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ASIA PACIFIC
INTERNATIONAL PRIVATE CLIENT SERVICES NEWS

FOREIGN PROPERTY OWNERSHIP

LEADING GLOBAL NEWS

As global mobility increases, it is becoming common for high net worth families to own homes in a number of countries, as well as investing in commercial and other real estate outside of their country. As a result of this, Governments around the world are closely examining and enforcing their domestic laws to make sure foreigners comply with the rules.

In the coming years, the domestic enforcement will assist many countries move to adopt the automatic annual exchange of tax information, to improve tax transparency whereby financial institutions will release information each year to the tax authorities in their country, and which will be shared with authorities in other countries. At this stage 65 countries have committed to a process of introducing these measures, including all OECD, countries and in the Asia Pacific region, Australia, Japan, Korea, India, Indonesia, Malaysia, New Zealand, and Singapore.

In this edition we detail both the legal and tax implications of foreigners buying real estate in the Asia Pacific region, as well as abroad in the popular countries of Canada, USA, and UK.

Some of the key highlights from this edition include:

- Australia lowering its reporting thresholds to $AUD15m for purchase of agricultural land, as well as a massive clampdown on foreigners who have failed to seek prior approval for purchases of residential property resulting in forced sales of property
- New Zealand proposes to significantly change the tax system from 1 October 2016 which will have a significant impact on foreigners who are planning to buy land in New Zealand
- Canada has relaxed laws that generally encourage foreigners to own property in that country
- China is allowing foreigners to own only one residential property which must be used to live in and cannot be rented
- Indonesia's laws allow foreigners to hold a long term lease/license over property, but exclude specific legal title ownership which is reserved for Indonesian citizens
- Malaysia's requirement for foreigners to get approval before purchasing real estate
- Philippines have set tight restrictions on foreigners owning property, although there are concessions for long term leasehold interests
- Thailand provides concessions for high net wealth individuals and business when approved by the Thai Government
- Singapore's requirements for foreigners to get necessary approvals given land is scarce
- UK's tax rules on purchase, ownership, and disposal of property
- USA's recommendation for the need to hire a local State lawyer to provide advice, given the 50 different States with 50 different possible approaches to the legal rules governing the ownership of real property.

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CONTENTS

IN THIS EDITION

JULY 2015

Welcome to the July 2015 BDO International Private Client Services (IPCS) Newsletter.

In this edition we bring you a selection of articles to update you on some recent developments in various jurisdictions around the world.

If you would like more information on any of the items featured, or would like to discuss the implications for you, please contact the author of the article. The material discussed in this newsletter is meant to provide general information only and should not be acted upon without first obtaining professional advice tailored to your particular needs.

BDO International Private Client Services Newsletter (Asia Pacific) is published regularly by BDO (WA) Pty Ltd.

WE WANT TO HEAR FROM YOU

If you have any comments or suggestions concerning BDO International Private Client Services Newsletter (Asia Pacific), please contact the Editor by e-mail at Katey.gibb@bdo.com.au or by telephone on +61 8 6382 4600. If you require assistance or advice in connection with any country not mentioned in this issue, please contact your usual BDO adviser or Mark Pollock.

CLIENT REFERRALS

The highest compliment our clients can give us is the referral of their friends, family and business associates. If you know of somebody who would benefit from our services, we would appreciate the introduction.

DISCLAIMER

This publication has been carefully prepared, but has been written in general terms and should be seen as broad guidance only. For our full disclaimer please see the back of this document.

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SINGAPORE

To accommodate a growing population, the Singapore government has put in place conditions for foreigners looking to own property in resource-constrained, land-scarce country. There are legal and tax aspects to consider when a foreigner wishes to own a property in the Singapore.

LEGAL REQUIREMENTS

The Residential Property Act defines a "foreign person" as:

- Any person who is not a citizen of Singapore
- A permanent resident
- Any foreign company, or
- A converted foreign company.

Any person or entity falling under the above category is totally restricted from owning landed residential property unless an approval is obtained from the Controller of Residential Property.

What types of property must a foreign person seek approval to purchase?

A foreigner who wishes to acquire a landed residential property may apply to the Controller of Residential Property for a written approval. The Residential Property Advisory Committee will consider the application, and thereafter, make its recommendations to the Minister for Law.

If approval is granted, the foreigner is required to give an undertaking to the government that the property is to be used only for the purpose of residence and not for investment and any other income-generating purposes. The application takes approximately three months to process.

The following are foreigners who may apply:

- Permanent residents of Singapore
- Foreigners who are of economic benefit to Singapore or who makes economic contributions to Singapore, and
- Foreigners who possess professional or other qualifications or experience which are of value or benefit to Singapore.

These are the types of property a foreign person must seek approval in order to purchase:

- Vacant residential land
- Terrace house
- Semi-detached house
- Bungalow/detached house
- Strata landed house which is not within an approved condominium development under the Planning Act (For example: townhouse or cluster house)
- Shophouse (for non-commercial use)
- Association premises
- Place of worship
- Worker's dormitory/service apartments/ boarding house (not registered under the provisions of the Hotels Act).

The approval of the government is also required if the foreigner is a beneficiary or is entitled to receive landed residential property by way of gift, bequest, succession or inheritance. The rules are generally strict with regard to the transfer of landed residential property to foreigners. The legal personal representative of a foreign beneficiary or the foreign beneficiary himself is bound to sell such properties to a citizen or approved purchaser within a period of ten years from the death of the deceased owner.

Where an approval is granted to a foreigner due to his permanent resident status, he is required to sell such restricted properties within two years from the day he ceases to be permanent resident of Singapore.

An alternative solution for a foreigner who wishes to stay in a landed residential property without having to go through this process is to rent one. This is allowed under the Act, provided that the tenancy does not exceed seven years.

What types of property can a foreign person purchase without approval?

According to the Singapore Land Authority (SLA), the only property that can be purchased by any person or entity falling under this definition without any approval required, include those residential properties which contain six or more storeys including the ground floor or "any flat or dwelling-house shown as a unit in an approved plan bearing the title condominium". In this case, there is no limit as to the number of units that a foreigner may purchase within the development. The types of property are as follows:

- Condominium unit
- Flat unit
- Strata landed house in an approved condominium development
- A leasehold estate in a landed residential property for a term not exceeding seven years, including any further term which may be granted by way of an option for renewal
- Shophouse (for commercial use)
- Industrial and commercial properties
- Hotel (registered under the provisions of the Hotels Act)
- Executive condominium unit, Housing & Development Board (HDB) flat and HDB shophouse.

TAX RULES

Stamp Duty

The buyer is required to pay Buyer's Stamp Duty (BSD) for documents signed for buying or acquiring property located in Singapore. BSD will be calculated on the purchase price, as stated in the document to be stamped or market value of the property (whichever is the higher).

Purchase Price or Market Value of the Property	BSD Rates
First S$180,000	1%
Next S$180,000	2%
Remaining Amount	3%

On top of the BSD, Additional Buyer's Stamp Duty (ABSD) is liable, dependent on the profile of the buyer as at the date of purchase or acquisition of the property. The rates are as follows:

Profile of Buyer	ABSD Rates with effect from 12 Jan 2013
Singapore Citizens (SC) [i] buying first residential property	Not applicable
SC[1] buying second residential property	7%
SC[1] buying third and subsequent residential property	10%
Singapore Permanent Residents (SPR)[1] buying first residential property	5%
SPR[1] buying second and subsequent residential property	10%
Foreigners and entities[2] buying any residential property	15%

[1] Whether owned wholly, partially or jointly with others.

[2] An Entity means a person who is not an individual. It includes the following:

- *An unincorporated association*
- *A trustee for a collective investment scheme when acting in that capacity*
- *A trustee-manager for a business trust when acting in that capacity*
- *The partners of the partnership whether or not any of them is an individual, where the property conveyed, transferred or assigned is to be held as partnership property.*

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AUSTRALIA

Australia generally encourages foreign ownership of property subject to satisfying specific conditions which depend upon the type of property being purchased ie: residential, commercial, and rural.

The following tables contain a summary of the rules:

Residental Property

Property Type	Temporary Resident	Non-Resident
New house/apartment (for residence)	Yes	Yes*
Existing house (for residence)	Yes *	No
Investment properties	No	No
Vacant land/build house	Yes *	Yes *

**Need to apply to Foreign Investment Review Board ("FIRB") for approval*

Commercial & Rural Property

Property Type	Temporary and Non-Residents
Commercial	<A$54m – No approval required >A$54m – FIRB approval required
Vacant land for commercial development	FIRB approval required
Rural/farm land	<A$15m – No approval required >A$15m – FIRB approval required

In this article we have considered both the legal and tax considerations for foreigners looking to purchase property in Australia.

LEGAL REQUIREMENTS

Foreign Investment Review Board Rules

Australia has a Foreign Investment Review Board (FIRB) which is responsible for examining foreign investment proposals and acts as an advisory body to the Treasurer, who exercises his discretion to accept or reject applications, or impose conditions on foreign investment proposals, in accordance with Australia's foreign investment policy.

Generally, all foreign persons are required to submit an application for approval to the FIRB for any proposed acquisition of Australian property, whether that be for residential, commercial, or agricultural purposes subject to specific exemptions.

In February 2014, the Australian Government announced proposed changes to Australia's Foreign Investment Policy aimed at increasing the transparency of identifying foreigner owners of agricultural land as well as introducing specific administration charges.

The FIRB rules vary according to the type of land being purchased being:

a) Residential

b) Commercial

c) Rural /Agricultural land.

Each is considered in more detail.

Residential Real Estate

Australia's foreign investment policy encourages foreigners to purchase newly contracted houses typically referred to as 'off-the-plan' properties which, more often than not, are apartments which are normally approved without conditions.

Foreign persons are prohibited from purchasing established house, regardless of whether it is to be used as an investment property or as their home. However, those classified as 'temporary residents' for tax purposes are permitted to purchase one established dwelling only, on the condition that it is used solely as their residence while they are in Australia, and must generally be sold once it ceases to be their residence.

