*euro*FINESCO

*e*Book nº 5

Capital Gains Tax on Portuguese Property

by

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Ficha Técnica:

12ª Edição:	The FINESCO Guides: *e*Book nº 5 *Capital Gains Tax on Portuguese Property*
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Distribuição:	*euro*FINESCO*s.a.*
Tiragem:	Internet
Executado:	Abril 2018

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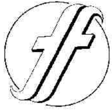

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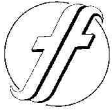

At ***euro*****FINESCO**, we take pride in being a frontrunner in fiscal and expatriate services in Portugal, playing a leading role in interpreting Portuguese fiscal legislation as plain English for the foreign resident community since 1991.

PORTUGUESE TAXATION

- *IRS* - Individual Income Tax Returns
- *IRC* - Income Tax Preparation for Portuguese Nominee Companies as well as Non-Resident Companies
- Fiscal Residency Transitions to Portugal
- Fiscal Representation for Non-Residents

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- Jurisdiction Conflict Resolution
- Compliance Issues

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- Liaison between *Finanças* and Company Owners.
- Resourcing information to Owners;

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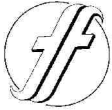
We can provide you with the following comprehensive Estate Planning services:

- *Analysis*
- *Evaluation*
- *Implementation*



Compliant vs Aggressive Tax Planning

If you believe that winning the *Euro Millions Lottery* will be your key to prosperity, you may already have defined your strategic outlook. However, if you really want to have the odds in your favour, *planning* is always your best bet. This is specially true when it comes to Capital Gains Tax. Understanding how CGT assessment works in Portugal is the best way to orchestrate a satisfactory and successful outcome.

Anticipating Tax

In this day and age of ever-increasing scrutiny from tax authorities, it is essential to distinguish between a *legitimate* plan of action and pursuing *dodgy* strategies:

compliant tax planning - a systematic analysis of differing tax options aimed at minimising on-going or long-term tax liabilities; or

aggressive tax planning - tax strategies where there is a reasonable probability that a particular tax stance will not be upheld by an audit and subsequent legal challenge.

Aggressive tax planning is designed to sidestep fiscal obligations and may well be interpreted as tax evasion. Pursuing such strategies can lead to serious complications, particularly in this age of heightened tax enforcement and open channels of communication between fiscal authorities.

Simply put, proper planning means understanding your options and choosing the most appropriate one. It means working within the law to help you pay the legal minimum.

Deadlines & Parameters

When examining the Portuguese tax system, we are constantly confronted by *deadlines,* with rarely an opportunity for an extension. These time limits can be very annoying. Being a foreign national often means that there are intrinsic gaps in time and space and short deadlines can vary from frustrating to impossible.

Nevertheless, it is essential not to ignore these time constrictions. By nature, bureaucrats love to say “no”.An unfulfilled deadline can be a convenient justification for saying the favourite word. This is specially true with Capital Gains Tax reinvestment periods: if outside the limit by even a day, you will unequivocally loose your right to rollover relief or an otherwise legitimate tax deduction.

EU Rollover Relief

Rollover relief on Capital Gains on Real Estate is applicable anywhere throughout the EU. When the proceeds of the sale of one’s principle residence are reinvested within the European Union, no tax will be assessed on the profit. Proof of Residency will be required in order to be eligible for tax relief.

In 2003, the European Commission had sent Portugal a formal request to amend its legislation regarding Capital Gains treatment of home sales. Formerly, gains from home sales attracted tax relief only if the proceeds were reinvested in a Portuguese home. The EU Commission considered that by not allowing tax relief on reinvestment in homes in other Member States, Portugal was in

conflict to European Community Treaty rules, including those on the free movement of citizens. The request came first in the form of a 'reasoned opinion' under Article 226 of the EC Treaty.

The Portuguese Income Tax Act (*CIRS*) contains rules on the taxation of capital gains resulting from the disposal of immovable property intended for use by the taxpayer or his family as their permanent abode. Such gains are exempt from income tax under, amongst others, the condition that the realisation value is reinvested in the acquisition of other immovable property to be used solely for the same purpose and which is located on within the European Union. The application of the latter means that individuals who sell their Portuguese home and buy a home in another Member State as their sole permanent residence can get the same tax relief provided for reinvestment in a Portuguese home.

This affects foreign nationals who have lived temporarily in Portugal as well as Portuguese nationals who move abroad and thus in particular migrant workers, but also any other person wishing to make use of the free movement of persons within the EU. At the same time, it constitutes an obstacle to the free movement of capital. The Commission therefore considered that the former territorial limitation of the tax relief violated EC Treaty rules on the right of residence in other Member States, free movement of workers, freedom of establishment and free movement of capital.

