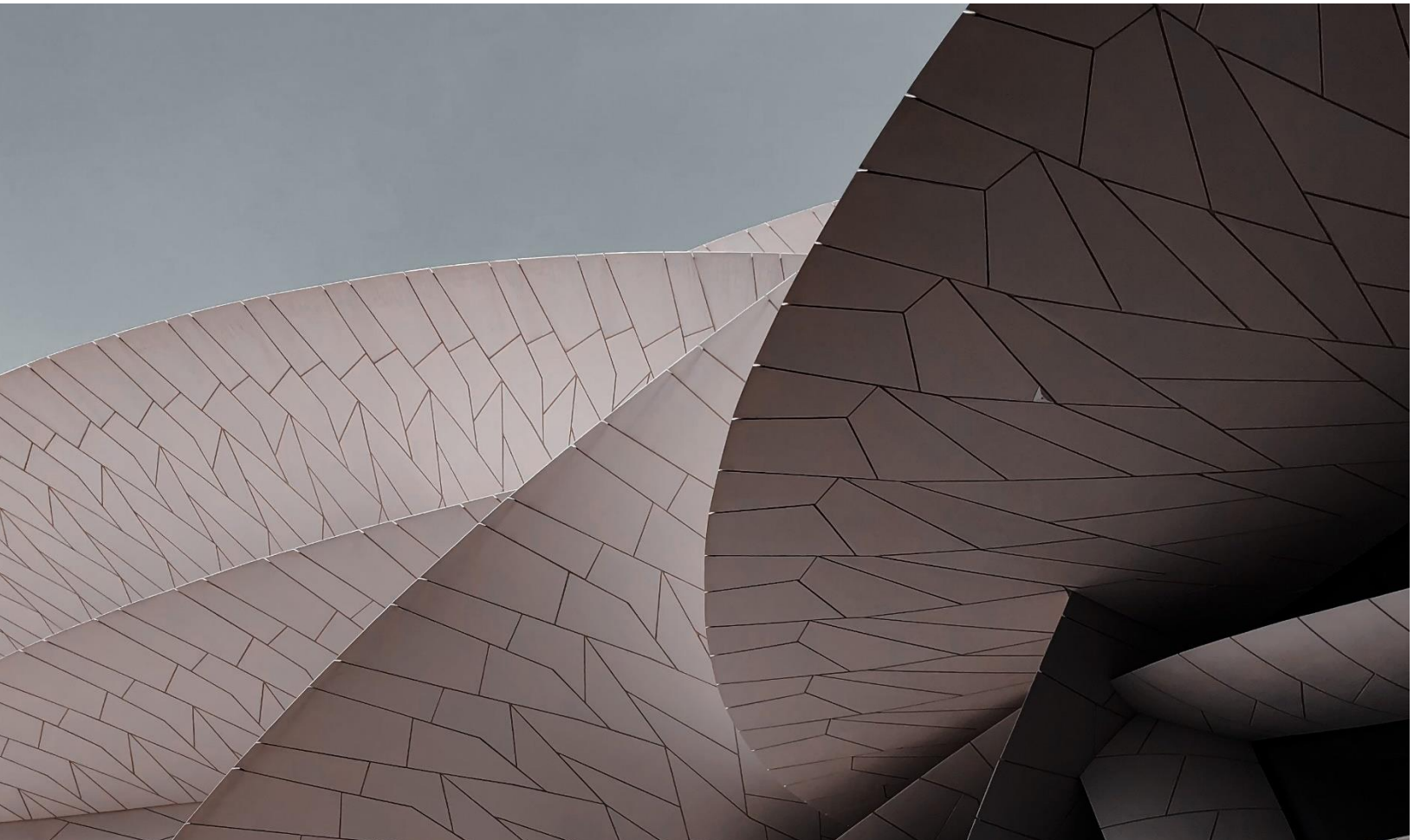


MdME

INSIGHT

*Portugal Real Estate Market: What
Investors need to know about the New
Housing Law*



MdME

Lease Agreement

1.1 Cap on Rents for New Lease Agreements

Any property which was leased during the 5 precedent years before Law 56/2023 of October 6 (New Housing Law) came into force, will be subject to a cap on the rent in new tenancy agreements, which cannot exceed the value of the last rent accrued of 2%.

