CGT on Real Property:
The Portuguese Nominee Company Solution

Those who bought their homes in Portugal many years ago often find themselves faced with massive Capital Gains problems. It is no secret that properties have multiplied in value over the years. Added to this background, it is all too common that the basis of acquisition was often significantly understated in the past. Years ago, buyers and sellers it was common practice to under-declare values. To compound an already complicated situation, capital improvements made over time either lack proper invoices or too much time has elapsed for them to be still recognised. Whatever the reason, you, as Seller, may be faced with sizable profits and a substantial tax bill looming in the near future: Non-Residents are assessed at a flat of 25%; Residents typically pay up to a net of 20% on their gain. Either way, Capital Gains Tax can quickly add up to tens of thousands - if not hundreds of thousands - of Euros in many cases. Let us examine several ways that a Portuguese Nominee Company might be used to solve your potential Capital Gains Tax problems:

***Example nº 1* - Mitigating Capital Gains Assessment**

Fred and Susan bought a villa in Vale de Lobo in 1996 for the Euro equivalent of €250,000. However, the deed only accounted for the equivalent of €150,000 at the time. When adjusted for inflation, their purchase price is seen today as just over €200,000.

While they made many improvements to the house in the early years, they saved few invoices and most of the work was done before the allowable 5-year period prior to sale.

Their house is now going on the market for €1,850,000, leaving a potential gain of over €1.6 million. This will leave them with Capital Gains tax to pay of over €320,000.

What to do?

They can form a Portuguese Nominee Company with husband and wife as equal shareholders. With a "*VPT*" (the rateable value for tax purposes) of €250,000, each puts up their half of the property as share capital and settle the gain on the transfer (€250,000 - €200,000 = €50,000 X 25%). If the couple owns than 75% of the Company, the transaction is exempt from IMT (Property Transfer Tax). Unfortunately, the same cannot be said for Stamp Duty which is due on the Deed at the rate of 0.8% or €2,000. Together with Company formation costs and other disbursements, the total outlay comes to under €20,000.

With the property safely secured in the Company, they sell their shares for €1,850,000, leaving a taxable gain of €1,600,000. As Company Shares, the Capital Gains Tax rate is only 14% or €259,000. Even with their Company costs and taxes, they have saved themselves €61,000.

And the Buyers? By purchasing Shares (moveable property) rather than acquiring the Villa directly (immoveable property), the Buyers can avoid both IMT and the property transfer deed Stamp Duty, saving over €125,000. Clearly, a win-win situation. The best part is that the whole procedure is squarely within legislation and sidesteps the complications of using dubious Offshore structures.

Example nº 2 - Achieving Rollover Relief

> *Harold and Maud moved to Portugal in 1998 when they bought the retirement home of their dreams for €200,000. Years later, the appreciated 4-bedroom villa + garden are now worth €850,000 but was proving too much work to handle. They decided to sell and built a smaller cottage. To this purpose, they purchase a plot and got planning permission for their new home.*
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> *However, with the onset of the world economic crisis, they experienced difficulty in selling their property. As the clock ticked, they begin to realise that they would soon loose eligibility for Rollover Relief and might have to pay €115,000 of unanticipated Capital Gains Tax.*

What to do?

By forming a Portuguese Nominee Company, they put up the plot (€50,000) as share capital. When the Villa eventually sold, they transferred the plot back to their own names, closed the Company and completed the Rollover within the 3 year reinvestment period. The costs, disbursements and taxes of the double transfer came to ±€10,000, so their net overall savings exceeded €100,000. Just as in the previous example, the entire procedure is squarely within legislation.

Example nº 3 **- A solution for an Offshore Company "*white elephant*"**

> *Jeremy and Anne originally bought their home via an Offshore Company. When the laws in Portugal changed in 2003, they followed their lawyers advice and moved the Company to Delaware. They now want to sell but find that they have a "white elephant". In a nutshell, the only way to move the property is to discount fully the latent Capital Gains, reducing the sales price substantially.*

What to do?

As part of a Redomiciliation of a Delaware Company to Portugal, a Balance of Accounts needs to be recorded to mark the starting point as a Portuguese resident entity. This Balance Sheet must be based on *current* rather than on *historical* values so that the Company's assets reflect the present market value of the property as determined by a Chartered Surveyor's appraisal rather than simply the original purchase price. "Liabilities" can show the Shareholders' loans into the Company as well as any other outstanding loans or mortgages. As such, there is the potential for a significant uplift in the basis for eventual CGT assessment. Many of the problems of the past can be rendered irrelevant.

Share value can reflect no Capital Gain to the Sellers and share transfers are assessed Stamp Duty. Just as in the previous example, by purchasing the shares rather than property, the Buyers can sidestep completely Property Transfer Tax (IMT) and property deed Stamp Duty, thereby achieving comparable savings in a win-win situation.

Example nº 4 - Planning ahead for the future

David and Marie are planning to buy a holiday flat in Madeira, far from the dull, grey skies of their native Great Britain. As non-residents, they will be faced with paying CGT at a rate of 25% in Portugal when they eventually sell the property. Assuming a net gain of €50,000, this would lead to a Portuguese tax assessment of €12,500.

What to do?

By purchasing the property in a Portuguese Nominee Company and then selling the shares rather than the property, they sidestep the Portuguese taxation altogether. Nevertheless, the couple will still be faced with a CGT liability in the UK. However, after applying their respective Capital Gains allowances, they will still pay less than 10% on the balance for a net savings of ±€8,000.

Conclusion

While not always a "one-size-fits-all" solution, a Portuguese Nominee Company can prove to be an extremely useful and flexible tool in many situations. By transforming *immoveable* property into a *moveable* asset, substantial advantage can be achieved in resolving certain circumstances that otherwise could prove to be far more costly. With a favourable *savings vs expense* ratio, using a Portuguese Nominee Company may well provide the right solution for you.

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euroFINESCO s.a.

Headquarters
Rua do Sol, 4
8200-448 Guia (Algarve)
tel: +351 289 561 333
fax: +351 289 562 061

Madeira Branch
Rua do Aljube, 61, 2º dtº
9000-067 Funchal (Sé)
tel: +351 291 221095
fax: +351 291 221103

Lisbon Branch
Rua A. M. Cardoso, 15, 4ºD
1200-273 Lisboa (Chiado)
tel: +351 21 342 4210
fax: +351 21 342 4212

Internet
e-mail: info@eurofinesco.com
www.eurofinesco.com
Portugal
mobile: +351 96 910 2813