

Reinvestment - capital repayment into debt (Reinvestimento - amortização do capital em dívida)

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: Reinvestment - capital repayment into debt

Details of the Scenario:

The applicant requests binding information regarding the value considered as reinvested under Article 10(5) of the IRS Code, in the situation described below: In 2021, following a divorce, the applicant sold to their ex-wife their share of the jointly owned permanent residence, which was still theirs at the time of sale. The deed states that the sale price was 8x.xxx,xx, of which only 3x.xxx,00 was received, as the amount of 4x.xxx,00 corresponds to the bank loan assumed by the other party. Considering that they intend to reinvest the amount of 2xxx,00, they want to know if they can consider the amount of 4x.xxx,00 as repayment of the loan, since they did not receive it and it was assumed by the ex-wife.

Response and Guidance:

1. Under Article 10(5) of the IRS Code (in force at the time of the events), gains from the onerous transfer of properties intended for the taxpayer's or their household's own permanent residence are excluded from taxation, provided that: The sale proceeds, less any repayment of a loan contracted to acquire the property, are reinvested in the acquisition of another property, land for building a property, or the construction or improvement of another property exclusively for the same purpose located in Portuguese territory or in the territory of another EU Member State or European Economic Area, provided that, in the latter case, there is an exchange of tax information.

The reinvestment is made between 24 months before and 36 months after the date of the sale. The taxpayer expresses the intention to proceed with the reinvestment, even partially, stating the respective amount in the income tax return for the year of the alienation.

2. Furthermore, under Article 10(6)(a) of the IRS Code, the property reinvested must be allocated to the taxpayer's or their household's own permanent residence, within twelve months after the reinvestment.
3. Therefore, in the case under consideration, if confirmed that:
 - The property sold corresponded, at the time of sale, to the taxpayer's own permanent residence/fiscal domicile;
 - The reinvestment is made within the specified periods; and
 - All other requirements established for this purpose are met; the amount of 2x.xxx,00, as indicated by the taxpayer, may be accepted as reinvestment, without resorting to credit.
4. Regarding the amount mentioned by the taxpayer as loan repayment in the sum of 4x.xxx,xx, it cannot be deducted from the sale proceeds for the purpose of determining the amount to be reinvested, considering that it was not the repayment of the borrowed capital for the acquisition of the property, as stipulated in Article 10(5) of the IRS Code, but rather the transfer thereof to the ex-spouse.
5. Therefore, since it involves partial reinvestment, where only 2x.xxx,00 will be reinvested from the sale proceeds of 8x.xxx,00, the benefit will apply only to the proportional part of the gains corresponding to the reinvested amount, under Article 10(9) of the IRS Code.

Conclusion:

Binding information plays a crucial role in providing authoritative guidance on tax-related issues. In this instance, the applicant sought clarification regarding the treatment of reinvestment under Article 10(5) of the IRS Code following the sale of a jointly owned property due to divorce. The conclusion is straightforward: the amount of 4x.xxx,00 cannot be considered as reinvestment under the provision, as it represents the repayment of a loan assumed by the ex-spouse, not the amortization of the loan capital that the applicant received. Therefore, only the amount of 2x.xxx,00 can be recognized as reinvestment. This clarification ensures that taxpayers adhere to the specific requirements for reinvestment under the IRS Code, thereby facilitating compliance with tax obligations and preventing potential inaccuracies or penalties in tax filings.

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