

Indication of property allocated to business activity (box 7B of Annex B of the DM3)
Indicação de imóvel afeto à atividade empresarial (quadro 7B do anexo B da DM3)

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 3 - Category B Income

Subject: Indication of property allocated to business activity (box 7B of Annex B of the DM3).

Details of the Scenario:

The applicant seeks binding information regarding the following situation:

In 2001, they acquired a property directly within their business sphere, never having it allocated to personal use, immediately registering it as a tangible fixed asset upon acquisition and making the corresponding depreciations; In Annex C of the respective IRS Model 3 declaration for the year 2021 (box 7B), it was indicated that as of January 1, 2021, there were no properties allocated to business activity. Considering the aforementioned facts, they question whether this procedure is correct, and if it is mandatory to indicate "Yes" in any field of box 7B of Annex C, and whether they should replace the IRS Model 3 declaration.

Response and Guidance:

1. With Law No. 75-B/2020, of 31/12 (State Budget Law for 2021), the allocation of private property to business and professional activities conducted individually by the owner, as well as the transfer of such property to private assets, ceased to constitute a taxable event.
2. Under the current regime, as a general rule, the taxable event occurs when the property is sold, involving a change in its ownership.
3. Consequently, the respective qualification and taxation are determined based on whether the property is used for personal or business/professional purposes at the time

- of sale, categorizing it under Category G or Category B, respectively, with fiscal neutrality during interim operations of allocation and/or transfer of the aforementioned property.
4. Therefore, standard rules apply for calculating gains or losses.
 5. An exception to this rule applies to real estate that was allocated to the taxpayer's business and professional activities and is sold within three years after transfer to private assets. In this case, the sale is categorized under Category G, but the taxation rules of Category B apply (as provided in Article 10(16) of the Personal Income Tax Code).
 6. Pursuant to Article 369(1) of the aforementioned law (transitional regime under IRS), the new tax regime applies to gains that were previously exempt from taxation under Article 10(3)(b) and Article 3(9) of the Personal Income Tax Code.
 7. However, according to Article 369(2) of the same law, taxpayers who, as of January 1, 2021, had real estate allocated to business and professional activities may opt for the previous regime to determine gains or losses resulting from the allocation of real estate.
 8. To exercise this option, they must indicate it in the income tax return referred to in Article 57 of the Personal Income Tax Code for the year 2021, as well as identify the real estate allocated to business and professional activities and the date of allocation.
 9. In the case at hand, the taxpayer indicates that the property was acquired directly within the business sphere, immediately becoming part of the tangible fixed assets upon acquisition.
 10. Therefore, since there was no allocation (transfer) of the property from private to business and professional activities, it means that as of January 1, 2021, there were no properties allocated to business activities of the taxpayer. In these terms, the field "No" should be filled in response to the question "Indicate whether as of January 1, 2021, you had properties allocated to business and professional activities" in box 7B of Annex C of the respective IRS Model 3 declaration for 2021.

Conclusion:

Binding information serves a crucial role in providing authoritative and precise guidance on specific tax issues. In this instance, the applicant sought clarity regarding the correct procedure for indicating property allocated to business activities in box 7B of Annex B of the DM3. The conclusion is straightforward: as of January 1, 2021, since there were no properties allocated to business and professional activities, the taxpayer correctly indicated "No" in the respective field of their IRS Model 3 declaration for 2021. This ensures compliance with current tax regulations and avoids potential discrepancies in tax filings, thereby providing clarity and accuracy in tax reporting.

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