White-Listed Company Redomiciliation

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 tax advantages that may be very appealing.

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 country 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. 60º 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 would 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 a company to Portugal. With Double Taxation Treaties opening 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. To compound matters, the Bank of Portugal shares this perception, forbidding Portuguese banks to make loans to Offshore Companies. With no mortgage, only a handful of buyers are in a position to pay outright in cash.

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 purpose of the legislation is to make compulsory warning of tax authorities of strategies on the edge of the law, designed primarily 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.

REDOMICILIATION TO PORTUGAL

No Taxation on Redomiciliation

When an Offshore Company moves to Portugal, there is no Capital Gains Tax nor Property Transfer Tax upon re-domiciliation. The Company Headquarters moves, not the property, avoiding transfer of Company's assets.

A Fully Compliant Solution

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. They are fully compliant and are not subject to any of the punitive laws that have made Offshore Property Companies a pariah.

Selling a Nominee Company

When it comes time to sell a Nominee Company (effectively transferring the property held within), both Sellers and Buyers can enjoy a full range of options:

1) At the notary, the Company's shares are transferred to the Buyers for the full market value of the Property held by the Company. The Sellers are liable for Capital Gains Tax on the sale of the shares at an autonomously assessment of 10% rather than face potential assessments that could be as much as 45% were the Property to be sold directly by the Company to the Buyers;

2) The Buyers elect one of two options:
   a) If Buyers wish to lock in the advantages of the Nominee Company, the transfer of ownership is now complete. As the new Shareholders, they now take full possession. There is no taxation: no "*IMT*" (Property Transfer Tax), no Stamp Duty. Subsequent registrations can now take place;
   b) If the Buyers wish to assume direct ownership of Company's assets, the Company is dissolved and the Property transferred to the Buyers' names. "*IMT*" (Property Transfer Tax) as well as Stamp Duty are due, followed by subsequent registrations, exactly as would be the case in any conventional property transfer.

While presented here for the purpose of clarity as a series of distinct and separate steps, the chosen option should be prepared in advance and the complete set of transactions then occurs simultaneously in a matter of minutes at the Notary with both parties getting what they wanted.

Portuguese Nominee Companies

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

Domiciliary Services

Beyond meeting basic formalities and essential obligations, ***euro*FINESCO** will be by your side to help resolve problems that may arise in navigating your way through Portuguese bureaucracy.

Our Experience and *know-how*

***euro*FINESCO** is a recognised leader in Expatriate Services in Portugal over the past 20 years. Having pioneered the resurgence of *Portuguese Nominee Companies* since 2004, our breadth of experience and expertise can help you find an appropriate solution tailored to your requirements.

 27 March 2018