

2009 STATE BUDGET STIMULATES RESIDENTIAL LETTING

In order to invigorate the housing rental market, particularly in view of the real estate crisis at even national level, the 2009 State Budget Bill provided for the creation of a specific regime which would run until 31 December 2020. This regime would apply to new Real Estate for Residential Letting Investment Funds (FIIAH) created between 1 January 2009 and 31 December 2014 and to the properties acquired by such funds during the same period. Although the final version of the 2009 State Budget passed by the Parliament is not yet available, it is likely that the regime set out in the Bill has been accepted with little or no changes. The FIIAH will be closed-end public funds which must have a minimum of 10 million euros and at least 100 unit-holders after the first year, while at least 75% of their assets must be located in Portugal and destined for permanent residence.

In order to make this collective investment instrument more attractive, the 2009 Budget sets out a range of associated tax benefits. Most importantly, the exemption from corporation tax (IRC) on any income earned by the FIIAH and the exemption from property transfer tax (IMT) and property tax (IMI) on buildings destined for letting as permanent residences for as long as they belong to the fund. It also sets out a favourable tax regime for investors, who will be exempt from personal income tax (IRS) and IRC on income from the FIIAH units, in line with the trend towards favourable treatment of non-resident investors and resident individuals in investment funds generally. Nevertheless, unlike the situation with investment funds in general, a positive difference between the capital gains and losses arising from any disposal of property is excluded from the scope of the exemption.

Furthermore, in order to make these funds more flexible and encourage their use, mortgage loan borrowers who dispose of the mortgaged property to an FIIAH may enter into a rental agreement with an option to purchase the property from the fund, which may be exercised up to 31 December 2020. **The owner therefore, under the regime governing the funds, will be able to combine the sale of the property with the rental and ultimate repurchase of the same property.** A specific tax regime also exists for these latter situations:

an IRS exemption on capital gains arising from the transfer of the property to the FIIAH and a Stamp Duty (IS) exemption on all acts related to or associated with the transfer. It should be noted that an amendment was proposed to the initial version of the 2009 State Budget Bill presented by the Government, suggesting that such capital gains should be taxed if the taxpayer terminated the rental agreement or failed to exercise the purchase option on the property. Conversely, in cases where the purchase option is triggered by the tenants of the FIIAH properties, there will be IS and IMT exemptions on the purchase of a property as a main permanent residence. In addition, 30% of the rents paid by the tenants will be tax deductible (IRS) up to a maximum of €586.

In view of the current economic climate, it is likely that the new regime will be welcomed by private individuals who are having difficulty in paying off their loans, although it remains to be seen whether access to these funds will be easy or indeed whether investors will opt for real estate-related products.

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