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COMMENCEMENT OF ACTIVITY

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Commencement of activity and issuance of green receipts – Swiss royalties Início de atividade e emissão de recibos verdes – Redevances Suíça

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: Royalties and Double Taxation Issue

Article/Item: : Article 115 – Issuance of receipts and invoices

Subject: : Commencement of activity and issuance of green receipts – Swiss Royalties

Response and Guidance:

1. If the taxpayer resides and earns income in Portugal (paid by XXX), there is no double taxation, and the income is subject to declaration and taxation in Portugal.

2. However, if the taxpayer changes residence to Switzerland, potential double taxation may arise.

3. In such cases, irrespective of Portuguese domestic law, the Convention for the Avoidance of Double Taxation (CDT) between Portugal and Switzerland applies. This treaty has been in effect since 17/12/1975, with modifications

through the Amending Protocol effective from 21/10/2013.

4. The income in question, derived from copyright royalties, qualifies as "royalties" under Article 12(3) of the CDT. Both Portugal (the source state) and Switzerland (the residence state) have concurrent tax jurisdiction, with Portugal applying a withholding tax rate limited to 5% of the gross amount of royalties (Articles 1 and 2 of Article 12 of the Portugal-Switzerland CDT).

5. Regarding the commencement of activity and issuance of receipts, compliance with Articles 112 and 115 of the IRS Code (CIRS) is necessary.

Conclusion:

By obtaining binding information, taxpayers gain clarity on complex tax matters, ensuring compliance with tax laws and avoiding disputes with tax authorities.



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For any inquiries or support with the residency process for businesses or individuals, our team can guide you through the whole moving process. Feel free to reach out to us at info@afm.tax or call us at +351 281 029 059.

"YOU MUST PAY TAXES, BUT THERE'S NO LAW THAT SAYS YOU NEED TO LEAVE A TIP."