

*euro*FINESCO

eBook n° 13

Nominee Companies to hold Portuguese Property

by

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PORTUGAL

Ficha Técnica:

13ª Edição: *euroFINESCO eBook nº 13*
Nominee Companies to hold Property
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Designer: Maria de São José Belchior Horta
Distribuição: *euroFINESCOs.a.*
Tiragem: Internet
Executado: Maio 2017

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FISCAL & EXPATRIATE SERVICES
from
euroFINESCO



*We are a full service company, helping expatriates to make the most of their life in Portugal since 1991. Whether it be meeting obligations in a new land, maximizing opportunities in a smooth transition from the past, or financial and estate planning for the future, **euroFINESCO** is here to guide you, keep you compliant and prepare you to meet your goals.*

TAX CONSULTANCY

FISCAL REPRESENTATION

NOMINEE COMPANIES FOR PORTUGUESE PROPERTY

CROSS BORDER ESTATE PLANNING

SMALL BUSINESS FORMATION

DOCUMENTATION



At **euroFINESCO**, 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
- Fiscal Representation for Non-Resident Companies

INTERNATIONAL TAX ISSUES

- Bilateral Tax Treaties
- Jurisdiction Conflict Resolution
- Compliance Issues

PERSONAL TAX PREPARATION

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

- Meeting basic compulsory compliance commitments;
- 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

DOCUMENTATION

We can assist you by cutting through the bureaucracy:

- “*Residências*”
- Portuguese Wills
- Driving Licences
- Rates Exemptions
- Fiscal Numbers
- Medical Cards

SMALL BUSINESS FORMATION

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.



A “Win-Win” Solution

Let us start with the conclusion - that a *Portuguese Nominee Company* is a multifaceted and often superior vehicle for investment in Portugal. We believe this to be a genuine “win-win” situation. You, as the investor, whether buying or selling, have an excellent opportunity in Portugal, driven by climate and demographics in Europe. Portugal, in affording you an alluring framework that is squarely within legislation, both attracts foreign investment and gains a competitive edge on other countries in Southern Europe.

A Compliant Solution

We believe in compliant solutions. Of course, we all dislike paying our taxes; that’s only human. But most of us, in our hearts, are conscientious citizens, cognisant of the fact that we need to contribute our fair share. But while we have compliance obligations to meet, it is our *right* to be taxed at the *legal minimum*. There is nothing wrong about paying as little as possible, as long as you do so within the bounds of legislation. That is at the core of our purpose: to explain to you what your rights are under Portuguese Law and how to implement these goals in the minefield of Portuguese bureaucracy.

An Affordable Solution

The solutions that we offer are not expensive. In fact, our services are competitively priced so there should be no significant difference in costs to you as compared with other solutions. As we will show, a *Portuguese Nominee Company* can be a very versatile tool, both to take advantage of attractive investment opportunities as well as for resolving many types of

problems that confront the investor in Portugal.

The issue is not merely how much you are going to pay. The key is how *wisely* you spend to assure that you get your money's worth. We sincerely believe that we can deliver excellent value for what you spend. We will be successful when you are.

In other words, we are on the same team.



1. *What are Nominee Companies?*

“Sociedade Civil”

A Portuguese Nominee Company (*Sociedade Civil de Simples Administração de Bens Próprios*), with headquarters and effective management in Portugal, is one that limits its activity to the mere administration of belongings and assets held as a reserve, a benefit, or the purchase of accommodation for its shareholders. In these Companies, the share capital must belong to either a family group or from two (2) to five (5) shareholders and may be either resident or non-resident indiscriminately. Normally held by individual family members, shareholders may also be other companies or trusts, although none of these may be a public collective entity.

1.1 **Civil Companies**

As Civil Companies, these entities do not practice any commercial activity or other like activities as defined in Portuguese Law. They are pure Civil Companies, regulated by the Civil Code, and may or may not have “judicial personality” (formation via public deed). These Companies are subject to the Fiscal Transparency Regime (*see below*).

1.2 **Trusts**

Those familiar with Trusts will immediately recognise certain similarities. A Trust is a legal device under English Common Law that allows title to - and possession of - property to be held, used and/or managed by one person, *the trustee*, for the benefit of another different person or group, *the beneficiaries*.

In the case of the Nominee Company, possession of property is transferred to the Company, overseen by the *administrators*, and managed for the benefit of the shareholders: the owners of the Company. Competencies of the administrators are defined in the *Statutes* of the Company and are normally limited to meeting required basic compliance and basic administrative functions as stipulated under Portuguese law.

1.3 Confidentiality

The Nominee Company is registered with the National Company Registry (*Registo Nacional de Pessoas Colectivas*) as well as with *Finanças*. Only Company administrators are recorded, not the shareholders. Nor are the shareholders identified in the Statutes of the Company, which appears as an annex to the Deed of Establishment. Their names do appear in this initial deed as well as in any Deed of Transfer of ownership of the Company. These deeds are kept in the archives of the practising notary as the sole registry.