Whilst applications to purchase vacant land for development are normally approved subject to certain conditions; for example the construction must begin within 24 months.

All foreign persons must notify the FIRB of any proposed acquisition of residential real estate, which includes new houses, off-the-plan properties, or vacant land for development. In February 2015, Federal Treasurer, Joe Hockey, ordered the sale of an $AUD39 million Sydney harbour side mansion, which had been purchased by a Chinese national who failed to seek prior approval from the FIRB. The foreign investor was given 90 days to sell the property, which had been purchased through various shelf companies in Australia and Hong Kong. Currently, only divestment orders and criminal penalties apply for breaches of the foreign property ownership rules. Under the current rules, breaches could attract criminal penalties of and $AUD85,000, imprisonment of two years, or both.

Commercial Real Estate

Investment proposals for existing commercial real estate, for example offices, factories, retail outlets, and hotels, do not require approval where the value of the real estate is less than $AUD53 million. If the real estate is heritage listed, a lower threshold of $AUD5 million applies. Any proposed acquisitions above this threshold must be approved by the FIRB prior to purchase.

All foreign persons must notify the FIRB of a proposed acquisition of vacant land for commercial development, regardless of the value of the land. Such applications are normally approved subject to development conditions.

Rural Land

All foreign persons must apply for FIRB approval for a proposed acquisition of an interest in rural land where the cumulative value of rural land owned by the foreign investor, including the proposed purchased, exceeds $AUD15 million. This threshold has reduced from the previous threshold of $AUD252 million.

Rural land is land which is used wholly and exclusively for the carrying on of a primary production business, as defined in the Tax Act.

Introduction of Fees and Penalties

There are currently no fees to apply for FIRB approval. As part of the Government's proposed changes, administration fees will be charged on all foreign investment applications, at a level determined by the type of property and its value. For example, it is proposed that residential real estate proposals and rural land acquisitions would be subject to a fee of up to $AUD5,000 where the property is valued under $AUD1 million, which would increase in increments of up to $AUD10,000 for each additional $AUD1 million in value.

Business, commercial real estate and agribusiness investments would be subject to applications fees ranging from $AUD10,000 to $AUD100,000 depending on the size of the investment and the sector it operates in.

The Government has also proposed introducing civil pecuniary penalties and infringement notices for breaches of the foreign property ownership rules, in addition to the current criminal penalties. These changes could see infringement notices ranging from $AUD2,040 to $AUD51,000 depending on the investor and whether they voluntarily came forward. Civil penalties could range from 10% to 25% of the purchase price or market value of the property, whichever is higher.

TAX RULES

Stamp Duty

On purchase of a property a stamp duty tax is payable on the purchase price payable by the purchaser. Stamp duty is levied at graduated rates as a State Tax and the rates vary between each State. The maximum rates are as follows:

City	State	Rate of Stamp Duty ($AUD)
Adelaide	SA	5.00% over $300,000
Brisbane	QLD	5.25% over $980,000
Darwin	NT	5.45% over $3million
Perth	WA	5.15% over $725,000
Melbourne	VIC	5.50% over $960,000
Sydney	NSW	7.00% over $3million

Federal Income Tax

Any income derived from renting the property and any profit made on the sale of the property is subject to federal income tax. The rate of tax depends upon who the legal owner of the property is. Companies pay tax at 30% with no further tax payable on remittance of the funds to the overseas investor whereas individuals are taxed at marginal rates which could be as high as 45%.

A foreign investor is required to file an annual tax return with the Australian Tax Office. The Australian tax year runs from 1 July to 30 June. Substituted accounting periods can be obtained in certain circumstances.

Withholding Tax

New proposed laws from 1 July 2015 will require real estate agents to apply a 10% withholding tax to the disposal by foreign residents of certain 'taxable Australian property' which will cover everything except residential property with value less than $AUD2.5m including commercial property, rural property, mining interest and expensive residential property.

To ensure the correct tax is being paid, the Government has introduced these measures for foreigners buying and selling real estate in Australia. The withholding tax will help tax authorities identify foreigners selling or purchasing real estate. The amount withheld will be credited to the account of the foreign resident payee when calculating their final income tax position for the relevant tax year. This would generally require the foreign resident to have a tax file number and to have lodged a tax return.

Gift, Inheritance, Estate Taxes

Australia does not impose any gift, inheritance, or estate taxes on the death of an owner. If a gift of property is made during the lifetime of an individual to a related party it is deemed to be disposed of for the market value at the time of the gift. On death, the beneficiary of an estate inherits the cost base of the property of the deceased.

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CHINA

LEGAL REQUIREMENTS

The general statutory requirements for foreigners to purchase / own properties in China are as follows:

- A foreigner who has resided in China for over one year is eligible to purchase one unit of residential property for self-use only (i.e. he or she must live in it). The number of residential properties that a foreigner is allowed to own in China cannot exceed one
- An overseas entity that has already set up a branch or representative office in China is eligible to purchase non-residential property for the purpose of self-use only in the city where such branch or representative office is registered
- If a foreigner intends to purchase a property in China for non-self use purposes, they need to establish a foreign invested enterprise in China as a business vehicle to engage in such commercial activities. All applications for setting up a foreign invested enterprise for such purpose are subject to approval by the relevant Chinese authorities.

In practice, the requirements for acquisition of residential properties in China by foreigners vary slightly from one city to another. In some cities, it is not uncommon that additional local requirements will have to be satisfied before foreign individuals are allowed to buy residential properties in China. Foreigners considering purchasing properties in China are recommended to seek clarification on the exact local requirements from legal advisers or relevant local authorities in which the property is located, before implementing any purchase plans.

TAX RULES

Buying and selling of a property in China will usually involve the following taxes.

Deed Tax

Deed tax is payable by the buyer of the property and is currently calculated at 3% to 5% of the sales consideration of the property (the specific applicable rates vary from city to city). Lower deed tax rates may be allowed if certain conditions can be satisfied.

Stamp Duty

Stamp duty is levied at 0.05% on the sales consideration of the property (payable each by transfers and transferees). Currently, the transfer of residential properties by individuals is temporarily exempted from stamp duty in China.

Business Tax

Business tax is payable by the seller at 5% of the sales consideration of the property transaction. Local surcharges of approximately 0.6% will also be imposed (ie a combined business tax rate of approximately 5.6% may apply). For transfer of residential properties that have been held for more than two years, business tax may be reduced or exempted depending on the exact type of the residential properties at issue.

Land Value Appreciation Tax

Gains derived from disposal of land-use rights and buildings are subject to a land value appreciation tax ranging from 30 % to 60%. Land appreciation tax is payable by the seller of the property. The sale of residential properties by individuals is temporarily exempt from land appreciation tax in China.

Individual Income Tax

Gains on disposal of residential properties by foreign individuals are subject to individual income tax at 20%.

Enterprise Income Tax

Gains on disposal of a residential property by a Chinese enterprise form part of the enterprise's taxable income which, after allowing for deductible expenses and outgoings, is subject to enterprise income tax at 25%.

Real Estate Tax

Real estate tax is levied on property-owners at:

a) 12% of the rental income generated by the property, or

b) 1.2% per annum on the standard value of the property.

In the latter case, the standard value of a property is estimated at 70% to 90% of the original cost of the property. Residential properties held by foreign individuals for self-use purposes are currently exempt from real estate tax.

As the legal requirements and tax rules concerning property dealings in China vary from city to city and change from time to time, please ensure that you obtain advice specific to your circumstances from your usual BDO contacts or your other tax advisers.

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HONG KONG

LEGAL REQUIREMENTS

Foreigners (including Chinese, Macau and Taiwan residents) are virtually allowed to buy and sell, without restriction, residential properties (such as apartments, condominiums, etc.) and nonresidential properties (such as commercial buildings, industrial buildings, etc.) located in Hong Kong. Properties can generally be held by individuals and / or companies set up in Hong Kong or other jurisdictions.

In the ensuing paragraphs we will look at the tax considerations for foreigners who consider purchasing properties in Hong Kong.

TAX RULES

Ad Valorem Stamp Duty (AVD)

AVD is levied on the sale or transfer of both residential and nonresidential properties, the maximum rate is 8.5%. AVD rates may be reduced by 50%, but such concessionary rates only apply to Hong Kong permanent residents under certain circumstances. AVD is levied on the sales consideration of the property being sold. By law, both the seller and the buyer are jointly and severally liable for paying AVD [i].

Special Stamp Duty (SSD)

For residential properties acquired by individuals (including foreigners) or companies (irrespective of their place of incorporation) on or after 27 October 2012 and resold within 36 months of acquisition, SSD will be levied at rates ranging from 10% to 20% on the consideration. The maximum rate of 20% applies if the residential property is resold within six months of acquisition.

SSD is payable on top of AVD. Both the seller and the buyer are jointly and severally liable for paying SSD [ii].

Buyer Stamp Duty (BSD)

All non-Hong Kong permanent residents and companies (irrespective of their place of incorporation) acquiring residential properties in Hong Kong on or after 27 October 2012 are subject to BSD at a flat-rate of 15% of the consideration. BSD is levied on top of AVD and SSD.

Property Tax

For properties acquired by individuals (including foreigners) for rental purposes, property tax will be levied. The current property tax rate is 15%, charged on the basis of the actual rent receivable, less a 20% statutory deduction to allow for repairs and maintenance.

Profits Tax

Rental income received by a company (irrespective of its place of incorporation) carrying on business in Hong Kong is subject to profits tax instead of property tax. Profits tax is currently charged at 16.5%.

Capital Gains

Gains from realisation of assets held for long-term investment purposes are not taxed in Hong Kong. This applies to both companies and individuals. However, profits tax may be charged on the profits of speculative transactions if they can be shown to constitute an adventure in the nature of trade and are having a source in Hong Kong.

[i] *In practice, AVD is usually paid by the buyer.*

[ii] *In practice, SSD is usually paid by the buyer.*

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NEW ZEALAND

Nonresidents are allowed to own real property in New Zealand with only certain property subject to Overseas Investment approvals. Income derived from the use of property is subject to income tax as New Zealand sourced income derived by a nonresident.