The above cap is not applicable to the following cases:

(i) if the rent of the last tenancy agreement was not updated in accordance with the existing annual legal updates on rents.

if the property is subject to refurbishment works duly certified by the municipality. In this case, the rent can be increased up to the value of the expenses incurred by the landlord up to the annual limit of 15%.

1.2 Forced Rental

Residential units may be forced to rent by the relevant municipality if, among other conditions, the units are vacant for a period of 2 years or more.

1.3 Personal Income Tax (PIT) - General Tax Rate Reduction

The general tax rate applicable to personal income generated by rents on residential tenancy agreements is reduced from 28% to 25%.

Companies will maintain the corporate income tax standard rate of 21%.

1.4 Personal Income Tax (PIT) - Lower Reduced Tax Rates

The tax rate applicable to personal income generated by rents on residential tenancy agreements is further reduced, as follows:

Lease agreement with a term of 5 years or more: Tax rate at 15% instead of 23%

- i. Lease agreement with a term of 10 years or more and less than 20 years: Tax rate at 10% instead of 14%
- ii. Lease agreement with a term of 20 years or more: Tax rate at 5% instead of 10%
- iii. These reduced rates are limited to long term rental agreements and for primary residences only.

These rates are not applicable when the owner of the property is a company.

1.5 Facilitated Eviction Process

The integrity of the eviction process from the payment claim to the eviction is now handled by a single entity named "The tenant and landlord desk".

There is a special eviction procedure for the Landlord to evict the tenant in case he fails to notify the tenant on the termination of the tenancy agreement due to late payment of rents.

There is the possibility of the government paying the outstanding rents in case the tenant continues to occupy the property.

Local Lodging

Short-Term Rental

2.1 Suspension of New Licenses

The issuance of new short-term rental licenses, commonly known as Airbnb license, will be suspended for apartments and lodging establishments (except in inland areas of Portugal and in the Islands of Azores and Madeira).

Further to an assessment to be made by the respective municipalities on the balance between housing offer and student lodging, the municipalities can withdraw the above-mentioned suspension on the issuance of new short-term licenses.

MdME

In addition, it should be noted, that certain municipalities have created contention areas where the issuance of short-term licenses in those areas were already restricted before the entering into force of this new law.

2.1 Non-Transferability of Existing Licenses

The short-term rental license is personal and untransmissible regardless of being granted to an individual or a company.

The license will automatically expire if any portion of the share capital of a company holding such license is transferred to a third party, unless in inheritance cases.

2.2 Required declaration to maintain existing short term rental licenses

Any short-term rental license holder must submit a specific tax declaration by 7 December 2023 if they intend to maintain the respective license. Failure to proceed with such declaration will entail the cancellation of the respective license and activity.

2.3 Re-assessment of existing short term rental licenses

The renewal of existing licenses for an additional period of 5 years will be reassessed by 2030.

2.4 New short term rental licenses

New short term rental licenses will be valid for a period of 5 years, renewable for equal periods.

The renewal of the license will be subject to the municipality's approval.

2.5 Opposition to the activity of short-term rental

If the short-term rental is performed in an autonomous unit or part of a building which is not under strata title, the owners committee of the building (through the condominium general assembly) can cease its activity if they resolve accordingly with votes of 2/3 of the permillage of the building. This termination of the short-term rental cannot be done by the owners committee if the constitutive title of the building allows the short-term rental activity in the building and there is a resolution from the owners committee that expressly authorizes such lodging activity.

A favorable resolution of the general assembly of the condominium must be obtained prior to the issuance of a new short-term license in a residential unit pertaining to a building under strata title.

2.6 New annual Tax (extraordinary contribution) on short term rental activity – 'CEAL'

An annual extraordinary tax contribution ('CEAL') is created for the short-term rental activity. This new tax applies to individuals or companies that hold the license on December 31st of each year.

