

The logo for 'afm all finance matters' is positioned at the top of the page. 'afm' is in a large, bold, red font, and 'all finance matters' is in a smaller, red font below it. The background of the entire page is a photograph of a multi-story brick building with white-painted sections and several windows. A dark grey vertical bar is on the left side, and a red vertical bar is on the right side.

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PARTIAL DISPOSAL OF HEREDITARY SHARE PERSONAL INCOME TAX (IRS)

ALL FINANCE MATTERS

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Question raised

1. The issue concerns the ruling of the Supreme Administrative Court issued in case no. 082/19.1BELLE, regarding the sale of a property belonging to an undivided estate.

2. In this context, the following questions arise:

- In the case of a property inherited from parents to children, should the taxpayer refrain from declaring the sale of the property if it has not been formally partitioned, even if the deed states that a property is being sold and not a right to an inheritance?

- In the specific case of a property owned by a married couple, where the wife has passed away and the heirs are the four children and the husband: since the children do not even have tax identification numbers, when the sale is carried out, can the husband refrain from declaring the inherited portion and declare only the sale of the 50% that already belonged to him?

- What procedures should be adopted, both for future sales and for sales already declared in IRS?

Response and Guidance:

It is important to start by noting that the position adopted by the Tax and Customs Authority does not fully align with the interpretation followed by the higher courts.

In April 2025, the Supreme Administrative Court clarified that the transfer of a hereditary share should not be treated as an onerous transfer of real estate rights for the purposes of article 10(1)(a) of the Personal Income Tax Code. The Court's reasoning is based on the fact that, in the context of an undivided estate, heirs do not hold ownership over specific assets. Such ownership only becomes effective once the estate has been formally partitioned.

This understanding is consistent with earlier case law, where the Court characterised an undivided estate as a separate pool of assets jointly held by the heirs, not under co-ownership of individual items, but as a collective entitlement. In practical terms, each heir holds an abstract share of the estate as a whole, rather than rights over specific properties.

From this perspective, the transfer of a hereditary share should be seen as the transfer of a proportional interest in the entire estate, rather than the disposal of individual assets. This means that, conceptually, it is not possible to isolate and transfer rights over a specific property independently of the remaining estate.

This interpretation has also been reinforced in arbitration decisions, namely Decision no. 1318/2024-T, which concluded that even a partial disposal of a hereditary share, including cases where the estate is composed exclusively of real estate, does not fall within the scope of taxable real estate transfers. As such, any resulting gains would not be subject to IRS.

The reasoning behind this approach follows the same line of thought: since heirs do not have a concrete ownership right over specific assets prior to partition, there is no real estate right capable of triggering taxation under the IRS framework.

Despite this, the Tax Authority has not adopted this position consistently. In fact, following divergent arbitration decisions, the matter was brought before the Supreme Administrative Court, which confirmed that the disposal of assets within an undivided estate should be legally treated as a partial transfer of a hereditary share and, therefore, outside the scope of IRS taxation.

Even so, the Tax Authority has clarified its stance through Official Letter no. 20281 of 25 July 2025. According to this guidance, the non-taxable treatment will only be accepted where the legal documentation clearly shows that the transaction concerns the inheritance or hereditary share as a whole. If the deed refers instead to the transfer of a specific property, the Authority may consider the transaction taxable.

In light of this, failure to report such transactions may lead to adjustments by the Tax Authority, particularly in the context of tax audits. That said, taxpayers may still opt to follow the court-backed interpretation and, if challenged, defend their position through legal proceedings.

For transactions that have already taken place, it may be appropriate to consider the revision mechanism set out in article 78 of the General Tax Law. This allows corrections to be made either at the initiative of the taxpayer, within the standard claim period, or by the Tax Authority under certain conditions, including errors attributable to the administration, situations of manifest injustice, or cases of double taxation, generally within a four-year timeframe.

It is also worth noting that established case law recognises the taxpayer's right to request such revisions, even where the error originates from the tax authorities themselves.

Accordingly, for past transactions still within the legal time limits, taxpayers may seek a review of the tax assessment and, if necessary, pursue the matter through the courts.

Looking ahead, if the interpretation of the Supreme Administrative Court is followed, these transactions would fall outside the scope of IRS and would not need to be reported in the annual tax return. However, given the Tax Authority's current position, there remains a risk of reassessment within the applicable four-year limitation period, potentially requiring judicial intervention to uphold the taxpayer's position.

Summary

This opinion analyses whether the sale of a hereditary share in an undivided estate is subject to Personal Income Tax (IRS).

Recent case law from the Supreme Administrative Court establishes that the disposal of a hereditary share does not qualify as a transfer of real estate rights. As a result, any gains arising from such transactions should not be subject to IRS, since heirs do not hold ownership over specific assets until the estate is formally partitioned.

However, the Tax Authority does not fully follow this interpretation. It only accepts this treatment when the deed clearly states that what is being transferred is the inheritance or hereditary share as a whole, rather than a specific property. Otherwise, it may consider the transaction taxable and issue corrections.

For past transactions, taxpayers may request a review of the tax assessment within a four-year period. For future transactions, taxpayers may choose not to declare the sale based on court rulings, but this carries a risk of inspection and potential litigation.

In practical terms, there is a legal divergence between the courts and the Tax Authority, meaning each case should be carefully assessed, particularly regarding how the transaction is formalised in the deed.

A photograph of an older man and a woman walking hand-in-hand in a residential courtyard. The man is on the left, wearing a light blue button-down shirt over a grey t-shirt and blue jeans. The woman is on the right, wearing a denim jumpsuit. They are both smiling and looking towards the right. The background shows a brick building with windows and a garden with green bushes and white flowers.

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