*euro*FINESCO

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Companies for Portuguese Property: *White-List or Portugal?*

by

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PORTUGAL

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At ***euro*FINESCO**, we take pride in being a frontrunner in fiscal and expatriate services in Portugal, playing a leading role in interpreting Portuguese fiscal legislation as plain English for the foreign resident community since 1991.

PORTUGUESE TAXATION

- *IRS* - Individual Income Tax Returns
- *IRC* - Income Tax Preparation for Portuguese Nominee Companies as well as Non-Resident Companies
- Fiscal Residency Transitions to Portugal
- Fiscal Representation for Non-Residents Individuals
- Fiscal Representation for Companies

INTERNATIONAL TAX ISSUES

- Bilateral Tax Treaties
- Jurisdiction Conflict Resolution
- Compliance Issues

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The Portuguese tax system offers surprising opportunities to the foreign resident. When properly prepared, Portugal can prove to be a "tax haven within Europe" for you.

PORTUGUESE "*IRS*" INCOME TAX RETURNS

FINESCO specializes in helping foreign residents by preparing their annual Portuguese *IRS* Income Tax Returns.

NOMINEE COMPANIES FOR PORTUGUESE PROPERTY

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- Liaison between *Finanças* and Company Owners.
- Resourcing information to Owners;

FISCAL REPRESENTATION

- Protecting your Valuable Investment
- Meeting Compliance Requirements
- Resourcing Key Information
- Liaison with *Finanças*
- Personalised Service
- Payment Facility
- Plain English

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We can assist you by cutting through the bureaucracy:

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- Rates Exemptions
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We can help expatriates launch new businesses in Portugal:

- Choosing the right structure
- Accountancy Services
- Social Security & VAT

CROSS BORDER ESTATE PLANNING

Cross Border Planning for individuals becomes important when assets and income are split between two or more jurisdictions. If you are a foreign resident, married to a foreigner, have international sources of income, or have assets in a another jurisdiction, Cross Border Planning may be necessary to avoid unforeseen harsh Inheritance Tax consequences.

Anytime foreign laws are introduced into a plan, complexity is an inevitable outcome because contradictory legislation must be accounted for. Because laws are so different in the international arena, planning in advance becomes essential.

Introduction

The background

One of the obvious purposes of the 2004 Property Tax Reform in Portugal was to make it prohibitively expensive to hold a home via an Offshore Property Company. This end has been achieved. Even with the rate's oscillations over the years, taxes, fees and compliance costs can still run into the tens of thousands of Euros year after year. Even on a modest house, that can add up, especially when compared to resident company or individual ownership where taxes, in most cases, should be only a few hundred Euros per year.

However, it is not without considerable irony that it should now prove considerably cheaper to re-domicile your company rather than transfer the property to your own name. Perhaps this stems from the fact that the government had a stereotyped view of the Offshore phenomena in the first place and therefore the implementation of the Reform vis-à-vis current Offshore Company Owners was not well thought through.

In Portugal, CGT is assessed on the net profit between the original purchase and eventual sale (adjusted for inflation, transaction expenses and capital improvements). While the conveyance from Company-to-Individual may be nominal in nature in the eyes of the Beneficial Owners, the transfer constitutes a chargeable event for *Finanças*.

To compound the problem, many lawyers put through original acquisitions at a fraction of the actual price in order to minimize *SISA* (Property Transfer Tax). Sadly, in light of the new realities, this under-declaration adds up to *"robbing Peter to pay Paul"*: instead of 10% SISA before, the seller now pays 25% CGT on full market value. To make matters worse, the seller's gain is only on paper, yet the tax must be paid in hard cash. Total tax and expenses typically run between ¼ to ⅓ of the market value of the property. In all but a few instances, these costs are prohibitive.

If moving your property into your own name proves expensive under the new legislation, re-domiciling your Company off the Black List may well prove to be more advantageous. This is because the property stays in the same company and is not transferred: no *"I.M.T."* (Transfer Tax), no

crystallisation of Capital Gains. Initially, the only costs are for the move itself. Surprisingly, these expenses are very similar to those when selling a house (while the content may be entirely different, the actual steps are quite similar). Following the move, however, the running costs are key, especially the relationship between cost and value (if any exists).

