



Buying a Property in an “Offshore” Company

Before the introduction of the current Portuguese Property Tax legislation, putting a property Offshore was considered the sensible thing to do. However, annual property tax (“IMI”) for blacklisted companies is now set at 7.5% of registered value, some 10 to 15 times the rate on domestically held property. To add insult to injury, *Additonal Property Tax* (“CIMI”) doubles the rates to a total of 15% for companies from tax havens.

As a buyer, what should you look out for when the house of your dreams is in an Offshore Company, whether “black” or “white-listed”?

Don’t buy the Problem

Keep in mind Rule nº 1: *When you buy a company, you acquire both the assets and the liabilities.* The first problem, of course, is the Offshore 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 located in an Offshore 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, and the seller, will achieve surprising tax advantages over individual property ownership.

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 lack of registration. Some former owners engaged the property in commercial activity, yet never declared a penny of the earnings.



Remember rule nº 2: *the Company's outstanding liabilities are the responsibility of the current shareholders.*

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 Rates payments are up-to-date.

“the Triangulation Trap”

Those with property companies in Delaware are faced with a dilemma: while they have managed to escape for the time being the immediate consequences of punitive taxation on blacklisted companies, they have 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 foreign Company.

In a nutshell, the taxpayer may be faced with being taxed twice: once, in the Company, from the *de facto* transfer of rights of 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 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

As always, 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.