



## PT Nominee Company Transformation

Property purchased a decade or two ago is often liable to a substantial Capital Gains Tax at today's market prices. There are numerous reasons for this trend. First and foremost is the obvious fact that property prices have risen far ahead of inflation over the years. In addition, since capital improvements can only be deducted in the 12 years prior to sale, many renovations and refurbishments have, in effect, "expired" and no longer count in the calculation of CGT.

A second element comes in changes in reporting practices. Twenty years ago, it was common to underestimate selling prices to reduce the impact of the then existing property transfer tax, "SISA", which was levied at the rate of 10%. Another factor was the failure of professionals in the building trades to issue correct invoices; often no VAT was paid nor income reported on annual tax declarations. While these components typically reflected pervasive forms of tax evasion that were widespread yet often tolerated, tougher enforcement today has substantially reduced these once common abuses.

Whatever the reason, the reality today is much the same: if you purchased your property years ago, you are likely to be in line for a considerable Capital Gains assessment. If you are lucky enough to have a modest rateable evaluation ("VPT") on your property, *Transformation* of a Portuguese Nominee Company may prove to be a viable solution.

### **Example**

*Suzanne and Chris bought a ruin in the hills of the Algarve in 1989 for 10,000,000 escudos (today's equivalent of ±€50,000). In those days, few builders readily produced proper invoices. The couple was focussed on the refurbishment project, not on preparing for the eventual sale. In short, there was no documentation to support the construction expenses.*

*Last year, they put the property on the market for €350,000 and were fortunate to have an offer. They quickly realised that would be faced with a CGT of over €50,000. The purchasers were also coming to grips with*



*considerable taxation on their acquisition: over €20,000 in Property Transfer Tax (“IMT”) property and Stamp Duty on the deed.*

*Buyers and Sellers quickly agreed to use a Portuguese Nominee Company to their mutual benefit. First, a simple form company with no share value was created to buy the property at “VPT”, thereby keeping taxation to a minimum.*

*Next, the Company was transformed into its final structure with a share value of €350,000, based on a formal appraisal of its newly acquired asset. These shares were then sold to the buyers for the same price of €350,000. With no transfer of property – only Company shares changing hands – the final transaction suffered no taxation.*

How is this possible? The Portuguese Tax Code defines a Capital Gain as the *transfer* of ownership or the respective rights. On the other hand, the share value uplift occurs in the *transformation* of one form of company into another. As a rule, a *transformation* does not constitute a chargeable event while a *transfer* typically triggers one or more forms of assessment.

In this case, there are 2 transfers and 1 transformation: first, the property is acquired by the Company, then subsequently the shares of the Company are sold to the Buyers, both without change in respective nominal values. The *transformation* comes in between, altering the form of the company and its share capital without changing its legal personality (“*personalidade jurídica*”).

## **Closing the Company**

If the Buyers should eventually want to take the property out of corporate ownership, they should avoid a property sale by the Company that would generate CGT and taxable dividends. Via Company liquidation, the property can be transferred at market value to the shareholders.

When the share value is equal to the property’s market price, there is no Capital Gain. Keep in mind that, like any property transfer, “IMT” and Stamp Duty will still be due. The closing assessment on the corporate gain triggered by the liquidation can also be significantly reduced or sometimes eliminated when full accounting is made of shareholders’ loans.