Moving the Company

What does it mean to move your company out of Gibraltar or another black-listed jurisdiction? A company's domicile is defined by two principal factors: first, its statutes, defining the basic operating rules within the laws of a given jurisdiction and secondly, where it has fixed its corporate headquarters. Thus, re-domiciliation will mean new statutes, fresh registration within a different country and a new head office with local administrators.

But moving off the Black List is only half the battle. It is the recognition of the Company's new status and the eventual consequences of the move that are the crucial factors. If the escape from the blacklist is likely to be short lived, not much has been accomplished. Likewise, if the move has been achieved but the company and property are unsaleable because potential buyers remain unconvinced, the "white elephant" status stays the same. In other words, it is not simply a matter of fleeing from the problem. You also have to move towards a viable, long-term solution.

The Next Crossroads

In comparing possible destinations for a potential migration, the first level of choice comes between the "White List" and Portugal. Remembering that the Ministry of Finance defined a registry of "Tax Havens" that were found to have "privileged" tax regimes, any other country not found on this "Black List" is seen to have "normal" tax treatment in Portugal. The first such "Black List" appeared in 1994 and was updated in 1996. The recently revised version lists 83 jurisdictions around the world.

The other possibility is to bring your Company to Portugal. It goes without saying that Portugal will be the whitest of the "White List". Next, we will examine the White List and whether it offers a temporary or a permanent solution.

1. Direct vs Company Ownership

non-resident companies

One of the initial questions when foreigners contemplate buying Portuguese Property is whether to buy directly in one's own name or hold the property via a Company. If you are purchasing your principal residence, direct ownership is usually the best choice. However, if it is a second home or an investment property, Company Ownership offers tax advantages that may be very appealing.

For many years, buyers used *Offshore Property Companies* to achieve a tax savings, although many of the practices were "grey" in nature. Due to tax evasion problems, Portuguese legislation was changed in late 2003 and Offshore Companies now suffer an array of punitive measures that now make them unsuitable.

Today, buyers may choose between *Non-Resident Companies* registered in another jurisdiction not on Portugal's "Black List" or *Resident Companies*, domiciled in Portugal.

1.1 *Loss of Control*

No government likes to lose control over a piece of sovereign territory, especially when it means giving up tax revenue rights. Those who remember Portugal in the "Good Old Days" will recall that a foreigner could only own one property and had to import the capital to purchase a home through a licence from the Bank of Portugal. Offshore Property Company ownership was one way around such restrictions.

After joining the European Union in the mid-1980's, these restrictions melted away but Offshore Companies grew, not so much to avoid local bureaucracy but more to avoid 10% transfer tax levies (*Sisa*) as well as assessment on eventual profits. While Capital Gains Tax was theoretically due in Portugal at the point of sale, the unchallenged confidentiality and lack of specific taxation in these Tax Havens were sufficient to hide most transactions. Shares routinely changed hands without reporting, thus evading chargeable events.

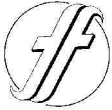
The current criteria for Sanctions, based on the principles of *unfair tax competition*, are clearly defined in Art. 60º of the CIRC, In general, such measures may take the form of blacklisting as occurred in 1994 and 2002 or specific action directed towards individual companies.

1.2 *Still Non-Resident*

While a temporary positive change in status may be achieved via "White List" migration, the Company retains its non-resident status. This means an eventual Capital Gains Tax rate of 25%, two and a half fold what comparable Portuguese companies are required to pay. Even more important, tax assessment remains on an historical basis and there is no opportunity to update the basis for CGT assessment as exists when moving to Portugal. With Double Taxation Treaties opening channels of information sharing between tax authorities, specific clauses in these accords confer CGT taxation rights to Portugal on the sale of such non-resident companies.

1.3 *Market Perception*

Potential home buyers often have difficulty distinguishing between different categories of Offshore companies. That is because they are looking for a solution in Portugal, not a company in a far off land. With the problems surrounding Offshore companies in recent years, perspective buyers are now aware that when they buy a foreign company, they acquire not only the assets but also all of the accumulated liabilities - a bit like the game of "Musical Chairs" when the music stops. Most property buyers just want a new home, not to be taking on someone else's problem.



2. Buying an "Offshore" Property Company

what to look for when buying

Before the introduction of the new Portuguese tax legislation, putting a property Offshore was considered the sensible thing to do. However, annual property tax for blacklisted companies is now set at 5% of registered value, some 6 to 12 times the rate on domestically held property. Equally important, rateable values, traditionally understated, are being updated in a two step process.