Extension of Rollover Relief Periods

Reinvestment periods have been expanded for Rollover Relief. You have 2 years before or 3 years after to replace your principal residence. When building from scratch, there are extended periods

available for final occupancy. However, invoices must be raised within the above mentioned reinvestment periods in order to be considered.

Tax Declarations

Even if you had no net gain from the sale of your Portuguese property, an "*IRS*" Individual Income Tax Declaration is mandatory when you sell. The fiscal year in Portugal is the calendar year - January to December - and income tax submissions are due in April / May of the following year.

In order to prepare your tax return, you will need copies of the following documents:

a) Deed of Purchase;
b) Deed of Sale;
c) "*Registo Predial*" - Property Registration;
d) "*Caderneta Predial*" - *Finanças* property booklet;
e) Expenses necessary for purchase or sale, such as:
   I) Property Transfer Tax (Sisa or IMT);
   ii) Notary charges;
   iii) Registration fees;
   iv) Estate Agency fees (only when declared in the deed).
f) Valid Invoices from Capital Improvements made in the 12 years prior to sale.

Calculating Capital Gain Tax

Although *Finanças* who does the calculation, we can anticipate the bottom line. Let's suppose that you sold your home last year that you originally purchased in 1994. Calculate the CGT as follows:

Year	Coefficient
1989..	2.49
1990..	2.22
1991..	1.96
1992..	1.81
1993..	1.68
1994..	1.60
1995..	1.54
1996..	1.50
1997..	1.48
1998..	1.43
1999..	1.41
2000..	1.38
2001..	1.29
2002..	1.24
2003..	1.20
2004..	1.18
2005..	1.16
2006..	1.12
2007..	1.10
2008..	1.07
2009..	1.08
2010..	1.07
2011..	1.03
2012..	1.00
2013..	1.00
2014..	1.00
2015..	1.00
2016..	1.00
2017..	1.00

Step 1:
From the sales price, subtract any necessary buying and selling costs.

Step 2:
Multiply the purchase price by the Inflation Adjustment Coefficient: *(see table at left)*

Step 3:
Add to the adjusted purchase price any documented capital improvements within the past 12 years.

Step 4:
The difference between the adjusted purchase and sales prices is your net profit.

Step 5
For resident, one half of the net profit is assessed unless the gain is rolled over into another principal residence. Non-residents have no 50% exclusion. Report the sale on Annex G.

NOTE: *If you own your home through an Offshore company, the full gain is assessable in the year of sale and should be reported on the company's IRC declaration. There is no 50% exemption for companies.*

Resident vs Non-Resident

As with most aspects of taxation in many countries, certain intrinsic benefits exist for residents (who, by the way, are voters) that do not for non-residents (who do not vote locally).Therefore, those that make their principal abode outside of Portugal pay a flat tax of 28% of the full gain from the sale of their property.

Residents receive a 50% exemption before the net gain is added to their other income and taxed at marginal rates. As such, the maximum theoretical tax rate for residents on the full gain works out to be 24%, (half of the top rate of 48%),which is slightly less than what non-residents are charged (28%).For smaller gains and more modest incomes, tax rates come down progressively as opposed to the flat tax treatment for non-residents.

EU Court Challenge

The European Justice Court ruled against the Portuguese legislation allowing a 50% exclusion to residents when selling their second homes while taxing non-residents at 100% on the same type of transaction. According to the Court, this discriminatory practice violates article 56º of the European Community Treaty which prohibits restriction of capital movements between member states within the European Union. As EU citizens, Residents and Non-Residents have the right to comparable tax treatment. You have the right to refund if you are overtaxed.

Rollover Relief - *time periods*

Rollover Relief is a tax break available to those who sell their *principal and permanent residence* and reinvest the proceeds directly into another. In practical terms, your "*principal residence*" is the one that you registered as your "fiscal" address with *Finanças*.

Needless to say, rollover relief does not apply to *non-residents* who, by definition, are tax residents of another country and therefore are presumed to have their *principal residence* in that jurisdiction.

> **Note:** *When you move, it is always important to update your "fiscal" address with Finanças. Not only do you risk losing important tax breaks but you will also miss important correspondence that will continue to be sent to the outdated address unless you inform them otherwise.*

Properties sold have a 5 year "window" to make the reinvestment: up to two years prior to the sale and as much as 3 years after.
If you buy a building plot as your reinvestment, you have 2 years to make the purchase, 6 months to sort out planning permission and another 2 years to complete the build (ie. Habitation Licence to the Council and *Modelo 1* to Finanças).