Although New Zealand does not have a specific capital gains tax, there are a number of situations where a nonresident who makes a profit on the disposal of a property will find that profit being taxed as ordinary income.

Set out below is an overview of the regulatory environment for property ownership and the applicable tax system.

It also outlines significant changes to the tax system which are proposed to be effective from 1 October 2016 and will have a significant impact on nonresidents who are planning to buy land in New Zealand.

LEGAL REQUIREMENTS

A nonresident looking to purchase land in New Zealand only needs to apply to the Overseas Investment Office (OIO) for consent if they are looking to buy sensitive land or an interest in sensitive land (eg by buying shares in a company that owns sensitive land).

Sensitive land is determined by the types of land and area thresholds detailed in the relevant Overseas Investment legislation. While determining sensitive land is sometimes straightforward, often significant legal and land expertise is required, particularly if there are any nearby waterways.

In short, sensitive land includes land of a particular type, such as farm land, that exceeds a particular area threshold. For example, five hectares of farm land is considered sensitive land, but three hectares of the same land is not.

Land is also sensitive if it adjoins land of a particular type and exceeds an area threshold. For example, three hectares of farm land would be considered sensitive if it adjoined a recreation reserve on the edge of a lake. An interest in sensitive land includes a freehold estate or a lease, or any other interest, for a term of three years or more, including rights of renewal, and is not an exempted interest.

Applicants for consent must satisfy a number of criteria, including the core 'Investor test' criteria. In addition, consent to acquire sensitive land will only be granted if:

- The transaction will, or is likely to, benefit New Zealand, or alternatively
- The relevant overseas person intends to reside in New Zealand indefinitely.

Some types of land (such as farm land) also have specific consent criteria.

Applicants for consent to acquire fishing quota must satisfy a 'national interest' test. In addition, there are various legislation around building consents; resource management and the environment, and local council zoning, all of which may need to be taken into account depending on what you plan to do with the property.

TAX RULES

A nonresident is liable to income tax on income which has a New Zealand source. Income generated from property situated in New Zealand has a New Zealand source and the Double Tax Agreements give the primary right to tax that income to New Zealand.

The income is liable to tax at the nonresidents marginal tax rate when derived by an individual, or at the applicable company tax rate or trustee rate if the property is owned through a company or trust.

Income from use of Property

Income generated from the land is taxable as income with a deduction allowed for expenditure which is incurred in deriving that income. The expenditure is deductible unless one of the set limitations applies, such as expenditure which is capital in nature or private in nature. Depreciation is available for the purchase of certain forms of depreciable property but there is no depreciation on land and on most buildings with a life expectancy of 50 years or more. The cost of a building fit-out for commercial property and for certain chattels on residential property may be able to be depreciated on an annual basis where the costs can be separated from the cost of the building. The cost of repairs will usually be regarded as a revenue expense unless the repairs are for bringing the asset into a condition where it can be used to generate income or are so extensive that they are an improvement and therefore capital in nature.

There are specific rules also for mixed use assets where the property is used both for private purposes and for income generating purposes. An example is a holiday home rented out to third parties while the nonresident is overseas but occupied by them during a holiday in New Zealand. The mixed use assets specifically aim to provide an apportionment of the expenditure on a prescribed basis between the private and business use.

If debt is being introduced to purchase the property by a nonresident, the interest deduction will be subject to a thin capitalisation ratio which will deny a portion of the interest deduction which is in excess of 60% of the asset value. The interest may also be subject to nonresident withholding tax (at 15% or 10% if a DTA provides) or an approved issuer levy at 2% if the interest is paid to a third party. Specific advice should be sought.

Sale of Property

Taxable income can also arise in certain circumstances when land is sold for a profit. This can arise when a gain is derived on the sale of land and the owner acquired the land with an intention or purpose of resale, even if it was only one of the person's intentions or purpose at the time they acquired the land.

This is an area that has proved difficult for Inland Revenue to monitor, and as a result new rules are proposed to be introduced with effect from 1 October 2016 which include:

- A bright line test for residential property bought and sold within two years, and
- An obligation for a non-resident investor to obtain an IRD Number; provide their home country tax identification number, and open a bank account in New Zealand.

Two-Year Bright Line Test

Although the exact details of how the two year rule is to apply will depend on the final legislation, the basic premise is that all gains on the sale of residential property which are sold within two years of when it is acquired will be taxed as income unless an exemption applies.

The exemptions being limited to property which is the main family home, property which is sold recently after it was acquired through an inheritance, and property which is sold as a result of a relationship split.

The intention is for the two year rule to act as a 'bright line' making it unequivocal that a gain on sale of property within that time frame is taxable. We assume that a loss will also be deductible but that may depend on the final legislation.

It will make it easier to tax property which is bought with the intention or purpose of resale at a profit. Such property transactions have always been taxable but the intention or purpose of resale had to be more than a vague notion that a person can sell a property in the future if their circumstances change.

No such intention or purpose will be required as any property bought and sold within the two year time frame will be caught on revenue account subject to the exemptions for family homes, inheritance, and relationship splits.

It is also not a safe harbour rule and property which is acquired with a purpose or intention of resale will remain taxable if sold after two years of ownership.

The new two year rule is to apply to all residential property acquired after 1 October 2015.

There are a number of other occasions where a gain on sale of land will be taxed and detailed advice should be obtained at all times. The areas to be wary of include:

- Land where the owner is a dealer in land, a property developer or builder or persons associated with them
- Land where there is a rezoning or resource consents issued and the value of the land increases substantially as a result of those changes
- Land which is subject to a one-off development or subdivision which commences within 10 years
- Land which is subject to major development expenditure such as roading, earthworks and similar expenditure irrespective of how long the land has been owned.

Note there are certain concessions and exemptions that apply to some of these areas of land acquisition and need to be reviewed according to each situation.

Additional Compliance Obligations

In addition to the two year rule, additional compliance obligations were announced and these are also due to come into force on all property bought and sold after 1 October 2015.

The first proposal applies to New Zealand residents and nonresidents. Both the vendor and purchaser will be required to provide an IRD number when ownership in land is being bought and sold. This will be part of the requirement for registering the change in ownership with the Land Transfer Office and will make it easier for the Inland Revenue to monitor gains on sale of land which need to be returned for income tax purposes.

In addition to obtaining an IRD number, a nonresident will be required to open a bank account in New Zealand and supply a tax identification number from their home country. The obligation to open a bank account ensures that the nonresident is subject to compliance with AML and FACTA legislation which the bank is required to review before allowing a bank account to be opened.

The provision of the home country tax identification number may also allow a greater sharing of information between the relevant tax authorities if required.

GST

New Zealand has a Goods and Services Tax (GST) regime which imposes GST at a standard rate of 15% on the supply of goods and services in New Zealand by a GST registered person.

It is important to make sure the contract for the sale and purchase of land deals adequately with GST. If the person selling a property is GST registered then the supply of the land and buildings may be subject to GST at 15% where the property is being sold to a nonregistered person.

In some circumstances GST on a land sale may be zero rated as a supply in whole or in part of land and the purchaser is also GST registered.

A purchaser can be registered for GST where they intend to make taxable supplies. For example where the property is commercial property and is being rented to tenants or used in carrying on a business to supply goods and services. The renting out of residential property is generally not subject to GST except in certain circumstances such as a serviced apartment complex.

The changes announced in May 2015 to take effect from 1 October 2015 are targeted measures aimed at making it easier for Inland Revenue to monitor compliance with various tax obligations and share information with other Revenue Authorities.

It will also make it easier to introduce future tax changes such as a withholding tax regime on property transactions. A prospect which Inland Revenue has been asked to look into with a view to providing a framework for introduction at some point late in 2016. So watch this space.

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INDONESIA

From a legal perspective, land ownership (i.e. Ownership under right of ownership or "Hak Milik") in Indonesia is closed to foreigners, whether they are individuals or foreign companies (i.e. Companies that are not incorporated under the Indonesian laws). Nevertheless, it is possible for an individual foreigner who is residing in Indonesia to acquire right to the use of land ("Hak Pakai") subject to certain conditions. These conditions are elaborated in the legal aspect section of this article. Alternatively, a foreign individual investor may acquire limited land titles in Indonesia by forming an Indonesian direct foreign investment company or acquiring an existing limited liability company.

LEGAL REQUIREMENTS

Generally, there are six types of land title recognised in Indonesia. These rights are summarised in the table below.

Type of right	Description	Qualified Party
Right of Ownership ("Hak Milik")	Hak Milik is the most comprehensive and complete form of individual rights over land. There is no time limit and the holder has the right to use the land, including the earth and the water underneath it. It does not, however, include the right over resources underneath it.	**Closed to individual foreigners**– open only to Indonesian citizens
Right to Cultivate ("Hak Guna Usaha")	Hak Guna Usaha is the right to cultivate land which is administered by the government. This title is normally granted to land for cultivation/ plantation businesses.	**Closed to individual foreigners** – open to Indonesian citizens and companies that are incorporated under the Indonesian law (including foreign investment limited liability companies or PT PMA)
Right to Build ("Hak Guna Bangunan")	Hak Guna Bangunan is a right over land (either State-owned or private), with which the holder may erect and possess buildings over the land for certain period of time.	**Closed to individual foreigners** – open to Indonesian citizens and companies that are incorporated under the Indonesian law (including foreign investment limited liability companies or PT PMA)
Right to Manage ("Hak Pengelolaan")	Hak Pengelolaan is only granted to state-owned companies and government agencies with, usually, unlimited terms.	**Closed to individual foreigners**
Right to Use ("Hak Pakai")	Hak Pakai is a right over land (either State-owned or private), which gives the holder the right to use and obtain the product of a certain piece of land. The land to which Hak Pakai is applied may be used as a building site or for agricultural purposes.	**Open to resident individual foreigners**, Indonesian citizens, Indonesia-incorporated companies and **foreign companies that have a representative office in Indonesia**.
Right to Lease (Hak Sewa)	Hak Sewa gives its holder the right to construct a building on another person's land in exchange for rent.	**Open to resident foreigners**, Indonesian citizens, Indonesia-incorporated companies and **foreign companies that have a representative office in Indonesia.**

As seen from the table above, the options for a foreign individual to have rights over land (and buildings) in Indonesia are quite limited. The available options are discussed in the section below.