As a buyer, what should you look out for when the house of your dreams is in an Offshore Company, whether "black" or "white-listed"?

2.1 *Don't buy the Problem*

Keep in mind Rule nº 1: *When you buy a company, you acquire both the assets and the liabilities*. The first problem, of course, is the Offshore Company structure itself. It can be expensive to maintain, needlessly forcing you to pay Portuguese Corporate Income Tax and, worst of all, can cost you tens of thousands of euros annually in extra Property Tax assessment. All because the Company's head office is located in an Offshore jurisdiction. However, if the owner moves the Company headquarters and management to Portugal, not only will most of the problems melt away but both you, the buyer, and the seller, will achieve surprising tax advantages over individual property ownership.

2.2 *Investigate the History of the Company*

Many companies have a complicated past. Sometimes, there are underlying bureaucratic problems. All too often, improvements have been made without building permission or without registration. Some former owners engaged the property in commercial activity, yet never declared a penny of the earnings. Remember rule nº 2: *the Company's outstanding liabilities are the responsibility of the current shareholder.*

Finally, do your homework thoroughly. Have your lawyer check all registrations, deeds, licences, etc. to make doubly sure that everything is up-to-date and contains no surprises. You, as current owner, will be responsible for any outstanding liabilities.

2.3 *Check out Compliance Requirements*

Another key issue is Compliance. Has the Company fulfilled all of its fiscal requirements since legislation started to change in 2002? Who is the Company's Fiscal Representative? Make sure that the Company tax returns have been submitted and that Rates payments are up-to-date.

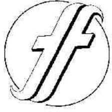
2.4 *Get a "Clean" Company*

The problem is not the Company *per se*. It lies in the fact that the headquarters of the Company is in a non-resident jurisdiction. If the headquarters are transferred to Portugal, the Company achieves a "New Beginning":

1) Capital Gains Tax issues can be reduced to a minimum;
2) Buyers are often exempt from "*IMT*" transfer tax (formerly "Sisa");
3) Operating costs are low;
4) Local management can provide an important support structure against eventual property related complications.

2.5 *Buy a Bargain*

As always, the difference between a problem and an opportunity is your perception. While the current starting place may be less than desirable, simple relatively inexpensive changes can dramatically reverse the fortunes for all concerned. With sound professional advice and a bit of perseverance, the house that is now a nightmare can become your "dream come true". In other words, buy a bargain, then move the structure safely to Portugal.



3. Anti-Avoidance Legislation

abusive tax planning schemes

Portuguese anti-avoidance legislation makes mandatory divulging any "abusive" tax planning schemes by promoters and/or beneficiaries. The purpose of the legislation is to make compulsory warning of tax authorities of strategies on the edge of the law, designed primarily to avoid paying tax. Individual clients need not necessarily be identified but rather the plans are entered in a data base to help prevent "abusive" schemes.

Criteria of Abusive Schemes
Unauthorised schemes are defined as follows:

a) involvement of entities resident in black-listed tax havens;
b) involvement of entities resident in jurisdictions not subject to taxation equivalent to "*IRS*" or "*IRC*";
c) if assessment would be 60% or less than the tax owed in Portugal were the entity resident;
d) if the beneficiary is partially or totally exempt from taxation;
e) when financial or insurance operations are involved that reclassify income or alter the beneficiary of the investment;
f) when the use of financial loses is implied;
g) when a confidentiality clause is present in covering contracts or if the sponsors contractually limit their responsibility.

Fines for non-compliance can be as high as €100,000 for companies and €50,000 for individuals. This legislation came into force in 2008.

Note: It is important to give careful attention to the fact that some of the above mentioned criteria may apply to tax planning schemes in "white listed" jurisdictions as well as black-listed tax havens. Professionals and owners alike may need to rethink their strategy.

LOCAL LODGING
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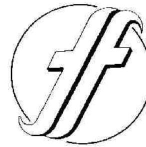


The issues surrounding Short Term Letting continue to generate confusion amongst Owners wanting to rent their properties and Agents wishing to serve the growing need for *self-catering accommodations*.

At ***euro*FINESCO**, we can help you take the right steps:

Comprehension: Facilitating the understanding of the key requirements and how they apply to you.