> **Note:** *Buying "rustic" land (intended for agriculture purposes) does not qualify as a reinvestment until it is registered as an "urban" building plot.*

Partial Reinvestments

If you eventually reinvest less than the full amount, the tax reduction will occur on a *pro rata* basis. For example, if you only reinvest 3/4 of the proceeds, you will only get 3/4 tax relief and will be required to pay 1/4 of the tax due.

> **Note:** *Tax relief is based on reinvestment of proceeds, not profit. How much or how little your gain is irrelevant to the calculation of your pro rata exemption.*

In the event that you do not fulfill your declared intentions, an assessment will be made on the entire non-reinvested balance plus interest.
Finally, Rollover Relief allows reinvestment in a new principal residence anywhere within the European Union. However, formal proof of residency is required for approval to be granted.

Deductable Expenses

There are two types of expenditures that can be reported to reduce your tax CGT liability: necessary expenses for the transfers of the property as well as capital improvements.

a) Necessary buying & selling costs (notary & registry fees, *"Sisa"*/*"IMT"*, etc.) supported by proper documentation.

   Note: *Finanças recently ruled that for Estate Agent commissions to be considered, the Agent must be mentioned in the Deed of Sale.*

   Deduction of legal expenses can also prove to be problematic and are easier to justify for purchase rather than sale. Because buyers support all transfer costs, they typically require legal services at the onset. Not only are there a host of bureaucratic formalities to fulfill, it is essential to complete a *title search* to be certain that there are no hidden surprises or problems in the property's past.

b) Documented capital improvements to the property are deductable only within a 12 year period prior to sale. Stated inversely, your capital improvements expire after 5 years for tax purposes.

   This can be an important consideration if you are performing major interior renovations such as a remodelled kitchen or bathroom. Such improvements do not require a building license and do not trigger a subsequent re-evaluation of the property for tax purposes. When major renovations are in order, a Portuguese Nominee Company (see Chapter 5) is often the preferable option to avoid loss of these valuable allowances.

c) Finally, while the purchase price of the property is adjusted for inflation when making tax calculations (see step two in "*Calculating Capital Gains Tax*", page 9), expenses are not. Although a bit incongruent, that is the way the law is written: no adjustment is allowed for expenses. Despite the fact that inflation erodes the value of buying costs and initial improvements, these costs are fixed and are not allowed to benefit from cost of living adjustments.

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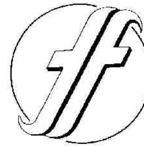

The issues surrounding Short Term Letting continue to generate confusion amongst Owners wanting to rent their properties and Agents wishing to serve the growing need for *self-catering accommodations*.

At ***euro*FINESCO**, we can help you take the right steps:

Comprehension: Facilitating the understanding of the key requirements and how they apply to you.

***Clarity**:* Providing qualified Fiscal Representation Services; Linking you to specialised lawyers to prepare *protective contracts*.

Compliance: Submitting *Local Lodging* Registrations; Preparation of "*IRS*" Tax Declarations.

If you have dealt with property matters in the past in another country, you may assume that you are prepared to do the same here in Portugal. In reviewing some of the basics surrounding property, this conclusion may not necessarily be the best one. Portugal, like any country, has its traditions, peculiar practices and foibles that must be taken into account in order to achieve a successful outcome.

Urban vs Rustic

Real Estate is registered in Portugal in one of two broad categories. Rustic ("*rústico*") designates agricultural land. Urban ("*urbano*") is for residential, commercial or industrial properties. Whenever an owner proposes to change the type of usage of a property, the alteration must first be approved by the "*Câmara*" (Town Council), then annotated at the "*Conservatório Predial*" (land registry) and finally registered with *Finanças* (Revenue) for tax purposes.

With three different organs of government involved, it should be no surprise that we are faced with a cumbersome bureaucratic process. Anyone planning to purchase property with the purpose of building a residential dwelling that is not currently registered for this purpose should be prepared for a lengthy, expensive and somewhat uncertain procedure in respect to the final outcome.

New Build vs Refurbish

If you are building from scratch or reconstructing a ruin, you will need to apply for a building license and submit detailed plans to the local

council ("*Câmara*").As previously detailed in Chapter nº1, you have an extended period for occupancy if you are reinvesting. However, keep in mind that there are still strict deadlines to be met. Invoices need to be raised withing the designated periods (24 months before 2009, 36 months there after) in order to be recognised. At the end of the process, your property will be reappraised to determine the new rateable value ("VPT" or "*Valor Patrimonial Tributável*").This evaluation is based on a set formula and is outlined in Chapter nº6 - *Other Taxes*.

