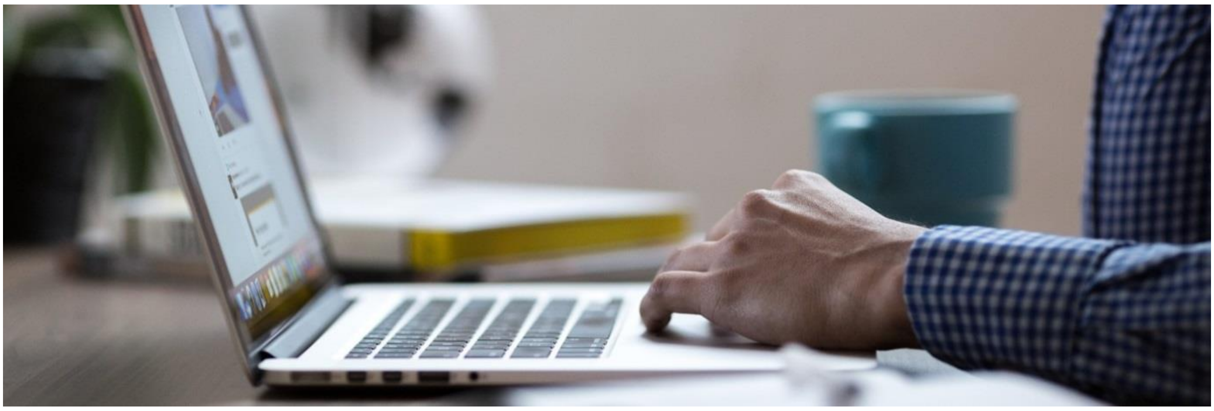

The law on the right to housing in Spain: implications and significant issues

On May 29, 2023, Law 12/2023, of May 24, 2023, on the right to housing, came into force.

The full text of the law can be consulted at the following link:

https://www.boe.es/buscar/act.php?id=BOE-A-2023-12203

Through this circular, we explain the most significant aspects of the new Law:

1. **Elimination of the cpi as a reference index as of 2025.**
2. **New definition of large holder**
3. **TAX implications**
4. **Obstacles to evictions**
5. **Expenses derived from housing leasing contracts**

1.- Elimination of the CPI as a reference index as of 2025

As we informed in previous circulars, in the middle of the year 2022, Royal Decree-Law 6/2022, of March 29, which adopted urgent measures within the framework of the National Plan of Response to the economic and social consequences of the war in Ukraine, came into force (later modified by Royal Decree-Law 20/2022, December 27) which introduced the obligation for landlords to apply the Competitiveness Guarantee Index (GCI), instead of the Consumer Price Index (CPI), when updating the annual rent to their tenants, until the end of 2023.

With the entry into force of Law 12/2023, it has been consolidated to maintain the 2% cap of the GCR as a reference value set by the National Statistics Institute (INE) until the end of the year, agreeing that as from 2024, such index will increase to 3% and establishing that the INE must define a new reference index for the annual update of the housing lease contracts in replacement of the CPI, which will be applicable as from 2025.

2.- New definition of large tenant

Until now, a large tenant was understood to be a landlord, whether an individual or a legal entity, who owned more than 10 urban properties, excluding garages and storage rooms, or a built-up area of more than 1,500 m2.

From now on, a large tenant will also be understood as a person who owns 5 or more urban properties for residential use located in stressed residential environments, when so motivated by the autonomous community.

In housing lease contracts in which the property is located in a stressed residential market area, within the period of validity of the declaration of the aforementioned area, the rent agreed at the beginning of the new contract may not exceed the last rent that had been in force in the last 5 years in the same property, once the clause of annual updating of the rent of the previous contract has been applied, without being able to set new conditions that establish the repercussion to the lessee of fees or expenses that were not included in the previous contract. However, this last possibility will not be applied until the aforementioned new index is approved.

3.- TAX implications

The Law on the Right to Housing brings with it various tax incentives applicable to Personal Income Tax for landlords who lower the price of their rents in new contracts.

The current IRPF regulation provides for a reduction of 60% for the positive net yield derived from the lease of real estate intended for housing, and with the modification introduced by the housing law for contracts entered into since its entry into force, the general percentage of reduction will be 50% (instead of the previous 60%), but it regulates higher percentages for the following cases:

- 90%: when the same owner has entered into a new housing lease contract (in a stressed residential market environment) in which the rent has been reduced by more than 5% concerning the rent of the previous contract.

- 70% when:
    - A dwelling located in a stressed residential market environment is leased for the first time, and the tenant is between 18 and 35 years of age.
    - In the case of affordable incentivized or protected housing, leased to the public administration or non-profit entities, or under a public housing program that limits the rental income.

- 60%, when the property has been rehabilitated in the previous 2 years.

The requirements for each type of reduction must be met at the time the lease contract is executed.

Notwithstanding the above, not all the tax changes are positive for homeowners, since a surcharge is introduced for residential properties permanently unoccupied in the Real Estate Tax, which may be applied to those properties vacant for more than 2 years, provided that the owner has a minimum of 4 properties in such situation, except for justified causes of temporary unoccupancy established by Law. This surcharge, which is currently set at 50%, may be increased to 150% depending on the duration of the vacancy and the number of unoccupied dwellings owned by the same owner in the municipality.

4.- Obstacles to evictions

Another new feature of the Housing Law is the possibility for tenants who are in a situation of economic or social vulnerability to extraordinarily request the extension of the contract for a maximum period of 1 year, during which the terms and conditions established for the current contract will continue to apply.

However, when the dwelling is located in a stressed residential area, such extraordinary extension may be for up to 3 years, unless other terms or conditions have been established by agreement between the parties, a new lease contract has been entered into with the limitations on the rent that may be set by the parties, or a new lease contract has been entered into with the limitations on the rent that may be set by agreement between the parties.

5.- Expenses derived from housing leasing contracts

From now on, lessors will be obliged to pay the real estate agents' fees (for management and formalization of the contract), and they will not be able to pass on other expenses such as the garbage collection fee or community expenses in the price of the lease.