

# Programme

# “Mais Habitação”

public opinion \_ march 2023

# Contribution to the public consultation on the proposal of Law 64/XXIII/2023 regarding the "More Housing" programme

We are a law firm that provides services to a significant number of Portuguese and foreign citizens; to that extent we participate every year in multiple non-governmental organisations' initiatives such as the IBA (International Bar Association), ABA (American Bar Association - International Law Section) and IFA (International Fiscal Association).

Without debating or doubting the well-meaning of many of the measures announced, to which we wish the greatest success, we must challenge the proposed measures that violate constitutional principles and undermine the confidence of the citizens in the State and the image of Portugal abroad.

Since the announcement of the programme "*Mais Habitação*" (More Housing), made publicly on 16 February, an international perception has surfaced: that Portugal is not abiding by the rule of law and that it is reneging on the contracts entered and expectations it has created with national and foreign citizens.

This statement of fact is based on multiple exchanges with clients and colleagues both abroad and in Portugal.

There is still time to take a step back, at least with regards to the most blatantly unconstitutional measures.

## Golden Visa - "revocation of residence permits for investment activity", by amending Law 23/2007

### Observations

1. With the announcement of these measures, Portugal has already suffered and will further suffer a serious reputational stain; that is to say, we will enter the list of countries where the rule of law is replaced by arbitrariness and the unprotection of citizens and companies.
2. The ARI holders, also known as Golden Visa, basically entered into a contract with the

Portuguese State in which the latter, in exchange for the investment it selected, for the amount it determined, complemented by tens of thousands of euros for the assessment and issue of visas, promised them a residence visa and a path to citizenship or permanent residence after five years, under the exact same conditions as holders of other types of residence permits/visas.

3. Now the intention is to tear up these contracts, or rather to amend them in midway, in such a way that citizens cannot possibly meet the new criteria.

4. Others, who have not yet had the opportunity to submit the ARI, but have already made the investment, opened a bank account, delivered a profusion of papers, translated and certified, now see themselves retroactively denied the possibility of submitting the request.

5. Even more serious is the situation of those who invested in shops, warehouses, tourist resorts, businesses or even in cultural patronage since none of these investments are convertible into their permanent residence or into long term rentals.

6. The plan goes as far as to demand that in those investments made in residential property, that the property must be inhabited by the owner or his/her descendent; not admitting spouses or unmarried partners, collateral or even ascendants!

7. The same State that takes two years to issue the card that grants the ARI, now intends to give 60 days for its holder to definitively move to Portugal with a document issued by the Tax Authorities, or to promote the rental, forgetting that many ARI holders cannot even enter in Portugal because SEF does not issue them the cards timely

### Recommendations

a) To establish a transitory regime until the end of 2023 to allow investing citizens and other stakeholders to prepare themselves and complete the realization of ongoing investments and thus protect the expectations legally created by the Portuguese State through the legal framework still in force, thus respecting the constitutional principle of legal certainty and security.

b) Respecting the constitutional principle of the protection of confidence thus not applying this draconian regime to ARIs already issued and in the process of renewal within the legal framework currently in force.

c) Reshape the ARI (Golden Visa) for areas of high added value such as investment in venture funds in the areas of innovation and technology, direct investment in start-ups, funding for public and private research bodies, cultural and scientific patronage, enabling a beneficial inflow of capital into a country that needs it so much.

## Art 9 – Short Renting

### Observations

1. It is unconstitutional for the new special tax, CEAL, to be levied on a presumed income of 100% of occupation. Constitutional principles require taxation proportional to the capacity to pay for such taxes.
2. The non-transferability of short rentals business registrations is a disproportionate limitation to the right of ownership, enjoyment, and fruition, it also destroys the value of the business in case of necessity to sell by the holder of the registration (serious illness, indebtedness) or in case of succession.

### Recommendations

CEAL cannot be approved in these terms, nor can it restrict transmissibility absolutely, unless violating the constitutional principles of respect for the capacity to pay and the principle of non-confiscation.

## Coercive renting

### Observations

1. Mandatory communications to municipalities by service providers of non-existent or reduced consumptions violate the GDPR and, as with the

metadata law, are fishing expeditions, unacceptable and unconstitutional intrusions into the privacy of citizens.

2. Coercive renting to the State, violates the rights of property, enjoyment and fruition, especially when the State does not propose objective and scrutinized criteria for establishing rents in case of these "expropriations", nor even sets limits to the value of the works that the State does and the owner supports, nor the relationship between the value of these works and the value of the rent to be practiced, which in practice may allow the perpetual confiscation without compensation of the owner.

3. It also violates the principle of proportionality since the State is one of the great enablers of past and present real estate speculation; State sponsored sales of its own property for luxury projects such as the Hospital da Marinha, Direção Nacional da PSP, Courts on Rua Braamcamp, plus the recent announcement of alienation of State owned historic buildings at speculative prices on Rua da Academia das Ciências.

### Recommendations

The State cannot use data regarding the consumption of all its citizens, it's a prohibited fishing expedition; the State should start by using its vacant vast real estate patrimony. Forced rentals to the State should only be applied to abandoned houses at risk of ruin, the value of the works and

their relation to the rent to be paid by the State must be clearly defined, otherwise it becomes a disguised form of expropriation without compensation or, in current Portuguese, confiscation.

## New and old rental contracts

### Observations

Limiting rent increases to 2% based on a hypothetical, future, and mythical inflation figure, making landlords liable for overcrowding of the leased premises by the tenant, indexing affordable rents to arbitrary typologies based on room types rather than on the square meters of each house, are direct violations of the right to property in its aspects of disposing of, enjoying, and using property. They also violate the principles of the protection of confidence and of proportionality, seeking to give landlords the social responsibilities that should be committed to the State.

### Recommendations

a) The provision of the NNRAU of 2012 should simply be applied. By transferring the old contracts to values in the order of 1/15 of the tax valuation of the house (VPT), the State should subsidize the

tenants that can't afford the updated rents, just like it does to the youngsters through Porta 65.

b) The increase in the rent must be at least equal to the inflation; otherwise, we will condemn the landlord to an annual depreciation of the rent initially contracted.

c) The values of the rents cannot be based on the typology of the houses but on their square meters.

## Acquisition of property by the State with exemption of capital gains for the seller

### Observations

Given that capital gains are 24% for individuals and a maximum of 21% for companies, any acquisition 20% below market value eliminates the intended tax effect or opens the door to situations where only certain types of people or companies, due to their connections to the State machinery, can sell to the State at fair prices.

### Recommendations

Establishing objective, transparent, and updated criteria for calculating the market value of real estate, as a starting point for the acquisition of property by the State, so that some do not receive too much.