Taxation of Asset Distribution upon Company Liquidation

Upon liquidation of a company, Capital Gains from the distribution of assets are determined by calculating the difference between the market value of the asset(s) (** CIRC, Art. 80*) less the cost of acquisition of the shares. (*** CIRC art. 81º, nº 1*)

*** CIRC, Artigo 80º - *Resultado de liquidação***
Na determinação do resultado de liquidação, havendo partilha dos bens patrimoniais pelos sócios, considera-se como valor de realização daqueles o respectivo valor de mercado.

*** CIRC, Article 80º - *Results of the Company liquidation***
In determining the settlement results, the amount attributed to the assets distributed to the shareholders shall be the current market value of those assets.

**** *CIRC,* Artigo 81º - *Resultado da partilha***
nº 1 - É englobado para efeitos de tributação dos sócios, no exercício em que for posto à sua disposição, o valor que for atribuído a cada um deles em resultado da partilha, abatido do preço de aquisição das partes sociais correspondentes.

***** CIRC, Article 81º - Distribution Results***
nº 1 - Following the distribution of assets, the respective taxable amount to each shareholder in the fiscal year is determined by deducting the acquisition cost of the shares from the respective attributed value.

Therefore, if the cost of the shares is equal to the market value of the asset, no Capital Gains assessment arises to the shareholders.

In the event that a distributed asset is an immoveable property, "*IMT*" (Property Transfer Tax) as well as Stamp Duty will be due upon the transfer of ownership from the Company to the Shareholder(s).

EXAMPLE:

Situation: *A Delaware company owns a property in Portugal with an historical value (original purchase price) of €250,000. The house currently has a market value of €750,000, leaving a potential Capital Gain of €500,000.*

If the Company sells the property directly to a buyer, Capital Gains tax will be owed by the Company. In this case, the "IRC" assessment will be €105,000 at 21%. When the profit is subsequently allotted to the shareholders, this distribution will be seen as a dividend. Another €105,000, this time in "IRS", will be due. In other words, the seller is caught in double taxation: first to the Company, then to the Individual (shareholder). In this example, the double taxation totals €210,000.

Solution nº 1:

Step 1 - Sale of Shares to the Buyer

The Delaware Company redomiciles to Portugal and, in the process, uplifts the share capital to €750,000. The shares are then sold to the Buyer for this price.

Step 2 - Company Liquidation

The new shareholders have two options. The first is to liquidate the Company immediately and distribute the property to themselves. Since the market value of the property is equal to the share value of Company, the capital gain/loss is zero. "IMT" (Property Transfer Tax) and Stamp Duty of €51,000 will be due in the same fashion as in any property transfer. Alternatively, this method can be applied at a later date, thereby deferring or even eliminating completely "IMT" and Stamp Duty. Either way, there is no Capital Gains Tax liability.

Solution nº 2:

Step 1 - Company Liquidation

The Delaware Company redomiciles to Portugal and, in the process, uplifts the share capital to €750,000. The shareholders liquidate the Company immediately and distribute the property to themselves. The market value of the property is equal to the share value of Company resulting in a zero capital gain/loss. On the transfer of the property, "IMT" and Stamp Duty of €51,000 are due to be paid by the former shareholders.

Step 2 - Sale of Property to Buyer

The property is then sold to the new buyer for €750,000. The new buyer will also pay IMT and Stamp Duty of €51,000.

Conclusion

In our example, this method results in a tax savings to the Seller of €159,000 when compared to the original double assessment situation.

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