Under the current land law, individual foreigners are only qualified for the Right to Use or the Right to Lease. An individual foreigner is allowed to own one residential property (a house or an apartment) whereby the foreigner must be deemed to have provided benefits for the national development and must be either :

- An Indonesian resident (i.e. An individual foreigner with a permanent resident permit), or
- A nonresident domiciled in Indonesia only at particular times in possession of appropriate visit and immigration stamps in his/her passport.

In addition to the above conditions, an individual foreigner can purchase (or construct) a house on land with the Right to Use status or an apartment unit that is built on land also with the Right to Use status. This is possible because the Indonesian Land Law adopts the horizontal land separation principle whereby buildings or structures on a piece of land are considered as separate objects such that an individual foreigner may acquire the Right to Use of land and the building(s) over it. Foreigners are not, however, allowed to purchase houses or apartments classified as "low cost housing" or "very low cost housing".

The Right to Use title is granted for a maximum period of 25 years, and can be extended for a maximum of 20 years provided that the foreigner remains an Indonesian resident or meets the status requirements. If the foreigner departs from Indonesia, the property must be sold or the Right to Use must be transferred to another qualified person within one year of departure.

With the emergence of foreign investment and business in Indonesia, as an alternative to the above, an individual foreigner may acquire limited land titles in Indonesia by forming an Indonesian direct foreign investment company (or "PT PMA") or acquiring an existing Indonesian limited liability company (in which case, the status of the company will convert to PT PMA upon acquisition). In this case, the individual foreigner would indirectly qualify for Right to Cultivate and Right to Build.

If an individual foreigner wants to establish a PT PMA, there will be a minimum investment of IDR 10 billion (approximately $USD769,231) and it needs to be approved by the Investment Coordinating Board (BKPM).

The period of Right to Cultivate title is 35 years and may be extended for another 25 years, with renewal for another 35 years at the most. The minimum size of land is five hectares and the maximum will be determined by the Land Office for corporate bodies. The maximum period for the Right to Build is 50 years.

TAX RULES

Transfer of Land and Building

A transfer of land and building will result in income tax to become payable on the deemed gain on the transfer/sale to be charged to the transferor/seller. The tax is specified at 5% of the gross transfer value (tax base) and must be paid at the time the rights to the land and building are transferred to the transferee. For transfers of simple houses and apartments by taxpayers engaged in property development business, the tax rate is 1%. The tax payment constitutes a final tax.

A notary is prohibited from signing a transfer of rights deed until the income tax has been fully paid.

Land and Building Transfer Duty (BPHTB)

A transfer of land and building rights will generally also give rise to BPHTB for the party receiving or obtaining the rights. Transactions subject to BPHTB include sale-purchase, grants, inheritance, business mergers, consolidations and expansions. Acquisition of land and building rights in certain nonbusiness transfers may be exempt from BPHTB.

BPHTB is calculated based on the Tax Object Acquisition Value (NPOP), which in most cases is the higher of the market value or the NJOP of the land and building rights concerned. The tax due is determined by applying the applicable duty of 5% to the relevant NPOP, less an allowable nontaxable threshold. The nontaxable threshold amount for BPHTB varies by region, and the maximum threshold currently is IDR 60 million (approximately $USD4,600). For acquisitions by inheritance, the nontaxable property value is determined by the regional government, but the maximum is set at IDR 300 million. BPHTB is due on the date that the relevant deed of land and building right transfer is signed before a public notary.

A notary is prohibited from signing a transfer of rights deed until the BPHTB has been fully paid.

Land and Building Tax (PBB)

PBB is a type of property tax chargeable on all land and/or buildings, unless exempted. The PBB rate is specified at 0.5% from the taxable sale value of the object (NJOP) less the nontaxable NJOP. At present, the effective PBB is 0.1% or 0.2% of the NJOP. PBB is payable annually following an official assessment from the Regional Government.

A 50% reduction in the PBB rate is given to land and buildings used for nonprofit activities, including social and educational activities and health care services. Land and buildings used for religious worship, nature reserves, parks, diplomatic offices and designated international organisations are exempted.

Value Added Tax (PPN)

A value added tax of 10% applies to rental and sales of real estate properties. VAT on the sale price of land and buildings, as part of a real estate or industrial estate price, is imposed at the rate of 10% of the invoice value. Exempted from the VAT is the delivery of a basic house, very basic house, basic apartment and other properties as defined by the Minister of Finance.

Luxury Sales Tax (LST)

LST is levied at 20% on strata title apartments, condominiums, town houses with an area of 150 square meters or more, and non-strata title luxury houses (including office buildings and shop houses) with an area of 350 square meters or more.

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MALAYSIA

LEGAL REQUIREMENTS

Foreign individuals are generally permitted to purchase properties in Malaysia. However, approval by the state is generally required and there may be minimum purchase price conditions imposed depending on the location of the property.

TAX RULES

Foreign individuals intending to purchase or sell property in Malaysia should note the following high level tax implications.

Real Property Gains Tax ('RPGT')

RPGT is charged on gains arising from disposal of real property and is governed by Real Property Gains Tax Act 1976 ('RPGT Act'). Real property is defined as any land situated in Malaysia and any interest, option or other right in or over such land. RPGT is also imposed on the gains arising from the disposal of share in a Real Property Company ('RPC'). A RPC is a controlled company which owns Real Property or shares in a RPC or both, where the value of such property or shares is not less than 75% of the value of the company's total tangible assets. The RPGT rates provided under Schedule 5 of the RPGT Act, with effect from 1 January 2014 are as follows:

Foreign Individual *	Rate of RPGT (%)
Disposal within 5 years from the date of acquisition	30
Disposal after 5 years from the date of acquisition	5
An individual who is* ***not* *a citizen and* ***not*** *a permanent resident*	

Other individuals (non-foreign individual)	Rate of RPGT (%)
Disposal within 3 years from the date of acquisition	30
Disposal in the 4th year after the date of acquisition	20
Disposal in the 5th year after the date of acquisition	15
Disposal in the 6th year after the date of acquisition	Nil

Any gain of up to RM10,000 or 10% of the chargeable gain (whichever is higher) is exempt. There are also other reliefs available for specific situations.

Stamp Duty

Stamp duty is governed under the Stamp Act 1949 and the stamp duty rates on purchase of property as per Schedule 1 of the Stamp Act 1949 are as follows:

	Value	Rate
On the first	100,000	RM1 per RM100 or part thereof
On the next	400,000	RM2 per RM100 or part thereof
In excess of	500,000	RM3 per RM100 or part thereof

Income Tax

Rental income derived from real property in Malaysia is subjected income tax under either 4(a) or 4(d) of the Income Tax Act 1967. The rates of income tax for rental income derived by an individual as per Schedule 1 of the Income Tax Act 1967 are as follows:

Owner	Rate
Resident individual	Progressive; maximum of 26% (25% for year of assessment 2015 onwards).
Non-resident individual	26% (25% for year of assessment 2015 onwards).

Goods and Services Tax (GST)

The supply of real property in Malaysia by a taxable person who is registered for GST is subject to GST. The standard rate of GST is 6%. The supply of land used or intended to be used to the extent of it being used or intended to be used for residential or agricultural purposes, or general use is exempt.

Other Taxes

There is no net wealth tax or inheritance tax in Malaysia.

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PHILIPPINES

LEGAL REQUIREMENTS

Under the 1987 Constitution, only Filipino citizens and corporations or partnerships that are at least 60% Philippine owned are entitled to acquire land in the Philippines. As an exception to this rule, a foreign individual or entity can only acquire real estate in the Philippines in the following cases:

- Acquisition before the 1935 constitution
- Acquisition through hereditary succession if the foreign acquiree is a legal heir
- Purchase of not more than 40% interest as a whole in a condominium project
- Purchase by a former natural born Filipino citizen subject to the limitations prescribed by law. A Filipino who is married to an foreigner retains their Philippine citizenship, unless by their act or omission they are deemed to have renounced their Philippine citizenship. The maximum area allowed is as follows: a) 1000 square meters for residential land; b) One hectare for agricultural or farm land; c) For business purpose- 1000 square meters of urban land, and 3 hectares of rural land.

Foreign nationals or corporations may lease land for a period of 50 years and renewable for another 25 years.

TAX RULES

The acquisition of real estate by a foreigner under those cases allowed by law, is subject to the following taxes.

Real Property classified as an ordinary asset, which means that the seller is engaged in the realty business or the property sold is used in business:

Income Tax

For Corporate Sellers - Regular Corporate Income Tax of 30% is imposed on the gain on sale, which forms part of the taxable income for year.

For Individual Sellers - Individual Income Tax Rate of 5% to 32% is imposed on the gain on sale, which forms part of the taxable income for the year.

Withholding Tax

Where the seller is habitually engaged in real estate business, a creditable withholding is required to be withheld by the buyer at the following rates:

- 1.5% if the selling price is P 500,000 or less
- 3.0% if the selling price is more than P 500,000 but not more than P 2,000,000
- 5.0% if the selling price is more than P 2,000,000.

Where the seller is not habitually engaged in the real estate business, the creditable Withholding Tax (WHT) rate is 6.%

Value-Added Tax

Sale of residential house and lot, dwelling/ condominium unit is subject to VAT of 12% if the selling price exceeds P 3,199,200. This threshold amount does not apply to other categories of real properties, such as commercial or industrial.

Documentary Stamp Tax

Documentary Stamp Tax of 1.5% is imposed on the sale of real property regardless of classification. The tax base is the Selling Price or Fair Market Value, whichever is higher.

Real Property classified as a capital asset, which means that it is not being used in business or the seller is not engaged in real estate business.

Capital Gains Tax

Capital Gains Tax of 6% final tax is imposed on the sale based on the selling price or fair market value, whichever is higher. This applies for both corporate or individual sellers.

