

# NEWSLETTER No. 82

JULY 2021



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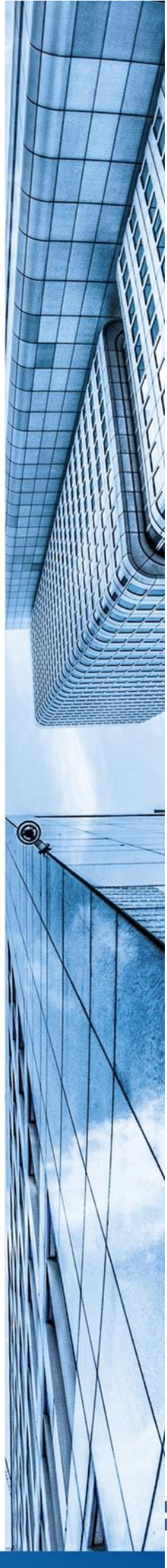
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# SUMMARY

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**FEDERAL REVENUE SERVICE DISCLOSES CONSULTATION SOLUTION WITH ORIENTATIONS ON THE TAXATION OF DONATIONS OF SHARES IN CLOSED INVESTMENT FUNDS**

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## **FEDERAL REVENUE SERVICE DISCLOSES CONSULTATION SOLUTION WITH ORIENTATIONS ON THE TAXATION OF DONATIONS OF SHARES IN CLOSED INVESTMENT FUNDS**

On July 1, 2021, the Office for General Coordination of Taxation (Cosit) of the Federal Revenue Service (RFB) published Cosit Consultation Solution 98 ("[Cosit Consultation Solution](#)"), containing clarifications about the advance donation of the legitime (portion of estates reserved for forced heirs) composed of shares of closed equity investment funds.

The Cosit Consultation Solution establishes that the advance donations of legitimes consisting of shares in closed equity investment funds are subject to the same tax rules related to the capital gains on donations in general.

Therefore, according to Art. 16, numeral II, of RFB Normative Instruction 1,585/2015, which will apply in these cases, the gains on the disposal of shares of individuals (natural persons) in transactions outside securities exchanges must follow the rules applicable to the taxation of capital gains on the disposal of assets or rights of any nature.

The Cosit Consultation Solution clarifies that the transaction in question is also subject to Art. 23 of Law 9,632/1997, according to which the assets or rights whose ownership is transferred by succession, inheritance, legacy or advance legitime donation can be appraised (i) at market value, or (ii) at the value stated on the tax return of the decedent or donor, as applicable.

Besides this, if the advance donation of legitime consisting of shares of closed equity investment funds is appraised at the acquisition cost, there will be no assessment of Personal Income Tax (IRPF) at the moment of the donation, since there will be no capital gain. In this situation, the IRPF will be applied only at the moment of redeeming the shares and will occur in name of the donee.

On the other hand, if the donation is appraised at market value of the shares, the difference between the market value and the value indicated on the last tax return (DIRPF) of the donor will be considered the capital gain (if the former is greater than the latter), and thus will be subject to IRPF at the rate of 15%.

Furthermore, according to the Cosit Consultation Solution, the donee must register in his/her DIRPF the shares received at the value of the donation. Also, the transaction and its value must be reported to the administrator of the investment fund to formalize the transfer of the shares.

Finally, the Cosit clarifies that the interpretation consolidated by the Cosit Consultation Solution also applies to succession *causa mortis* of the shares in closed equity investment funds.

More information, including the full content of the Cosit Consultation Solution (in Portuguese) can be found at the site of the Federal Revenue Service ([www.gov.br/receitafederal/pt-br](http://www.gov.br/receitafederal/pt-br)).

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