CAPITAL GAINS TAX
Property in an Offshore 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 afraid and 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 to be illustrative of many situations. Respective costs and savings ought to be proportional to most cases.

Situation:

a) In 1992, an Offshore Company purchases a Property in Portugal for €200,000 (inflation-adjusted price in 2018).
Therefore, both the Property and the Company are worth €200,000 at this point.

b) 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.

c) In 2003, the Company moves its headquarters and effective management (*Redomiciliation*) from Gibraltar to Delaware.
No changes in respective values are registered.

d) In 2018, the Owners wish to sell for €550,000. This can be realised by one of three ways:

1) the Company sells the Property directly to the Buyers; or
2) the Owners of the Delaware Company sell their shares to the Buyers; or

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

Question: *What are the CGT consequences of each type of sale?*

nº 1) Sale of Property

The 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 5 years minus deductible buying and selling costs. This net gain is then taxed at the rate of 25%.

Example - the final result might look like this:

€550,000 (sale) - €200,000 (purchase) - €15,000 (improvements) - €5,000 (expenses) =
€230,000 (net gain) X 25% (non-resident tax rate on sale of property) = **€57,500** (CGT)

The buyer will also pay the following taxes:

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

Since it is the Delaware Company that is selling the Property, the Gain will be in the Company. Profits distribution will incur another assessment in the home jurisdiction on these “dividends”.

nº 2) 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 **€57,500.**

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

nº 3) Sale of Portuguese Nominee Company

When selling the Portuguese Company, the Gain is reached 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% (rate on share sale = €2,800 (CGT)

The buyers will also pay:

€25 (Stamp Duty on Share Transfer Deed)

As the Sellers are *Non-Resident*, they may be liable for CGT in their home jurisdiction. If this is the case, the tax paid in Portugal will serve as an *international tax credit,* reducing any eventual CGT assessment.

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 Redomiciliation costs should prove only a minor inconvenience.

In addition, due to Portuguese fiscal transparency rules, owners of Nominee Companies are free from double taxation in Portugal since liability for chargeable events is transposed out of the Company directly to Shareholders and is never assessed to both.

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