entrepreneurial immigrants will be accompanied by the verification by the competent authorities of the adequacy of the investment to the respective entrepreneurial project.

Although the "Mais Habitação" Policy does not admit new applications of Golden Visas, this fact **will not harm the possibility of renewal of residence permits for investment granted** or the granting or renewal of residence permits for family reunion. Simultaneously with pending applications, the renewal of these permits also determines the conversion into a permit for entrepreneurial immigrants, without prejudice to the benefit regarding the requirement to remain in national territory.

For those who still intend to obtain a residence permit in Portugal, but without the possibility of applying for a Golden Visa, there are several other options, including which stand out:

- Employment Visa (and job search) - D1
- Self-employer Visa - D2
- Entrepreneur Visa
- Retirement/Passive Income Visa- D7
- Digital Nomad Visa - D8
- EU Blue Card



## 2 | Simplifying Construction Licensing Procedures

One of the Government's goals is to make urban licensing procedures quicker and more efficient.

In the first version of the bill this measure consisted in **approving projects based on the terms of responsibility of the respective authors**. This measure will make it possible to generalise the principle that no prior assessment by licensing authorities is necessary.

Along with this measure, a regime of joint liability between the authors of the project, the promoters and the builders will be established.

It was also foreseen in this first bill of 16 February the creation **of a late-payment interest regime**, with the purpose of sanctioning the municipalities and external entities involved, in case of failure to comply with the legally established decision deadlines. This measure may bring more celerity to the processes, if effectively put into practice and accompanied by measures that promote efficiency within the administrative and urbanistic procedures.

From the Council of Ministers of 27 April, resulted that, since licensing procedures are very lengthy and complex, works that increase the number of floors (without increasing the height or the façade), construction works in areas with an approved allotment operation, detailed plan or execution unit with urban design, among others that are yet to be specified, will no longer be subject to licensing.

Once approved, the Prior Information Request will be valid for 2 years and will, in general, exempt the applicant from prior control.



## 2 | Simplifying Construction Licensing Procedures

Another important measure that resulted from the Council of Ministers reveals that the non compliance of the legal deadlines for decision by the Public Administration will determine **the tacit approval**.

In order to put an end to procedures considered obsolete and difficult to human validation, it is foreseen the **end of the obligation to obtain a building construction permit/license** and subsequent **license to use**, with the creation of a single licensing platform to ensure the dematerialization of procedures.

It is also intended to reduce the complexity and burden of technical and procedural requirements, through the codification of all legislation, the revoke of redundant procedural norms and the elimination of excessive requirements.



# 3 | Local Accommodation (Short-term rental)

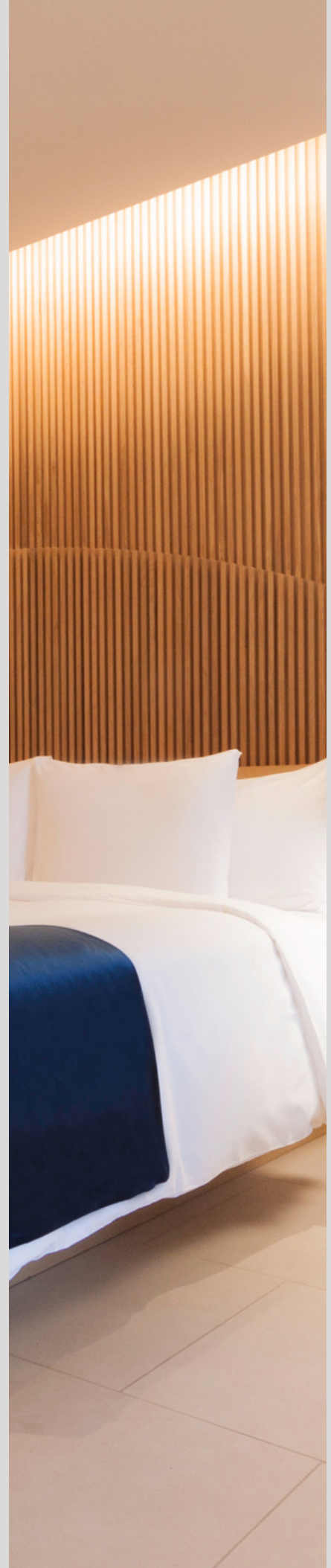
Within the scope of local accommodation, the measures of the Mais Habitação programme aim to ensure a greater balance between the housing available for residents to rent and the continuity of Local Accommodation.