***Clarity**:* Providing qualified Fiscal Representation Services; Linking you to specialised lawyers to prepare *protective contracts*.

Compliance: Submitting *Local Lodging* Registrations; Preparation of "*IRS*" Tax Declarations.

This provision mirrors the OECD Model Tax Treaty, giving countries the tools to combat fiscal fraud. With only minor variations, this condition is clearly defined in most other Portuguese bilateral tax treaties. Therefore, a white-listed Company normally offers little protection from CGT for Portuguese tax residents.

4.3 *Limited Liability Companies*

A Delaware Limited Liability Company is a "flow-through" entity (*FTE*) where income "flows through" to owners; that is, the income of the Company is treated as taxable income of the shareholders in the jurisdiction where they are resident individually for tax purposes, not to the company where it is domiciled. Flow-through entities are also known as being "pass-through" or "fiscally transparent".

On the positive side, the structure can avoid economic double taxation such as successive corporate tax followed by dividend tax on the shareholders because only owners or investors are taxed on income, not the Company. However, as taxable individuals, owners or "members", as they are called in Delaware, are normally not eligible for tax credits or tax deductions on this "flow-through" income and are assessed based on full gross rather than net income.

LLC: *Advantages and Disadvantages*

Choosing to use a Delaware Limited Liability Company can have long-reaching repercussions: where taxes are due, personal liability issues as well as applicable rules and regulations in the US and elsewhere.

Advantages:

+ ***Tax Flexibility***: Generally, an LLC is not considered a separate entity from its owners. This means that your LLC will not pay taxes by itself; rather, the owners or "members" do individually in their jurisdiction of tax residence.
  However, owners can also choose to have their Limited Liability Companies taxed like a corporation at 40%. This option is based on US "check-the-box regulations" and allows you to elect the way you want to be taxed.

+ ***Limited Liability***: Unlike sole proprietorships or partnerships, LLCs allow the owners to shield themselves from personal liability if the business goes bankrupt, injures someone or otherwise runs into legal trouble. This means that, although the business might fold, courts and creditors will generally not be able to attach your personal assets. In other words, your business and personal responsibility and assets remain separate.

+ ***Easy Set-Up***: Starting a Limited Liability Corporation is generally simpler and faster than traditional forms of incorporation. Set-up costs can be as low as US$300 (± €235).

+ ***Less Paperwork***: In terms of paperwork, LLCs are very flexible. Generally speaking, an LLC Operating Agreement (the equivalent of Company Statutes) is drafted so you can choose the specific norms that govern your business. Otherwise, your company will be governed by the default rules. With less stringent requirements for compliance and less necessary paperwork, LLCs are easier to form and easier to keep in good legal standing.

Disadvantages:

- ***Tax flexibility can backfire***: Unless you choose to be taxed like a corporation in the US (referred to in US "check-the-box" regulations at 40%), income from an LLC is subject to self-employment taxes in the jurisdiction where the "members" are resident for tax purposes.

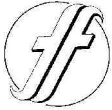
For example, if you have local lodging income, you will not be eligible for the Simplified Regime in Portugal on your local lodging income. This means that you will pay full marginal rates, which can go as high as 48% rather than just 5.6% as a non-resident individual.

- ***No tax credits or deductions*****:** In addition, this form of income is not eligible for tax credits or deductions on earned income. In other words, owners will be taxed "full fare" on gross income rather than net, as normally would be the case.
- ***Steep mark-ups***: While formation of a Delaware LLC can cost as little as US$300, this low basic cost leaves substantial room for intermediary mark-ups that can be as much as 10 fold.
- ***Confusion About Roles***: Whereas corporations have specifically defined roles (like directors, managers, and employees), LLCs generally do not. This can make it difficult for the company and especially investors to know who is in charge, who can sign certain contracts, etc. Some of this confusion can be avoided by creating a personalised LLC Operating Agreement.
- ***"FBAR" compliance***: If a Delaware Company has a financial interest in or signature authority over a foreign financial account, the US requires annual reporting to the Internal Revenue Service ("FBAR"). This requirement can undermine any element of confidentiality in addition to adding another on-going compliance commitment and cost.
- **"*Controlled Foreign Company*" scrutiny:** A Delaware LLC is normally considered to be a *Controlled Foreign Corporation***.** A *CFC* is a corporate entity that is registered and conducts business in a different jurisdiction or country than the residency of the controlling owners. When no normal commercial business activity is in place, such entities can be subject to increased suspicion and scrutiny by Tax Authorities throughout the European Union and information sharing internationally.

