SALE OF INHERITANCE BEFORE SHARING: No Capital Gains to Pay!

The transfer of inherited assets is, by its nature, a sensitive and legally complex process. The situation becomes even more complicated when, instead of formally sharing the inherited assets, one of the heirs wishes to transfer their position in the inheritance - the called hereditary share - to another interested party, who may be another heir or a third party unrelated to the inheritance. Traditionally, and with some hesitation on the part of the tax authorities, this operation raised doubts: would we or would we not be dealing with a disposal subject to capital gains tax? In other words, should the heir pay tax as if they were selling a property? The answer to this question has now been clarified by the Supreme Administrative Court ('STA') in a ruling published on 29 April 2025 in Case 033/24.1BALSB. The decision standardises case law, i.e. it applies in a binding way to similar situations throughout Portugal.

What is a hereditary share?

A hereditary share is not a concrete asset, but rather an expectation of rights over a set of assets yet to be shared. Until the division, the heirs are co-owners of an undivided universality.

Therefore, selling the share is not the same as selling a house, but rather transferring the legal position in an inheritance.

The Case decided

The case in question concerned the sale of a hereditary share - the position of an heir in an undivided inheritance - before the assets were shared between the heirs.

The Tax and Customs Authority (hereinafter referred to as 'AT') took the view that the sale was subject to income tax (IRS), as it involved immovable property. However, the Supreme Court clearly and definitively stated that this was not a disposal of real estate, but rather an assignment of inheritance rights, which is not covered by Article 10 of the IRS Code (Personal Income Tax Code), which taxes capital gains.

Legal basis

According to Article 10(1)(a) of the IRS Code (Personal Income Tax Code) states that onerous transfers of rights in rem over immovable property are taxed as capital gains. The STA held that the hereditary share does not constitute a real right over a specific immovable property and therefore does not fall under this tax incidence rule.

This decision also reinforces the understanding of previous case law, to the effect that the sale of the share, as long as there is no division, does not constitute a disposal of property.

What changes in practice?

- The sale of a share does not trigger a capital gains tax charge.
- Heirs who sell their share of the estate before it is divided will not pay capital gains tax;
- This decision provides legal certainty to a common practice among family members and investors;

An opportunity for the property sector

This clarification from the Supreme Court could stimulate the circulation of inheritance shares in complex or contentious succession processes, allowing an heir to sell their position without a tax penalty, avoiding lengthy negotiations over the division of assets.

It is also relevant for investors looking to acquire inheritance shares with a view to consolidating the property in the future.

In summary, the jurisprudence of the Supreme Administrative Court has put an end to uncertainty: selling your share of an inheritance before it is divided does not require you to pay capital gains tax.

This is a clear step forward in terms of legal certainty, succession efficiency and market dynamism.

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