Sometimes a rebuild will lead to the designation of an entirely new property registration number. For example, a ruin may have the old registration number of U-1234 and upon final approval of the rebuild be allocated the new number of U-9876.Since the latter is final and represents the new principal residence, it can be argued that the reinvestment only initiated when the new registration number was assigned, not when the ruin was purchased. Since the old number was struck off, it should no longer be considered as part of the formal reinvestment process. Nevertheless, all reinvestment periods must be rigorously respected in order to be recognised.

Invoiced Expenses

Building expenses must be supported by *valid invoices* made out in the *name and fiscal number of the owner* and with the *address of the property* in question.(Tax Inspectors can be finicky about these points)

Don't be confused by simple receipts or scribbles on the back of an envelope. In Portugal as throughout Europe, proper invoices must show the following information:

1. Date;
2. Number of invoice (sequential);
3. Fiscal number of both company and recipient;
4. Names and full addresses of both company and recipient;
5. Description of goods or services;
6. Quantity of goods or services;
7. Date of delivery of goods or rendering of services;
8. Location of delivery;
9. Amount charges for goods or services without VAT;
10. Rate of VAT applicable;
11. Amount of VAT due;
12. If exempt from VAT, reference to specific legislation justifying exemption;
13. If special VAT rules apply, reference to specific legislation in question;
14. Total amount due.

Getting an invoice issued is often easier said than done. Since the final sale of property is VAT exempt, builders and tradespeople often are unable to recover accrued VAT and have little incentive to "play by the rules".You, on the other hand, do. Without VAT paid through a proper invoice, your expenses will be disallowed and lead to a substantially higher CGT bill at the end of the day.

If the invoice is not in your name (or your Company's) or with a address other than the one being sold, you run the risk of rejection by tax inspectors who may deem that the invoice to be insufficient proof that the expense in related to the property in question.

Renovations & Planning Permission

If you make structural alterations to a house (for example, building an addition or extension), you will need to apply for planning permission, just as you would for a new build. Upon completion

and licensing, form "*Modelo 1*" must be submitted to *Finanças* which triggers the calculation of a new rateable value ("*VPT*" or *Valor Patrimonial Tributável*) as well as a new registration number being assigned (the old number will be struck off).This new number and evaluation serve as the basis for future assessments.

Non-Structural Improvements without Planning Permission

If you perform non-structural remodelling, you need not have a building license. However, you may still inform the local *Cãmara* of your plans via a "*Requerimento*" (Request), depending on the nature of the improvements.

Only properly documented capital improvements are valid as deductable expenses when calculating Capital Gains when incurred in the 12 years prior to sale.

> **Note:** *Keep in mind that maintenance and minor repairs are considered operating expenses, not capital improvements and are not admissible.*

Principal Residence vs Investment Property

The opportunity for rollover relief upon full reinvestment from the sale of one's principal residence is usually the most attractive fiscal position: zero tax to pay. Owning your home in your own name is essential to lock in this benefit so for most people, personal ownership is the best option.

When buying and selling an investment property, a *Portuguese Nominee Company* can be an attractive alternative. With no rollover relief available for this type of transaction, the simplicity of share transfer and lower tax rate on shares typically cuts CGT in half. With no formal property transfer, buyers also eliminate property transfer tax ("IMT") and most of the Stamp Duty due.

Together with the other advantages (see Chapter nº 5), the modest costs of this alternative pale in comparison with overall savings.

Tourist Development vs Condominium

When buying an apartment or villa, it is important to know whether your dwelling is integrated into a Tourist Resort or whether it is part of a Residential Condominium. While the difference may not always meet the eye, certain legal limitations particular to each can have an impact on your flexibility over the long run and influence the final outcome for you.

Tourist Developments in Portugal are *commercial* in nature with the business being "*tourism*".Management of these resorts is exclusively in the hands of the Administration and owners are forbidden to let out their unit independently. In fact, owners are considered "tourists" in their own home and are entitled to all of the amenities - as well as restrictions - applicable to holidaymakers.

Condominiums are *residential* in nature, not commercial. If you decide that you want to change the type of usage of your apartment, such as set up an office or have licensed local lodging lets, other owners might potentially object and legitimately interfere with your operation.

Like any situation, there are always advantages and inconveniences to each. What is key is that you understand clearly what they are, how they will work for you and approach the venture with your eyes open.