1.4 Fiscal Transparency Regime

Some Nominee Companies fall under the regime of Fiscal Transparency. They are considered “*look-thru*” companies. Chargeable events of the Nominee Company, as calculated according to the Corporate Tax Code (“*CIRC*”), are attributed and assessed directly to the shareholders (beneficial owners) in their Individual Income Tax declaration (“*IRS*”). The Company itself is tax exempt but still has nominal reporting requirements (“*IRC*”). Another form of Nominee Company follows the same rules as Commercial Companies.

1.5 Company Assets

Portuguese law does not place limits on what kinds of assets may be held in a Nominee Company. They may be immovable (real property) or moveable (investment portfolio).

Normally, one property or portfolio is held in each Company so that ownership of the Company may be easily transferred. If the conveyance is a gift or bequest to an immediate family member, the transfer is tax exempt. If the shares are sold, the gain will be subject to a flat tax of 10%.

1.6 Two Choices

There are two forms of Nominee Companies that can be used. While they share in the above mentioned benefits, they differ in the following aspects:

1) “*Sociedade Civil de Administração de Bens Próprios*”

(Civil Company for Administration of Owner Assets)

PROS

- a) Tax exempt in IRC. Assessment still calculated according to Company rules including IRC tax breaks.
- b) No annual "PEC" (Special Estimated Tax)
- c) Confidentiality - the identity of shareholders only registered with the local notary;
- d) Fiscal Transparency - avoids economic double taxation;
- e) There is no minimum share capital requirements;
- f) Capital can be uplifted at any time without creating a chargeable event.

CONS

- a) Problematic endorsement upon registration in some Registries: not suited for real property;
- b) Exemption in the Company Registry: security questions can arise;
- c) Some lawyers & officials lack of experience;
- d) Despite no *standard accounts*, TOC still required;
- e) Fiscal Transparency implies possible loss of IRS tax breaks.

2) “*Sociedade Civil sob Forma Comercial*”

(Civil Company under Commercial Form)

PROS

- a) Simplified tax obligations;
- b) No annual "PEC" assessment;
- c) Standard treatment: the same rules as Commercial Companies;
- d) Retains non-trading purpose;
- e) Better known entity: ease of registration & bank credit; appropriate for holding real property;
- f) There is no minimum share capital.

CONS

- a) Some different bureaucratic requirements (but usually not at extra expense);
- b) No confidentiality;
- c) No *limited liability* status;
- d) Can be exposed to economic double taxation;
- e) Despite no *standard accounts*, TOC still required;



2. Nominee Companies *for Real Property*

2.4 Expenses Never Expire

Unlike direct ownership where capital improvements no longer can be offset against Capital Gains after five years, any capital invested into your Nominee Company is always reflected in the Company value. This is important when major remodelling is contemplated, such as new kitchen, bathroom, swimming pool and the like.

2.5 Ease of Transfer

When the Company is eventually sold, only a simple deed of sale is required. The property remains securely within the company and there is nothing to trigger bureaucratic problems and extra expense often associated with property transfers.

2.6 No Taxation on Redomiciliation

When an Offshore or a non-resident company moves to Portugal, there is no Capital Gains Tax or Property Transfer Tax upon redomiciliation. This is because it is the Company Headquarters that moves, not the property, thereby avoiding any transfer of the Company's assets.

2.7 Uplifted Basis for CGT

Following Company registration in Portugal, a Balance of Accounts needs to be recorded 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 the market value of the property. The "Liabilities" show the Shareholders' loans into the Company - not the invoicing of how the monies were spent - as well as any outstanding loans or mortgage. As such, there is usually a significant uplift in the basis for eventual CGT assessment and many historical problems can be rendered irrelevant. A colossal problem can be transformed into a very manageable inconvenience.

2.8 No Benefit-in-Kind Assessment

Within Portugal, Nominee Companies are not subject to the Benefit-in-Kind or Deemed Income assessment as was imposed on Offshore Companies. Under the Fiscal Transparency rules, Nominee Companies are, in fact, tax-exempt.

While there have yet to be specific rulings from Tax Authorities in other EU jurisdictions 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:

- a) As a non-trading entity, the Nominee Company has the sole purpose of administering its assets to the benefit of the shareholders;
- b) The Company is bound to full Fiscal Transparency;
- c) The Company is required to have administrators with statutory compliance obligations.

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.

2.9 Restrictions

There are certain restrictions to such structures. Whether these limitations prove to be a negative or not depends upon your situation.

- 1) Although the Company itself is tax exempt, any chargeable events, as calculated by Company Tax Code (“*CIRC*”) rules, are assessed directly to the shareholders under a regime referred to as “Fiscal Transparency”.
- 2) Shareholding is also constrained. These Nominee Companies must have a minimum of two shareholders but no more than five. These shareholders are normally individuals and members of the same family, although collective entities such as companies or trusts may be shareholders in certain circumstances.

