

Onerous transfer of properties not intended for main residence - Application to the repayment of capital in debt from housing credit intended for main residence - Article 50 of Law No. 56/2023 (More Housing Program) Alienação onerosa de imóveis não destinados a HPP - Aplicação na amortização de capital em dívida de crédito à HPP

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 10 - Capital Gains

Subject: Onerous transfer of properties not intended for main residence - Application to the repayment of capital in debt from housing credit intended for main residence - Article 50 of Law No. 56/2023 (More Housing Program).

Details of the Scenario:

Request for Binding Information:

The applicant seeks binding information regarding the possibility of benefiting from tax exclusion concerning capital gains realized from the sale of his share in residential properties that are part of the estates of which he is a titleholder, in case he applies the corresponding sales proceeds to repay the capital debt from credit granted for the construction of his main and permanent residence.

- He has a debt with Banco ABC, contracted on 2023-07-XX by transferring the initial contract made with financial institution XYZ, relating to a loan granted under the general regime of housing credit, for the construction of a property intended for main residence;
- Through inheritance, he acquired in 2024-01-XX and 2024-03-XX, jointly with a brother, a building corresponding to an autonomous fraction intended for housing, and half of another building consisting of a house and backyard;
- He intends to sell those inherited real estate assets.

Response and Guidance:

1. Article 50 of Law No. 56/2023, of October 6, introduced a transitional tax provision.
2. Specifically, the benefit of tax exclusion in IRS on gains from the onerous transfer of a property that does not correspond to the seller's main residence, provided that the sales proceeds, deducted from the repayment of the loan contracted for the acquisition of the property, are applied to the repayment of capital in debt from housing credit intended for main and permanent residence of the taxpayer or his descendants, and this repayment is made within three months from the date of realization.
3. The specific situation that the applicant seeks clarification on concerns the use of the sales proceeds from certain properties to repay the loan granted for the construction of a property intended for main and permanent residence under the general regime of housing credit.
4. Regarding the application of the sales proceeds to repay the loan, Circular Letter No. 20266, dated 2024-02-23, from the IRS Services Directorate, clarified (point 11) that "b) Despite paragraph 2 of the aforementioned article 50 specifically referring to 'housing credit contracted for the acquisition of the property,' it should be understood that the legislator did not intend to impose any restriction on the rule set out in paragraph 1 of the same article, so the repayment of any 'housing credit intended for main and permanent residence' is permissible."
5. In conclusion, the applicant may benefit from the tax exclusion of the capital gains obtained from the sale of residential real estate assets acquired through inheritance, of which he is a proprietor, even if in joint ownership, provided that the sales proceeds allocated to him are applied to the repayment of capital in debt from housing credit granted for the construction of his current main and permanent residence.
6. The benefit depends on the property transfer being completed by December 31, 2024, and the repayment being made within three months from the date of realization.
7. Furthermore, it is noted that the Tax and Customs Authority may require the taxpayer to submit documentary evidence of the capital repayment in debt.

Conclusion:

Binding information plays a crucial role in providing authoritative guidance on intricate tax issues. In this instance, the applicant sought clarity regarding the eligibility for tax exclusion on capital gains realized from the sale of inherited residential properties, under specific conditions laid out in Article 50 of Law No. 56/2023 (More Housing Program). The conclusion is unequivocal: taxpayers can benefit from the tax exclusion if the proceeds from the sale of such properties are used to repay the capital debt from housing credit intended for their main and permanent residence. This interpretation ensures that taxpayers receive clear guidelines, facilitating compliance with tax regulations and minimizing potential errors or penalties in their tax filings.

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