REDOMICILIATION:

Why move a Delaware Company to Portugal

Offshore has become a "four-letter word" throughout the EU in recent years. Properties held in Delaware Companies, for example, once a popular solution within the expatriate community in Portugal, will soon become a scourge in 2018.

Capital Gains from the sale of a Delaware Company where at least 50% of its share value comes from Portuguese real estate are now taxed as the transfer of rights to the immoveable property rather than as the mere conveyanceof shares.

When a company redomiciles to Portugal, there is no asset transfer: no crystallisation of Capital Gains, no "*I.M.T.*", no Stamp Duty on Real Property. Only the headquarters and effective management move. The assets remain safely within the Company. Thus the alternative term for Redomiciliation: *Continuance*. "Continuance" opens an attractive opportunity for tax mitigation.

Updated Basis for Capital Gains Tax

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 their book value or the present market value of the property. Any Shareholders' loans into the Company show as "Liabilities" as well as any mortgages (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.

The move to Portugal constitutes a *transformation,* not a *transfer* of ownership. The latter is always at the core of any chargeable event. However, if a Company moves across the street or resettles to another jurisdiction, it is not deemed to be a transfer because of the nature of *continuance*; despite a new establishment in a new jurisdiction, the company continues as the same entity as before.

Reduced CGT

Most Delaware companies have only symbolic share capital (often only US$1) and sometimes had an understated deed purchase price when the property was originally acquired. In both cases, while the original buyers might have achieved some savings, the current owners can suffer exaggerated CGT assessments. Redomiciliation can help mitigate both these problems.

From the new base as a resident corporate body in Portugal, Capital Gains Tax on the eventual sale of the Company is reduced to 14%, as compared to 28% that may normally be assessed to other Portuguese companies. The combination of these factors alters what is normally a colossal problem into a very manageable inconvenience.

Capital Gains tax mitigation can take one of two forms. With the uplift in share value upon registration of the new Portuguese entity, the shares can be sold at full value with little or no gain. Alternatively, the company can be wound up (liquidation) and the assets distributed to the shareholders. As in the previous instance, with similar values, there is little or no tax to pay by the shareholders. Also, shareholders' loans can partially or totally offset corporate CGT.

Potential Transfer Tax Exemption

If the Company assets include Portuguese immoveable property, the sale of the shares may be exempt from "*IMT*" depending on the circumstances of the eventual buyer of the Company. Under Portuguese law, when one exceeds a concentration of more than 75% of shares to any one of the shareholders, Property Transfer Tax (*"IMT"*) is due as the underlying assets. If eligible, the buyers may potentially save many thousands of Euros, thus making such an acquisition more desirable than purchasing in one's own name.

Simplified 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 laborious 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 can be both slow and expensive.

The transfer of share ownership is normally a straightforward notarial process. While there is some paperwork involved in amending records to reflect the changes of Company domicile or holdings, the process is normally simple and transparent and does not spark reevaluations of the underlying property nor latent licensing problems inherent with many older properties.

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