- 3) The Company is required to have administrators in order to meet basic corporate compliance obligations. However, these requirements are not extensive and annual operating costs are modest. Auxiliary overhead is also minimal and this type of company does not pay the minimum corporate income tax (“*P.E.C.*”) as would a commercial Limited Liability Company.

***Local Lodging Plan
for Non-Residents***
from **euroFINESCO**



If you have qualifying short-term tourist lets, our *Local Lodging Plan* allows you to reduce your **Portuguese income tax assessment to just 5%**. Even more important, this specific category of income is normally taxable only in Portugal, exempt from subsequent assessment in the country of tax residency in most cases.

*(If you do not as yet have a Local Lodging License for your property, **euroFINESCO** can help you obtain the necessary permit as part of our Fiscal Representation service)*



3. Property Alternatives

Investment Opportunities

3.1 Property Subdivisions

Let us begin our analysis of property investment opportunities with a common strategy: *Property Subdivision*. The value of a tract of land in a desirable location can multiply when partitioned into Building Plots (when developed out) or Horizontal Property (when building up). However, with the propagation of individual properties comes an increment in diverse forms of taxation: Capital Gains Tax (“CGT”); Property Transfer Tax (“*IMT*”); Stamp Duty. Without proper planning, profits will shrivel and final costs can escalate out of reach.

Nominee Companies (“*SCP*”) are an ideal vehicle to mitigate these tax liabilities. First and foremost, they are fully compliant structures. This means that your strategy has legal foundations erected securely on bedrock legislation: the Portuguese Civil Code. No dicey Delaware Companies, no Offshore snarls.

Next, the “*SCP*” achieves substantial tax savings as compared with Direct Ownership:

<i>Table n° 1: INITIAL COST OF LAND + TAXES TO INVESTOR</i>		
	<i>Private Ownership</i>	<i>Nominee Company</i>
Cost of Land	€100,000	€100,000
IMT	€ 6,500	€ 6,500
Stamp Duty	€ 800	€ 800
Closing Costs * (includes Company formation)	€ 2,500	€ 2,500 *
Total	€109,800	€109,800

In other words, at the outset, there should be little cost difference between using a Nominee Company and buying in your own name. Assuming “average” legal and procedural fees, locking in the long-term advantages of the Nominee Company structure should not increase expenses.

However, when it comes time to sell, the respective tax burdens offer a dramatic contrast. To complete our example, the land is subdivided into 10 building plots and sold for €25,000 each:

<i>Table n° 2: SALE OF 10 BUILDING PLOTS: per plot</i>				
	<i>Private Ownership</i>		<i>Nominee Company</i>	
	Buyer	Seller	Buyer	Seller
Selling Price	€25,000	-	€25,000	-
CGT	-	€ 3,500	-	€ 1,400
IMT	€ 1,625	-	-	-
Stamp Duty	€ 200	-	€ 25	-
Closing Costs	€ 1,500	-	€ 750	-
Total	€28,325	€ 3,500	€25,775	€ 1,400
<i>Net Savings by using the Nominee Company</i>			<i>€ 2,550</i>	<i>€ 2,100</i>
			€25,500	€21,000
<i>Based on the Sales Price, Total Net Savings</i>			10.2%	8.4%

By using Nominee Companies, we achieve a combined tax savings of almost 19%. With this tax-efficient structure in place, other Property Investment Opportunity concepts can be brought into play.

3.2 OFF-PLAN INVESTING

As the name implies, *Off-Plan* refers to purchasing a contract for the acquisition of a property that is still in the development stage. The buyer can either hold the contract until the property is finished or sell on to another buyer prior to completion.

Off-Plan property purchasing continues to offer potentially high return on investment. A major benefit to the investor is the relatively small initial outlay - usually a 30% deposit with the balance due on completion of the complex, when property has already appreciated due to the strength of the property market.

Buying *Off-Plan* Property offers strong investment returns:

- ✓ It is possible to achieve returns of over 100% of the initial investment within 24 months;
- ✓ A deposit of 30% of property value is made with no further payments until completion when the remaining 70% can be financed with a mortgage or the property sold at its increased market value.
- ✓ The transaction and profit can be assessed at modest levels;
- ✓ Long-term ownership benefits from appreciation of the property in one of the fastest growing markets in Europe.

Why Buy *Off-Plan* Properties

- ✓ Developers offer more competitive prices to *Off-Plan* buyers, sometimes below market value, to secure immediate financing;
- ✓ Access to better investment opportunities: penthouses, layout, square footage which generate a better return at resale;
- ✓ Owning a brand new property on completion. Take advantage of future market appreciation at current market rates.