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DOCUMENTATION

Ownership & CGT

While the method of taxation may be different, the rules for determining Capital Gains are essentially the same whether ownership is directly in the hands of individuals or via Companies: Capital Gains assessment is based on the net difference between the costs of acquisition and sale, adjusted for allowable expenses.

Property Company Ownership

However, when a property is owned by a Company, there exists a possible second level of transaction. When the owners of a Company transfer their shareholdings, it is a *moveable* property (shares) that changes hands, not the underlying immoveable property (real estate) that is transacted.

For whatever reason at the time if it was to your advantage to use a Company to hold property, it is essential to remember that you will most likely loose any benefit if and when you sell the property out of the Company. This is because you will no longer be selling shares but be following the basic rules mentioned above in Ownership & CGT. In other words, if you switch strategies midstream, you are unlikely to meet your original objectives.

OFFSHORE COMPANIES

Offshore Companies were a popular property holding vehicle starting in the 1970's with several purposes in mind. First, prior to joining the European Union in 1986, Portugal had very restrictive

rules regarding foreign ownership of Portuguese property and Offshore Companies were one way around these limitations. The confidentiality practices of these jurisdictions made them attractive since Portuguese officials often turned a blind eye to non-reporting of tax obligations.

Legislation regulating Offshore Companies has changed 3 times since 2002.After two punishing increases in 2002 and 2004 that saw "*IMT*" Rates for black-listed companies climb to 5% of property evaluations (almost 10-fold normal assessments), a more reasonable charge of 1% was introduced starting in 2008.However the relief proved to be short lived. Currently, IMT is a full 10%. Let us examine this premise to see where, in fact, Offshore Companies stand when compared to onshore options.

Uplifted Evaluations

Historically, Portugal has had substantially understated Rateable Values ("*VPT*") on property. In fact, when the rules changed in 2004, more than one half of properties accounted for less than 1% of the tax collected. At the other end of the spectrum, the top 1% of properties (the newest ones) paid over 30% of real estate levies!

The Property Tax Reform Act of 2004 changed the method of calculation and a new "objective" 5-point formula was introduced based on 1) size, 2) location, 3) type of usage, 4) age, and 5) quality of construction. Any property transfer now triggers a re-evaluation of the rateable value. In the meantime, *Finanças* has already made substantial progress in new appraisals with the balance due for completion in the next few years.

Needless to say, an ever-growing percentage of properties will pay their Rates based on these new uplifted appraisals so that any underlying increase will inevitably magnify the tax owed.

Corporate Tax on “deemed” income

A second punitive component against Offshores was also introduced in 2002 and still remains in force. Black-listed Companies must pay annual corporate tax (“*IRC*”) based on “deemed” income equal to 1/15 of the rateable value of the property. Since Rateable Values (“*VPT*”) purport to be on average at 80-90% of market value, such an “*IRC*” assessment will look something like this:

VPT = €350,000 ÷ 1/15 = €23,333

€ 23,333 X 25% = €5,833

Based on the same assumptions, annual “IMI” Property Rates will cost an additional €3,500 for a total annual assessment of €9,333.Add mandatory Fiscal Representation and IRC declaration costs and annual fiscal compliance costs total almost €10,000.

Onshore options based on the same assumptions would only have annual assessments of less than €2,000.

In summary, even with the reduction of Offshore Rates from 5% to 1%, an Offshore Company pays 5 times the annual taxes as compared to onshore options starting.

Market Perceptions

It should not come as a surprise that *Offshore* has become a four-letter word in recent years. Property buyers are leery of Offshore Companies, whether black-listed or white-listed, under the justifiable perception that they want to avoid buying someone else’s problem. However, if Offshore Companies are moved to Portuguese Nominee Companies, Capital Gains Tax rates drops in half (14% as compared to 28%), potentially saving many thousands of Euros at the time of sale. Buyers also achieve similar savings in Transfer Tax and Stamp Duty, creating a win-win situation.

Conclusion

It is important to go back to our starting point: legislation regarding Offshore Companies has changed 3 times since 2002.By any standard, such volatility constitutes a precarious basis for making any long-term decision. In addition to substantial tax savings and a positive perception at the point of sale, Redomiciliation of your Offshore Company to Portugal embraces a stable, mainstream solution sanctioned by Law. Rather than taking evasive measures, your strategy will be based on a fully compliant answer that allows you to pay the legal minimum.

TRUSTS

For the first time, Portugal has formally recognised *Trusts* in mainstream legislation. *Trusts* are now defined as fiduciary structures and are now assessable for tax. Three forms of taxation may now be levied as defined in the new legislation: a flat 28% tax on income disbursed from a Trust; Capital Gains Tax when winding up a Trust; and Stamp Duty on gifts distributed from a Trust.

