Portugal uses tax rates to stimulate the rental accommodation market
Real Estate Committee, March 2019

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From the 1 January 2019, Portugal significantly slashed the tax levied on rental income under Law 3/2019. The basic tax rate remains at 28 per cent, but the tax rate will decrease as the duration of the contract increases, as follows:

- contracts between two and five years: 26 per cent. For each renewal, the tax rate is reduced two percentage points down to a minimum of 14 per cent;
- contracts between five and ten years: 23 per cent. For each renewal, the tax rate is reduced five percentage points, down to a minimum of 14 per cent;
- contracts between ten and 20 years: 14 per cent; and
- contracts for more than 20 years: ten per cent.

These reduced tax rates are applicable to new lease contracts and to the renewals of existing contracts from the 1 January 2019.

These tax rates are applicable to private landlords, and the law does not distinguish between Portuguese residents and non-Portuguese residents, which is attractive for the Golden Visa and other residency programmes. However, the law shall be regulated within 60 days and the government intends to re-evaluate this tax regime by the end of 2019, introducing a certain degree of uncertainty for investors.

Portugal is facing a major housing problem, exacerbated by the massive conversion of residential units into Airbnb accommodation. As explained in a previous article[1], part of the problem was the huge tax advantage enjoyed by touristic rental. A private owner would pay a 28 per cent flat rate for a conventional rental, whereas renting to tourists attracted a tax rate of no more than 16 per cent for a rental income in excess of €80,000, with the average tax rate being paid being around seven per cent.

On top of the tax inequality, landlords faced an ordeal in evicting defaulting tenants, the courts being notoriously slow and reluctant to enforce the law. On top of the pressure on landlords, there was political wrestling between the socialist government and the radical left, whose dream is to impose tenancy for life and frozen rents on landlords.

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[1] João Valadas Coriel, 'Airbnb versus landlords: law-makers set to reduce the tax gap between short-term lets and normal leases; government official says it's too early', International Real Estate News, September 2017.

In the end, some common sense prevailed and this new law is intended to boost the residential rental market, which has notoriously scarce supply. These measures are coupled with penalties for owners with vacant residential property that will attract municipal real estate tax (Imposto Municipal sobre Imóveis – IMI) at a higher almost punitive rate. Rescinding old contracts will also become more attractive to tenants since indemnities will be tax exempt.

The market came to expect a surge in ‘buy to let’ transactions, given the scarce alternatives for investors. But then two other laws were passed to strengthen tenants’ position and to balance the relationship between landlords and tenants.

Law 12/2019 punishes bullying behaviour in the rental market. Specifically it targets the actions, whether of landlords, parties acting on behalf of landlords or third parties interested in the acquisition of the property, which have the purpose of achieving the vacancy of the property. The law defines bullying behaviour very widely – such as creating an hostile, hazardous or intimidating environment towards the tenant or its family or visitors, or in any way making access to, or the enjoyment of, the property difficult. The tenant can notify the landlord or the city council of bullying behaviour and, if the bullying behaviour is not immediately ceased, the tenant can seek a court injunction against the offending parties and within such injunction ask for a daily penalty, the amount of which is aggravated if the tenant is aged over 65 or has a disability.

Law 13/2019 vows to restore balance in the relationship between landlords and tenants in the residential rental market. Changes introduced include explicitly forbidding discrimination on the basis of nationality, race, religion, gender, ideological or political beliefs, sexual orientation, age or disability; lowering the penalty for late payment of rent from 50 per cent to 20 per cent of each monthly rent payment; allowing the tenant to prove the rental contract by any admissible means when it is not in a written form (and the tenant is also not responsible for such lack of formality of the contract); the landlord must notify the tenant in writing of the intention to rescind the contract after the third late rent payment; relieves the tenant from having to pay rents or penalties in the event of early termination of the contract caused by involuntary unemployment, permanent work disability, death of the tenant or their spouse or companion.

Finally, the law imposes a new restriction on contractual freedom, imposing that any rental contract, even if entered for a shorter period, is automatically renewed for three-year periods, unless explicitly rescinded upon its term. Even if a landlord enters a new residential rental contract for one year, they can only take the property back after three years if the tenant agrees.

In light of the above, landlords now have a strong tax incentive to let houses in the rental market but this new layer of protection to tenants might prove to be cumbersome for landlords in several circumstances.