***Off-Plan* in Portugal**

In the past, *Off-Plan* property was often sold repeatedly with little or no reporting of profits and no declaration of transfer tax (“*Sisa*”). The Property Reform Act of November 2003 closed many of the former avenues of *Off-Plan* Property Investments in Portugal. The new procedures were intended to close two major loopholes:

- 1) Promissory Contracts now need to be registered and reported by Notaries and may not exist as legally binding contracts when celebrated merely in private between buyer and seller. This measure was meant to close the door on the common practice of property transactions stating true value in the Promissory Contract and a quite different, understated value in the final Deed of Sale.
- 2) Each transmission of a Promissory Contract to a new owner is now subject to “*IMT*” (*Imposto Municipal de Transmissões*) at the rate of 6.5% . This new assessment was intended to eliminate the practice of repeated resale of the property *Off-Plan*, free of Transfer Tax and without reporting of Capital Gains.

Despite these constraining changes, once overlooked opportunities can breath new life into *Off-Plan* projects. Using *Portuguese Nominee Companies* (“*SCP*”) to hold *Off-Plan* properties can offer an attractive alternative that achieves the lion’s share of the benefits sought in the past while operating squarely within legislation. In this strategy, an investor puts the *Off-Plan* property into a *Nominee Company*. The Company first holds the Contract, then eventually owns the Property; the investors possess the Company. When it comes time to sell, it is the Company that is sold (with the property safely inside). The advantages are multiple:

- ✓ As long as a single shareholder does not have absolute control of the Company (exceeding a 75% concentration of ownership), there is **no** “*IMT*” (Municipal Transfer Tax) on the sale of the shares. For example, if two partners or a couple, each co-owner of half of the shares, sell the Company with the Property inside, the buyers suffer no “*IMT*” on the transaction.
- ✓ Under Portuguese Law, there is a flat CGT rate of 14% on the sale of Company shares. This tax is flat rated and is assessed independently from other income, so it will not “*top slice*”, unwittingly forcing the taxpayer into a higher tax bracket.
- ✓ If transacted though **euroFINESCO**, buying a property via a *Portuguese Nominee Company* should cost no more than the direct purchase of the property. Because of our volume in the marketplace, we can pass on wholesale pricing and perform both Company formation and property transaction on a *two-for-one* cost basis.

- ✓ Buyers also enjoy reduced closing costs, avoiding the 0.8% Stamp Duty on property transfers. For example, in a recent *Nominee Company* sale openly reported at €1,700,000, the total tax bill came to only €25 for incidental expenses on the deed, saving the buyer Stamp Duty and “*IMT*” that normally would have cost €136,000.
- ✓ The operating costs are modest of *Portuguese Nominee Companies*: just €600 p.a. This annual fee includes meeting all basic compliance requirements and offers a support structure for non-Portuguese speaking investors to guide them through the maze of perplexing bureaucracy in Portugal.
- ✓ Last but not least, this is a fully compliant solution that has no “grey” areas. The *Nominee Company* structure has been in Portuguese legislation since the nineteenth century and has survived countless reforms over the past 150 years. While no one has a crystal ball to look into the future, this basic structure under Portuguese Law has undoubtably stood the test of time.

3.3 FRACTIONAL OWNERSHIP

Fractional ownership is title to real property or a share in a company owning the property, making it possible to own a holiday residence without worrying about maintenance, taxes, or property management. You pay for the period you use or rent out to cover costs with the expenses shared between the owners of each residence.

Table n° 3:

FRACTIONAL OWNERSHIP of HORIZONTAL PROPERTY
Portuguese Nominee Companies: OFF-PLAN

Step 1: **Nominee Company formation**

Number of shares: up to five
Share price: VPT / 5
Shareholding: Developer
Chargeable events:
IMT: no
Stamp Duty: € 25
CGT: no

Step 2: **Promissory Contract for future Horizontal Property**

Promised buyer: Nominee Company
Contract price: VPT
Shareholding: no change
Chargeable events:
IMT: no
Stamp Duty: € 25
CGT: no

Step 3: **Shares Sold to Buyers**

Number of Shares: up to five per company
Share price: Market Price / 5
Shareholding: developer → first buyers
Chargeable events:
IMT: no
Stamp Duty: € 25
CGT: 14%

Step 4: **Share(s) may be re-sold** (optional)

Number of Shares: 1 - 5
Share price: VPT / 5 + X
Shareholding: shareholder → new buyer
Chargeable events:
IMT: no
Stamp Duty: € 25
CGT: 14%
(may only be taxable in country of residence)

Step 5: **Property Completed → Property Transferred**

Transfer price: VPT
Property Owner: Nominee Company
Shareholding: no change
Chargeable events:
IMT: yes
Stamp Duty 0.8% of deed value
CGT: no

Step 6: **Share(s) sold with completed Horizontal Property**

Transfer Price: Market Price
Property Owner: Nominee Company
Shareholding: shareholder → new buyer
Chargeable Events:
IMT: no
Stamp Duty: € 25
CGT: 14%
(may only be taxable in country of residence)

Many fractional ownership purchasers chose a Private Residence Club for the lavish amenities and the limited time they have to spend at their holiday home. The added value is very appealing, especially when compared with timeshare or full ownership. Timeshare, no matter how luxurious, is a usage contract; Full ownership comes with full responsibility, including maintenance—a headache for owners living at a distance.

