

Right to deduction - Electricity expenses incurred by employees for charging the company's electric vehicles - Article 19 of the VAT Code (Direito à dedução - Despesas de eletricidade suportadas pelos funcionários referentes aos carregamentos de viaturas elétricas da empresa - artigo 19.º do CIVA)

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: Value Added Tax Code

Article/Item: Article 19 - Right to deduction

Subject: Right to deduction - Electricity expenses incurred by employees for charging the company's electric vehicles - Article 19 of the VAT Code

Details of the Scenario:

According to the information in the Taxpayer Management and Registration System (SGRC), it is verified that the Applicant is registered for VAT purposes with the main activity of "WHOLESALE TRADE OF MACHINE TOOLS" with CAE 46620, under the normal monthly periodicity regime since 1998.07.20.

The applicant, "in the exercise of its activity, has salespeople with flexible working hours to whom it assigns an electric vehicle for the performance of their duties."

It informs that "employees, as they travel with the vehicle to their residences, charge them overnight" and that "the company intends to reimburse them for the electricity consumption incurred for charging the vehicles."

It states that "according to paragraph h) no. 2 of article 21 of the VAT Code, VAT incurred on electric vehicle charging is deductible."

The Applicant "wants to know what type of document the employee must present to the company to justify payment and be accepted for VAT deduction purposes and cost reduction in Corporate Income Tax (IRC)."

Response and Guidance:

1. The exercise of taxable transactions generally grants the right to deduct the tax included in the acquisition of goods and in the provision of services necessary for the realization of these transactions, as stated in articles 19 and 20 of the VAT Code (CIVA).
2. Given the question raised, it is important to understand the necessary conditions for the deduction of tax incurred on acquisitions referred to in paragraph 1 of article 19 of the CIVA.
3. In accordance with paragraph 2 of article 19 of the CIVA, the right to deduction arises only from VAT mentioned in invoices issued in the legal form, in the name and possession of the taxable person, considering as issued in the legal form those containing the elements mentioned in articles 36 or 40 (simplified invoice) of the CIVA.
4. Furthermore, paragraph 1 of article 20 determines that only VAT incurred on goods or services acquired, imported, or used by the taxable person for the realization of taxable transactions of goods and services subject to tax and not exempted therefrom under subparagraph a) or in the operations listed in subparagraph b). This right arises when the deductible tax becomes due (temporal requirement - article 22, no. 1 of the CIVA). As mentioned by the Applicant, paragraph h) of no. 2 of article 21 of the CIVA allows the deduction of VAT incurred on expenses related to electricity used in electric vehicles, provided that the deductible tax has been incurred on goods acquired, imported, or used by the taxable person for the operations referred to in paragraph 1 of article 20 of the same code, i.e., operations entitling the right to deduction, and provided that the tax is mentioned in invoices issued in the legal form in the name and possession of the taxable person.
5. Therefore, for the Applicant to deduct expenses related to electricity consumed in the residences of its salespeople resulting from the charging of vehicles assigned to them for the performance of their duties, it must have in its possession and in its name an invoice issued in the legal form regarding these consumptions.
6. Requests for binding information regarding Corporate Income Tax (IRC) matters must be submitted to the respective tax area.

Conclusion:

Binding information plays a crucial role by offering authoritative and precise guidance on specific VAT matters. In this instance, the query concerned the deductibility of electricity expenses incurred by employees for charging company electric vehicles, under Article 19 of the VAT Code. The conclusion is straightforward: for the company to deduct VAT on these expenses, it must possess invoices issued in compliance with legal requirements, in its own name and possession. This ensures adherence to VAT regulations, facilitating accurate tax reporting and minimizing potential discrepancies or liabilities in corporate tax filings.

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