The main legislative alteration concerns the **suspension of new local accommodation licenses in the form of flats and lodging establishments (hostels) integrated in flats of a building in strata regime**. The following must be taken into account:

- This measure is not applicable in low density territories (also known as Interior territories), nor to other local accommodation modalities, such as villas;
- The Government has also assigned an important role to the municipalities in the application of this measure, since in the case of medium and high density territories, the municipalities may, through Municipal Housing Charters, define the areas in which it will not be necessary to maintain the suspension of new local accommodation licences.

Besides the suspension of new licences, the Government intends to eliminate inactive licences. For that purpose, it is envisioned that the holders of local accommodation licenses already issued prove the maintenance of that activity by submitting tax returns. The non-compliance with this obligation will result in the automatic cancellation of the licence.

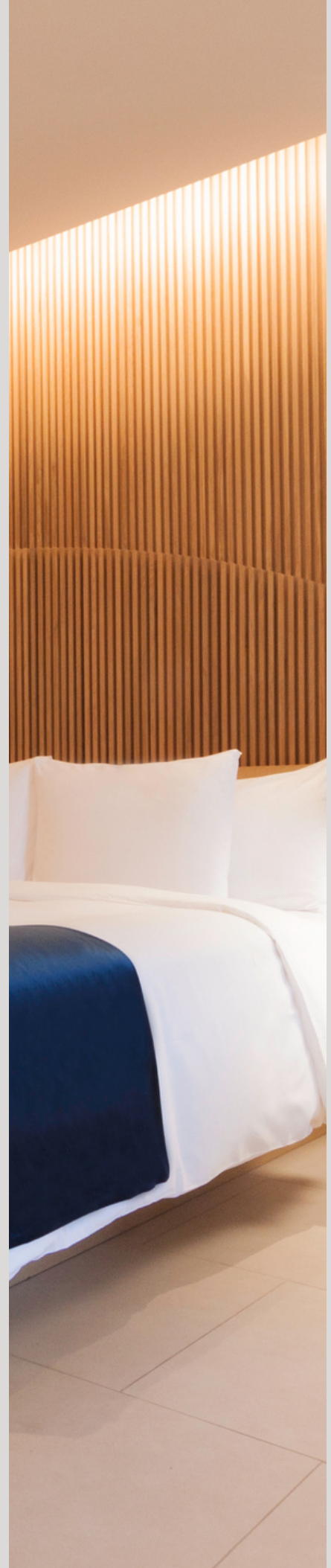
The new local accommodation licenses will have a "validity period" of 5 (five) years, renewable for equal periods. The licences issued before the new legislation comes into force will be **reviewed in the year 2030** and, should they remain active, they will then be valid for the same period.



# 3 | Local Accommodation (Short-term rental)

Another innovation to come with the new legislation - also quite controversial - is the possibility for **condominiums to put an end to licences issued without their approval**. If the local accommodation activity is carried out in an apartment block, the condominium's assembly, by deliberation of more than half of the building's share, may oppose to the exercise of the local accommodation activity, with the exception of cases in which (i) the strata title allows the use of the apartment block for this activity or in which (ii) there is a deliberation of the condominium's assembly expressly authorising it.

In terms of costs and the fiscal impact in the local accommodation activity, the Government intends to increase the costs of holders of local accommodation licenses in the flat modalities, by **implementing an extraordinary contribution of 20%** - the calculation of this rate will obey several application criteria. In addition, a tax regime has also been created that benefits owners that taking their property out of the local accommodation activity and use it for rental purposes (an option that will be analysed in due course under "tax incentives").





## 4 | Rental Market

As far as leases are concerned, the proposal presented by the Government involves the reduction of inherent taxes and a faster justice, in order to make this market more appealing both for tenants and landlords.

The reduction of taxes, in particular, will be addressed below, as a fiscal incentive that it configures.

