# International Tax Triangulation when selling a Delaware Company

Bilateral income tax treaties do not always operate effectively to eliminate double assessment in situations where more than two states are involved. These fiscal situations are known as "triangular cases".* In a nutshell, triangulation can lead to, rather than avoid, international double taxation.

We examine here the *legs-of-the-triangle* upon the sale of the shares held by a UK tax resident of a Delaware Company owning a property in Portugal to determine who is the taxable person and where the tax liability lies:

1) First, one must determine what the *chargeable event* is. In this case, it is arises from the sale of the shares of a Delaware Company by a British tax resident. Both by bilateral treaty and domestic legislation, this act comprises a potential gain that is derived from the transfer of property rights of Portuguese real estate held by the Company.

2) Next, one must also determine who is the *chargeable person* and in which jurisdiction(s). Based on the principle of *situs*, the seller is clearly taxable in Portugal on the gain from the sale of the shares that are deemed to be an *immovable* asset under the US – PT Treaty as well as Portuguese domestic fiscal law. In other words, Portugal looks through the company structure and assesses the beneficial owners directly on their holding of a Portuguese property.

3) *Is the seller as a British tax resident also assessable in the UK?* As resident for tax purposes in the UK and therefore taxable on

worldwide income, the gain from the sale of the Delaware Company shares is liable to taxation by HMRC as part of Self-Assessment, being seen as the profit from the sale of a *moveable* asset.

**Conclusion**

In this case, there is a tax triangle between Portugal, the UK and the USA:

- On the PT – US leg, the tax liability is on the transfer of the property rights controlling a Portuguese asset deemed to be *immovable*;
- On the US – UK leg, the tax liability is in the UK where the seller is tax resident and taxable on worldwide income;
- On the PT – UK, the seller is resident for tax purposes in the UK. With no fiscal transparency due to the age of the treaty (50 years old), there is no crystallisation of tax liability on this leg.

In this example, we conclude that double taxation does occur: in Portugal, on the gain from the transfer of property ownership rights of Portuguese real estate; and in the UK, on the profit from the sale of the Company's shares deemed to be a *movable* asset, with the PT – UK bilateral tax treaty unable to eliminate this two-fold assessment.

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05 June 2019