Fuelling the growth of this active slice of the holiday home market is the fact that fractional ownership requires far less capital investment. And, because it is deeded ownership, you have a real asset, one you can will to heirs, sell, rent, or mortgage.

Nominee Companies and Fractional Ownership

Fractional ownership often starts out *Off-Plan*. In a first stage, the required Nominee Companies are created and each has a promissory contract regarding the eventual transfer of the property into Company ownership. Shareholdings can range from 2 to 5 owners and the company statutes define respective usage rights and obligations to be shared.

From this point on, the Company shares can be bought and sold. When the property is built and registered, it is transferred into the respective Company at basic fiscal value (“*VPT*”), triggering the sole “*IMT*” levy. CGT assessment only occurs when the shares are actually sold at market value and is only a flat 14% , rather than the normal 28% for a Commercial Company or a Non-Resident individual. Future CGT assessments will be based on the net share price differential, also at a fixed 14% rate.

3.4 BUY-TO-LET

Buying a property to let can serve as a stand alone investment option or work in conjunction with long-term personal goals for eventual retirement. Since this practice has the potential to include many problems as part of the package, it is definitely not for everyone. But when well managed, there are promising rewards.

Capital Growth

Over the long term, property is almost always an appreciating asset. Unless you buy at an overly inflated price, let the place fall into disrepair, or some kind of disaster besets the structure of the place, then you should eventually end up with a property worth considerably more than you paid for it. With foreseeable demographic pressures in Portugal over the coming years, demand for housing is set to boom.

It is for this reason that many people invest in property purely for long term profit, hoping to make money on the rising value of housing. It can be a very successful vehicle if you know what you are doing, choose the right areas and properties and perhaps have a bit of good luck.

Retirement Planning

Property is an increasingly popular choice among people planning for retirement. This has, in part, been driven by falling annuity rates and pensions may not provide the returns previously expected. Shrewd property acquisitions can remove much of the dependence on a pension. If approached correctly, a buy to let investment can be self-financing over the life of the loan repayments. Once the mortgage has been repaid, the property can provide a useful and sometimes sizeable income.

With a personal pension, you cannot access your cash until you retire. When you do, you are then forced to buy an annuity, which are subject to variations in their rate, meaning that you cannot guarantee how much you will end up receiving. With property, you can access the cash at any time you wish, by selling up. As well as having an investment that could provide you with a regular long term income, you end up with a sizeable asset that you can pass to your children or other relatives.

Nominee Company Benefits to the Buy-to-Let Investor

Ease on Entry

Cost of buying a property along with Company formation can be done on a 2-for-1 cost basis, so using a *Portuguese Nominee Company* to hold your property can be done at no extra cost.

No punitive taxation

Unlike Offshore Companies, there is no punitive taxation. These non-trading companies have existed in Portuguese Civil Law for over a century and a half and have survived countless legislative reforms intact.

Low Operating Costs

Annual administration charges can substitute normal Fiscal Representation fees that non-residents need to bear as individuals, therefore representing no real increase in overhead costs.

Reduced CGT Liability

As a resident Portuguese Company, eventual Capital Gains assessment will be a flat rate of 14%, rather than the normal 28% assessment of non-residents. This two fold reduction can eventually save tens of thousands of Euros in CGT assessment.

International Tax Credits

Any taxes paid in Portugal will be eligible for an international tax credit under the terms of the Double Taxation Treaties in force between Portugal and over 40 countries throughout Europe and around the world.

No Property Transfer Tax for Buyers

Under most conditions, sale of Company shares will not attract Property Transfer Tax (“*IMT*”), saving the buyer up to 6% as well as almost another 1% in Stamp Duty on the transaction.

Reduced Tax Rates on Rent

Through an agreement between the Company and Shareholders, rental income can be declared individually, benefitting from a special 15% tax rate (reduced from the normal 25%).

3.5 LIFE TENANCY AND NOMINEE COMPANIES

Usufruto (right of tenancy) is the right to the use and enjoyment of the fruits or profits of another's asset, without fundamentally changing its substance. *Usufruto* is the right to enjoy things that someone else owns, in the same way as an owner, but subject to an obligation to conserve the substance. In order to define usufruct, it is necessary to introduce two other characteristics:

- a) first, usufruct is a temporary right, and in the majority of cases, on a lifetime basis of an individual (a corporate entity is restricted to 30 years);
- b) also usufruct is a real right (*direito real*).

Usufruct grants the right to use the asset and receive the fruits therefrom. Without the right of usufruct, there is the complementary right called bare ownership (*nua propriedade*). When the usufruct is extinguished the bare ownership reverts to absolute ownership (*plena propriedade*). Usufruct comprises two of the rights to property as recognized in Roman law, the right of user (*usus*) and the right of enjoyment (*fructus*), but does not include the right to change or transform the property (*abusus*), this latter right is only available to the absolute owner (*nu-proprietário*).