4.5 *Conclusion*

We all realise that there is never an ideal solution to any situation. This is why it is essential that you study the pros and cons of any answer to understand which factors may be truly relevant to your individual circumstances. On the positive side, an LLC can offer a high degree of flexibility and liability protection. However, potentially burdensome tax obligations, far-reaching international repercussions and confusing ambiguity may tip the scales negatively for others. It is for each owner to choose and make an *informed* decision.

We believe that there is a safer, fully compliant alternative: using a *Portuguese Nominee Company*.



When a company redomiciles to Portugal, there is no property transfer: no "*I.M.T.*", no crystallisation of Capital Gains. Only the headquarters and effective management move. There is no transfer of the assets which remain safely within the Company. Thus the alternative term for Redomiciliation: *Continuance*. This act of Continuance opens an attractive opportunity for tax mitigation.

5.1 *Updated Basis for CGT*

Following Company registration in Portugal, a Balance of Accounts needs to be presented to mark the starting point as a Portuguese resident entity. This Balance Sheet must be based on current rather than historical values. Thus, the Company's "Assets" reflect either the "*VPT*" value or present market value of the property. The "Liabilities" show the Shareholders' loans into the Company - but not the invoicing of how they were spent - as well as the mortgage (if one exists). "Capital" is the paid-up share capital as well as Reserves, reflecting any appreciation in the value of the property. As such, there is a fresh start and many historical problems, such as under-declared deed values or lack of bonafide invoices for capital improvements, can be rendered mute.

5.2 *Reduced CGT*

From this new base as a resident Portuguese entity, Capital Gains Tax on the eventual sale of the Company is reduced to 14%, as compared to 28% that may be assessed to non-resident companies.

The combination of these two factors transform what is normally a colossal problem into a very manageable inconvenience.

5.3 *Potential Transfer Tax Exemption*

Depending on the circumstances of the eventual buyer of the Company, the sale of the shares may be exempt from "*IMT*." Under Portuguese law, when

one does not exceed a concentration of more than 75% of shares to any one of the shareholders, no Property Transfer Tax (*"IMT"*) is due on the underlying assets. If eligible, the buyers may potentially save tens of thousands of Euros, thus making Portuguese Property Company acquisition far more desirable than purchasing in one's own name.

5.4 *Reduced Bureaucracy*

When property changes hands, many organs of government get into the act. *Finanças* records the change of ownership and updates the "*VPT*" evaluation (rateable value) in a cumbersome and labourious process. The Council checks to see that current architectural drawings match the building on site. The Land Registry verifies that boundaries and areas are correctly recorded. In short, a sea of bureaucracy that is both slow and expensive.

A transfer of ownership of shares is normally a simple notarial process. While there is some paperwork involved in amending records to reflect the changes of Company domicile or ownership, the process is normally straightforward and does not trigger reevaluations of the property nor latent building licensing problems inherent in many older properties.

"the better way to hold property"

A Portuguese Nominee Company is the best solution for those stuck with non-resident structures. Combining tax efficiency, low cost and simplicity, this type of non-trading company embraces many of the advantages that property buyers once sought in Offshore Property Companies, yet achieves these objectives in a compliant, mainstream fashion squarely under the Portuguese "umbrella".

6.1 *A Fully Compliant Structure*

These small Nominee Companies have existed in Portuguese statute law since the 19th century and have been embraced in subsequent legislative reforms over the past 150 years. Therefore, they are fully compliant and are not subject to any of the punitive laws that have made Offshore Property Companies a pariah: no deemed income assessment, no 5% Rates bill. In fact, the simplicity of this form of company makes this structure easy and inexpensive to run.

6.2 *Lower Taxation*

"CGT": One of the big advantages of the Nominee Company is a substantial reduction in the Capital Gains rate on the sale of the Company. As a fully resident structure, eventual CGT assessment is only 14% on the sale of the shares, some two fold less than the 28% of the non-resident rate. In addition, this assessment is flat-rated, so your profit will not push up any other income into a higher tax bracket. The on-going operating costs of a Nominee Company are normally a fraction of other company structures, thereby making them substantially more attractive to both owners and to future buyers alike;

"IMT": In addition, future buyers qualify for exemption from Property Transfer Tax ("*IMT*"), something that would be impossible under direct property acquisition. If future shareholders avoid a 75% or greater concentration of shares in one individual, then the purchase of the Company's shares will not trigger "*IMT"* (formerly called "*Sisa*"). At the current rate of up to 6%, this can save tens of thousands of Euros;

"Stamp Duty":

Using a Nominee Company also avoids the usual Stamp Duty of 0.8% on Property Deeds, giving additional savings of thousands of Euros on the transaction.