"White-list" Company - *Options selling Property held in a Delaware Company*

Many Owners of Offshore Companies - both black and white listed - reach the point where, for any number of reasons, they wish to sell up. Yet most are uncertain of the Capital Gains Tax consequences of such a sale, particularly since there are a number of different ways to structure the transaction. While individual proceedings sometimes present unique circumstances, the following example should prove illustrative of most sales. Respective costs & savings ought to be proportional in most cases.

SITUATION: *Non-Resident Owners selling a Property in an Offshore Company*

1) In 1992, an Offshore Company purchases a Property in Portugal for €200,000.

   Therefore, both the Property and the Company are worth €200,000 at this point.

2) In 1999, a Non-Resident couple buys the shares of the Company for €300,000.

   While the Company now has a share value of €300,000, the book value of the Property remains €200,000.

3) In 2003, the Company moves its headquarters and effective management (*redomiciliation*) from Gibraltar to Delaware.

   No change in respective values is registered.

4) In 2007, the Owners wish to sell the Property/Company for €550,000.This can be realised by one of three ways:

a) the Company sells the Property directly to the Buyers; or

b) the Owners of the Delaware Company sell their shares to the Buyers; or

c) the Delaware Company is first moved to Portugal, then Owners of the Portuguese Nominee Company sell their shares to the Buyers.

What are the CGT consequences of each type of sale?

a) Sale of Property

The Capital Gain on the sale of the Property is the net difference between purchase cost (€200,000) and sales price (€550,000) minus capital improvements in the last 12 years minus deductible buying and selling costs. This net gain is then taxed at the rate of 25%.

Example - the final result might look something like this:

€550,000 (sale) - €330,000 (purchase of €200,000 x 1.65 inflation coefficient) - €15,000 (improvements) - €5,000 (expenses) = €220,000 (net gain) X 28% (non-resident tax rate on property sale) = **€50,000** (CGT)

The buyer will also pay the following acquisition taxes:

€33,000 (IMT) + €4,400 (Stamp Duty) = **€37,400** (acquisition taxes)

Since it is a Delaware Company that is selling the Property, then the taxable Gain will be to the Company. Profit distribution to the shareholders will likely incur yet another assessment, this time to the owners in their home jurisdiction as "dividends".

Bottom Line: Option A
Seller is taxed €50,000
Buyer is taxed €37,400

b) Sale of the Delaware Company

The shares of the Delaware Company are sold to the Buyer. In accordance with the USA-Portugal Tax Treaty (Article 14), this is treated as a sale of Property Rights since the US Company, as a resident entity under the Treaty, consists principally of immovable property located in Portugal. Therefore, the Gain may be taxed in Portugal in an identical fashion as above (a) with a net CGT due of **€50,000.**

Since the Sellers are non-residents in Portugal, they will also be taxable on the worldwide income in their home jurisdiction. In this instance, the transaction will no longer be seen as a property rights transfer but merely as a sale of shares (movable assets). After application of any Capital Gains allowance, a second CGT assessment will be due on this gain. Given the different deemed natures of the perceived

Bottom Line: Option B
Seller is taxed €50,000
Buyer pays no tax

transaction, together with the triangulation of the jurisdictions involved, there is no way to eliminate the inherent double taxation.

c) ***Sale of Portuguese Nominee Company***

When the Portuguese Company is sold, the Gain is calculated as follows:

First, the Delaware Company must move to Portugal. As part of this Redomiciliation, an appraisal is performed of the Property, determining that the Company's sole asset is valued at €530,000.

Therefore, at the time of the move to Portugal, the Company is worth €530,000 and the now Portuguese Company's shares reflect this value.

The Shares are then sold as follows:

€550,000 (sales price of shares) - €530,000 (value of shares upon Redomiciliation to Portugal) = €20,000 X 14% (tax rates on sale of shares) = **€2,800 (CGT)**

The buyers will also pay: **€25** (Stamp Duty on Share Transfer Deed)

As the Sellers are *Non-Resident*, they may also be liable for CGT in their home jurisdiction. In this case, the tax paid in Portugal will normally serve as an *international tax credit,* reducing or eliminating any eventual CGT assessment. Needless to say, while the rate may be different, the basis should be the same.