Usufruct may be created by deed, by testamentary grant or it may be created by law, as with the right of parents over the property of their children while they are minors. Usufruct may be granted over movable (*móveis*) or immovable (*imóveis*) property. Unlike a lessee, the usufructuary takes and accepts the thing as he finds it, but is obliged to return the subject matter as he found it originally or to provide equivalent value. Although, if the property wears out through normal use, as with most goods, the usufructuary is not responsible for such degradation. The grantor or bare-owner (*nu proprietário*), is responsible primarily for major repairs and the usufructuary for maintenance, but not for deterioration due to wear and tear (*vetustez*) or damage caused by “*força mayor*”.

Termination of Tenancy Rights

A usufruct may come to an end:

- a) at the death of the grantee;
- b) a set period of limitation;
- c) by renunciation, merger or subrogation.



4. Property Holding

Problem Solving

4.1 **Problem n° 1: *First-time Home Buyers in Portugal***

Our first problem is one of inexperience: the language, the bureaucracy, the idiosyncrasies. Do you know where to go, how to get things done, who to trust?

Solution: A built-in support structure

*When you buy your home via a Portuguese Nominee Company, you do much more than just lock in multiple tax advantages in a fully compliant structure. With **euroFINESCO**, you have a team of competent professionals on your side, specialised in sorting out the problems that constantly arise in Portugal: navigating a complex and unpredictable bureaucratic system, keeping you updated regarding constantly changing legislation. You have someone who can put the problem, and the solution, to you in plain English; an extended team of capable, knowledgeable professionals who are specialised in meeting your needs. Personalised service is one of our principal goals.*

4.2 **Problem n° 2: *Family Ownership and Tenancy Rights***

Most investors, whether buying property or investing in a portfolio, are family members. They are looking to build their net wealth, enjoy retirement and pass their assets on to the next generation. Many want to buy their home and include their children in the ownership with the intention of leaving their affairs in order and mitigating eventual inheritance tax problems.

However, life sometimes takes unexpected and cruel twists: bitter divorce, crippling illness, untimely death. In the worst case scenario, a retirement home in the children's name can vanish as a consequence of an unanticipated calamity, leaving the parents without a home, or the means to replace it.

Solution: Staying in Control

One simple and inexpensive solution is to use a nominee company with the shareholding in the name of the children. The Company grants a Deed of Life Tenancy (“Usufruto”) to the parents who then have full and exclusive rights to the property for as long as they live. Upon the passing of the last survivor, the tenancy rights automatically revert to the Company which is already owned by the children, thereby solving harmlessly any potential IHT problem outside of Portugal.

4.3 Problem nº 3: Downsizing

Many people look to buy the home of their dreams when they first retire to Portugal. With the passing of the years, the dream house can be a burden with never-ending maintenance, repairs, etc. Often there is substantial equity value accumulated in the property, yet rather than added income comes only extra work. Downsizing starts to look like an attractive alternative.

Solution: Preparing the Transition

When using a Nominee Company to downsize, you can often “kill two birds with one stone”. As mentioned in the Family Ownership Problem above, your Nominee Company can be valuable tool in Estate Planning and prove an effective means of passing your home to your children free of Inheritance Tax.

The benefits don’t stop there. In downsizing, there is usually liberated capital that can be turned into supplementary income. A second Nominee Company, holding the capital investments, can act like a trust, providing a flow of income while creating an important instrument in Estate Planning. (see eBook nº 16 - “Investment Portfolios & Nominee Companies”)

4.4 Problem nº4: Capital Gains Tax Liability

Investors are potentially looking for two types of return: growth and income. Both are readily available from property investments. However, if one fails to anticipate the fiscal consequences, needless tax will be paid. Only residents selling their principal residence are eligible for roll-over relief. Profits from the sale of second homes will be taxed at marginal rates (up to 42%) after a 50% exclusion. That is a net rate of up to 21%. Non-residents face a flat 25% tax.

Solution: Compliant Mitigation

When you sell the shares of a Nominee Company, there is a flat tax of 14%. This also means that the 14% rate is independent from other sources of income so does not “top slice” to push you into a higher tax bracket. Since the property does not change hands, just the shareholding, other taxes are not triggered: Municipal Property Tax (up to 6%) and Stamp Duty on the Deed (0.8%).

Let’s examine a sample comparison to see the degree of difference:

table n° 4

	<i>Direct Ownership: Non-Resident</i>	<i>2nd Home: Resident</i>	<i>Nominee Company</i>
Original Net Cost	250000	250000	250000
Net Sales Price	550 000	550 000	550 000
Net Taxable Gain	300 000	300 000	300 000
Capital Gains Tax (<i>paid by seller</i>)	75 000	63 000	30 000
Transfer Tax (<i>paid by buyer</i>)	33 000	33 000	-
Stamp Duty (<i>paid by buyer</i>)	4 400	4 400	-
<i>total taxes paid on transaction</i>	112 400	100 400	30 000

The €700 per annum overhead cost should prove to be a minor expense given the tens of thousands of Euros in eventual savings.