The CEAL rate is 15% and the taxable base is determined by indicators based on the annual average amount of fees charged in Portugal by all license holders and the urban pressure coefficient of the area where such local lodging activity is performed.

The simplified tax regime available with a taxable base of 35% for annual gross income below 200,000 EUR on personal income tax or corporate income tax is still in force.

2.7 Tax incentive for the transfer of residential units under short term renting into long term rental

Any individual or company that transfers its units under short-term renting into a long-term rental for primary residence purposes will be exempted from taxes (PIT and CIT) on the income generated with the long-term rent of such unit until 2029 if the following conditions are met:

- i. The license of the short-term renting existing until 31.12.2022;
- ii. Signing and registering with the tax department a long-term rental agreement over such unit until 31.12.2024.

MdME

Under the tax law rules applicable before these changes and still in force, whether the individual transfers the property from short-term renting into a long-term rental, this operation qualifies as a taxable event for capital gains' taxation purposes, ie. the difference between the acquisition price and the market value of the shifting date. The taxation of these capital gains will be suspended for 3 years, to the extent that the individual maintains the property for 3 years without selling it. In case a sale of the property occurs during that period, eventual capital gains will be taxed.

Any short renting license holder must submit a specific tax declaration by 7 December 2023 if they intended to maintain the respective license. Failure to proceed with this declaration will entail the cancellation of the license.

3. Golden Visa

The golden visa program is still available with the following eligible investments:

- Transfer of capital of at least €500,000 to acquire of units/shares of non-real estate collective investment vehicles (investment or venture capital funds)
- Transfer of capital of at least €500,000 to set-up (or reinforce the capital) of a Portuguese incorporated company, combined with the creation of five permanent jobs or maintenance of at least ten jobs (with a minimum of five permanent jobs) for a minimum period of three years
- Creation of at least 10 jobs
- Transfer of capital of at least €500,000 into public or private scientific research institutions, integrated within the national scientific/technological system
- Transfer of capital of at least €250,000 into investment or support for artistic production, recovery or maintenance of national cultural heritage.

All former investments into real estate were eliminated and the above eligible investments cannot be linked, directly or indirectly, to real estate.

The minimum requirement of an average of 7 days a year in Portugal is kept.

4. Urban Rehabilitation: Tax Changes

4.1. Reduced VAT rate on Urban Rehabilitation works

The reduced rate for rehabilitation works established in the VAT Code has been in force for several years and since 2007 it has considered the rehabilitation work on property, regardless of the type of property itself.

The new rules limit the current reduced rate of 6% to rehabilitation of entire buildings. These new rules will bring additional challenges as it excludes the demolition and construction of new buildings, even if located in identified urban rehabilitation areas.

A transitional rule is foreseen to maintain the 6% VAT rate to ongoing projects and therefore, the new wording of paragraph 2.23 of List I annexed to the VAT Code, is not applicable to the following cases:

- i. Licensing requests, prior communication or prior information of urban planning operations submitted to the territorially competent municipal council before the date of entry into force of the new law (October 7th, 2023);
- ii. Licensing requests or prior communication submitted to the territorially competent municipal council after the entry into force

MdME

of the new law, submitted under a favorable prior information in force.

4.2. Revocation of Tax Benefits

(i) Real estate investment funds

The corporate income tax exemption available to income received by real estate funds set up between 1 January 2008 and 31 December 2013 and composed by at least 75% of real estate assets for rehabilitation works in urban rehabilitation areas is revoked.

The new law also revoked the reduced withholding tax of 10% of corporate income tax (CIT) or personal income tax (PIT) on income related to units in these funds and a 10% of capital gain tax (CGT) on capital gains realized on the sale of the fund units.

(ii) Individuals – Capital gains – Personal income tax

The individuals that qualify as tax residents in Portugal were entitled to a reduced tax rate of 5% on capital gains related to the first sale of the property after the rehabilitation works and the rental income from the rehabilitated property located in urban rehabilitation areas.

5. Highlights on The Urban Development Simplex

The Parliament has approved a simplified urban licensing and zoning framework with the intention to promote housing, reduce costs and optimize procedures for companies, in the areas of trade, services, tourism and agriculture.