Bottom Line: Option C
Seller is taxed €2,000
Buyer is taxed €25

CONCLUSION

As you can see, there is considerable difference both for Buyers and Sellers when redomiciling to Portugal. By selling the Portuguese Nominee Company, rather than the Company selling the Property or the shares of the Delaware Company, both sellers and buyers save appreciably. In comparison, the costs of Redomiciliation and the subsequent share transfer should prove only a minor inconvenience.

Whether your property is in an Offshore Company or you are in the market for a new home, a Portuguese Nominee Company may prove to be an effective vehicle for mitigating Capital Gains Tax liabilities. If you do not use your house or apartment in a commercial activity, this type of non-trading structure can provide both stability and benefits that are ideal for many foreign property owners in Portugal.

These simple companies are not subject to the punitive laws that have made Offshore Property Companies a pariah: no deemed income assessment, no penalising "Rates" bill. If you do have a company in Gibraltar, Delaware or elsewhere, it can be re-domiciled without crystallisation of either Transfer Tax or Capital Gains Tax.

A Portuguese Nominee Company may well prove to be the most appropriate vehicle for purchasing property in Portugal. This form of home ownership offers many of the advantages that property buyers once sought in Offshore Property Companies but achieves these objectives in a compliant, mainstream fashion. This type of non-trading company can provide stability and attractive benefits, meeting diverse potential needs.

A Fully Compliant Structure

In fact, although infrequently used in recent years, these small 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 assessment, no 5% Rates bill. In fact, the simplicity of this form of company makes this structure easy and inexpensive to run.

Indivisibility of Real Property

As the name implies, shareholding is a better way to share ownership of an asset. This is because real property is by nature essentially indivisible. Shares in a company are easier to distribute than splitting up immovable property and any eventual transfer of the property can be simplified in terms of time, bureaucracy as well as cost.

The Resident Advantage

Capital Gains Tax on the sale of a Nominee Company is only 14%, as compared to 28% that may be assessed to non-resident companies. Non-resident individuals also pay 28% while residents typically pay close to a net of 20% (50% exclusion with the balance paid at margin rates of up to 42%) if they are ineligible for rollover relief.

(Non-Residents should check tax liabilities as defined in relevant Double Tax Treaties).

Potential Transfer Tax Exemption

The sales of the shares are normally exempt from "*IMT*". Buyers may potentially save tens of thousands of euros, thus making Nominee Company acquisition more desirable than direct property purchase.

Expenses Never Expire
Unlike direct ownership where capital improvements no longer can be offset against Capital Gains after five years, any capital invested into your Nominee Company is always reflected in the Company value. This is important when major remodelling is contemplated, such as new kitchen, bathroom, swimming pool and the like.

Ease of Transfer
When the Company is eventually sold, only a simple deed of sale is required. The property remains securely within the company and there is nothing to trigger bureaucratic problems and extra expense often associated with property transfers.

No Taxation on Redomiciliation
When an Offshore or a non-resident company moves to Portugal, there is no Capital Gains Tax or Property Transfer Tax upon redomiciliation. This is because it is the Company Headquarters that moves, not the property, thereby avoiding any transfer of the Company's assets.

Uplifted Basis for CGT
Following Company registration in Portugal, a Balance of Accounts needs to be recorded to mark the starting point as a Portuguese resident entity. This Balance Sheet should be based on **current** rather than **historical** values so that the Company's assets reflect the market value of the property. The "Liabilities" show the Shareholders' loans into the Company - not the invoicing of how the monies were spent - as well as any outstanding loans or mortgage. As such, there is the potential for a significant uplift in the basis for eventual CGT assessment and many historical problems can be rendered irrelevant. A colossal problem can be transformed into a very manageable inconvenience.

No Benefit-in-Kind Assessment

Within Portugal, Nominee Companies are not subject to the Benefit-in-Kind or Deemed Income assessment as was imposed on Offshore Companies. While there have yet to be specific rulings from Tax Authorities in other EU jurisdictions regarding potential benefit-in-kind assessment for non-residents in Portugal, it is clear that the presumptions surrounding this type of taxation do not apply to Portuguese Nominee Companies and their owners:

- As a non-trading entity, the Nominee Company has the sole purpose of administering its assets to the benefit of the shareholders;
- The Company is required to have administrators with statutory compliance obligations.

Both under Legislation as well as Company Statutes, there is clearly no basis to conclude that the Shareholders could be construed as *"Shadow Directors"*, the underlying premise for any benefit-in-kind assessment.

Restrictions

There are certain restrictions to such structures. Whether these limitations prove to be a negative or not depends upon your situation.

