TRANSFER OF PROPERTY OWNED BY A COMPANY

Mitigating Capital Gains Tax

The Problem

Sometimes, despite significant mutual savings, a potential buyer is closed to the idea of buying the shares of a property-holding company and will only consider direct purchase of the property. If the house has been held for a long time, Capital Gains are crystallised, triggering significant taxation to the Company. To complicate matters, the problem can be exacerbated when residual corporate profits are distributed, creating a second assessment, this time to the shareholders upon receipt of these dividends. Finally, the empty Company is now ready to be closed. Strike-off brings more costs, once again at owners' expense.

The Solution

An attractive alternative can be achieved with the liquidation of the company and subsequent distribution of assets to shareholders:

1. As preparation for the sale, a non-resident Company should be transformed into a Portuguese Nominee Company if not already in place to take full advantage of Portuguese rules and procedures. Upon Company transformation, share value can readily be uplifted to market values without triggering any chargeable events.
2. The shares are then sold to the new buyers. In principal, this market-value sale should be at uplifted share value, leaving little or no assessable gain.
3. Finally, the new owners proceed to the liquidation of the Company. The asset(s) are then transferred at market value to the personal names of the shareholders with IMT and Stamp Duty due as with any property transfer in Portugal.

This process, when properly prepared and executed, can be achieved from start to finish in a matter of minutes in the Notary's office at the closing Deed, allowing all to achieve their objectives while keeping taxation to the legal minimum.
Costs can be borne by the Seller, added on to the final sales price or amicably split between the two parties.

 Nov 2016