

WITHHOLDING TAX RATE

ALL FINANCE MATTERS

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Withholding tax rate on industrial property income and copyright income

Titularidade de rendimentos obtidos com propriedade industrial – Taxa de retenção na fonte

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:

Article/Item: Art. 3º – Income from Category B

Subject: Ownership of income obtained from industrial property – Withholding tax rate Process: 23033

Details of the Scenario:

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

– The applicant is a legal entity of public law and considers research as one of the vectors of its intervention in society, having approved the Intellectual Property Regulation of the University of XX;

- According to Article ..º of the aforementioned Regulation, the University of XX holds the industrial property rights of all work-related inventions made by its public employees and collaborators, within and because of the employment relationship they have with the University;

- The inventor only has the right to be designated as such in the application for protection of the invention or industrial creation and to claim its authorship and integrity, as established in Article ..º of the Regulation;

- Although the University fully holds the ownership of the industrial property rights of the invention developed by its employee, Articles ..º to ..º of the Regulation provide for the distribution of the economic benefits obtained from the exploitation or assignment of patent rights with the inventor employee, in accordance with the provisions of paragraph 3 of Article 59 of the Industrial Property Code, approved by Decree-Law No. 110/2018, of December 10;

- This participation of the employee or collaborator in the economic benefits does not have a remunerative or salary nature, according to paragraph 7 of Article 59 of the Industrial Property Code;

- In terms of IRS, paragraph c) of paragraph 1 of Article 3 of the IRS Code considers business and professional income "those from intellectual or industrial property or the provision of information regarding experience acquired in the industrial, commercial, or scientific sector, when earned by their original owner";

- However, paragraph m) of paragraph 2 of Article 5 of the IRS Code establishes that capital income is "income from contracts that have as their object the assignment or temporary use of intellectual or industrial property rights or the provision of information regarding experience acquired in the industrial, commercial, or scientific sector, when not earned by the respective author or original owner, as well as those derived from technical assistance".

Considering the facts mentioned above, the applicant requests information on how these payments should be classified and, consequently, their subjection to the withholding mechanism and applicable rates.

Response and Guidance:

1. Industrial Property Rights aim to protect inventions, aesthetic creations, and distinctive signs that allow products and companies to be distinguished in the market.

2. This protection is regulated by the Industrial Property Code, which was approved by Decree-Law No. 110/2018, of December 10.

3. In terms of IRS, income from industrial property is covered by the incidence rules of two different categories: a) Category B – business and professional income includes “income from intellectual or industrial property or the provision of information regarding experience acquired in the industrial, commercial, or scientific sector, when earned by their original owner,” according to paragraph c) of paragraph 1 of Article 3 of the IRS Code; b) Category E – capital income includes “income from contracts that have as their object the assignment or temporary use of intellectual or industrial property rights or the provision of information regarding experience acquired in the industrial, commercial, or scientific sector, when not earned by the respective author or original owner,” according to paragraph m) of paragraph 2 of Article 5 of the IRS Code.

4. In this case, according to Article ..º of the Intellectual Property Regulation of the University of XX, industrial property rights cover “all inventions and creations that can be protected by intellectual property rights, such as patents, utility models, industrial designs or models, plant varieties, or semiconductor topographies.”

5. The University of XX holds the ownership of these industrial property rights, generated within any research, teaching, or student activities by teachers, researchers, and other employees, scholarship holders, and students, conducted at the University of XX or with the significant use of its resources, as established in Article ..º of the Regulation.

6. However, Article ..º of the Regulation provides the inventor or creator the right to be designated as such in the application for protection of the invention or industrial creation and to claim its authorship and integrity. This rule is in accordance with Article 60 of the Industrial Property Code.

7. Additionally, under paragraph 3 of Article 59 of the Industrial Property Code, the inventor or creator has the right to participate in the economic benefits earned by the University of XX from the exploitation or assignment of rights, with the modalities and terms of this participation being provided in Articles ..º to ..º of the Intellectual Property Regulation of the University of XX.

8. According to paragraph 7 of Article 59 of the Industrial Property Code, this participation of the employee or collaborator in the economic benefits does not have a remunerative or salary nature.

9. Therefore, it is not classified under Category A, and the applicant has doubts whether this participation should be classified under Category B, under paragraph c) of paragraph 1 of Article 3 of the IRS Code, or under Category E, under paragraph m) of paragraph 2 of Article 5 of the same Code.

10. Under paragraph c) of paragraph 1 of Article 3 of the IRS Code, income from industrial property is considered business and professional income when earned by their original owner.

11. Although the University of XX holds the ownership of the industrial property rights, the inventor or creator has the right to participate in the economic benefits from the exploitation or assignment of these rights, so this income falls under paragraph c) of paragraph 1 of Article 3 of the IRS Code.

12. On the other hand, paragraph m) of paragraph 2 of Article 5 of the IRS Code establishes that income from industrial property is considered capital income when not earned by the respective author or original owner.

13. However, for it to be classified under this paragraph, the income from industrial property cannot be earned by the respective author.

14. Therefore, considering that the participation in question is received in the capacity of inventor or creator, it does not constitute capital income under paragraph m) of paragraph 2 of Article 5 of the IRS Code.

15. Consequently, this income is subject to withholding tax at a rate of 16.5% when paid or made available by entities that have or should have organized accounting, as established in paragraph a) of paragraph 1 of Article 101 of the IRS Code.

16. It should also be noted that Article 58 of the Tax Benefits Statute does not apply, as the income is not from intellectual property earned by holders of author or related rights, but rather from industrial property.

17. Based on the above, the following conclusions are drawn:

- The amounts related to participation in economic benefits, in the capacity of inventor or creator, constitute income from industrial property and, therefore, business and professional income, under paragraph c) of paragraph 1 of Article 3 of the IRS Code;

- Consequently, the withholding tax on these amounts is at a rate of 16.5%, as established in paragraph a) of paragraph 1 of Article 101 of the same Code.

Conclusion:

By obtaining binding information, taxpayers gain clarity that the economic benefits received by an inventor or creator from the exploitation or assignment of industrial property rights held by the University of XX constitute business and professional income under Category B, as specified in paragraph c) of paragraph 1 of Article 3 of the IRS Code. Consequently, these amounts are subject to withholding tax at a rate of 16.5%, as per paragraph a) of paragraph 1 of Article 101 of the IRS Code. The income does not fall under the classification of capital income and is not subject to the provisions of Article 58 of the Tax Benefits Statute, as it pertains to industrial property rather than intellectual property.



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