REINVESTMENT COSTLY SALE

ALL FINANCE MATTERS

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Costly sale of a property partially used for local lodging – Reinvestment
IV 25217

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: Costly sale of a property partially used for local lodging – Reinvestment

Details of the Scenario:
The applicant seeks binding information on the following situation:

– The applicant owns an urban property in full ownership, without floors or divisions that could be used independently, which serves as their primary residence;
– The ground floor of the property in question has been used for local lodging since January 1, 2020.

Given the facts outlined above, the applicant requests clarification on whether, upon selling the property that serves as their primary residence, they will be required to pay capital gains on the portion used for local lodging, in the event of reinvestment in a new primary residence.

Response and Guidance:

1. According to paragraph 5 of Article 10 of the IRS Code, "gains from the onerous transfer of properties intended for the taxpayer's or their family's primary residence are excluded from taxation, provided the following conditions are cumulatively met:

a) The sale price, less any mortgage deducted for the acquisition of the property, is reinvested in the acquisition of another property, land for property construction, or its respective construction, or in the enlargement or improvement of another property, exclusively for the same purpose;

b) The reinvestment must occur between 24 months before and 36 months after the sale date; c) The taxpayer must express the intention to reinvest, even partially, indicating the corresponding amount in the income declaration for the year of the sale;

d) (Repealed);

e) The transferred property must have been designated as the taxpayer's or their family's primary residence, as evidenced by their tax domicile, in the 24 months preceding the transfer; f) The taxpayers must not have benefited from this exclusion regime in the year the gains were obtained and in the three previous years, unless the taxpayer can demonstrate that non-compliance was due to exceptional circumstances.

2. Furthermore, according to subparagraph a) of paragraph 6 of the same article, this tax exclusion does not apply when the reinvestment in acquiring another property does not designate it as their primary residence or that of their family within twelve months after reinvestment.

3. Therefore, for the tax exclusion to apply, the law requires that the sale price of a property that constituted the taxpayer's primary residence (initial property) be reinvested in another property exclusively for the same purpose (new property), provided certain conditions are fulfilled.

4. The concept of permanent residence is understood as the place where domestic life is centered with stability and lasting intent; it is where one sleeps, takes meals, receives family and friends, and constitutes a home with all associated rituals and ties.

5. Key characteristics of permanent residence include habitual use, stability, and serving as the center of domestic life organization.

6. In the case at hand, the applicant asks whether, upon selling their primary residence, they will incur capital gains tax on the portion used for local lodging when reinvesting in a new primary residence.

7. Since the ground floor is designated for local lodging, it indicates that the property is not exclusively dedicated to their primary residence, as there is a partial allocation to local lodging activity.

8. Thus, since one of the legal requirements is not met, they cannot benefit from the tax exclusion outlined in paragraph 5 of Article 10 of the IRS Code.

9. In conclusion:

– Since the ground floor is being used for local lodging, it is not exclusively dedicated to their primary residence;

– Therefore, not meeting one of the legal requirements that would allow them to benefit from the tax exclusion under paragraph 5 of Article 10 of the IRS Code means the applicant forfeits this right, and the gain from the sale of the property will be subject to the general rules of taxation under the IRS.

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."