

Jordan's Properties Guide for BUYING THROUGH AN OFFSHORE COMPANY

Recent Tax changes have once again raised the question of whether or not it is worth purchasing properties in Portugal through an "Offshore Company". Until recently the system has been used, by foreign investors especially, making the most of all of its advantages. You can explore how this simple mechanism works. One which is frequently used by those who are concerned about protecting their assets, but are not willing to spend their money on taxes, especially when there are legal ways in which to avoid payment of the same.

To start with, constituting an "Offshore Company" is a quick process and the costs of the formation and annual maintenance is relatively low.

What we are dealing with is a share company. The "Offshore Company" permits the participation of the whole family in the purchase of the property (each member holding a determined number of shares), and at the same time it provides the beneficiaries with anonymity throughout the whole process of the transaction. The beneficiaries of the company can be individuals (one or various) or they can even be other companies already formed. Once the company has been incorporated, it is in its name that the purchase of the property in Portugal will be finalised.

After completing all the legal procedures, from the signing of the promissory contract of purchase and sale to the signing of the public deed of purchase and sale, the property will then be registered in the name of the company. Those who hold the shares of this company are then the proprietors of all assets acquired in the company name.

When you buy there are no savings; all the taxes and expenses normally paid by individuals have to be paid. But as soon as you wish to sell, the case changes radically.

When the beneficiary or beneficiaries intend to proceed with the sale of their property, the only thing that is required to do is to transfer the shares of the company to that of the potential purchaser, thus automatically transferring all assets registered in the company name.

Therefore, the person who intends to purchase the property would have the advantage of not having to pay Sisa Tax, as this tax involves immovable assets and not on transmission of company shares. But the fiscal advantages do not end here.

Also, the beneficiaries of the company do not pay any taxes preceding the sale of the property, once again, because there is no public deed of purchase and sale, but merely a transfer of shares.

The traditional Capital Gains Tax, which the vendors of immovable assets are normally subject to, in this case does not exist.

For the buyer the attraction remains; when he sells he also avoids paying Capital Gains Tax and his buyer pays no IMT Tax.

Another tax advantage: a company never "dies", hence there is no Inheritance Tax to be paid in the case of death, as would be the case if the purchase was made by an individual. Some precautions have to be taken nevertheless: deal only with a reputable lawyer or agent when buying your "Offshore Company".

Even though you can have an "Offshore Company" in any part of the world such as The Cayman Islands, Liberia, Panama, etc., it is recommended that you choose a European "Offshore" zone... Gibraltar, The Channel Islands (Jersey and Guernsey), The Isle of Man; these appear to be the most appropriate, the first reason being the proximity to Portugal.

To resume;

The advantages of purchasing through an "Offshore Company" are as follows:

Anonymity - the mechanism works in a manner where it is not possible to find out who the owner of the property is. These days it is good practise to maintain a "low profile" when it comes to tax matters.

Non payment of taxes - it avoids the payment of taxes such as IMT, Capital Gains Tax and Death Duties. In the case of SIMT (stamp duty) this advantage does not apply to the first buyer but to those who follow.

Easy transfer of property or assets - the transfer of the shares is done by a simple handing over of the same to the new proprietor.

Non payment of notary and registration expenses - except for the first acquisition, the transmission of the property does not have the physical property that is being transmitted but company shares. This is the real owner of the property, who in truth never changes hands.

The disadvantages of the system are as follows:

Costs of the constitution and maintenance, even though they are low, are still considered as expenses. The company constitution is only paid once but the maintenance is paid annually and varies from bank to bank or lawyer to lawyer.

Natural doubts for those who don't understand the mechanism and don't know anything about how it functions, don't worry; it has been tested many times and is secure.

Final note: Recently the Decree Law N°44/98, of the 3rd of March introduced the requirement of a new type of payment by account to be made by companies in which are included the "Offshore".

Following this law, the beneficial owners of these "Offshore Companies" have been receiving from the Portuguese tax department a form to be filled out in order to clarify the situation relating to the use given to the property of which they are holders.

However, neither the document nor form sent by them puts in jeopardy any of the above mentioned advantages. Whenever you choose to purchase in the name of an "Offshore Company" always get advice from your lawyer, to find out by explaining your situation whether or not it is really worth it.

RECENT ALTERATIONS INTRODUCED BY THE PORTUGUESE AUTHORITIES

The main alterations consist of the following:

Annual Municipal Tax (Contribuicao Autarquica):

This is a tax paid on the rateable value of the property. This rateable value is generally substantially lower than the market value. Up until now the percentage of this tax was fixed every year, to the maximum of 1.3% of the referred rateable value, applicable to all property owners. The alterations introduced brought the rate up to 2% - and this became a fixed figure only for offshore companies. For entities not based in the listed offshore territories, the maximum rate will continue to be 1.3%.

Income Tax:

In the past, unless the companies were generating an income in Portugal (for example the renting of the property), there was no income tax payable in this country. The other alteration introduced now affecting offshore companies relates to income tax to be charged on "assumed rental income" i.e. whether the property is actually rented or not. This tax will be charged on the equivalent to 1/15th of the referred rateable value. Currently this tax will correspond to approximately 1.66% of the referred rateable value.

The above new taxes will be payable in 2003 in respect of this current year (2002) and both together correspond to approximately 3.66% of the rateable value of the property.

The Directors of the company, or the fiscal representative in Portugal, must declare to the Finance Department of the area in which the property is registered the fact that the property is held in the name of the company registered in one of the listed countries or territories (list available on request). This must be done in 90 days from the initial registration, or within 90 days from 1st January 2002, if the property was already thus registered.

It is believed that the existing advantages of offshore company ownership have not been affected, although the annual costs will now be higher.

One way of softening the implications of these changes would be to enter into a formal rental contract with the beneficial owner/occupier of the property as this would give the possibility of deducting specific allowable costs in relation to the maintenance and conservation of the property. Also, for those property owners who are registered with the tax department in Portugal there is the opportunity to deduct 30% of the paid rent up to a maximum of 517 Euro from their individual annual tax bill (IRS). An accountant in Portugal would have to be instructed to file the company's accounts.

Unless the Directors of the offshore company are resident in Portugal, a fiscal representative may have to be appointed in this country in order to comply with the new regulations.

If you are a resident in Portugal you can be appointed the fiscal representative and this would, perhaps, be the less costly option.

The acceptance of Fiscal Representation is made in a form/Declaração de Inicio de Actividade, which is required to be signed by a Chartered Accountant in this country. Accounts are to be filed annually.

Revised by Dra. Nelia Faisca June 2007