

THE ANDORRAN PARLIAMENT APPROVES AN ACT AIMED TO IMPLEMENT  
SIGNIFICANT CHANGES TO FOREIGN INVESTMENT, REAL ESTATE, TAXATION  
AND IMMIGRATION REGULATION

On 29 July 2024, the Andorran Government approved a draft law aimed at ensuring the right to decent and affordable housing and implementing a model of demographic, touristic and territorial sustainable growth (the “**Draft Law**”) and introducing crucial amendments to the existing regulations of foreign real estate investment as well as presenting significant updates in several key areas, such as, inter alia, tax, immigration, and real estate.

On 6 March 2025, the Draft Law was passed by the Andorran Parliament (“*Consell General*”). This new piece of legislation (the “**Act**”) will enter into force fifteen days after its publication in the Official Gazette of the Principality of Andorra, what we expect it will take place within the month following this approval. As to the assignment of empty homes, the Act will enter into force six months after. The relevant amendments are described in this legal flash.

Foreign investment changes

The Act repealed the vast majority of the existing Foreign Investment Act (Act 10/2012, of June 21) and replaced it with a new set of provisions that introduces significant changes, including the following:

- **Scope:** Foreign investment in Andorra is defined in the Act as the investment by any means in real estate properties or companies located in the Principality of Andorra by: (i) non-resident individuals; (ii) individuals with less than 3 years of uninterrupted residence in Andorra; (iii) foreign legal entities; and (iv) Andorran companies or collective investment schemes with direct or indirect foreign equity participation equal or greater than 50% in its share capital or its voting rights (the “**Foreign Investors**”). The Act has introduced two relevant amendments: (i) Andorran nationals are excluded from its scope, even if they are not residents in the Principality of Andorra; and (ii) individuals holding a residence permit without work are no longer considered Foreign Investors. Nevertheless, both direct and indirect participation will be considered for the calculation of such threshold. Moreover, a new set of grounds has been added to deny investments: (i) potential risks to food safety; (ii) access to energy sources and raw materials; and (iii) access to, or ability to control sensitive information, in particular personal data, the labour market and housing.
- **Direct foreign investments:** Foreign investment authorisation granted by Andorran Government was required prior to the incorporation of a new company in Andorra, or prior to hold a percentage of share capital or voting rights greater than 10%.

Furthermore, direct foreign investment did not, by itself, confer any right to obtain the residence in Andorra, even if the investor occupied the position of director or maintained any employment or business relationship with the company. The Act has slightly modified this regime to the extent that such authorization is required as long as the participation of Foreign Investors in the company's shared capital is, at the time of acquisition, less than 25%, a circumstance to be proven pursuant to the regulation. Moreover, authorization is also required to change the existing participation beyond the 10% threshold, amend the corporate purpose or increase the company's share capital.

- **Real estate investments:** Foreign investment authorisation was mandatory for Foreign Investors to acquire ownership rights and other *in rem* rights in respect of real estate located in Andorra, subject to these limits: a) 2 residential units, including apartments or studios, along with their annexes; b) a single-family home or a plot of land for its construction; or c) six parking slots. However, the Act introduces some exemptions to the application for prior administrative authorization as follows: (i) if the acquisition is either due to death or due to the liquidation of the economic regime matrimonial; (ii) for administrative concessions, the applicable regime is established in the corresponding terms and conditions; and (iii) for acquisitions of real estate carried out by the entities operating in the Andorran financial system or by legal persons of Andorran nationality with foreign participation in its capital or in its voting rights of more than 50%, holders of security rights, under the conditions set forth in the Act.

In any case Andorran companies with direct or indirect foreign equity participation equal or greater than 50% in its share capital or its voting rights and natural persons with less than 3 years of uninterrupted residence in Andorra may purchase a real estate for the purpose of conducting their own business activity.

The Act banned foreign investment aimed at urban or real estate development, except for real estate developments involving residential rental properties intended for habitual and permanent residence, provided that the ownership was maintained for a minimum of 10 years. The Act introduces two exceptions: (i) real estate developments that are entirely intended for rental housing for habitual and permanent residence (including common areas, car parks and storage rooms assigned to the rent), provided that at least 50% is at an affordable price, and provided that the ownership of the lease is maintained a minimum of 10 years; and (ii) real estate developments that are required to be adapted to the conclusions of the study of maximum parish load capacity.