"IHT": Like other assets in Portugal, bequests upon death or gifts during one's lifetime suffer no Inheritance Tax. Exempt transfers are permitted to immediate relatives: spouse, children, grandchildren, parents or grandparents. All others are assessed Stamp Duty of 10%.

6.3 *Ease of Transfer*

With the property secured safely within the Nominee Company, bureaucracy is significantly reduced at the time of eventual sale of the Company, cutting the costs and complications so often associated with property ownership in Portugal. A simple deed, declaring the sale of the shares, is all it takes, thereby avoiding the headaches related to licencing, registration and ever-changing rules associated with property paperwork.

6.4 *No Benefit-in-Kind Assessment for Non-Residents*

While no specific rulings from Tax Authorities in other EU jurisdictions have as yet been made regarding potential benefit-in-kind assessment for non-residents in Portugal, it is clear that the presumptions surrounding this type of taxation do not apply to Portuguese Nominee Companies and their owners. Both under Legislation as well as Company Statutes, there is clearly no basis to conclude that the Shareholders could be construed as *"Shadow Directors"*, the underlying premise for any benefit-in-kind assessment.

6.5 *International Tax Credits for Non-Residents*

If you are non-resident in Portugal, you now understand your compliance obligations. Under bilateral double taxation treaty agreements, any CGT paid in Portugal should be eligible for an international tax credit, thereby reducing or eliminating the assessment you paid in Portugal. It is now up to your local tax advisors to apply their ingenuity and knowledge of the Law to mitigate your final tax liability at home.

7.1 *When you buy . . .*

Buying a Nominee Company saves time and money while avoiding many of the complications normally associated with property acquisition.

7.1.1 **Time**

Acquiring the shares of a Company is a quick process. It can be done at the Notary or in your lawyer's office and can usually be accomplished in a matter of minutes rather than the weeks or even months required to sort out conventional Property Transfers.

7.1.2 **Simplicity**

Changes in property ownership inevitably entangle 3 different organs of government: "*a Câmara"* (the local Council), *"as Finanças*" (the Revenue) and *"o Registo Predial*" (the Land Registry). When transferring shares, these three bureaucracies are only marginally involved, if at all.

7.1.3 **Tax Efficiency**

With only €25 of Stamp Duty to pay, the transfer of shares avoids triggering "*IMT*" (Property Transfer Tax) and the 0.8% Stamp Duty on Deeds of Property Transfer, proportioning tax savings that can run into the tens of thousands of Euros.

7.1.4 **Reduced Costs**

Simplicity can also mean lower costs for lawyers, notaries and other disbursements that are an integral part of any compliant transfer process.

7.2 *When you sell . . .*

Selling a Nominee Company offers the best of options to both Seller and Buyer:

7.2.1 At the notary, the Company's shares are normally transferred to the Buyer at full market value of the Property held by the Company.

The Seller will be responsible for Capital Gains Tax on the sale of the shares at a flat rate assessment of 14%, rather than full "*IRC*" Corporate Tax Rates were the Property to be sold directly by the Company to the Buyer;

7.2.2 The Buyer elects one of two options:

7.2.2.1 If the Buyer wishes to keep the Company, the transfer of ownership is now complete and there is no further taxation: no "*IMT*" (Property Transfer Tax), no Stamp Duty. Standard registrations can subsequently take place;

7.2.2.2 If the Buyer wishes to own the Property directly, the Company is dissolved and the Property transferred to the Buyer's name. "*IMT*" as well as Stamp Duty are due, followed by standard registrations, just as would occur in a conventional property sale.

In either case, the selected option is prepared in advance and the full set of transactions occurs simultaneously at the Notary' office.

Our recommendations regarding the use of Nominee Companies remain as always. However, we realise that there is no "one size fits all" solution. Future buyers may not necessarily share your goals and objectives. For this reason, it is important that, as an Owner, you know that the advantages you originally sought in your Nominee Company can still be achieved even if a eventual buyer wishes to acquire only the property and not the Company.

