CAPITAL GAINS TAX AND NOMINEE COMPANIES

In an eventual conveyance of a Portuguese Nominee Company and its underlying assets, the transfer of ownership has the potential of being treated in one of three ways:

1) Sale of the property out of the Company and subsequent disbursement of any profits to shareholders;
2) Company conveyance of property rights via the sale of the shares; or
3) Liquidation of the Company and the subsequent distribution of its assets to the shareholders.

Like most choices, there are implications associated with each solution, so having a clear understanding is essential before reaching a decision on how to proceed.

Capital Gains Tax

1) *The Company can sell its asset*

In this instance, CGT is calculated on the net difference between the original cost of the property, adjusted for inflation, and the final sales price, altered for allowable expenses such as necessary costs for the transfer and capital improvements made over the 12 years prior to sale.

In addition, shareholders must pay tax on the distribution of profits (assessed as dividends). Buyers are also taxed Property Transfer Tax ("IMT") and Stamp Duty on the deed of transfer.

As you can see, this method suffers multiple assessments – first, on Company profits, then as distribution of dividends to the shareholders and finally on the Property Transfer itself. For obvious reasons, this is normally the least tax friendly solution.

2) *The Shareholders can convey the Company shares*

With the sale of shares, the Capital Gains are calculated on the net difference between the price basis of the Portuguese Nominee Company's share capital and the final sales price of this stock. This is often the choice of preference for those redomiciling an offshore company into Portugal.

There is potentially no taxation to the Buyer on this form of transaction, saving "IMT" and Stamp Duty, and often little or no CGT to the seller, making this method the most tax efficient.

3) *Company Liquidation and distribution of assets to the shareholders*
This option is a hybrid when the seller wants to circumvent the multiple assessments of a direct sale and the buyers prefer acquiring the property in their own names, bypassing long-term company ownership.
CGT to the Seller is calculated on the difference between the value of Company shares and the market value of the assets which, in case of Redomiciliation, is often one and the same. Upon liquidation of the Company, "IMT" and Stamp Duty are due on the transfer of its property. Buyers should acquire the shares and immediately liquidate the Company to avoid doubling up on "IMT". A side agreement with an escrow account can assure that all parties' interests are protected through the process.

Nominee Companies and Shareholders' Loans

Repayment of outstanding shareholders' loans can mitigate or even eliminate underlying capital gains to the Company. Unlike a trading Commercial Company, a Nominee Company (*"Sociedade Civil*") has no business activity and therefore produces no income. The Company limits its mission to the mere administration of assets held by the Company to the benefit of its shareholders. Normally, the asset held is an immoveable property and its contents, which came into the possession of the Company thanks to shareholders' loans.
Also, expenses related to the property – cost of living adjustment, interest on shareholders' loans, real estate taxes, fixtures and fittings, maintenance, repairs, capital improvements, etc. – were also assumed by the Shareholders on behalf of the Company and came as a result of further shareholders' loans. In the Company accounts, the accumulated debt can be deducted when calculating the taxable gains of the Company's asset.

Cost basis

The cost basis of each of the potential transactions is quite different. With the sale of the property, values are based on the Deeds of Purchase and Sale of the property. Inevitably, these are *historical* values, specially in relation to the acquisition price from the Deed of Purchase.

On the other hand, the share price is calculated on the current market value of the Company's assets. Once the social capital is fixed, future gains to the shareholders will be set by calculating the net difference between the initial value and the final sales price of these shares.

Any Capital Gain to the Company is calculated net of settlement of Shareholders' loans as well as other deductable expenses.

Conclusion

Each method has different consequences. Therefore, Owners should choose carefully, making sure that they comprehend the ramifications of each alternative. Unambiguous understanding, not wishful thinking, must be your guide.

© - *All rights reserved* 05 May 2018