



MITIGATING CAPITAL GAINS WHEN SELLING A PROPERTY IN AN OFFSHORE COMPANY

Under Portuguese fiscal corporate legislation, there is often a dual calculation for Capital Gains on an immovable property. *Fiscal Capital Gains* (“IRC”) are calculated on the net difference between original purchase price and final selling price (minus a 50% exclusion for reinvestments by a Portuguese domiciled company).

For “IRS” purposes, Capital Gains are the difference between the selling price and the share capital value. It is possible to uplift original share capital to eliminate this gain.

Example

A Delaware Company owns a property that was originally acquired for €100,000. A potential buyer now offers €600,000. Let’s calculate the Capital Gains Tax based on different methods of selling the property out of the Company and the sale of the Company itself.

Conventional Method: Direct sale of the property by the Company

Upon the sale of the Property, the Delaware Company, as a non-resident company, is liable for Capital Gains Tax on the full gain at 25% or, in this case, €125,000. As usual, the Buyer pays “IMT” and Stamp Duty of €40,800. Subsequently, the Company distributes the net profit to its resident shareholders who pay “IRS” at the rate of 28% or €110,600.

total tax due to Seller (“IRC”+“IRS”): €235,600

total tax to Buyer (“IMT”+ Stamp Duty): €40,800



Alternative n°1: Redomiciliation and Sale of the Property

The first step is *redomiciliation*, thereby becoming a domiciled, resident Company in Portugal. In the process, the share capital can be uplifted to the full market value of the asset: €600,000.

The Company then sells the property for €600,000. The Buyer pays “*IMT*” and Stamp Duty of €40,800. As a national entity, the Company can now reinvest the proceeds and be entitled to a 50% exclusion, cutting the CGT to the Company from €105,000 to €52,500. With a full reinvestment of profits, there will be no distribution of dividends and therefore no “*IRS*” assessment.

total tax due to Seller (“*IRC*”): €52,500 ¹

Saving to Seller: 76.6%

total tax to Buyer (“*IMT*”+*Stamp Duty*): €40,800

Alternative n°2: Branch Office in Portugal

The Delaware Company sets up a branch office in Portugal (*permanent establishment*). The Company then sells the property to the Buyer. As above, the Buyer pays “*IMT*” and Stamp Duty of €40,800.

Now resident, the Branch Office can reinvest the proceeds into a new property and take advantage of the 50% exclusion, cutting the CGT in half to the Company from €105,000 to €52,500. ³

With reinvestment of profits, there is no immediate distribution of dividends and therefore no “*IRS*” assessed to the shareholders. ⁴

total tax due to Seller (“*IRC*”): €52,500 ²

Savings to Seller: 76.6%

total tax to Buyer (“*IMT*”+*Stamp Duty*): €40,800



Alternative n°3: Redomiciliation and Sale of the Company

First, the Offshore Company is redomiciled to Portugal. In the process, the share capital is uplifted to reflect the current value of the Company's asset: €600,000 in this case. The shares of the Company are then sold to the Buyer for market value of the asset or, in this case, €600,000. Since the values are equal and the property remains in the Company, there is no CGT, no "IMT", no Stamp Duty.

total tax due to Seller: €0

total tax due to Buyer: €0

Closing thoughts

When an Offshore Company is redomiciled, any shareholders' loans that were originally left unrecorded can now be registered. With these loans in the Company books, CGT can often be eliminated even when there is only a partial reinvestment.

- ¹ If there is no reinvestment and profits are distributed, there is no exclusion (based on reinvestment). Partial disbursements paid to resident shareholders will be assessed at 28% or, in this case, up to €110,600.
- ² If there is no reinvestment and the Mother Company distributes the profits to resident shareholders, the tax will be at 28% or €110,600.
- ³ In the event of a partial distribution, the non-reinvested gain will be assessed at 21%.
- ⁴ Resident shareholders will pay 14% on a partial distribution of profits, benefitting from a 50% exclusion on income from dividends.