- Shareholding is constrained. These Nominee Companies must have a minimum of two shareholders but no more than five. These shareholders are normally individuals and members of the same family, although collective entities such as companies or trusts may be shareholders in certain circumstances.
- The Company is required to have administrators in order to meet basic corporate compliance obligations. However,

these requirements are not extensive and annual operating costs are modest. Auxiliary overhead is also minimal and this type of company does not pay the minimum corporate income tax (*"P.E.C."*) as would a commercial Limited Liability Company.

Developer vs Individual

In order to avoid undesirable results, planning means anticipating the final results. Let's examine the Exit Strategy, first to the developer, and then to the investor. The value of a tract of land in a desirable location can multiply when partitioned into Building Plots (when developed out) or Horizontal Property (when building up). However, with *Property Subdivision* comes an increment in diverse forms of taxation:

- Capital Gains Tax ("CGT");
- Property Transfer Tax ("*IMT*");
- Stamp Duty.

Without proper planning, profits will shrivel and final costs to consumers can escalate out of reach.

At the onset, putting a property into a Nominee Company should cost no more than ordinary transfers. Therefore, assuming typical legal and procedural fees, locking in the long-term advantages of the Nominee Company structure should not increase

When subdivisions are structured properly, each new individual property can be placed into its own Nominee Company. Gains from subsequent transfers constitute sale of shares, taxed at 14%, rather than sale of property that would attract corporate tax ("*IRC*") of 21%. This represents a substantial increase in after-tax profits at little or no addition cost.

CGT Example:	Purchase Price	Sales Price	Gross Gain	CGT Rate	Capital Gains
as individual:	€350,000	€500,000	€150,000	28%	€ 42,000
as a company:	€350,000	€500,000	€150,000	14%	€ 21,000
(*annual Company running costs:* €600 pa)				***total savings per unit:***	**€ 21,000**

More Attractive to Buyers

The eventual buyers also save up to 6% because the share transfer is exempt from "*IMT*" (Municipal Property Tax) as well as the 0.8% Stamp Duty of property deeds. The investor also continues to save when it comes time to sell.

"IMT" Example:	Purchase Price	Sales Price	Transfer Tax	Stamp Duty	Total Tax
as individual:	€350,000	€500,000	€30,000	€ 4,000	€ 34,000
as a company:	€350,000	€500,000	nil	nil	€ 0
(*annual Company running costs:* €600 pa)				***total savings:***	**€ 34,000**

As a Buyer of property in Portugal, what taxes will you face? It is the entity (*individual* or *company*) that acquires a property which assumes all of the costs related to the purchase: legal fees, notary and registration costs as well as the following forms of taxation. The only expenses payable by the seller are Estate Agent commissions (if any) and fees paid to a lawyer if representation is deemed necessary.

Municipal Property Transfer Tax ("*IMT*")

"*IMT",* formerly called *"Sisa",* is levied when property is bought and sold: the *transfer for consideration* of ownership rights or of partial ownership on real estate (immovable property). The taxable person is the one who acquires the property.

For residential property, there is a progressive scale reaching 6% over £557,500.

Other Urban Property, such as building plots:	6.5%
"Rustic" Property (agricultural land):	5.0%
"Black-listed" Offshore Companies	10.0%

Stamp Duty

One must also pay Stamp Duty on deeds and contracts, in addition to documents, titles, books, papers and financial operations. This tax is paid by the purchaser.

The Stamp Duty is levied on the value of each taxable deed or operation at a tax rate, which varies according to the type of deed or operation. For real property, a gift or sale is assessed at 0.8%.

Death Duties

Inheritance Tax was abolished in 2004 and replaced by Stamp Duty in certain cases. Gratuitous Transfers, such as gifts or bequests, to immediate family members - spouse, children grandchildren, parents or grandparents - are exempt. All others - more distant relatives and non-relatives - are assessed Stamp Duty of 10% on the "*VPT*" (Rateable Value) of the property.

CONCLUSION

As we have seen, Capital Gains Tax on property can be a complex matter with many permutations. The basic guideline is quite simple: *Plan Ahead*! Leaving your queries to the last minute makes the worst case scenario an almost certain outcome. By anticipating possible events, you can take timely action to minimise your eventual assessment.

"An ounce of prevention is worth a pound of cure!"

For more ideas, please consult *e*Book nº 21, "CGT Mitigation - *14 Arrows in the Quiver*"

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23) Acquiring Portuguese Citizenship
24) Visas and Legal Framework
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29) Golden Residence Visa

30) Leaving Portugal - *Moving Back*
31) Non-Habitual Residence Status and the Alternatives
32) Trusts, Foundations and Fiduciary Structures