

TRANSFER OF PROPERTY

Transfer of property to personal ownership followed by disposal within a period of less than 3 years – currency depreciation coefficient.

ALL FINANCE MATTERS

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

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Transferência de imóvel para a esfera pessoal seguida de alienação em prazo inferior a 3 anos – coeficiente de desvalorização da moeda

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: Transfer of property to personal ownership followed by disposal within a period of less than 3 years – currency depreciation coefficient

Details of the Scenario:

Request for Binding Information: The applicant seeks binding information on the following situation:

- He owns an urban property in Portugal, which was used for local accommodation starting in 2015.
- In 2021, he ceased the activity and removed the property from the business.
- In his 2021 IRS Model 3 income tax return, he opted for the new capital gains taxation rules regarding the inclusion/exclusion of property from business activity.

Given these facts, the applicant questions whether, upon selling the property within 3 years of removing it from the business, he can apply the currency depreciation coefficient in calculating the capital gain in Category B.

Response and Guidance:

1. The regime for the inclusion and exclusion of properties was altered by Law No. 75- B/2020, of December 31 (State Budget Law for 2021).

2. Under the current regime, gains related to properties included in business activity are only taxed when they fall under specific taxable events, notably the onerous disposal of real estate.

3. Therefore, if at the time of disposal, the property is still included in the business activity, the capital gain is categorized under Category B, according to Article 3(2)(c) of the CIRS.

4. Conversely, if the property is no longer included in the business activity (having been transferred to personal ownership), the capital gain falls under Category G, as stated in Article 10(1)(a) of the CIRS.

5. However, if the disposal occurs within three years of transferring the property to personal ownership, the gains are taxed under the rules of Category B, per Article 10(16) of the CIRS.

6. Hence, even though the capital gain is classified as Category G, for taxation purposes, the rules of Category B apply.

7. In this specific case, the applicant queries whether, in calculating the capital gain under Category B rules, due to selling the property within three years after its removal from business activity, the currency depreciation coefficient can be applied.

8. Regarding Category B income, Article 3(2)(c) of the CIRS states, "the capital gains obtained in the scope of activities generating business and professional income, defined under Article 46 of the IRC Code."

9. Article 46(2) of the IRC Code specifies that "capital gains and losses are determined by the difference between the net realization value and the acquisition value, adjusted for tax-accepted depreciations and amortizations, impairment losses, and other value corrections."

10. Furthermore, Article 47(1) of the IRC Code indicates that "the corrected acquisition value is updated by applying the currency depreciation coefficients whenever at least two years have passed since the acquisition date."

11. Therefore, in determining the taxable gain according to Category B rules, the currency depreciation coefficient, as outlined in Article 47(1) of the IRC Code, applies.

12. Consequently, if the property disposal occurs within three years of its transfer to personal ownership, the gain will be taxed under Category B rules, including the application of the currency depreciation coefficient as per Article 47(1) of the IRC Code.

Conclusion:

Binding information, such as the one illustrated in this document, is crucial as it provides taxpayers with official guidance on specific tax situations. In this particular case, the taxpayer inquired whether the currency depreciation coefficient could be applied when calculating the capital gain if the property is sold within three years after being transferred to personal ownership. The binding information clarifies that, indeed, if the property is sold within this three-year period, the gain will be taxed according to the rules of Category B, and the currency depreciation coefficient, as outlined in Article 47(1) of the IRC Code, can be applied. This ensures that taxpayers have clear instructions on how to proceed, thereby reducing uncertainty and ensuring compliance with tax laws.

A close-up photograph of two hands shaking. The hand on the left is wearing a purple long-sleeved shirt, and the hand on the right is wearing a light blue long-sleeved shirt. The background is a blurred indoor setting with green and yellow tones.

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