Documentary Stamp Tax

Documentary Stamp Tax of 1.5% based on the GSP or FMV, whichever is higher.

The sale is not subject to VAT nor WHT.

Further, as an owner or possessor of real property, the foreigner is also liable to pay an annual real property tax collected by the Office of the Mayor of the City or Municipality where the property is located. The rate differs for every locality but in no case shall it be more than 2% of the Assessed Value of the property. This tax is due on or before 31 January of every year.

In regards to the inheritance tax, or estate tax as it is commonly referred to, the foreigner is covered as far as his/her property is situated in the Philippines. The rate is graduated from 5% to 20%. The top marginal rate applies if the value of the estate exceeds P 10,000,000.

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THAILAND

LEGAL REQUIREMENTS

Foreign individuals or companies can only own land in Thailand in limited situations. Foreigners may however own condominium units, subject to certain conditions being satisfied. Foreigners may also own a building situated on land owned by another person.

Acquisition of Land by Foreigners

Foreigners may acquire land in Thailand in three cases:

(1) Incentives under investment laws

Foreign owned businesses can receive permission to own land in Thailand to carry on their business if:

- Promoted by the Board of Investment (BOI)
- Located in qualifying industrial estates
- Hold concessions under the Petroleum Act, or
- Permitted by specific laws pertaining to their business.

A BOI promoted business shall be permitted to own land in order to carry on the promoted activity to such an extent as the BOI deems appropriate, even in excess of the permissible limit under other laws.

(2) Inheritance

A foreigner may acquire land by inheritance as the statutory heir. In this case, the land devolved when combined with land already acquired cannot exceed that specified law. Approval to acquire the land must be obtained from the Interior Minister.

(3) Investment for residential use

A foreigner that brings into Thailand no less than Baht 40 million of foreign currency to invest for at least five years can, subject to certain other conditions, own land of not more than 1 rai (equivalent to 1,600 square metres) for residential use. The other conditions include:

- Permission must be obtained from the Interior Minister
- Money brought into Thailand shall be invested in one of the prescribed businesses or activities e.g. Government bonds, property funds and BOI promoted businesses
- The land to be acquired shall be located in specified areas e.g. Bangkok or Pattaya.

Acquisition of Land by a Thai Company

A Thai company that has more than 49% of its registered capital held by foreigners, or with foreigners constituting more than half of its shareholders, shall be subject to the same land ownership restrictions as foreigners.

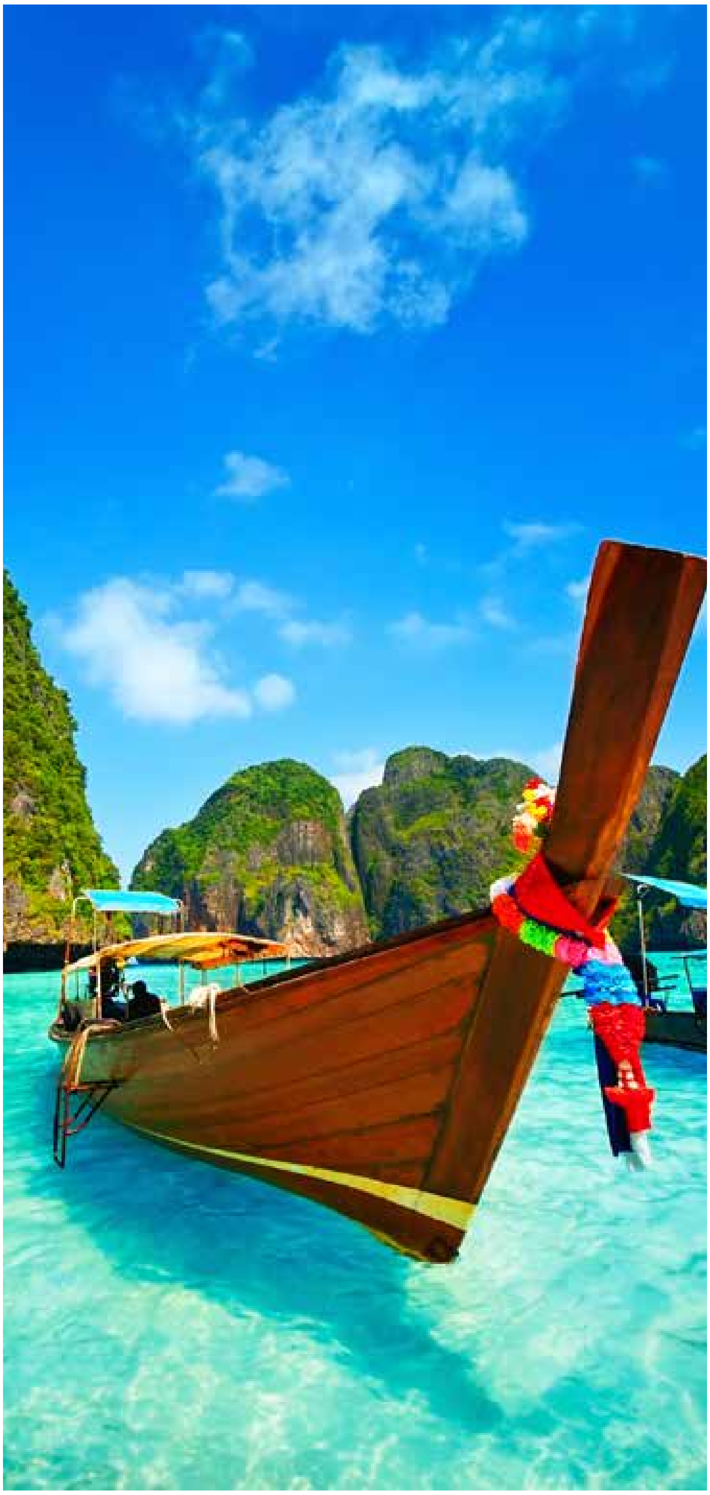
The Land Department may investigate the acquisition of land by a Thai company prior to its registration, to check whether the company was established to acquire the land for the benefit of foreigners.

Acquisition of a Condominium Unit

Under Thailand's Condominium Act, the foreign ownership of units in a condominium building is generally limited to 49% of the total floor area of the condominium.

Foreigners that may acquire a condominium unit include:

- A foreigner permitted to reside permanently in Thailand under the immigration law
- A foreigner granted permission to enter Thailand under the Investment Promotion Act
- A juristic person registered under Thai law i.e. a limited company, a public limited company, a limited partnership or a registered ordinary partnership, that is deemed to be a foreigner under the Land Code
- A juristic person that is deemed a foreigner under the Foreign Business Act and has been granted investment promotion under the Investment Promotion Act.
- A natural or juristic person deemed under the Land Code to be a foreigner, who brings foreign currency into Thailand or withdraws the money from a non-resident Baht account or from a foreign currency account held with a bank in Thailand. The total amount of money must not be less than the price of the condominium unit.



TAX RULES

Taxes and fees are collected under the Revenue Code and the Land Code when the transfer of real estate is registered at the Land Department.

The taxes and fees payable in general when a company sells real estate are summarised in the table below.

Tax/Fee	General Rate	Tax Base	Comment
Specific business tax	3.3%	Sales price or official appraised price whichever is greater	Payable by the seller. Exemptions may apply.
Stamp Duty	0.5%	Sales price or official appraised price whichever is greater	Payable by the seller unless otherwise agreed; exempt if the seller is liable to specific business tax.
Withholding tax	1%	Sales price or official appraised price whichever is greater	Deducted from the sales price. The tax deducted is a credit against the corporate income tax payable by the seller for the accounting period in which the tax is deducted.
Transfer registration fee	2%	Official appraised price	Paid equally by the seller and purchaser unless otherwise agreed. Reduced rates may apply.

Gains made on the sale of real estate by a company shall be subject to corporate income tax with few exceptions. The headline corporate tax rate is 20%.

Similar taxes and fees apply to the sale of real estate by individuals except for withholding tax, which is calculated at the personal tax rates.

Individuals are taxed on gains calculated based on the official appraised price of the property at the time of sale. The withholding tax paid at the time of sale may be treated as a final tax in some cases so that the gain is excluded from the seller's personal income tax return.

House and Land tax

The House and Land Tax Act imposes tax on the annual value of the rental receipts for the lease of a building and land connected to the building, where the building is used for commercial purposes.

The tax is payable annually at the rate of 12.5% on the actual rent received or the assessed rental value of the property, whichever is greater. The owner of the building is liable for the payment of the house and land tax.

A proposal to replace house and land tax with a property tax that is calculated on the official appraised price of property, rather than its stalled rental value.

Inheritance Tax (IHT)

Thailand's National Legislative Assembly has recently approved a bill which imposes tax on the receipt of inherited assets. In summary, the bill proposes the following measures:

- IHT will only apply to certain assets such as real estate, securities, bank deposits, vehicles and financial assets
- The first Baht 100 million of assets inherited will be exempt
- A 5% tax will apply to assets inherited greater than Baht 100 million by ascendants or descendants of the deceased and a 10% tax will apply in other cases unless exempted.
- Transfers to spouses will be exempt from the tax.

To address avoidance of IHT, the National Legislative Assembly also approved amendments to the Revenue Code to impose personal income tax at a rate of 5% on gifts and the transfer of real estate to children without consideration, where the value exceeds specified thresholds.

