



## ***Buying a Property in a Delaware Company***

Putting a property Offshore was once considered the sensible thing to do. However, annual property tax for black-listed companies is now set at 7.5% of registered value (“VPT”), some 20 times the Rates on domestically held property. Also important is the fact that rateable values, traditionally understated, have also been updated. As a buyer, what should you look out for when the house of your dreams is in a Delaware Company, once “white-listed”, now turning black?

### ***Don't buy the Problem***

Keep in mind Rule n° 1: *When you buy a company, you acquire both the assets and the liabilities.* The first problem, of course, is the Delaware 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 soon to be considered to be in a black-listed 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, along with the seller, will achieve surprising tax advantages.

### ***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 n° 2: *the Company's 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.

### ***Check out Compliance Requirements***

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

### ***“the Triangulation Trap”***

Those with property companies in Delaware are faced with a dilemma: while they were able to escape the immediate consequences of punitive taxation on black-listed companies, they still failed to resolve a fundamental taxation problem: *the Triangulation Trap*.

No government likes to lose control over a piece of sovereign territory, especially when it means giving up most taxation rights. Portugal is no exception. This is why the OECD introduced measures in the current version of the Model Double Tax Treaty to enable countries to assess Capital Gains on effective property transfers wrapped in a foreign Company.

In a nutshell, the owner/taxpayer may be faced with being taxed twice: once, in the Company, from the *de facto* transfer of rights to the Portuguese property, and also as an Individual, on the gain from the sale of US shares within a worldwide assessment of income in the home jurisdiction.

Under Portuguese law, as elsewhere throughout the European Union, it is your obligation to declare all of your taxable income. It is *Finanças'* job to evaluate and assess income or implement coercive



measures if you do not fulfill your reporting requirements. If left undeclared, a liability could remain in the Company as an eventual charge against future shareholders.

### ***Buy 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 black-listed non-resident jurisdiction. If the shareholders transfer the headquarters to Portugal, the Company achieves a “New Beginning”:

- 1) Capital Gains Tax issues can be reduced to a minimum;
- 2) Buyers may be 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.

### ***Get a Bargain***

Finally, rule n° 3: *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.