



New Legislation impacts Offshore Property Companies

The walls continue to close in on Offshore property holding companies in Portugal. Once a popular solution for home ownership, these structures are based in low-tax jurisdictions that allow shareholders to take advantage of certain “loopholes” to avoid paying Capital Gains tax when selling. Over the past 15 years, successive changes in legislation in Portugal have gradually tarnished the glow of these elusive structures. At first, black-listed jurisdictions began to be taxed a moderate 2% punitive assessment on their immovable assets. By this year, these punishing levies have reached 15% per annum, costing owners tens of thousands of Euros annually.

NEW LEGISLATION

Two recent changes in legislation have brought additional pain to popular “white-listed” jurisdictions such as Delaware and Malta. Transparency measures now allow authorities to look through companies directly to identify the underlying beneficial owners.

In a parallel “look thru” move, the sale of a non-resident company’s shares can now be assessed as a transfer of the rights to the underlying Portuguese property.

Beneficial Ownership Central Register

Portugal has implemented the EU directive, approving the Legal Regime of the Beneficial Ownership Central Register (BOCR). These new regulations require reporting a structure’s beneficial owners. The statutes are far-reaching and include companies holding Portuguese property in jurisdictions such as Malta and Delaware. This EU-wide directive further enhances the Common Reporting Standards introduced last year and is part of the new era of information sharing.



Capital Gains from Immoveable Property

The most recent attack comes in the 2018 Portuguese State Budget which introduces an enhanced definition of Capital Gains on Immoveable Property. When shareholders' sell their shares in a non-resident company which derives more than 50% of its value from real estate located in Portugal, *Finanças* now has been given the right to tax the transfer as an immoveable property conveyance rather than the mere sale of shares. In other words, the Tax Authorities “look thru” the corporate entity to assess individual shareholders directly on the sale of the property, regardless of whether they are resident or not. Both Malta and the US already have similar “anti-abuse” language in their bilateral tax treaties with Portugal.

EXAGGERATED CGT

Historically, many offshore jurisdictions levy Stamp Duty on the registered share value of Limited Liability Companies, typically at the rate of 1%. To avoid this potential extra cost, LLC's have often assigned only a symbolic share value. For example, it is not uncommon for Delaware Companies to be nominally worth just US\$1 or less. Under the new rules, rather than CGT being assessable in another jurisdiction, assessment takes place in Portugal, based on nearly 100% of the sales price.

EU BLACK LIST

White-listed jurisdictions recently were granted a temporary reprieve from being placed on the EU's new blacklist. The revelations in the Paradise and Panama Papers about international tax schemes, exposing some of the intricate methods that the world's wealthy use to avoid tax through offshore havens, raised hopes that Brussels would begin to rein in on abusive practices. For the time being, it is apparent that the EU could only muster the courage to target countries with little economic or political weight.

Nevertheless, the *handwriting is on the wall*. Efforts to constrain or eliminate dubious practices in offshore havens will only multiply in the future. The longer beneficial owners wait to achieve compliance, the more complicated and expensive solutions will become.



THE ALTERNATIVE: *Portuguese Nominee Companies*

Most of the problems associated with Offshore Companies, whether white or black-listed, can be readily resolved at relatively modest expense by transforming the structure into a Portuguese Nominee Company. This procedure, known as “Redomiciliation”, creates a fully compliant structure offering the beleaguered Company Owner a host of advantages:

- A fully compliant solution
- Tax-free uplift in share value
- Avoiding punitive “IMI” rates
- Possible IMT exemption
- Ease of transfer
- Tax-efficient Redomiciliation
- Reduced closing costs
- Capital improvements never expire
- Support unravelling bureaucracy
- Modest on-going domiciliary fees

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