Under current Portuguese legislation, it is mandatory for non-EU nationals who are non-resident with income arising in Portugal to have Fiscal Representation. A Fiscal Representative is strongly advised for all non-residents to assure that all compulsory compliance commitments are met. As the *liaison* between the taxpayer and Finanças, the Fiscal Representative should also help guide the non-resident through the maze of Portuguese bureaucracy.

8.1 *Fiscal Representatives*

For many years, being *Fiscal Representative* for Non-Residents was largely a *pro forma* position, requiring little more than forwarding Rates statements once or twice a year to the appropriate destination. As such, it was not uncommon for lawyers, estate agents and property managers to provide this service at little or no cost.

8.2 *The Theory*

For better or for worse, legislation has changed, dramatically altering the responsibility and obligations of the *Fiscal Representative*. In addition to new responsibilities and revised enforcement practices, this once benign position has turned into a potential nightmare for both the unwary service provider and the non-compliant property owner.

Fiscal Representatives are now required to fulfill all accessory fiscal obligations *(Art. 109º-118º do CIRC)*. Under the reformed version of the "General Law on Taxation" (*Art. 27º da LGT*), a *Fiscal Representative*, in certain instances, can even be made accountable for paying any outstanding taxes of the Non-Resident.

8.3 *The Practice*

While some of this legislation is new, much of it has been on the books for many years. In the past, the tax authorities habitually turned a blind eye to the tax requirements of most foreigners in Portugal. While there are many explanations for past lack of implementation, the important point is that this practice has changed substantially.

Foreigners, whether resident or non-resident, have become prime targets for tax audits. Property managers, lawyers and the like, currently acting as Fiscal Representatives, are often at a loss to mount a proper defence in fiscal inspections.

8.4 *Professional Services*

Using qualified professionals, such as ***euro*FINESCO,** as your Fiscal Representative may initially seem an extra expense. However, as with many expenditures, in the end, you get what you pay for. It is "*value for money spent*" that is the prime criteria, not whether cost is higher than before. With ***euro*FINESCO** on your side, you can count on the following quality services:

8.4.1 **Asset Protection**

Your property is a major investment. If basic requirements go unmet or are not completed correctly, your asset could be at serious risk. Having a qualified professional **Fiscal Representative** is a prerequisite, not an add-on.

8.4.2 **Statutory Fiscal Requirements for Property Owners**

Meeting tax obligations is a matter of Law. At ***euro*FINESCO**, we will make sure you are fully compliant while helping you to pay the legal minimum. We stand behind our work and will defend you in the event of a tax audit by *Finanças*.

8.4.3 **Resourcing Information to Owners**

Portugal is often a difficult country for obtaining accurate, reliable information. At ***euro*FINESCO**, we "wrote the book". We have publications on a host of different topics relating to Portuguese Taxation on Property: as Buyer, as Owner, as Seller. We can provide you with the most accurate, up-to-date answers to your questions.

When changes occur in legislation that may impact your situation, we will keep you abreast of current requirements and the steps that needed to stay compliant.

8.4.4 **Liaison between *Finanças* and Property Owners**

We will represent you and defend you and your interests as we have for others in Portugal since 1991. We have broad experience as well as an excellent rapport with local, regional, national and international *Finanças* offices to help sort out any problems that may arise.

8.4.5 **Personalised Service**

As a diversified service company, we have a dedicated Fiscal Representation Department, staffed by capable, knowledgeable professionals who are specialised in meeting your representation needs. Personalised service is one of our principal goals.

8.4.6 **Payment Facility**

Included in your annual fee is a Bill Payment Facility. Through deposits to your *personal client account*, we can pay Rates or Income Tax demands on a timely basis at no extra charge, avoiding additional costs and delays that could eventually lead to fines and late interest levies.

8.4.7 **Plain English**

As you have probably already learned by now, Portugal has complex bureaucracy. All the forms and web pages are only available in Portuguese and instructions are often in a jargon that even native Portuguese sometimes have trouble understanding. We put the full process to you in Plain English. With proper guidance, even those who speak English as a Second Language should have little trouble in getting it right.