4.5 Problem n° 5: Restorations and Capital Improvements period runs out

When calculating Capital Gains Tax, only work done in the five years prior to sale may be eligible to be considered as deductible expenses. In other words, after this period, these improvements “expire”. If you are buying an older property that requires considerable renovations and a quick sale is not part of your plan, this rule can prove to be very expensive.

Solution: Injections of Capital never expire

Unlike direct ownership where one has to demonstrate through formal receipts how money was spent to improve the property, Nominee Company ownership proves to be far simpler. Shareholders' loans into the Company never expire on the Balance Sheet until repaid, so they will be fully deductible for CGT purposes when the Company is eventually sold.

4.6 Problem n° 6: Offshore Property Companies (black-listed)

Before the introduction of the new Portuguese Property Tax Reform, putting a property Offshore was considered the sensible thing to do. However, annual property tax for black-listed companies is now set at 5% of registered value, some 6 to 12 times the rate on domestically held properties. Equally important, rateable values, traditionally understated, are being updated in a two step process. This means that the annual Rates assessment (“*IMP*”) for a €500,000 property will be €25,000 per annum! To compound the problem, the Company is also assessed on “deemed” income, based on 15% of the property’s rateable value. That’s an additional €18,750 in tax to pay.

Solution: Redomiciliation to Portugal

*Moving the Company’s headquarters and effective management from the Offshore jurisdiction to Portugal (called **Redomiciliation**) can solve many of the inherent problems facing company owners.*

a) No Taxation on Redomiciliation

There is no Capital Gains Tax or Property Transfer Tax upon re-domiciliation. This is because it is the Company Headquarters that moves, not the property, thereby avoiding any transfer of the Company's assets.

b) No Punitive Taxation

As a compliant resident in Portugal, your company falls into the mainstream where only normal assessments exist. The same €500,000 property, rather than paying almost €40,000 in taxes, will be assessed at only ±€2,000.

c) Basis for CGT uplifted

*Following Company registration in Portugal, a Balance of Accounts needs to be recorded 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 the current value of the property. The "Liabilities" show the Shareholders' loans into the Company - but not the invoicing of how the money was spent - as well as the mortgage (if one exists). As such, there is a fresh start and many historical problems can be rendered irrelevant.*

4.7 Problem n° 7: Offshore Property Companies (white-listed)

Following legislative changes in 2003, many Offshore Company owners redomiciled their companies to Delaware (or Malta), the so-called "*White List*". However, rather than solving the problem, they often only made matters worse, especially in the case of Non-Residents.

As a resident "*legal person*", the Delaware Company falls under the USA - Portugal Bilateral Tax Treaty which defines the sale of the shares as a gain from "*immovable Property*" situated in Portugal, creating a CGT assessment in Portugal. However, in the case of a British or Irish tax resident, for example, the respective treaties defines the gain from the sale of shares as merely "*Moveable Property*", triggering a new CGT

assessment in the home jurisdiction based on worldwide income. Because of the triangulation, the bilateral agreements have no means to eliminate this double taxation.

As the *coup de grâce*, under Portuguese legislation, new measures beefing up anti-avoidance practices were brought into place with *decree-law 39-A/2005 of 29 July* which states explicitly that any capital gains tax exemption is lost on the sale of shares when more than 50% of the company's assets is comprised real estate holdings in Portugal. The taxpayer is faced with being taxed twice: once, as a transfer of immovable property in Portugal, and then as a gain from the sale of movable property (US shares) in a worldwide assessment of income in UK or Ireland.

Solution: Redomiciliation to Portugal

Identical to its cousin, the Black-Listed Company, a move to Portugal can give white-listed companies a new lease on life: reduced taxation, low overhead, a compliant solution.

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, prospective buyers are now aware that when they buy a foreign company, they acquire not only the assets but also all of the accumulated liabilities. Most property buyers just want a new home, not to be taking on someone else's problem.



5. Capital Gains Tax *Redomiciliation to Portugal*

CGT: *Company* versus *Property* transfers

Confusion easily arises if the value of a *Company* is mixed up with the value of its *Property*. It is the *Company* that makes its accounts current. There is no effective carryover if the *Property*, rather than the *Company*, is sold. Capital Gains on Real Estate is always calculated on the net difference between purchase and sale of a property. Any eventual sale of the *Property* by the *Company* would trigger a CGT assessment to the *Company*, the owner of the *Property*. On the other hand, a sale of the *Company* would normally spark Capital Gains Tax to the shareholders on the difference between recorded values when registering in Portugal and the eventual sale of the *Company*. Needless to say, each event is distinct in nature and subject to entirely different fiscal rules.

Capital Gains and Losses

If the *Company* sells its property at a profit, this gain is recorded in the accounts of the *Company*. Were the *Company* to have losses to report, assessment would be calculated on the net difference. Sometimes it is possible to “acquire” paper losses that can partially or fully offset the gain. If this is the case, the net is reported on the annual “*IRC*” tax declaration. Needless to say, if this path should offer an attractive solution to you situation, you should work with specialists who have direct experience in this field.

