



REINVESTMENT TRANSFER OF PROPERTY

ALL FINANCE MATTERS

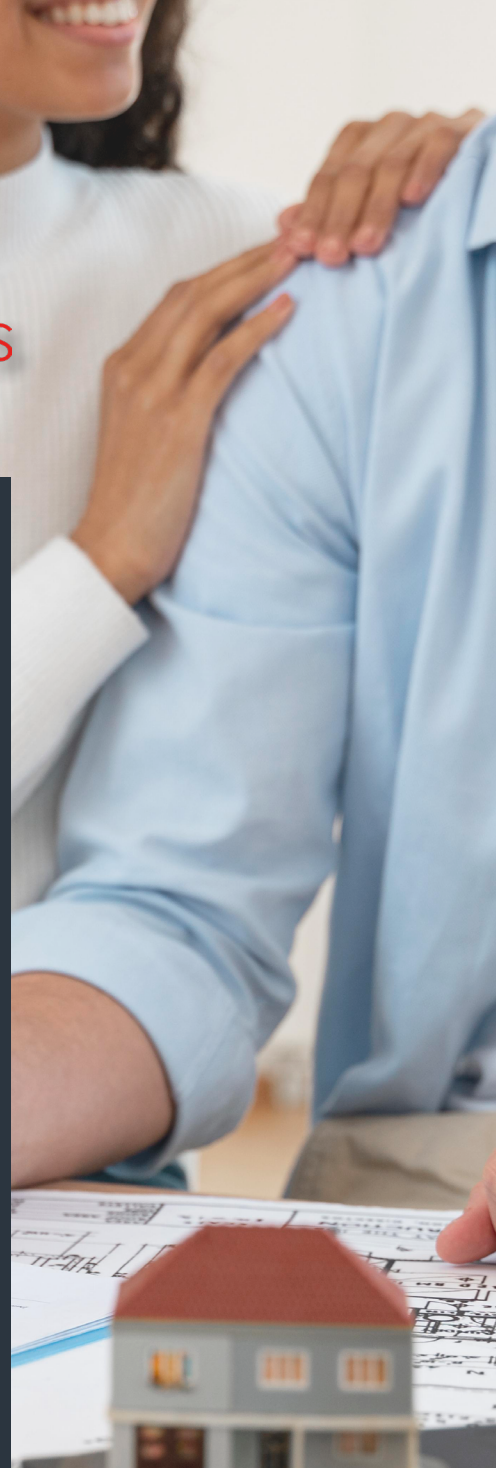
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Transfer of property partially allocated to local accommodation Reinvestment_PIV_26330

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: Transfer of property partially allocated to local accommodation – reinvestment_PIV_26330

Details of the Scenario:

The applicant requests binding information regarding the following situation:

- In 2020, the applicant acquired a property with her deceased husband, where she established her residence and permanent home.

- After the death of her husband in 2021, the property became owned 25% by her daughter and 75% by her, with no division of the inheritance having been made so far.

- In 2022, she converted one of the bedrooms to the Local Accommodation regime, but did not allocate the property to the activity, as the registered modality is "Room."

- The activity is registered in her name under the CAE codes 55201 and 55204, classified under the simplified taxation regime, with the room used for local accommodation having an area of 24 m², while the property has a total gross area of 284.54 m². Thus, the area used for local accommodation represents only 8.43% of the total gross area.

- She intends to close the Local Accommodation activity to proceed with the sale of the property and subsequently acquire a new permanent home.

Considering the aforementioned facts, she requests clarification regarding the legal and tax framework for the reinvestment of capital gains from the property in question.

Response and Guidance:

1. According to paragraph 5 of Article 10 of the IRS Code, "gains resulting from the onerous transfer of properties intended for the personal and permanent residence of the taxpayer or their household are excluded from taxation, provided that the following conditions are cumulatively met:

a) The realizable value, deducted from any loan amortization taken out for the acquisition of the property, is reinvested in the acquisition of another property, land for the construction of a property, and/or the respective construction, or in the expansion or improvement of another property, exclusively with the same purpose ();

b) The reinvestment referred to in the previous subparagraph is made between the 24 months prior and the 36 months following the date of realization;

c) The taxpayer expresses the intention to proceed with the reinvestment, even if partial, mentioning the respective amount in the income declaration relating to the year of the transfer;

d) (Revoked.)

e) The transferred property has been intended for the personal and permanent residence of the taxpayer or their household, as evidenced by the respective tax domicile, in the 24 months preceding the date of the transfer; (Added by Law No. 56/2023, of October 6)

f) Taxpayers have not benefited, in the year of the gain and in the three preceding years, from this exclusion regime, without prejudice to the taxpayer's

proof, carried out in a liquidation procedure, that the non-compliance with this condition was due to exceptional circumstances. (Added by Law No. 56/2023, of October 6)."

2. Furthermore, according to subparagraph a) of paragraph 6 of the same article, there is no entitlement to the aforementioned tax exclusion when, in the case of reinvestment in the acquisition of another property, the acquirer does not allocate it to their residence or that of their household until twelve months after the reinvestment.

3. Thus, for the aforementioned tax exclusion to apply, the law requires that the realizable value of a property that constituted the personal and permanent residence of the taxpayer (initial property) be reinvested in another property exclusively with the same purpose (subsequent property), provided that certain conditions are met.

4. It is understood that the concept of permanent residence corresponds to the place where domestic life is centered with stability and durability, where one sleeps, has meals, receives family and friends, and where, in short, a home has been established with all the rituals and bonds associated with it.

5. The essential characteristics of permanent residence include habituality, stability, and the circumstance of being the center of domestic life organization.

6. In this case, the applicant intends to close the Local Accommodation activity and proceed with the sale of the property that constitutes her personal and permanent residence, but which will not be exclusively allocated to that purpose at the time of sale, due to a portion of the property being allocated to Local Accommodation activity.

7. Therefore, as one of the legal prerequisites is not met, she cannot benefit from the tax exclusion provided in paragraph 5 of Article 10 of the IRS Code.

8. In light of the above, the following conclusions are drawn:

- Since the property is being used for local accommodation activity in the form of "Rooms," it will not be exclusively allocated to her personal and permanent residence;

- Thus, as one of the legal prerequisites that allows her to benefit from the tax exclusion provided in paragraph 5 of Article 10 of the IRS Code is not met, the applicant loses that right, and the gain obtained from the sale of the aforementioned property is subject to the general taxation rules under the IRS.



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