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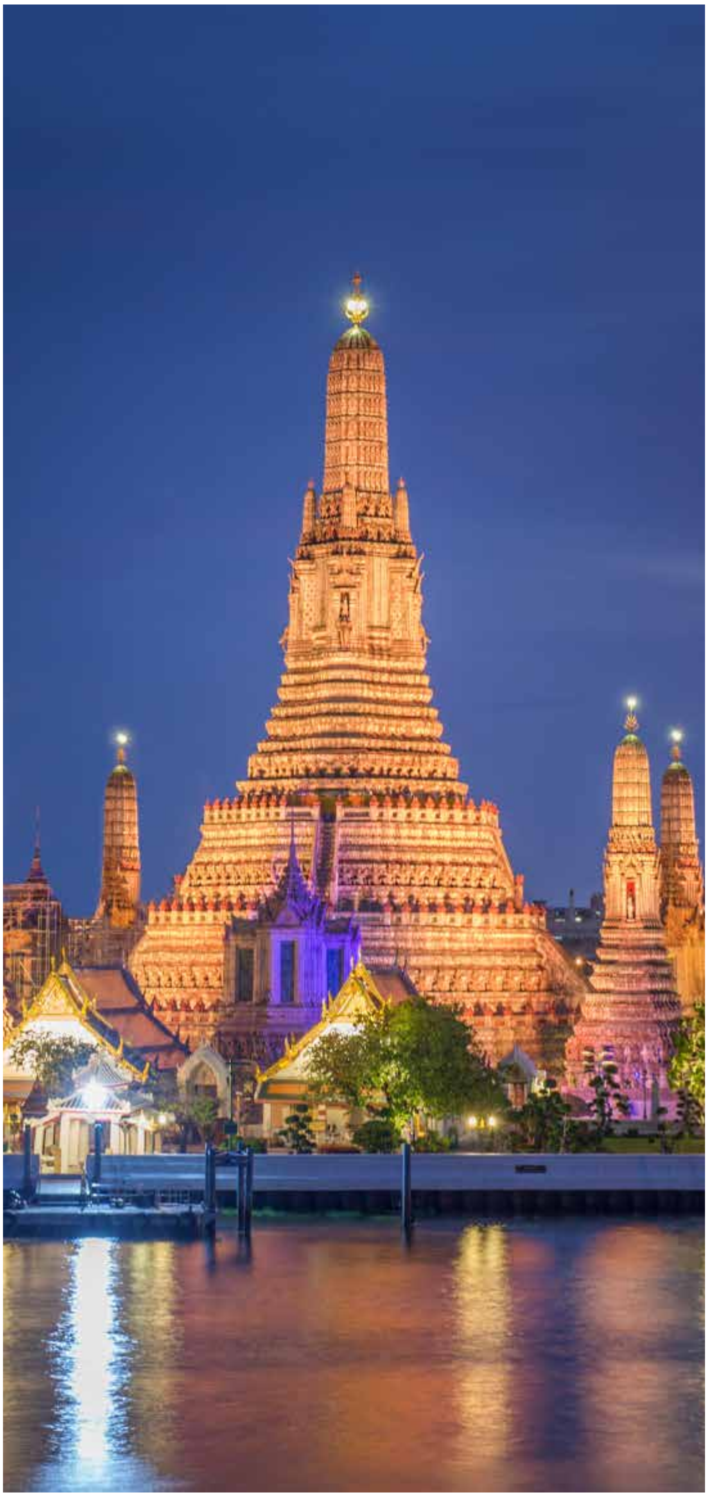

CANADA

Canada has seen substantial activity in recent years by foreigners looking to invest in residential and commercial real estate and development projects. In this article we have considered the tax considerations for foreigners looking to purchase property in Canada.

LEGAL REQUIREMENTS

Canada generally encourages foreign ownership of real estate, and most provinces treat foreign purchasers of residential and commercial real estate the same as residents. Any restrictions pertain to agricultural land and exist at the provincial level. One exception is Prince Edward Island, which forbids foreigners from owning more than 50 meters of waterfront without special permission. Some provinces have placed strict limitations on the number of acres of farmland that foreign individuals or corporations may own, while other provinces allow non-residents to buy up agricultural land unrestricted. Foreign investors seeking to buy farm land in Canada should consult their legal advisors before making an offer.

TAX RULES

Land Transfer Tax

The provinces of New Brunswick, Quebec, Ontario, Manitoba and British Columbia impose tax on transfers of real property, including fixtures attached to land. The rate of tax is a percentage of the amount paid for the property and varies from 0.5% in New Brunswick to 2% in British Columbia. In addition, all provinces, territories, and certain municipalities, levy some form of fee for the registration of mortgage or deed of title.

Value Added Tax

The federal government imposes a form of value added tax known as the goods and services tax (GST). Notwithstanding the goods and services name, the tax also applies to various transfers and leases of real estate. The federal rate is 5% and is applied to the sale price. Certain supplies are exempt, most notably the sale of used residential housing and residential rents. In addition, various provinces impose provincial sales taxes on the sale and lease price of certain assets and some services. Provincial sales tax rates range from zero in Alberta and the three territories to a high of 10% in Nova Scotia. In general, provincial sales taxes are not VAT systems, however, many provinces have harmonised with the federal GST system and the combined federal and provincial rates are applied to a transaction to determine the total applicable GST (i.e. Combined rate of 5% - 15% may apply).

The application of GST and provincial sales taxes to real estate transactions can be a complex area and professional advice should be obtained before entering into any real estate transaction.

Stamp Duties

Canada does not levy stamp duties.

Municipal Property Taxes

Real estate taxes are imposed in each province, usually at the municipal government level. In general, the tax is based on the annual assessed value of the real estate. Rates vary by class of property and from municipality to municipality.

Income Taxes

Any income derived from renting the property, and any profit made on the sale of the property, is subject to federal and provincial income taxes. Non-residents are subject to Canadian income tax in respect of capital gains realised on the disposition of real estate held directly, and shares of certain corporations and partnership interests where at any time during the preceding 60 months before the disposition more than 50% of its value was derived from real estate.

The rate of tax depends on the form of ownership (i.e. corporation, individual, partnership, trust), degree of commercial activities in Canada, taxable income level, and the province of jurisdiction. Rates may range from 25% (certain corporations) to a high of 50% for individuals in the highest personal marginal tax bracket. Capital gains are taxed at half of the applicable rate.

Withholding Tax

Rental Income

A flat 25% withholding tax applies on the gross amount of Canadian-source rental income paid or credited to a non-resident. In the case of rental income from real estate, an individual may elect to file a Canadian income tax return in respect of that income and pay the applicable graduated rates on the net rental income. This process involves having the non-resident appoint a Canadian agent, and filing a form (NR6) before the start of the relevant calendar year with Canada Revenue Agency (CRA) along with a statement showing estimated income and expenses for the upcoming year and an undertaking (jointly between the non-resident and their agent) to file a Canadian tax (T1) return to report the income and expenses within six months after the end of the calendar year. Where an NR6 is filed and accepted, the withholding tax requirement can be reduced to 25% of the estimated net income (before capital cost allowance) from the property. This can eliminate the remittance of withholding tax where the rental income is offset by sufficient rental expenses.

Disposition of Property

Any person purchasing real estate from a non-resident has an obligation to withhold and remit to CRA 25% of the gross sale proceeds with respect to the purchase. This liability increases to 50% where the real estate was depreciable property (a building used for rental or business purposes) or where the real estate was not held by the non-resident as capital property (for example, held for speculative purposes). A purchaser who fails to withhold this tax is liable for it (unless they had no reason to believe that the vendor was not a Canadian resident) and CRA has the ability to enforce this liability. Because of this potential purchaser's liability, it is standard practice for a purchaser's legal advisor to either require the vendor to certify in writing as to the vendor's Canadian residency status or require withholding of this tax.

The withholding tax requirements can be reduced or eliminated if the non-resident vendor obtains a Certificate of Compliance from CRA on a timely basis. This process requires the filing of a form with CRA in advance of the disposition or within 10 days thereafter, together with evidence as to the sale proceeds and the vendor's adjusted cost base of the property. One result of this filing is to allow the withholding tax to be calculated at 25% (or 50% as applicable) of the net gain from the sale (sale proceeds less cost of the property). Where the vendor's proceeds are less than or equal to cost, the withholding tax will be entirely eliminated by this process. A Certificate of Compliance is required any time that a disposition by a non-resident occurs regardless of whether or not a gain is realised on the property.

The process described in the previous section relates to withholding tax only. The actual Canadian income tax liability is determined by filing a Canadian tax return by the due date. That return will usually only include the property disposition, and often results in a refund of tax to the non-resident as the withholding tax rate typically is higher than the actual tax liability, and the gain can be reduced by costs of disposal, including real estate commissions, legal fees, etc.

Gift, Inheritance or Estate Taxes
Canada does not impose any gift, inheritance, or estate taxes on the death of an owner. However, a gift of the property to a related individual, or the death of the owner results in a deemed disposition of the property at fair market value at the time of the event. A Canadian income tax return must be filed for the year of the gift/death to report any deemed gain or loss realised. A Certificate of Compliance (discussed above) is not required in the case of a deemed disposition due to the death of the owner, however, it is required in the case of a gift.

In addition, certain provinces assess probate fees on the fair market value of assets transferred through an individual's Will.