- **Penalty regime:** The Act established a penalty regime for non-compliance with its provisions. Among the penalties provided for in the Act, unauthorized foreign investments may incur fines ranging from EUR 10,000 to EUR 20,000 and may also result in the nullity of both the investment and the entity through which it was conducted.

### Tax changes

The Act also introduces changes to both direct and indirect taxes, increasing taxation on capital gains derived from the short-term transfer of real estate, and aims to encourage the purchase of the primary residence by improving the exemption in real estate transfer tax.

- **Corporate tax:** Special surcharges on capital gains derived from the transfer of real estate located in the Principality of Andorra are increased: (i) if the property is transferred within 2 years of acquisition, the surcharge is 10%; and (ii) if transferred between 2 and 5 years, the surcharge is 5%, resulting in a tax rate of 20% and 15%, respectively.

In the case of real estate developments, a 5% surcharge will apply if the property is transferred within 2 years of acquisition, which leads a tax rate of 15%.

Additionally, the reduction for income obtained from renting residential properties is increased from 5% to 10% (the rental income limit remains at EUR 1,250 per month).

- **Personal income tax:** Special surcharges on speculative capital gains derived from the transfer of real estate are increased under the same terms as those established in the corporate tax section. The reduction for income obtained from renting residential properties is increased under the same terms as the corporate tax section. The reduction coefficients for the transfer of real estate located in the Principality of Andorra will apply starting from the sixth year of ownership (previously from the 5<sup>th</sup> year).

In terms of deductions, the reduction for family responsibilities is increased from EUR 750 to EUR 1,000 per year. The reduction for the acquisition of a primary residence has been increased to EUR 5,000 per year and a new reduction of EUR 300 is introduced for school fees paid for children's education. Finally, a new reduction is introduced for renting affordable rental housing.

- **Non-resident income tax:** Tax rates are increased on capital gains derived from the transfer of real estate located in the Principality of Andorra when owned for less than

10 years: (i) if the property is transferred within 2 years of acquisition, the tax rate is 25%; (ii) if transferred between 2 and 5 years, the tax rate is 20%; and (iii) if transferred between 5 and 10 years, the tax rate is 15%. After 10 years, the general tax rate of 10% applies.

- **Real estate transfer tax:** The act modifies the exemption for the acquisition of a primary residence. Among other aspects, the income limit is raised to four times the minimum wage (previously three), and the maximum value of the property is increased to EUR 600,000.

A new exemption is also introduced for the transfer of shares in companies that own administrative concessions. In addition to this, the Act includes an exemption for the transfer of real estate to Andorran companies when the property is intended for affordable rental housing.

- **General indirect tax:** A new super-reduced tax rate (0%) is introduced for administrative transfers of affordable housing use rights.
- **Tax on foreign real estate investment:** The Act significantly amends the Tax on Foreign Real Estate Investment (“TFREI”) which came into force on 29 February 2024, removing tax on financing transactions carried out by non-resident individuals and legal entities. It also excludes from the TFREI tax real estate investments conducted by Andorran legal entities with less than 50% foreign participation in their shared capital, as well as investments conducted by passive residents, as long as they can demonstrate that they are tax residents in the Principality of Andorra.

Additionally, several gaps in the previous draft of the TFREI regulation related to exemptions have been addressed, including: (i) the exemption for acquisitions due to inheritance of shares in companies with rights over such properties, (ii) acquisitions resulting from the liquidation of a matrimonial economic regime, and (iii) the requirement related to job creation in the exemption for real estate acquisitions intended for economic activity, which will now apply not only to their creation but also to their ongoing maintenance.

A key change introduced in the new wording of the TFREI Act is the modification of the tax base for Andorran legal entities with foreign participation in their capital. Under the previous wording, if the foreign participation exceeded 50%, the tax base was the total value of the investment. With the new changes, these entities will only be taxed based on the percentage of foreign participation in their capital.

The Act also modifies the tax rates, setting them at 3%, 5%, and 10%, depending on the number of units acquired. For the first real estate unit purchased, the tax rate will be 3%, while acquiring the second unit will increase the rate to 5%. For all other transactions subject to the TFREI, the tax rate will be 10%.

Finally, the 90% tax discount for investments in rental housing has been revisited, specifying that the discount will only apply if the rental price is affordable.

