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PROFESSIONAL USE OF ONE'S OWN PERMANENT RESIDENCE FOR PIT PURPOSES: THE PORTUGUESE TAX AUTHORITIES' POSITION

In a recent Binding Ruling (Case No. 30465, 11 May 2026), the Portuguese Tax Authorities (PTA) refused to apply the reinvestment tax exemption provided for under the Portuguese PIT Code to a lawyer who carried out his professional activity at the property where he resided. The PTA considered that the property was not *"exclusively used"* as the taxpayer's own permanent residence.

While this conclusion could arguably be defensible in the specific circumstances of the case, it would have to be based on different grounds - the reasoning adopted by the PTA, finds no support whatsoever in the wording of the law.

Advisory Team

CONTEXT

The Portuguese Personal Income Tax Code (PIT Code) excludes from taxation capital gains arising from the onerous transfer of real estate intended as the taxpayer's or their household's own permanent residence, provided that the sale proceeds, less the repayment of any loan taken out for the acquisition of the property, are (fully) reinvested, within the legally prescribed time limits, in the acquisition, construction, extension or improvement of another property intended as the taxpayer's or their household's own permanent residence.

The law further requires that the property transferred must have been used as the taxpayer's or their household's own permanent residence, as evidenced by their registered tax domicile, during the twelve months preceding the date of the transfer. This latter requirement was introduced as part of the *"Mais Habitação"* legislation, with the relevant period having initially been set at twenty-four months and subsequently reduced to twelve months.

It was against this background that the Portuguese Tax Authorities (PTA) recently issued their position in Binding Ruling No. 30465, dated 11 May 2026. The case concerned a lawyer who, since 2019, had owned an apartment in which he had established his tax domicile and where he also carried out his professional activity. At the time of acquisition, however, the property was registered for tax purposes as being designated for *"services"*, with its designated use being changed to *"housing"* only in 2026.

The PTA concluded that the reinvestment regime did not apply, relying on a single ground: since part of the property was being used for a service-provision activity, the property was not *"exclusively used"* as the taxpayer's own permanent residence.

THE GROUNDS ADOPTED BY THE PTA

The PTA based its refusal on the requirement of *"exclusivity"*. According to the PTA, the property could not be regarded as exclusively used as the taxpayer's own permanent residence because part of it was used for professional purposes.

However, this requirement is not laid down in the law, which refers merely to *"properties intended as the taxpayer's own permanent residence"*, and not to properties exclusively intended for that purpose. Since this is a provision defining the scope of taxation, the administrative imposition of an unwritten requirement naturally conflicts with the principle of tax legality.

Moreover, this conclusion reached by the PTA runs contrary to existing case law. First and foremost, CAAD Arbitration Court Judgment, Case No. 315/2025-T, dated 5 December 2025, concerned a case in which one part of the property was leased to the taxpayer's own company, while the owners nevertheless continued to reside in the property. The arbitral court held that the partial use of the property for professional purposes did not, in itself, prevent it from being regarded as the taxpayer's own permanent residence.

Along the same lines, the case law of the Portuguese administrative courts has also held that declaring a property as the registered address of a professional activity does not necessarily exclude its actual use as the taxpayer's own permanent residence. Thus, in the Administrative Court Judgment, Case No. 498/08.9BECTB, dated 13 July 2023, the court held that the fact that the registered address of the taxpayer's professional activity was declared at the property being transferred did not mean that the property had ceased to constitute the taxpayer's household's own permanent residence.

These judgments also confirm that the concept of an own permanent residence must be assessed in substantive terms, taking into account the actual use of the property as the stable centre of the taxpayer's personal and family life, rather than on the basis of a requirement of exclusivity that is not, in fact, established by law.

The legislator cannot have intended to exclude from the tax benefit taxpayers who carry out all or part of their professional activity from their residence. If such an interpretation were accepted, would any property where the taxpayer also carried out their professional activity cease to qualify as their own permanent residence? Would a lawyer, architect, software developer or any other self-employed professional who had designated the place where they live as their professional address cease to have their own permanent residence there? Would they be deemed to have been temporarily displaced from their home for tax purposes?