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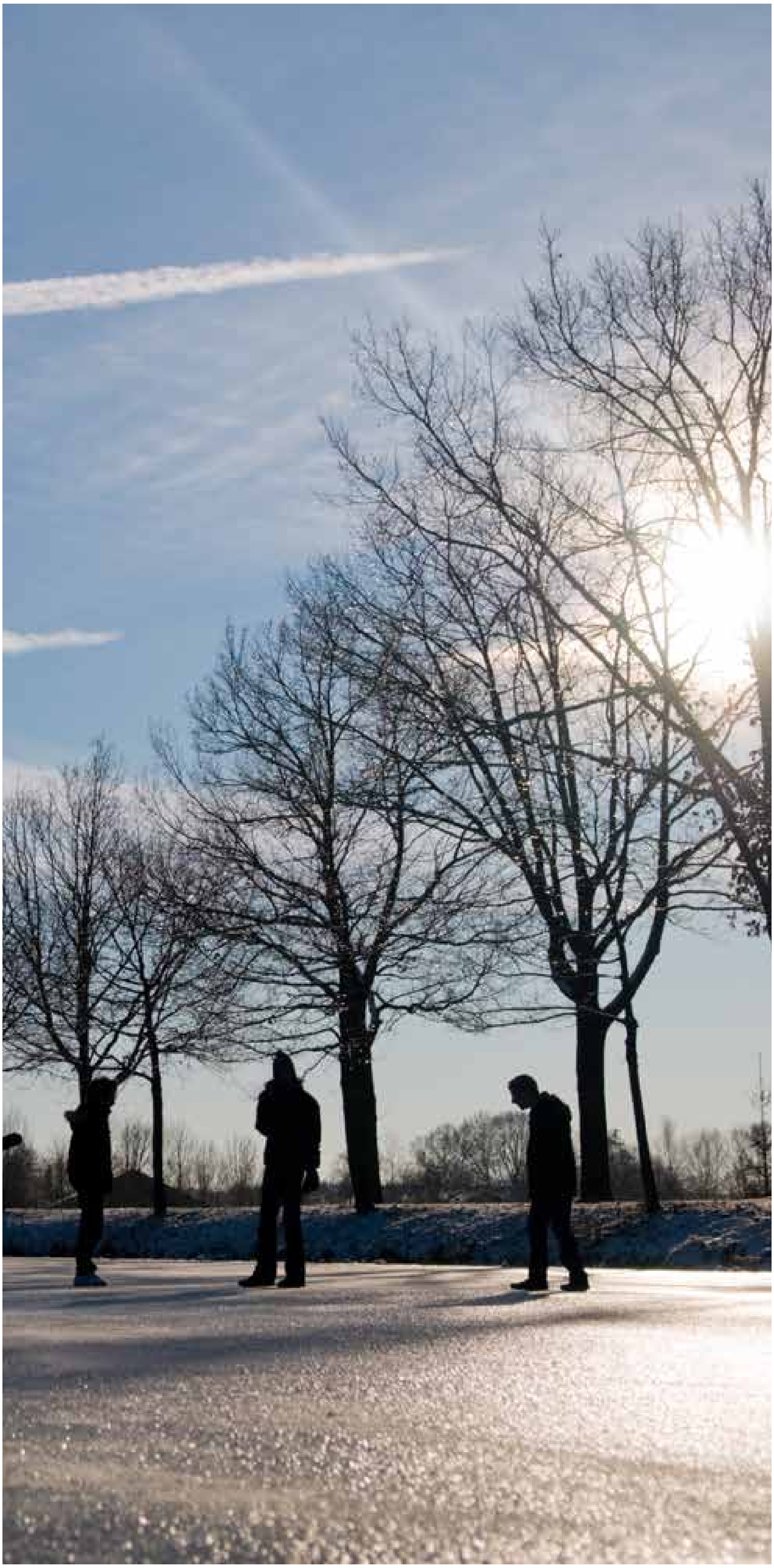

UNITED STATES

The United States of America has 50 states with 50 different possible approaches to the legal rules governing the ownership of real property. In addition to the 50 states, local jurisdictions such as cities or counties may have additional legal rules governing the ownership of real property. For this reason, it is highly advisable that a person acquiring real property within the United States should hire local lawyers to advise them concerning the acquisition of real property. Often, within the United States, a realtor (real estate agent) is used to assist with the purchase and/or sale of real estate. Generally, in addition to the real estate attorney and realtor it is prudent to consult with a tax advisor, such as BDO.

LEGAL REQUIREMENTS

Ownership by Individual(s)

Generally if the investor is an individual, the US property may be acquired in the name of the individual. If there are multiple individual investors, the property may be owned jointly as tenants in common or alternatively as joint tenants with right of survivorship. Some states may permit a married couple to own property as community property or tenants by the entirety. If the property is owned as joint tenants with right of survivorship, then upon the death of one of the owners the property will be owned by the surviving owners. Because the surviving owners will automatically become the new owners upon the death of one of the owners, a probate administration typically will be avoided. As discussed below, however, owning property as joint tenants with right of survivorship has a negative aspect under the US estate tax system, and therefore, is generally not advisable.

Ownership by Entities or Trustees

In addition to individual ownership, US real estate can also be owned in the name of a corporation, a partnership, a limited liability company (LLC), or a trustee of a trust. The method of ownership through these types of entities has legal, and non-legal, including tax implications. Furthermore, ownership by these entities may also have legal, and non-legal, including tax implications in the country of residence of the investor. Thus, US legal counsel and tax advisors should consult with the appropriate professional advisors in the country of residence to coordinate planning efforts so the best results can be reached. For example, in many civil law countries in Europe, ownership of the US real estate by the trustee of a US trust will likely generate problems and concerns in the country of residence. Another example requiring coordination would be ownership of the US real property by an LLC. In the United States the LLC will often be a pass-through entity for US income tax purposes. Many countries in the world, however, would classify the US LLC as a corporation under their income tax system. This lack of continuity between the US and the country of residence may cause problems and concerns.

TAX RULES

Similar to the legal rules concerning ownership of real property, each of the 50 states and local jurisdictions within those states may have their own set of rules concerning the taxation of real property.

Real Property Taxes

It is typical within the United States for a local jurisdiction within the state, to collect on an annual basis a property tax based on the value of the property. The method for determining valuation, and the applicable tax rate, varies widely from local jurisdiction to local jurisdiction. Thus, it is important for the investor to consult with his or her realtor, legal counsel and tax advisor to understand the rate of property tax, how valuation will be determined and how and when the property tax will be collected.

Income Taxes

In addition to the federal income tax, many states within the United States impose their own separate income tax. Furthermore, a local jurisdiction within the state such as a city may impose additional income tax. Typically, the income tax would be imposed on the taxable income generated from rents or royalties earned by the real property. A flat federal withholding rate of 30% may apply to the gross income collected from the real property if the operation of the real property is not considered to be a trade or business. If the property is operated as a trade or business (or an election is made to deem the income to be from a trade or business), then a US income tax return would be required to be filed by the owner reporting the income and deductions with respect to the property. For federal income tax purposes real property operated as a trade or business is entitled to a depreciation deduction. Rent and royalty income is considered to be ordinary income and for individual federal income tax purposes the maximum marginal tax rate on ordinary income for 2015 is 39.6%. If the real property is owned by a corporation, the maximum marginal rate is 35%, but a dividend paid to a shareholder is also subject to taxation (the general withholding tax rate on dividends paid by US companies to foreign persons is 30%, but this rate may be reduced if a US treaty with the country of residence applies).

When the real estate is sold, a capital gains tax will be imposed by the federal government on any gain from the sale. If the real estate has been held for more than one year the maximum federal tax rate is 20%. A relatively complex withholding regime applies to the sale of real estate that is located in the US (this tax regime is referred to as FIRPTA which stands for Foreign Investment in Real Property Tax Act). Generally, for federal purposes, a 10% withholding tax will be collected on the closing of the sale of the US real property based on the gross sales price. The foreign investor may be able to reduce the withholding by a timely filing of IRS Form 8288-B. If the state also imposes a state income tax there may be a withholding of a state tax at closing. Please note that there is no reduced rate for capital gains recognised by a corporation. For this reason, if the investor ultimately anticipates a sale of the property the possible higher income tax imposed on the gain to corporations is one factor to consider in structuring ownership of the US real property. (Note, as discussed below, ownership by a foreign corporation avoids US estate tax, but will generate a higher income tax if the property is sold at a gain.)

Gift Tax

The US does have a gift tax that can apply to foreign persons that make a gift of tangible property located in the US. Real property located in the US is considered to be a tangible asset and therefore, a gift of US real estate whether to a US person or to a foreign person would be subject to the US gift tax. The US gift tax is imposed on the donor. Caution should be exercised by foreign persons when determining who should be the owner of newly acquired US real property. For example, if a husband is the source of the funds for acquiring the US real property, placing the wife as half owner of the newly acquired real property would mean that the husband just gave a taxable gift to the wife of one half of the value of the property. If the wife was not a US citizen, the value of the gift in excess of $14,000 (2015 annual exclusion from gifts) would be a taxable gift subject to the US gift tax. The maximum marginal gift tax rate for 2015 is 40%. In addition to being careful upon acquisition of the property, foreign persons should also be careful when changing the title after acquisition. For example, if a husband and wife equally contributed to the purchase of the US real property and took title as 50-50 tenants-in-common, and subsequently decided to add their son and daughter to the title, this would be a taxable gift.

Estate Tax

The US has an estate tax that applies to a decedent's estate. For foreign persons (who are not US citizens and are not domiciled in the US and are not covered expatriates) US estate tax would only be imposed on those assets of the decedent which have a US situs. US real property is considered to have a situs within the US. The estate tax exemption available to foreign persons is only $US60,000. In some cases US may have a treaty with the foreign person's country of residence that may increase this exemption amount. The maximum marginal estate tax rate is 40%. If the decedent leaves his or her US real estate to a US citizen spouse there will be no estate tax because of the unlimited marital deduction. If the spouse is not a US citizen, however, the marital deduction will not be available unless a special trust is established to hold the US situs assets for the benefit of the surviving non-citizen spouse. This special trust is called a qualified domestic trust (QDOT).

Generally, for purposes of the US estate tax, if foreign persons own US real property as joint tenants with right of survivorship, the entire value of the US real property will be included in the gross estate of the deceased owner. The value of the ownership interests of the other owners can be excluded from the gross estate, if it can be substantiated that the surviving owners contributed to the acquisition price of the property from their own separate funds. For this reason, foreign persons should avoid owning US real property as joint tenants with right of survivorship.