### Immigration changes

The key amendments introduced by the Act concerning the immigration regime consist of several changes to the Act 9/2012, of May 31, of modification of the qualified immigration act (the “**Immigration Act**”). They are as follows:

- **Employees of foreign companies:** A temporary immigration authorization for employees of the foreign company is required to hire the services of a foreign company to carry out a specific job in Andorra. Unless these employees are employed by the government or public sector entities for justified reasons. The Act limits this type of temporary authorization to foreign workers of companies registered in a member state of the European Union (EU), the European Free Trade Association (EFTA) or the G7. The extension of the territorial scope to G7 member countries, which includes some countries not belonging to the EU or EFTA, such as United States, Canada, the United Kingdom and Japan, was added during the parliamentary processing. Likewise, during the parliamentary processing, it was added that the labour and social security conditions of the employees of foreign companies that provide services in Andorra are governed by the Andorran labour legislation in force in the Principality of Andorra.
- **Prohibition of changing the type of active residence permits during the first year:** The issuance of an active residence permit is conditioned upon the prior reservation of an available slot within the quota system. Individuals who have obtained an active residence permit for paid employment are prohibited from changing their economic sector or starting self-employment during the first year of their permit. After the parliamentary processing, it has been added an exception to the foregoing that allows to change of economic sector during the first year — prior administrative authorization — when there is an urgent need for personnel in the health or education sectors — previously endorsed by means of the corresponding report from the Government — and provided that the professional profile of the holder of the authorization corresponds to the needs of the sector in question.

- **Work permit without residence conditions:** Work immigration permits without residency require that a fixed salary higher than three times the current minimum wage is offered to the foreign worker. The Act includes exceptions to qualify although offering a lower salary range when the contracting Andorran company promote the following sectors: education, digital economy, entrepreneurship, innovation, or other government-designated strategic or public interest activities. Finally, the transitional regime provided for in the third transitional provision provides that all applications submitted before the entry into force of the Act are governed under the previous criteria.
- **Passive residences:** The Act increases some requirements for passive residences. While the minimum investment of EUR 600,000 in Andorran assets provided for by the current regulation remains, real estate investments now require a minimum of EUR 600,000 per unit (up from EUR 400,000). Additionally, the mandatory non-remunerated deposit with the Andorran Financial Authority (AFA) increases to EUR 50,000 (up from EUR 47,500), with an additional EUR 12,000 per dependant (up from EUR 9,500). Immigration administrative taxes are also raised. Finally, the transitional regime provided for in the seventh transitional provision establishes that residents with passive status authorized before the Act's entry into force will maintain their original investment obligations under the previous criteria.
- **Preventing fraudulent use of the legal regime:** Finally, several amendments have also been introduced in the Immigration Act of modification of the qualified immigration act, to provide authorities with legal tools for addressing irregularities and regularizing specific breaches of immigration regulations.

#### Real estate changes

The principal measures introduced by the Act on the real estate sector are related to empty homes and housing intended for tourist purposes (Act 16/2017, of July 13, on tourist accommodation).

- **Empty homes (“*habitatges buits*”):** The Act provides for the compulsory transfer of the right to use empty homes to the Andorran Government for a maximum period of 5 years, which will incorporate them into the public housing stock for rental at affordable rates. The owner will receive a financial compensation equivalent to an affordable rent. According to the Act, a dwelling is considered empty if (i) there is no electricity or water supply, or, despite having it, there is no energy or water consumption for the 18 months preceding the entry into force of Title IV; or (ii) it has been unoccupied for at least 18 months preceding the entry into force of Title IV and this unoccupancy is due to a cause attributable to the owner.

- **Housing intended for tourist purposes (“*habitatges d’ús turístic*”)**: The Act stipulates the suspension of the issuance of both new authorizations housing intended for tourist purposes and urban planning permits related to tourist apartments. Additionally, authorizations granted before the entry into force of the Act have to be renewed for the first time the day on which the first following winter season concludes. This renewal cannot be granted if the dwelling used for tourism purposes in question is located in a building where it represents less than 30% of the total participation quotas related to the total surface used for housing.

Finally, the Act has added a requirement for the prior authorization of dwellings intended for tourism use. Accordingly, it shall not be possible to designate a dwelling for tourism purposes if such designation is prohibited by the land-use planning regulations applicable to the sector in which it is located or if it is prohibited by the statutes of the community of owners.

Escaldes-Engordany, 7 March 2025.

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