Moreover, with this legislative package of "Mais Habitação", the **creation of a governmental financing line is foreseen**, which will have the purpose of contributing to the financial sustainability of private projects in housing to be destined to affordable renting. This line of credit, with mutual guarantee and subsidised interest rates, will cover real estate projects that are projected to be placed on the affordable rental market, if this is maintained on that market for at least 25 years.

The State also intends to "substitute" the tenant and **pay the landlords the rents in debts** after the end of the defence period, in case of resolution of the lease contract based on the tenant's delay, and when the tenant has not put an end to the delay within one month. The State will be able to coercively demand the payment of the debt through the general legal means currently at its disposal.

On the other hand, with the view to provide greater protection to tenants, the Government foresees in this package a **limit to the increase of the rents**.



## 4 | Rental Market

Thus, the initial rent for the new housing leases, on properties that have been subject to lease agreements in the 5 years prior to the entry into force of this bill, cannot exceed the amount of the last rent in the previous agreement, with the application of a 1,02 coefficient - this rule will only be applicable to agreements that exceed the general limits of rent price per typology foreseen in the legislation applicable to the Accessible Rent Program.

Furthermore, when the immediately preceding lease agreement has not been subject to one or more legally allowed rent updates, it may be applied the value of the annual coefficient (it is stipulated for 2023 the coefficient of 1,0543) to the initial rent's amount, provided that no more than 3 years have elapsed since the date in which its application would have been initially possible.

As for the very controversial measure of forced lease of vacant properties, this will only take place in flats that have been vacant for **more than two years, located outside the interior part of the country and the State will pay a compensatory rent to the owner.** The following are not considered vacant: holiday homes, homes of emigrants or people displaced for health or professional/training reasons and homes whose owners are in social facilities (e.g. retirement homes).

Finally, it is important to point out the innovative measure of establishing a **30-day deadline** for tenants to hand over their homes to their landlords in case of eviction, as from the date of notification of the judicial decision dismissing the opposition.



# 5 | Tax Incentives

The "Mais Habitação" Policy also foresees the creation or reinforcement of a set of **tax incentives** that aim to increase the supply of properties in the housing market, both for sale and for rental.

## **a. Properties destined for Affordable Rentals, disaffected from Local Accommodations or rented prior to 1990**

The owners of properties destined for Accessible Renting - under the scope of the Rental Support Program (RSP) - will have the following tax benefits:

- Reduced rate of 6% VAT (Value Added Tax) in the construction or rehabilitation contracts of properties mostly allocated to the Rental Support Programme (at least 70% of the buildings constructed or rehabilitated will have to be allocated to the RSP);
- Exemption of IMI (Municipal Property Tax) for 3 years after the acquisition or rehabilitation of real estate allocated to the RSP, which may be extended for another 5 years;
- Exemption of IMT (Municipal Property Transfer Tax) on the acquisition, acquisition for rehabilitation or construction of properties that are rented within the scope of the RSP;
- Exemption of AIMI (Additional to IMI) on properties rented under the RSP;
- Exemption from IS (Stamp Duty) on housing leases of properties which fall under the scope of the RSP.

The Affordable Rental Programme determines that the contracts affected to it have a minimum period of 5 years for permanent residence, notwithstanding, the parties may stipulate longer terms, as well as stipulate the conditions for its renewal.



T  
A  
X  
E  
S

# 5 | Tax Incentives

These accessible rental agreements have necessarily to be accompanied by insurance of compensation for lack of payment of rent (to be paid by the landlord), by insurance of compensation for involuntary loss of income of the tenants (to be taken out by the tenants) and by insurance of compensation for damage to the leased premises (to be taken out by the tenants), which can be replaced by a guarantee of up to 2 months' rent, subject to presentation of a justification.

As an example, in the parish of Albufeira e Olhos de Água (in the council of Albufeira, district of Faro), a two-bedroom apartment, with a gross private area of 107,27 m<sup>2</sup>, the maximum rent allowed under the RSP may be around 775 euros, and a property with the same characteristics located in the parish of Alvalade (in the council and district of Lisbon) may be around 1150 euros.