***Finanças*’ Position**

We, at **euroFINESCO**, have always acted with full knowledge and cooperation from the Portuguese tax authorities regarding *Company* Redomiciliation. In fact, it was *Finanças* that recommended and

encouraged us to pursue the strategy of bringing offshore companies to Portugal, rather than moving them to other jurisdictions. They have actively helped us to overcome obstacles that we have encountered over the past three years, working with us to bring these entities to a fully compliant, resident status here in Portugal.



6. Buying & Selling a Nominee Company

fresh opportunities

When you buy . . .

Buying a Nominee Company can save time and money as well as avoid many of the complications and bureaucracy often associated with conventional property acquisition.

Save Time

Acquiring the shares of a Company is quick process. It can be done at the Notary or in your lawyer's office and can usually be accomplished in a few minutes, rather than week or months.

Simplicity

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

Tax Efficiency

With no Stamp Duty or other taxes to pay, the transfer of shares avoids triggering "*IMT*" (Property Transfer Tax) and the 0.8% Stamp Duty on Deeds of Property Transfer, often proportioning tax savings of tens of thousands of Euros.

Reduced Costs

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

When you sell . . .

Selling a Nominee Company offers the best of options to both Sellers and Buyers:

At the notary, the Company's shares are transferred to the Buyers for the full market value of the Property held by the Company.

The Sellers are liable for Capital Gains Tax on the sale of the shares at a flat assessment of 14% rather than face potential assessments that could be as much as 45% were the Property to be sold directly by the Company to the Buyers;

The Buyers elect one of two options:

Keeping the Company

If Buyers wishes to lock in the advantages of the Nominee Company under their control, the transfer of ownership is now complete and as the new Shareholders, they now take full possession. There is no further taxation: no “*IMT*” (Property Transfer Tax), no Stamp Duty. Subsequent registrations can now take place;

Closing the Company

If, for whatever reason, the Buyers wish to assume direct ownership of the Company's assets, the Company is dissolved and the Property is transferred to the Buyers' names. “*IMT*” (Property Transfer Tax) as well as Stamp Duty are due to be paid by the Buyers, followed by appropriate registrations, just as would be the case in any conventional property acquisition.

The Nominee Company will subsequently need a “loss” to offset the gain created by this sale. This can be done by acquiring the shares of another Company in similar circumstances that is also divesting itself of its asset.

In either case, the preferred option is prepared in advance and the complete set of transactions occurs simultaneously in a matter of minutes at the Notary.



7. Domiciliary Services

on-going support from euroFINESCO

At **euroFINESCO**, we recognize that each owner of a Portuguese Nominee Company has individualized requirements; no two situations are identical. As Company Administrators, we are qualified & prepared to meet compulsory company compliance commitments. Our services also include:

- Resourcing accurate and current information in Portugal to Shareholders regarding Company obligations as well as relevant legislation;
- Clarification of pertinent procedures and interpretations by *Finanças*;
- Communications liaison between *Finanças* and the Company;
- Reporting to Shareholders concerning Company status in Portugal;
- Acting as Company Administration.

Professional Services

Using qualified professionals at **euroFINESCO** as your Company Administrators, you can count on the following quality services:

- 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 Company Administrator is an absolute prerequisite.
- 2) **Statutory Fiscal Requirements for Property Owners**
Meeting tax obligations is a matter of Law. At **euroFINESCO**, we will make sure that you are fully compliant while helping you to pay the legal minimum. We stand behind our work and will defend you at no extra cost in case of an audit.

- 3) **Resourcing Information to Owners:** Portugal is often a difficult country for obtaining accurate, reliable information. At *euroFINESCO*, we “wrote the book”. We have publications on a host of different topics relating to Portuguese Taxation. 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 you need to take to stay compliant.

- 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 and national *Finanças* offices to help sort out any problems that may arise.
- 5) **Personalised Service:** As a diversified *Expatriate Service Company*, we have a dedicated Nominee Company Administration Department, staffed by competent, knowledgeable professionals who are specialised in meeting your needs. Personalised service is one of our principal goals.
- 6) **Payment Facility:** Included in your annual fee is a 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 payments.
- 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 language 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 taking maximum advantage of the opportunities that Portugal presents.



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 previously experienced in their country of origin. Note of the following examples:

Pensions

- Each pensioner will be 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 €60,000 should have little or no tax to pay.

Non-Habitual Resident

- Only the Portuguese-source portion of a non-habitual resident's employment income will be subject to Portuguese Income Tax. Additionally, this income will be 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 5% 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 European Union.

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.

These and other benefits are entitlements under 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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eBooks from euroFINESCO

- 1) Offshore Companies: *Moving Onshore*
- 2) Freelancers 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 to hold 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
 - 27) Recognition of Qualifications
 - 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