The same reasoning could equally apply to employees working remotely. Although we do not expect the PTA to apply this interpretation in such circumstances, the arguments relied upon do not allow for any useful or legally grounded criterion that would justify distinguishing between self-employed and employed workers.

Taken to its logical conclusion, this interpretation would also lead to the absurd result that a taxpayer could live for decades in a particular property, have their tax domicile there and maintain the centre of their personal and family life there, and yet never have an own permanent residence for tax purposes- including for the purposes of the reinvestment regime - merely because they carry out all or part of their professional activity at that same location.

Such conclusion is difficult to reconcile with the current economic and social reality and, moreover, goes beyond both the wording of the law and the legislator's purpose. It should therefore be recalled that the concept of an own permanent residence has been interpreted by both legal scholarship and case law in light of the taxpayer's actual habitual residence, corresponding to the place where they stably organise their personal and family life. Accordingly, the fact that the taxpayer also carries out a professional activity in that space does not, in itself, alter either the residential nature of the property or the taxpayer's and their household's status as having their own permanent residence there.

Furthermore, the Portuguese tax system itself recognises, in other contexts, the coexistence of residential and professional use within the same property, namely by allowing certain expenses relating to the partial use of a residence for the purposes of carrying out an economic activity to have tax relevance.

Therefore, appears to be no basis for concluding that the mere partial use of the property for professional purposes constitutes an appropriate, sufficient or lawful criterion - as it is contrary to the PIT Code and unconstitutional on the grounds of breach of the principle of legality - to prevent the property from being regarded as the taxpayer's own permanent residence and from benefiting from the reinvestment tax exemption regime.

THE PRELIMINARY ISSUE

The case nevertheless raised an earlier and preliminary issue that the PTA did not address: whether a property with a registered tax designation for *"services"* since 2019 may nevertheless be regarded as being intended for residential use (as the taxpayer's own permanent residence), given that its designation was only changed by the lawyer concerned in 2026.

The answer is not straightforward. The law requires the property to be *"intended as the taxpayer's own permanent residence"* for a certain period (two years) and now expressly identifies the means of proving this requirement: the taxpayer's registered tax domicile.

Accordingly, the PTA should first assess whether it is permissible to register one's tax domicile in a property designated for services - which raises separate questions - and whether a taxpayer who moved their tax domicile there and actually began residing in the property as their own permanent residence may thereby establish the relevant tax qualification.

In this regard, it should be noted that the administrative courts and arbitral case law have repeatedly held that the concept of an own permanent residence is substantive in nature and must be assessed in light of the specific circumstances of the person concerned -

particularly the place where they stably and durably organise their personal and family life - and does not therefore depend exclusively on formal criteria.

This aspect was not analysed in the present case. It could, perhaps, have provided the PTA with grounds for refusing the application of the reinvestment regime. An interesting question therefore remains: can a property with a registered tax designation for *"services"* also be regarded as being intended as the taxpayer's or their household's own permanent residence?

However, the Binding Ruling makes clear that, in the specific case under consideration, the PTA based its refusal to apply the reinvestment regime - and consequently to exempt the capital gain arising from the disposal of the taxpayer's own permanent residence - on the property not being used exclusively for that purpose, despite the fact that such requirement is not actually provided for by law.

FINAL REMARK

The PTA's position is concerning because, if not promptly corrected, such an interpretation could have consequences extending far beyond the specific case, potentially affecting the application of the reinvestment regime to thousands of taxpayers who carry out all or part of their professional activities from the residence in which they actually live. In the current economic and social context, it is difficult to sustain that the partial professional use of a residence should, in itself, be sufficient to deprive that property of its nature and status as the taxpayer's own permanent residence.

It would therefore also be desirable for future administrative decisions and judicial rulings to refocus the discussion on the requirements laid down by law, avoiding interpretations which, in addition to lacking a legal basis, lead to outcomes that appear manifestly inappropriate.

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