

Onerous disposal of property partially allocated to local accommodation – Reinvestment
(Alienação onerosa de imóvel parcialmente afeto a alojamento local – Reinvestimento)

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: Local Accommodation and Reinvestment

Article/Item: Article 10 – Capital Gains

Subject: Onerous disposal of property partially allocated to local accommodation – Reinvestment

Details of the Scenario:

The applicant seeks binding information on the following situation:

- The applicant owns a fully owned urban property without floors or divisions capable of independent use, which serves as their own permanent residence;
- The ground floor of the property has been allocated to local accommodation since January 1, 2020. Considering the facts stated above, clarification is requested regarding whether capital gains will be incurred on the local accommodation portion upon selling the property used as their own permanent residence, upon reinvestment in a new own permanent residence.

Response and Guidance:

1. Pursuant to Article 10(5) of the IRS Code, "gains derived from the onerous disposal of properties destined for the taxpayer's own permanent residence or that of their household are exempt from taxation, provided that the following conditions are met cumulatively:
 - a) The proceeds, deducted from any loan repayment contracted for the acquisition of the property, are reinvested in the acquisition of another property, land for building a property, or its construction, or in the expansion or improvement of another property, exclusively for the same purpose;
 - b) The reinvestment mentioned in the previous subparagraph is made between 24 months before and 36 months after the date of disposal;
 - c) The taxpayer expresses the intention to reinvest, even partially, stating the respective amount in the income tax return for the year of disposal;

- d) (Revoked.)
- e) The property disposed of has been intended for the taxpayer's own permanent residence or that of their household, proven through their tax domicile, in the 24 months prior to the disposal; (Added by Law No. 56/2023, of October 6)
- f) Taxpayers have not benefited, in the year of obtaining the gains and in the three previous years, from this exemption regime, without prejudice to the taxpayer proving, in the assessment procedure, that non-compliance with this condition was due to exceptional circumstances. (Added by Law No. 56/2023, of October 6)".
2. Furthermore, according to subparagraph (a) of Article 10(6) of the same law, there is no room for the aforementioned tax exemption when, in the case of reinvestment in the acquisition of another property, the acquirer does not allocate it to their own or their household's permanent residence until twelve months after reinvestment.
 3. Therefore, for this tax exemption to apply, the law requires that the proceeds from the disposal of a property that constituted the taxpayer's own permanent residence (starting property) be reinvested in another property exclusively for the same purpose (destination property), provided that certain conditions are met.
 4. It is understood that the concept of permanent residence corresponds to the place where domestic life is centered with stability and on a lasting basis, where overnight stays occur, meals are taken, relatives and friends are received, where, in short, the home is established with all its associated rituals and bonds.
 5. Constitutive and indispensable traits of permanent residence include habituality, stability, and the circumstance of it being the center of domestic life organization.
 6. In the present case, the applicant questions whether capital gains will be incurred on the local accommodation portion upon selling the property used as their own permanent residence, upon reinvestment in a new own permanent residence.
 7. Now, since the ground floor is allocated to Local Accommodation, it means that the property in question is not exclusively allocated to their own permanent residence, due to there being a partial allocation to Local Accommodation.
 8. Therefore, failing to meet one of the legal prerequisites, the applicant cannot benefit from the tax exemption provided for in Article 10(5) of the IRS Code.
 9. Based on the above, the following conclusions are drawn:
 - Since the ground floor is used for Local Accommodation, it is not exclusively allocated to their own permanent residence;
 - Thus, failing to meet one of the legal prerequisites that would allow them to benefit from the tax exemption provided for in Article 10(5) of the IRS Code, the applicant forfeits that right, and the gain obtained from the disposal of the aforementioned property is subject to the general taxation rules under IRS.

Conclusion: By obtaining binding information, taxpayers can gain clarity on complex tax issues such as those involving local accommodation and reinvestment. In this example scenario, since the ground floor is being used for local accommodation, it is not exclusively used as the primary and permanent residence; therefore, as one of the legal conditions for tax exclusion is not met, the applicant loses this right, and the gain obtained from the sale of the property will be subject to the general taxation rules under the Personal Income Tax Code.

This allows them to make informed decisions and ensures they remain compliant with tax regulations.

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