

Reinvestment in the acquisition of property and in improvement works (Reinvestimento na aquisição de propriedade e em obras de melhoria)

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 in the acquisition of property and in improvement works.

Details of the Scenario:

The applicant seeks binding information regarding the potential tax exemption, under the terms of Article 10(5) of the IRS Code, for gains derived from the onerous transfer of property, provided that the entirety of these gains is reinvested in the acquisition of a new property and its improvement/requalification works.

In the present case, it is stated that the mentioned works consist of the improvement and significant upgrading of water and sewage networks, gas networks, telecommunications, frames with better energy efficiency, insulations, and coatings, noting that some of these interventions are also in the interest of the State regarding the requalification of buildings in national territory. Lastly, reference is made to a previous Binding Information where it was clarified that the amounts spent on improvement works may be added to the reinvested amount, provided that the conditions mentioned in said Binding Information are met, one of them being the requirement to "request/communicate the changes made to the property within 48 months from the date of realization." The taxpayer wishes to know how these alterations made to the property should be communicated (project, plan, written document?) and to which entity they should be presented (Tax Authority, Municipal Council...).

Response and Guidance:

1. Regarding the specific question posed, it is informed that, according to current legislation, the amounts spent on improvement works, without resorting to credit, may also be added to the reinvested amount, subject to the following requirements:

- The property transferred was intended for the taxpayer's or their household's own and permanent residence, proven through their respective fiscal domicile, in the 24 months prior to the date of transfer (as amended by Law No. 56/2023, of October 6);
 - Taxpayers have not benefited from this exclusion regime in the year of gaining and in the previous three years, except when proven by the taxpayer, in a tax assessment procedure, that the non-compliance with this condition was due to exceptional circumstances (as amended by Law No. 56/2023, of October 6);
 - The works occur within the period between the 24 months prior and the 36 months following the date of realization;
 - They are properly documented with documents issued under legal form, namely invoices/receipts that unequivocally show their relation to the aforementioned works on the property and meet the legal requirements established for this purpose, under the terms of Article 36(5) of the VAT Code;
 - The changes made to the property are requested/communicated within 48 months from the date of realization; and
 - The property is allocated to the taxpayer's or their household's residence until the end of the fifth year following the realization, in accordance with subparagraph (b) of Article 10(6) of the IRS Code.
2. It is emphasized that, currently, the applicant is not registered as having sold the property that constitutes their own and permanent residence, considering the cadastral identification provided by the taxpayer upon our request. Nonetheless, only the works performed on a property that, due to its nature, are indissociable from it and effectively contribute to its value in patrimonial terms, will be relevant.
 3. Regarding the changes that need to be requested, these should be communicated through the submission of the Model 1 declaration of the Municipal Property Tax Code (CIMI), at a Tax Office, within 60 days from the completion of the works, as established in Article 13(1)(d) of the aforementioned Code.
 4. The submission can also be made electronically, as follows: Portal das Finanças / Tax Services / Citizens / Services / Choose IMI option, click on Model 1 (Registration/Amendment) and then on Submit Declaration.

Conclusion:

Binding information plays a crucial role by offering authoritative and precise guidance on complex tax issues. In this case, the requestor sought clarity regarding the potential tax exemption for gains from property transfers, provided that the entire proceeds are reinvested in a new property along with improvement works. The conclusion is evident: to benefit from the exclusion of these gains from taxation under Article 10(5) of the IRS Code, taxpayers must meet specific conditions, including reinvesting within stipulated timelines and ensuring proper documentation of related expenses. This ensures compliance with tax laws, mitigates potential errors in tax filings, and facilitates accurate tax planning for taxpayers involved in property transactions.

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