CAPITAL GAINS TAX AND NOMINEE COMPANIES

At ***euro*FINESCO**, we recommend Portuguese Nominee Companies to hold assets, in particular Portuguese property. In an eventual conveyance, this form of ownership has the potential of being treated in one of three ways: 1) the sale of the underlying immoveable asset if the Company sells the property; 2) the conveyance of moveable assets (shares) if the shareholders sell the Company or 3) the liquidation of the company and subsequent distribution of the assets. Like any choice, there are pros and cons associated with each solution, so clear understanding is essential before reaching a decision on how to proceed.

CGT

Portuguese Nominee Company Owners have three conveyance options:

- *The Company can sell its asset*

In this instance, Capital Gains Tax is calculated on the net difference between the original cost of the property, adjusted for inflation, and the final selling price, adjusted for allowable expenses such a necessary costs for conducting the transfer as well as any capital improvements made during the 12 years previous to sale. In addition, Buyers pay Property Transfer Tax as well as Stamp Duty. Sellers pay tax (28%) upon the distribution of the profit (dividends) to the shareholders.

- *The Shareholders can convey the Company*

With the sale of shares, the Capital Gain is calculated on the difference between original cost basis of the Nominee Company's shares and the final share selling price. In this case, no inflation adjustment is allowed. There is no taxation to the Buyer on this transaction.

- *Liquidation of the Company and assets distributed to shareholders*

In this option, any CGT will calculated on the difference between the share value and the market value of the assets. If a property is being transferred, IMT will be due by the shareholder. Share transfer and liquidation should happen simultaneously to avoid doubling up on IMT.

The base of each of the potential transactions is quite different. With the sale of assets, values are based of the Deeds of Purchase and Sale of the property being sold. Inevitably, these are *historical* values, specially in relation to the value of the Deed of Purchase.

On the other hand, the share price is defined according to the *current* value of the Company's asset. Once the social capital of the Company is fixed, any future gains will be determined by net difference between the initial share value and the final sales price of the shares.

Unlike a Commercial Company, a Nominee Company has no business activity and produces no income. The Company limits its pursuit to the mere administration of assets held by the Company to the benefit of its shareholders. In most cases, the assets held are an immoveable property and its contents, having come into the possession of the Company thaks to shareholders' loans. In addition, the payment of expenses related to the property – taxes, fixtures and fittings, maintenance, repairs and capital improvements – were also paid by the Shareholders on behalf of the Company and came as a result of additional shareholders' loans. In the Company accounts, accumulated debt is deducted from the gross value of property when calculating the net gain of the asset in the Company.

Conclusion

Each method has potential advantages and disadvantages. Therefore, Owners should choose carefully, making sure that they comprehend the ramifications of each alternative. Needless to say, trying to pick and choose the preferred parts of each is not an alternative. It is a choice of "*either or*", not "*mix and match*".

While Nominee Companies may not be a "one-size-fits-all" solution , they can provide interesting opportunities. However, as always, whenever there is potential reward, possible risks also exist. Unambiguous understanding, not wishful thinking, must be your guide.

 09 March 2018