



REDOMICILIATION

White-Listed Company Ownership

One of the initial doubts when foreigners contemplate buying Portuguese Property is whether to buy directly in one's own name or hold the property via a Company. If you are purchasing your principal residence, direct ownership is often the best choice. However, if it is a second home or an investment property, Company Ownership offers appealing tax advantages.

For many years, buyers used *Offshore Property Companies* to achieve a tax savings, although many of the practices were "grey" in nature. Due to tax evasion problems, Portuguese legislation was changed in late 2003 and Offshore Companies now suffer an array of punitive measures that now make them unsuitable. Today, buyers may choose between *Non-Resident Companies* registered in another jurisdiction not on Portugal's "black-list" or *Resident Companies*, domiciled in Portugal.

Loss of Control

No government likes to lose control over a piece of sovereign territory, especially when it means giving up tax revenue rights. Those who remember Portugal in the "Good Old Days" will recall that a foreigner could only own one property and had to import the capital to purchase a home through a licence from the Bank of Portugal. Offshore Property Company ownership was one way around such restrictions. After joining the European Union in the mid-1980's, these restrictions melted away but Offshore Companies grew, not so much to avoid local bureaucracy but more to avoid 10% transfer tax levies (*Sisa*) as well as assessment on eventual profits. While Capital Gains Tax was theoretically due in Portugal at the point of sale, the unchallenged Confidentiality and lack of specific taxation in these Tax Havens were sufficient to hide most transactions. Shares routinely changed hands without reporting, thus evading chargeable events.



The current criteria for Sanctions, based on the principles of *unfair tax competition*, are clearly defined in Art. 60° of the CIRC, In general, such measures may take the form of blacklisting as occurred in 1994 and 2002 or specific action directed towards individual companies.

Still Non-Resident

While a temporary positive change in status may be achieved via “white-list” migration, the Company retains its non-resident status. This means an eventual Capital Gains Tax rate of 25%, two and a half fold what comparable Portuguese companies are required to pay. Even more important, tax assessment remains on an historical basis and there is no opportunity to update the basis for CGT assessment as exists when moving to Portugal. With open channels of information sharing between tax authorities, specific clauses in these accords confer CGT taxation rights to Portugal on the sale of such non-resident companies.

Market Perception

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

Anti-Avoidance Legislation

Portuguese anti-avoidance legislation has been approved that makes mandatory divulging any “abusive” tax planning schemes by promoters and/or beneficiaries. the legislation makes compulsory warning of tax authorities of strategies on the edge of the law, designed to avoid paying tax. Individual clients need not necessarily be identified but rather the plans are entered in a data base to help prevent “abusive” schemes.



Fines for non-compliance can be as high as €100,000 for companies and €50,000 for individuals. This legislation came into force in May of 2008.

It is important to give careful attention to the fact that some of the above mentioned criteria may apply to tax planning schemes in “white listed” jurisdictions as well as black-listed tax havens. Professionals and owners alike may need to rethink their strategy.

A Portuguese Nominee Company

The problems of the Offshore Company, whether white-listed or black-listed, can usually be solved easily and relatively inexpensively through a Portuguese Nominee Company. This fully compliant structure offers the beleaguered Company Owner a host of advantages:

- Potential CGT uplift
- Lower CGT rates
- IMT exemption
- Ease of transfer
- Tax-efficient Redomiciliation
- Reduced Closing Costs
- Simplicity
- Capital Improvements never expire
- Low Domiciliary fees

In addition, local management can provide an important support structure against eventual property related complications navigating Portuguese bureaucracy.

A Fully Compliant Solution

Although infrequently used in recent years, Nominee Companies have existed in Portuguese statute law since the 19th century and have been embraced in subsequent legislative reforms over the past 150 years.



Therefore, they are fully compliant and are not subject to any of the punitive laws that have made Offshore Property Companies a pariah: no deemed income tax, no higher Rates bill.

*For more details on how to use a Portuguese Nominee Companies to solve your Offshore problems, please consult our eBook n° 1:
“OFFSHORE COMPANIES: Moving Onshore”*

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