Regarding **rental agreements made prior to 1990**, the Government, after concluding a report on the housing and the rental market situation, intends to propose the exemption of IRS (Personal Income Tax) and IMI (Municipal Property Tax), as well as to define the amounts and limits of compensation to be granted to the landlord and the rent to be paid by the tenant as of 2024.

Also there is an exemption of IRS and IRC (Corporate Income Tax), until 31 December 2029, the property income resulting from **rental contracts for permanent residence purposes** of properties that have been **taken out from the operation of local accommodation establishments (AL)**, provided that the registration of the AL and its allocation have occurred until 31 December 2022 and that the signature of the rental contract and respective registration on the Portuguese Tax Office Portal occurs until 31 December 2024.



T  
A  
X  
E  
S



# 5 | Tax Incentives

## b. Reduction of IRS rates on Category F income

On the other hand, in order to encourage and increase the supply in the rental market, there will be a reduction in the IRS rate on rents received by landlords under housing rental contracts. Therefore, the rents (Category F income) deriving from housing leases will be taxed at the following special rates (without prejudice to the option for aggregation at the general progressive IRS rates):

Current Regime		Proposed Regime	
Contract Duration	IRS Rate	Contract Duration	IRS Rate
Up to 2 years	28%	Up to 5 years	25%
Between 2 and 5 years	26%	Between 5 and 10 years	15%
Between 5 and 10 years	23%	Between 10 and 20 years	10%
Between 10 and 20 years	14%	> 20 years	5%
> 20 anos	10%		

A vertical decorative element on the right side of the page. It features the word "TAXES" written in large, dark, block letters. Interspersed with the letters are several US coins, including quarters and dimes, arranged vertically. The background is a light, textured surface.

# 5 | Tax Incentives

**Rental income insurance** will also become a **tax-deductible item** from gross income of category F.

## **c. IRS exemption on real estate capital gains: sales to the State and amortisation of credits for permanent home ownership**

There will also be IRS exemption on capital gains generated by the sale of property to the State, the Autonomous Regions and municipalities, with the following exceptions: (i) capital gains made by residents with tax residence in a country, territory or region subject to a more favourable tax regime; and (ii) gains resulting from the exercise of pre-emption rights.

With the aim of helping families to reduce their levels of debt, there will also be an IRS exemption on capital gains generated by the sale of building land or residential properties which is not the taxpayer's or his/her household's own permanent residence, occurring after 1 January 2022, and whose sale profits are applied to the amortization of a loan contracted for the acquisition of the taxpayer's or his descendants' permanent residence (in case the sale profits are higher than the amortized loan amount, the capital gain proportional to the non-reinvested amount will be subject to taxation, under the general terms).

In order to benefit from the IRS tax exemption on gains arising from the transfer of real estate for own and permanent residence (capital gains), by reinvesting in new real estate (built or to be built) for the same purpose, it is now required that the real estate sold has been used as the taxpayer's or his/her household's permanent residence, with the respective tax domicile declared at the tax office, during the two years prior to the sale.



T  
A  
X  
E  
S



# 5 | Tax Incentives

On the other hand, only those who have not done it in the year of the sale and the three previous years (i.e. every four years) may benefit from the tax deferral by reinvestment.

Finally, those who sold their permanent home during the Covid-19 pandemic (between 1 January 2020 and 31 December 2021) will have two more years, in addition to the three currently provided for in paragraph b) of no. 5 of article 10 of the CIRS (Personal Income Tax Code), to reinvest in the purchase of a new property to be used for the same purpose.

**This information is not legal advice of concrete cases, nor should it be, under any circumstances, deemed as such.**



T  
A  
X  
E  
S



## Algarve



Avenida José dos Santos Farias, Edifício Arcadas,  
Bloco B, 1.º Esquerdo 8135-167 Almancil, Loulé



(+ 351) 289 356 330



(+ 351) 210 434 151



geral@matlaw.pt



matlaw.pt

## Lisboa



Rua Julieta Ferrão, 12, 6.º andar,  
escritório 604 , 1600-131 Lisboa (Entrecampos)



(+ 351) 210 434 150



(+ 351) 210 434 151



geral@matlaw.pt



matlaw.pt

