

Sale of urban land - Application towards the amortization of a mortgage loan on own and permanent housing (More Housing Program) Alienação de terreno urbano - Aplicação na amortização de crédito hipotecário sobre HPP (Programa mais habitação)

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: Sale of urban land - Application towards the amortization of a mortgage loan on own and permanent housing (More Housing Program)

Details of the Scenario:

The applicant seeks binding information regarding the following situation:

- Sold in March/2024, for 4X,000.00 euros, an urban land intended for construction registered in the urban property register of the parish
- Intends to apply the sale proceeds towards the amortization of the outstanding principal of a mortgage loan on housing intended for own and permanent residence, which is their current dwelling. Questions whether this situation falls within the tax exemption under IRS for gains from the sale of building land, as provided in Article 50(1) of Law no. 56/2023, of October 6 (More Housing Program).

Response and Guidance:

1. Law no. 56/2023, of October 6, approved a set of housing measures constituting the More Housing Program, which introduced legislative changes impacting IRS.
2. In order to clarify the legislative changes affecting IRS, particularly under Category G - Capital Gains, the Tax and Customs Authority (AT) published Circular-Letter no. 20266/2024, dated February 23.
3. Article 50 of Law no. 56/2023, of October 6, subsequently amended by Law no. 82/2023, of December 29 - State Budget Law for 2024, containing a transitional fiscal provision,

allows the tax exemption of gains arising from the onerous transfer of building land or residential properties not intended for own and permanent residence of the taxpayer or their family, provided that:

- a) the sale proceeds, deducted by the repayment of any loan contracted for the acquisition of the property, are applied to the amortization of the outstanding principal of a mortgage loan on housing intended for own and permanent residence of the taxpayer, their family, or their descendants;
 - b) the repayment referred to in the previous paragraph is completed within three months from the date of sale.
4. Therefore, Article 50(1) of Law no. 56/2023, of October 6, explicitly states, regarding the tax exemption of gains derived from the sale of a property, that the proceeds from the sale of the property must be applied to the amortization of the outstanding principal of a mortgage loan on housing intended for own and permanent residence of the taxpayer, their family, or their descendants.
 5. Regarding the application of the sale proceeds towards the amortization of the loan, Circular-Letter no. 20266, dated 2024-02-23, from the IRS Services Directorate, clarified (point 11) that "b) Notwithstanding paragraph 2 of the aforementioned Article 50 specifically refers 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 amortization of any 'housing credit intended for own and permanent residence' is permissible."
 6. In other words, the proceeds from the sale of building land or residential properties not intended for own and permanent residence of the taxpayer or their family may be applied towards the amortization of housing credit intended for the acquisition or construction of own and permanent residence.
 7. Therefore, we understand that the situation mentioned by the applicant does not fall within the scope of the tax exemption provision set forth in Article 50(1) of Law no. 56/2023, of October 6, because the proceeds from the sale of the building land were applied towards the amortization of a mortgage loan, which was not contracted for the acquisition or construction of their own and permanent residence, but rather secured by a mortgage on the property that constitutes their own and permanent residence.

Conclusion:

Binding information serves a crucial role by offering authoritative and precise guidance on intricate tax issues. In the present case, the requestor sought clarity regarding the potential tax exemption for gains from the sale of urban land under the More Housing Program, specifically concerning their intention to use the proceeds to amortize a mortgage on their own and permanent residence. It is evident that according to Article 50(1) of Law no. 56/2023, the exemption applies only when the proceeds are directly applied to the amortization of a housing credit intended for own and permanent residence within a specified timeframe. Therefore, it is essential for taxpayers to adhere strictly to these provisions to ensure compliance with tax laws and to avoid unintended tax liabilities or penalties. This ensures clarity in tax obligations and supports taxpayers in making informed decisions regarding their financial activities under the applicable legal framework.

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