Dividends obtained in the USA and Taiwan, mediated through a German broker (Dividendos obtidos nos EUA e em Taiwan, com intermediação de corretora alemã)

What is Informação Vinculativa (Binding Information)?

Binding Information, refers to an official response issued by tax authorities in Portugal, addressing specific queries from taxpayers regarding the interpretation or application of tax laws in particular situations. These rulings hold legal authority and must be followed by both the taxpayer and the tax authority, provided that the circumstances remain unchanged.

Importance of Binding Information:

Formality: They provide an official and authoritative interpretation of tax legislation.

Obligation: Both the tax authority and the taxpayer must adhere to the ruling, provided the facts presented remain unchanged.

Legal Certainty: Binding rulings offer taxpayers clarity and legal certainty regarding their tax obligations. By outlining how tax laws apply to their specific circumstances, taxpayers can plan and conduct their financial activities with confidence.

Procedure: Taxpayers must formally request binding information by detailing their specific circumstances for accurate analysis.

Facilitating Planning: Provides confidence for taxpayers in planning their financial activities.

Avoiding Disputes: Ensures compliance with tax laws, thereby reducing potential disputes with tax authorities.

Ensuring Fairness: Promotes fairness in tax treatment by providing consistent interpretations of tax laws.

Example Scenario:

Legislation: Personal Income Tax Code

Article/Item: Article 81 - Elimination of international double taxation

Subject: Distribution of dividends from a foreign company to shareholders. Taxation under the Non-Habitual Resident Regime

Details of the Scenario:

The applicant seeks binding information regarding the following situation:

- Through the German broker XXXX, he holds shares of a company located in the United States of America and a company located in Taiwan.
- In 2023, he received dividends from both companies, attaching documentation from the German broker.
- In both cases, there was immediate withholding tax at source: the tax related to the US company was 15%; as for the tax related to the Taiwanese company, the withheld percentage was 21% (it seems that Portugal does not have a special tax agreement with Taiwan).

Given the facts mentioned above, the applicant asks what the total tax percentage is on these dividends, as in his interpretation of international agreements, the tax is distributed as 15% to the USA and 13% to Portugal, making a total of 28%, which is the rate provided in Portuguese legislation. Since there is no agreement with Taiwan, he asks if he will have to pay Portugal 28% of the remaining dividend after the withholding already made. Finally, he asks about the tax procedure for dividends from other countries with which Portugal has a double taxation agreement.

Response and Guidance:

1. Under Article 1(1) of the IRS Code, personal income tax (IRS) is levied on the annual value of income from various categories, after corresponding deductions and allowances have been made.
2. In the case of persons residing in Portuguese territory, "IRS is levied on the totality of their income, including that obtained outside this territory," according to the principle of universality or worldwide income, as provided in Article 15(1) of the IRS Code.
3. The incidence rule provided in Article 5(2)(h) of the IRS Code qualifies as capital income (Category E) the profits made available to shareholders/income holders (dividends).
4. In terms of taxation, "income from securities paid or made available to their holders, residing in Portuguese territory, owed by entities that do not have a domicile here to which payment can be attributed, through entities that are mandated by debtors or holders or act on behalf of one or the other" is subject to final withholding tax at the rate of 28%, as established in Article 71(1)(b) of the IRS Code.
5. In this situation, to eliminate possible international double taxation, the holder must opt for inclusion in Annex J of the IRS Model 3 income tax return.
6. If dividends are not subject to withholding tax in Portugal because they are not paid through an intermediary located in Portuguese territory, they are subject to IRS at the special rate of 28%, according to Article 72(1)(d) of the IRS Code, without prejudice to the option for inclusion provided in Article 72(13).
7. To do this, the gross amount of dividends should be indicated in Annex J of the IRS Model 3 income tax return, and for the purpose of eliminating possible international double taxation, the tax paid abroad should also be indicated, under Article 81 of the IRS Code.
8. In the case at hand, the applicant received dividend income from companies based in the United States of America and Taiwan through a German broker (based in Germany), with 15% and 21% tax deducted, respectively.
9. To determine the tax jurisdiction on dividend income owed by a company in the United States of America obtained by a taxpayer resident in Portuguese territory, it is necessary to analyze the double taxation agreement (DTA) between Portugal and the United States of America.
10. The relevant agreement states that "dividends paid by a resident company of one Contracting State to a resident of the other Contracting State may be taxed in that other State," according to Article 10(1) of the DTA with the United States of America.
11. However, those dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the legislation of that State, but that tax cannot exceed 15% of the gross amount, as provided in Article 10(2) of the said agreement.
12. That is, dividend income may be taxed in the State of residence and the State of source, but the tax in the State of source cannot exceed 15% of the gross amount of the dividends, provided that the applicant's situation as a tax resident in a jurisdiction with which the country has entered into a double taxation agreement is proven.
13. When the agreement assigns cumulative tax jurisdiction to the State of residence and the State of source, the latter has "primary taxation" authority, and the State of residence must limit itself to reflecting the consequences of that taxation, granting exemption or tax credit - "secondary taxation."
14. That is, the State of source proceeds with the taxation or not of the income according to its internal law and the limitation provided in the DTA, and the State of residence must proceed with the elimination of double taxation, based on its internal law and what was agreed upon in the respective agreement.
15. Therefore, Portugal, as the State of residence, proceeds with the elimination of international double legal taxation, which is carried out under Article 81 of the IRS Code.

16. Regarding dividend income owed by a company based in Taiwan, a country with which Portugal has not entered into any double taxation agreement, it is subject to IRS taxation under Article 5(2)(h), in conjunction with Article 15(1), both of the IRS Code.
17. To eliminate international double legal taxation, the applicant will be entitled to a tax credit under Article 81 of the IRS Code, the quantification of which cannot be determined within this process.
18. It should be noted that, if not paid through an intermediary located in Portuguese territory (which is the case), the income in question should be included in Table 8A of Annex J of the IRS Model 3 income tax return, with Code E11.
19. Concerning the question posed by the applicant regarding other countries with which Portugal has entered into a double taxation agreement, it is clarified that this is not the appropriate means to assess the request, as it intends the AT's normative interpretation regarding the procedure for taxing dividends based on the source country and not the legal-tax framework of a concrete situation.

Conclusion: By obtaining binding Information, taxpayers gain clarity on how dividends from both the USA and Taiwan should be taxed in Portugal. If not paid through an intermediary located in Portuguese territory, the income in question is taxed autonomously at the special rate of 28%, under Article 72(1)(d) of the IRS Code, without prejudice to the option for inclusion provided in Article 72(13). To eliminate international double legal taxation, the applicant will be entitled to a tax credit under Article 81 of the IRS Code, to do this, the gross amounts of the dividend income and the foreign tax paid should be indicated in Table 8A of Annex J of the IRS Model 3 income tax return.

For more detailed guidance and to ensure compliance with tax laws, please contact AFM at info@afm.tax