INCOME TAX AND REINVESTMENT OF CAPITAL GAINS: DOES BUYING A DERELICT PROPERTY COUNT?

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"(...) THE PROPERTY ACQUIRED MUST, AT THE TIME OF ACQUISITION, MEET OBJECTIVE CONDITIONS THAT ALLOW FOR ITS [IMMEDIATE] USE AS THE TAXPAYER'S OWN PERMANENT RESIDENCE."

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Anyone who sells the home in which they live and uses the proceeds to purchase another property for their own permanent residence may, provided the legal requirements are met, be exempt from paying personal income tax on the capital gain realised. The Tax and Customs Authority (AT) has recently issued a ruling on an issue of particular relevance under this scheme for taxpayers who choose to buy derelict properties, rebuild them and then move in to live there.

The question that arises is whether the amount paid for the derelict property can be considered a reinvestment, for the purposes of the capital gains tax exemption provided for in Article 10 of the Personal Income Tax Code.

On 3 July 2026, Binding Ruling No. 25960 issued by the AT gave a negative response to this question.

In the case submitted to the AT for consideration, the taxpayer had sold the property intended as his own permanent residence and intended to reinvest the proceeds from the sale in the purchase of an urban property classified in the land registry as a 'ruin'.

The intention was to subsequently rebuild the property and establish their future permanent residence there.

The question raised was therefore whether the purchase price of the derelict building could be considered as a reinvestment amount for the purposes of the total or partial exemption from taxation of the capital gain realised on the sale of the previous home.

The Tax Authority concluded that the amount corresponding to the purchase of the derelict property cannot be considered an eligible

reinvestment for the purposes of Article 10 of the Personal Income Tax Code.

According to the interpretation adopted, the property acquired must, at the time of acquisition, meet objective conditions that allow for its [immediate] use as the taxpayer's own permanent residence. It is therefore not sufficient for the taxpayer to intend to carry out reconstruction works at a later date that would render the property fit for habitation.

The Tax Authority gives priority to the legal and physical reality existing at the date of purchase. Consequently, the fact that the property will subsequently be rebuilt and used as a habitual residence does not allow the purchase price to be retroactively classified as a relevant reinvestment for the purposes of tax exemption.

The Binding Ruling in question relates solely to the eligibility of the purchase price of the property classified as a ruin. For this reason, the Tax Authority's conclusion regarding that amount does not, in itself, exclude subsequent expenditure incurred as part of a reconstruction/renovation project from the reinvestment scheme.

Amounts spent on construction, reconstruction, extension or improvement may be subject to a separate assessment under Article 10 of the Personal Income Tax Code, taking into account the nature of the works carried out and compliance with the substantive and temporal requirements laid down by law. In other words, the portion of the price spent on building works may still qualify for tax exemption; the portion invested in the purchase itself, according to the Binding Ruling under consideration, does not.

To a certain extent, the concern underlying this interpretation by the Tax Authority is understandable. The reinvestment scheme is a benefit and should not serve to defer, indefinitely, the taxation of those who acquire property without a genuine intention to reside in it. However, several arguments lead us to conclude that the Tax Authority adopts a more restrictive interpretation than the law requires.

" (...) THE PORTION OF THE PRICE SPENT ON BUILDING WORKS MAY STILL QUALIFY FOR TAX EXEMPTION; THE PORTION INVESTED IN THE PURCHASE ITSELF, ACCORDING TO THE BINDING RULING UNDER CONSIDERATION, DOES NOT."

To begin with, the land registry classification as 'ruin' is an objective fact that is easily verifiable.

Furthermore, Article 10(5) itself expressly permits reinvestment in the purchase of land for the construction of a property and in the construction itself. Now, by definition, a plot of land does not meet any conditions of habitability on the date of the deed, and the law accepts this because what matters is the final purpose of the investment (the new owner-occupied and permanent dwelling that will be built).

This difference in treatment is difficult to justify. Anyone who buys a plot of land and builds from scratch can benefit from the scheme; anyone who buys a derelict building and rebuilds it, according to the Tax Authority, cannot. It could be argued that, from an economic perspective and in terms of the purpose of the legislation, the two transactions are equivalent: in both cases, the proceeds from the sale of the old house are used to create a new owner-occupied and permanent dwelling. Indeed, if either were to merit more favourable treatment, it would be the second, which restores dilapidated buildings rather than consuming land, in line with the urban regeneration policies that the legislator has sought to encourage.

Finally, the law already provides for adequate control mechanisms. The risk of abuse that the Tax Authority seeks to prevent is duly mitigated by the reinvestment deadlines and the obligation to use the new property as

one's own permanent residence within the statutory time limit: if the reconstruction is not completed or the taxpayer does not take up residence in the property, the exemption lapses.

To add a requirement of habitability at the time of purchase is to create, by way of interpretation, a condition that the legislator did not establish.

It should also be borne in mind that binding guidance is only binding on the Tax Authority in relation to the specific case in question. A similar issue may therefore be debated in court or in arbitration, where the Tax Authority's interpretation will have to be weighed against the letter and purpose of Article 10.

However, until there is sufficient case law from the courts, this is the interpretation that the taxpayer will encounter. Anyone wishing to sell their own permanent residence and reinvest in a dilapidated property—which is not immediately habitable, is intended for complete reconstruction, or is classified as a ruin—should therefore take three aspects into account:

- Carefully examine the land registry entry and the actual condition of the property beforehand, and do not rely on the exclusion of the purchase price without a defined strategy for the transaction;

- Separate and document the costs of the building works — planning permission, building contracts, invoices and supporting evidence of payment — as this part of the investment may be eligible for tax relief in its own right;

- Monitor the statutory time limits, both for the reinvestment (within the 24 months prior to or the 36 months following the sale) and for the actual use of the property as the owner's own permanent residence.

In short, in the AT's view, the purchase of a derelict property does not constitute an eligible reinvestment for the purposes of the capital gains tax exemption, even if the taxpayer intends to rebuild it and use the new building as their own permanent residence. This is, in my view, an excessively restrictive interpretation, which treats materially identical situations differently.

Those already suffering the consequences of this position taken by the AT are left to consider the use of the legal remedies available to taxpayers, ranging from an administrative appeal to a judicial challenge or tax arbitration.