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REINVESTMENT IN CONSTRUCTION

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Largo das Sete Ruas, 1-B
8800-604 - Tavira

Rua Frederico Lecor, Nº 53 B
8000-247 Faro

E : info@afm.tax

P : +351 281 029 059 | +44 (0) 20 3151 0021

W : www.afm.tax

Reinvestment in the construction of property prior to the sale – Date of acquisition of the constructed property and calculation of the reinvestment period
Reinvestimento na construção de imóvel anterior à alienação – Data de aquisição do imóvel construído e contagem de prazo para reinvestimento

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: Art. 10 – Capital Gains

Subject: Reinvestment in the construction of property prior to the sale – Date of acquisition of the constructed property and calculation of the reinvestment period

Details of the Scenario:

Request for Binding Information: The applicant seeks binding information regarding the deadlines for reinvestment, given that they will construct a permanent residence and only sell their current permanent residence apartment after the house is completed. Therefore, for the purpose of excluding the payment

of capital gains, and given that the law states they have 24 months to sell the previous residence, they wish to know the exact moment when these 24 months start to count:the following:

- From the moment the house being constructed has a habitation license? Or,
- From the first invoice related to the construction contract? They clarify that in the second scenario, they are not interested in considering the date of the land deed since the construction contract value will exceed the sale value of the current residence apartment.

Response and Guidance:

1. The question concerns the deadlines to be met for the benefit of tax exclusion due to reinvestment of the gain obtained from the sale of the property, considering that the sale will occur after the acquisition of the property subject to reinvestment, which, in this case, is a property constructed by the taxpayer themselves.

2. Paragraph 5 of Article 10 of the IRS Code establishes that gains from the onerous transfer of properties intended for the taxpayer's or their family's permanent residence are excluded from taxation, provided the reinvestment is made, notably, in the construction of a property, under the terms and deadlines established therein.

3. It is known that in reinvestment situations involving the acquisition of property, the acquisition date of the new property subject to reinvestment will be the date of the deed of purchase and sale.

4. Therefore, in the case of properties constructed by the taxpayers themselves, the relevant acquisition date is the date of the property's registration in the land registry, according to paragraph 2(a) of Article 50 of the IRS Code.

5. Consequently, since it is an acquisition/construction prior to the sale, it will be from the date of registration in the land registry, considered as the acquisition date, that the 24 months for the sale of the property will be counted for the purposes of paragraph 5 of Article 10 of the IRS Code.

Conclusion:

Binding information is crucial as it provides taxpayers with official, authoritative guidance on specific tax-related questions. In this case, it clarifies the deadlines for reinvestment in the construction of a property prior to the sale of an existing residence, ensuring compliance with legal requirements and deadlines. By knowing the exact moment when the 24-month period for selling the previous residence starts, taxpayers can effectively plan their financial and real estate activities to benefit from tax exclusions on capital gains, thereby avoiding potential legal issues and maximizing their financial benefits.



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