***euro*FINESCO**

Tax Techniques

Our periodic newsletter brings you the latest news & information before it reaches other media. Stay informed about the crucial changes that will impact your life in Portugal .

Subscribe today at **www.eurofinesco.com**

Surprising opportunities in Portugal

Being compliant for tax purposes is not synonymous with paying tax. The Portuguese tax code has generous allowances and unexpected exclusions on certain forms of income, broad deductions for numerous types of expenses and liberal tax credits for many common expenditures. Many people find their overall tax burden in Portugal to be significantly lower than in their country of origin. Note of the following examples:

Pensions

- In 2016, each pensioner is entitled to a pension allowance of over €4,104. This means that a retired couple, after personal allowances, typically receives the first ±€15,000 of pension earnings free of tax.
- Many pensions paid within EU and beyond are entitled to an appreciable exclusion applying basic principles of elimination of Double Taxation. If eligible, an occupational pension of €70,000 should have little or no tax to pay.

Non-Habitual Resident

- Only the Portuguese-source portion of a non-habitual resident's employment income is subject to Portuguese Income Tax. Additionally, this income is levied at a flat rate of 20%.
- Foreign-sourced income will be exempt from assessment in Portugal when assessed under the rules of standing Double Taxation Agreements or the like.

Disabilities Benefits

Sometimes the common consequences of aging qualify taxpayers for 60% or greater disability status and still not hurt your golf game. If you are eligible, you will enjoy enhanced deductions.

Income from Portuguese Property

When reported as Portuguese-sourced business income, final tax rates are 4% or less with no further tax liability in the home jurisdiction for Non-Residents.

Dividends

Dividends paid by Portuguese companies as well as those from any country within the European Union are entitled to a 50% exclusion and are taxed on the other half at marginal rates with withholding on national dividends.

Roll-Over Relief

If you sell your principal residence and fully reinvest the proceeds in a new home, the capital gain is exempt. This is to be extended eventually to new home reinvestment anywhere in the EU.

Nominee Companies

If you purchase property for investment purposes, using a Portuguese Nominee Company will provide many benefits including simplified bureaucracy and tax efficiency.

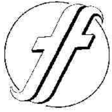
Inheritance Tax

Portugal abolished Inheritance Tax as of 2004. Transfers to immediate relatives (spouse, children, grandchildren, parents and grandparents) are tax exempt. All others pay only 10% Stamp Duty. Any assets held outside of Portugal explicitly fall outside of Portuguese law.

Tax Exclusions

Exclusions ranging up to 85%, running across almost every category of income and expense: pensions, salaries, dividends, royalties, disabilities, donations, healthcare, housing, education, etc. These are lawful fiscal readjustments, not mere tax breaks.

These and other benefits are entitlements under Portuguese legislation. It is your right as a citizen and taxpayer to take maximum advantage of these tax breaks. Who knows? Portugal may prove to be a legal "*tax haven*" for you within Europe.



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*e*Books from *euro*FINESCO

1) Offshore Companies: *Moving Onshore*
2) Self-Employed in Portugal
3) Requirements of the Common Reporting Standard
4) Setting Up Fiscal Residence
5) Capital Gains Tax on Portuguese Property
6) Portuguese Tax Code Summaries
7) "*VPT*" Unveiled
8) Tax-Efficient Investing in Portuguese Property
9) Income from Portuguese Property
10) Taxation on Portuguese Property
11) "S.C.I.": *Sociedade Civil Imobiliária*
12) Property Companies: *White-List or Portugal*
13) Nominee Companies for Portuguese Property
14) Fiscal Representation in Portugal
15) *"Permutas"* or Property Swaps
16) Estate Planning & Nominee Companies
17) "I.H.T." – Residence Rules & Determining Domicile
18) Moving to Portugal – *before, during & after*
19) Taxation of Pensions in Portugal
20) "I.R.S." Tax Credits
21) CGT Mitigation: *14 Arrows in the Quiver*
22) Residence Rules: *in the EU, Portugal and the UK*

Extracts from *Relocating to Portugal - Useful Information*

23) Acquiring Portuguese Citizenship
24) Visas and Legal Framework
25) Your Rights to Health Care
26) Access to Education
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28) Social Security Entitlements
29) Golden Residence Visa

30) Leaving Portugal - *Moving Back*
31) Non-Habitual Residence Status and the Alternatives
32) Trusts, Foundations and Fiduciary Structures