We highlight below some of the key points.

5.1 Increase of cases with exemption or waiver of prior control by the City Hall, as follows:

- Alteration works inside buildings or their units that do not affect, maintain or reinforce the stability structure;
- Reconstruction works which do not result in an increase in the height of the façade, even if they imply an increase of the number of floors;
- Allotment operations, urbanization works, land remodeling, construction, alteration or extension, in an area covered by a detailed plan, by an allotment operation;
- Works for improvement and to make more effective the system of exemption from prior urban planning control for the installation of photovoltaic panels or other solar energy production systems.

5.2 Tacit approval for works licenses

Tacit approvals for building permits are automatically granted if the relevant authority does not provide a decision within the applicable deadlines. In these cases, investors can move forward with the construction works in accordance with the architectural project submitted for approval, and to occupy the public road when needed to proceed with the works.

The mechanism for attesting the tacit approval is made with the issuance of a certificate obtained in an electronic administrative proceeding.

5.3 Elimination of the permit for works license

The building permit is replaced by the settlement of the respective invoice.

5.4 Elimination of prior opinion from the cultural heritage

Elimination of prior opinion from the cultural heritage authority when the refurbishment works and respective changes are made inside the property without any archaeological or architectural impact and their integrated heritage, advertising, signage esplanades, and street furniture.

MdME

5.5 Elimination of the use permit for new properties

The use license is replaced by a prior communication when the construction work was already subject to prior inspection.

If there is an amendment in the use when the construction works were not preceded by a prior inspection, a prior communication must be sent to the City Hall requesting it, and the City Hall must respond in 5 days. If no response is given within such a timeframe, the use permit is considered granted.

5.6 Purchase and sale real estate

Formalities for the purchase and sale of real estate are simplified, being no longer necessary to show the existence of certain documentation to the notary such as (i) the house technical data sheet, (ii) the use permit or (iii) demonstrate a certificate of exemption.

5.7 Zoning processes

The Land reclassification process of unbuildable land into buildable land is simplified. Municipalities may reclassify a parcel of land with no construction rights as a buildable parcel of land if the following conditions are met:

The reclassification process prepared by the Municipality is subject to:

- iii. A public consultation with a minimum duration of 10 days;
- iv. Procedural conference which must take place during the public consultation period, where all public bodies, services and legal persons may express their views on the proposed reclassification draft presented by the Municipality.

The reclassification process is made throughout a simplified alteration procedure when the intended purpose is housing, the land is exclusively public, and the land is located near a buildable zone.

5.8 Conversion and construction of building for residential use

The conversion of buildings to residential use and construction of new residential buildings in urban areas classified the Master Plans as spaces classified for equipment, commerce and services can be made throughout a simplified regime. The Municipality has 20 days from the date of the communication to convert the use or to present a justified objection based on the following grounds:

- Noise;
- Parking;
- Existing mobility systems; and
- Green spaces, public facilities, and recreational equipment.

If no objection is presented by the Municipality within such a timeframe, it is tacitly assumed that the residential use is compatible.

MdME

ABOUT US

We are a full-service, business-focused law firm that is committed to a single purpose: delivering value to our clients, our people, and the communities in which we operate.

Our multicultural team is driven by its passion for the law and its dedication to protecting clients' interests. We are relentless in the pursuit of technical excellence and of innovative legal solutions that help our clients stay ahead of the market. By understanding their ambitions and challenges, we become trusted advisors to leading businesses and forward-thinking entrepreneurs.

We have a proven track record, spanning from high stakes litigation to market-first transactions, across different markets and industry sectors. With our offices in Macau, Hong Kong, and Lisbon – and through our proud membership in the Lex Mundi network – we are uniquely positioned to connect people and businesses across Greater China and the Portuguese speaking countries.

Our Contributors:



Tirso Olazábal
Partner
tirso.olazabal@mdme.com



Ana Pinto Moraes
Counsel
ana.moraes@mdme.com



João Mendes Rodrigues
Senior Associate
joao.rodrigues@mdme.com