Estate Planning

An outline of possible estate tax planning strategies by a foreign person investing in US real property would include:

- Outright ownership in individual name -The real estate will be subject to US estate tax
    - Purchase life insurance on life of owner to cover estate taxes
    - Place non-recourse mortgage on US real estate approximately equal to the value of the real estate
    - If country of residence imposes a higher estate tax, a home country tax credit for US estate tax may make the payment of US estate taxes neutral from an economic perspective.
- Foreign corporation owns US real estate - There will be no US estate tax because the stock in the foreign corporation will not be considered a US situs asset (but see income tax discussion above for higher income tax rates upon sale of property).
- Foreign corporation owns a US corporation which owns US real estate - There will be no US estate tax because the foreign holding company will not be considered to be a US situs asset (but see income tax discussion above for higher income tax rates upon sale of property)
- Trust owns US real estate - A properly structured discretionary distribution trust may own US situs assets without estate tax upon the death of a beneficiary/settlor (but proper coordination with country of residence is essential)
- Foreign hybrid entity such as an LLC owns US real estate -The US tax law permits certain entities to elect to be treated as either a corporation or a partnership, the real estate could be owned by a foreign entity (other than a per se corporation) and the foreign taxpayer could elect to be treated as a corporation for US tax purposes. Stock in a foreign corporation is not a US situs asset (but see income tax discussion above for higher income tax rates upon sale of property).
- Foreign partnership owns US real estate - The US estate tax law is not clear concerning whether the interests in a foreign partnership owning US real estate will be subject to US estate tax. Although, depending on the facts and circumstances, there may be various positions to exclude from US estate tax, because of the lack of certainty, foreigners should consider other alternatives

The above list of alternatives is not intended to be exhaustive, but rather lists the primary ways of positioning ownership to avoid US estate taxes. Many other factors must also be considered as a part of the analysis concerning structuring the ownership of US real estate, including, but not limited to, US income taxes, taxes in the country of residence, privacy, creditor protection and administrative costs and complexities.

Miscellaneous Taxes

Because a number of different taxing authorities could be involved with respect to a particular purchase of property within the US, it is always advisable to check with tax advisors, your realtor and your lawyer concerning the various miscellaneous taxes that might apply. For example, many jurisdictions impose a real property transfer tax upon the sale, exchange or other transfer of real property.

Many foreign persons consider investing in US real estate either for pleasure or for commercial gain. Regardless of the purpose, investing in US real estate has many legal and non-legal, including tax implications which should be considered by the foreign person prior to the purchase. There is no one solution that applies to all foreign investors. Rather the circumstances, goals and objectives of each investor must be considered to determine the best answer for that investor.

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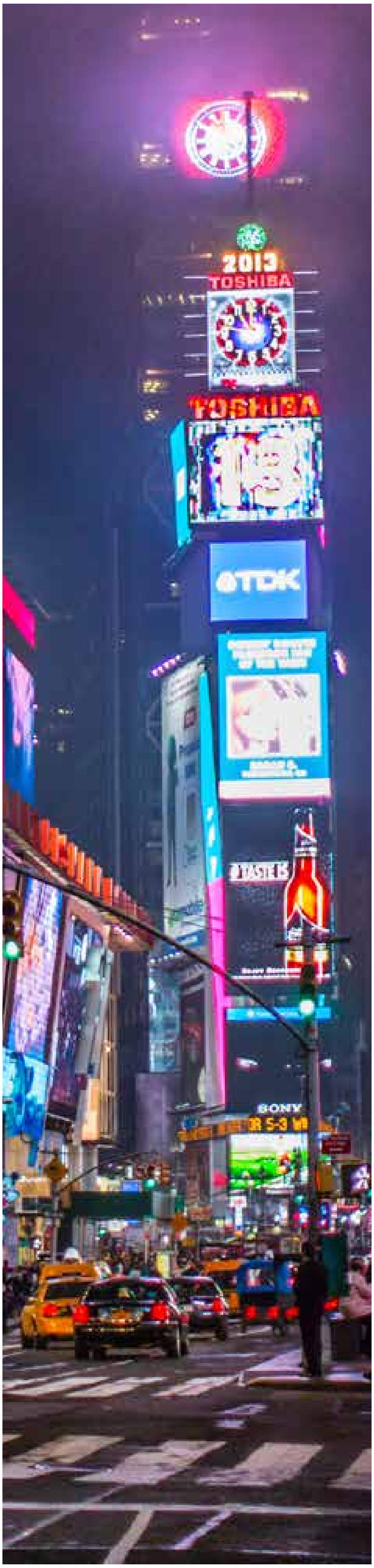

UNITED KINGDOM

TAX RULES

Stamp Duty

Stamp duty is due at the rate of 0.5% on the purchase of shares in a UK company, or the purchase in the UK of shares in a foreign company.

Stamp Duty Land Tax (SDLT)

In England, Wales and Northern Ireland, SDLT on the consideration for the purchase of a property is payable by the purchaser. SDLT on wholly residential freehold property purchases or on the premium paid for grant or assignment of a residential property lease is levied at rates on a sliding scale from 1% on properties above £125,000 to 12% on properties above £1.5m, and at 15% on certain purchases by non-natural persons of properties over £500,000.

SDLT on commercial or mixed use freehold property purchases or on the premium paid for grant or assignment of a lease on such a property is levied at rates on a sliding scale from 1% on properties above £150,000 to 4% on properties above £500,000.

SDLT on the rental element on grant of a lease is charged at 1% on the net present value (NPV) of the rent for residential leases over £125,000 and commercial leases over £150,000.

There is no SDLT on buying shares in property companies.

Scottish Land and Buildings Transactions Tax (LBTT)

In Scotland, LBTT on the consideration for the purchase of a property is payable by the purchaser. LBTT on wholly residential freehold property purchases is levied at the rates on a sliding scale of 2% above £145,001 to 12% on properties over £750,000.

LBTT on commercial freehold property purchases or on the premium paid for grant or assignment of a commercial property lease is levied at the rates on a sliding scale of 3% on properties between £150,001 - £350,000 and 4.5% on properties over £350,000.

Generally, leases of residential property are exempt from LBTT.

LBTT on the rental element on grant of a lease on commercial property purchases is charged at 1% on properties above £150,000.

Annual Tax on Enveloped Dwellings (ATED)

ATED is payable annually by companies, partnerships with a company member, and collective investment schemes which own a UK residential property valued at more than £1 million on or after 1 April 2012, or on the date of acquisition, if later. There are various reliefs and exemptions for certain types of businesses and properties, including:

- Property development businesses
- Property rental businesses
- Property trading business
- Financial institutions acquiring dwellings in the course of lending
- Charitable companies and providers of social housing
- Public bodies and bodies established for national purposes
- Accommodation provided to employees
- Farmhouses, as defined for this purpose
- Dwellings open to the public
- Dwellings conditionally exempt from inheritance tax.

It is important to note that the above reliefs must be claimed in an ATED return.

ATED is charged at rates on a sliding scale of £7,000 for properties valued between £1m - £2m and £218,200 for properties over £20m, depending on the value of the property on 1 April 2012, if then held, or on a later acquisition date. Properties will be revalued every five years, beginning on 1 April 2017.

From 1 April 2016 the entry threshold will be reduced to £500,000, with a £3,500 charge applying to properties held on 1 April 2012 and valued at that date between £500,000 and £1m or acquired for more than £500,000 at a later date.

The normal filing and payment deadlines for properties held at the start of each year are 30 April in the tax year in question. Late filing of ATED returns, even when Nil payable (e.g. because a property is commercially let) results in penalties.

Rental Income

Income Tax

Net rental income after allowable expenses, including repair costs, is chargeable to UK income tax and calculated on an accruals basis. Deductions can be made for interest and, in certain restricted circumstances, tax depreciation for specific fixtures, plant and machinery in commercial properties. In general, capital expenditure and related expenditure, such as acquisition costs, are not deductible. However, a 'wear and tear allowance' of 10% of the rent less council tax and water rates may be claimed against the rental income on the letting of a furnished residential property.

The rate of tax depends on the type of investor. Offshore companies are subject to income tax at a 20% rate. Non-resident individuals and trusts are subject to progressive income tax rates of up to 45%.

In general, unless properties are held in more than one capacity, rents from all sources are considered a single business, so rental profits and losses across properties are offset. Where there are excess losses in any year, these are carried forward and set against future profits of the rental business.

An annual tax return is required to be prepared assessing net rental profits for the period to 5 April each year (Tax Year). This return is required to be submitted by 31 January following the year of assessment.

Withholding Tax

A non-resident landlord's UK lettings agent, or in the absence of an agent, the tenant, is obliged to withhold 20% of the rent payment and pay this to the Tax Authorities.

However, under the non-resident landlord scheme, the UK Tax Authorities can agree to gross payment of rents (without tax withholding), providing annual returns are prepared and tax paid by the landlord. Income tax is settled in three instalments, on 31 January during the relevant Tax Year and on 31 July and 31 January following the Tax Year. The first two instalments are each based on half the tax liability for the previous Tax Year. The third instalment is the balancing amount.

Following submission of the annual tax return, any overpayment of UK tax can be reclaimed. Interest and, in some cases, penalties can arise on the late payment of tax.

Value-Added Tax (VAT)

Rental income from residential property is exempt from VAT and not subject to the option to tax. However, the first rental payment arising from the grant of a long lease (more than 21 years) by a developer of residential property may be zero-rated. In general, residential landlords cannot recover VAT incurred on expenditure related to their properties.

Rental income from commercial property is exempt from VAT, but subject to an option to tax. The option to tax converts rental income from exempt to standard rated and allows the landlord to recover VAT incurred on the property. The use of the option to tax is particularly important where a landlord has incurred expenditure on the development or refurbishment of a property. In certain circumstances (for example letting to some charities or to connected parties that cannot recover all of their VAT), the option to tax can be disapplied from rents, and this can result in a loss of input tax to the landlord.

Disposal of a Property

Generally, gains realised by nonresident individuals are outside the scope of CGT. However, from 6 April 2013 certain gains on property are brought within the CGT regime.

From 6 April 2013 – corporate and other bodies

For gains accrued on or after 6 April 2013, CGT is charged at 28% for gains on disposal of UK residential property for which a charge under the ATED rules has been due. Between 6 April 2013 and 5 April 2015 this was on properties valued at over £2 million owned by nonresident companies, partnerships with a company member, and collective investment schemes. This was the first time that nonresident persons were brought within the scope of UK CGT.

Between 6 April 2015 and 5 April 2016 the minimum value of property subject to CGT is reduced to £1 million, with a further extension on 6 April 2016 to enveloped property valued over £500,000.

The extended charge is closely linked to the ATED rules – it only applies to properties that are subject to ATED, so it does not apply to trustees who directly hold UK residential property. Also, as with ATED, the same reliefs and exemptions apply. For example, non-UK companies holding commercially let residential properties are not subject to the charge. If ATED is not due as a result of a relief, there is no chargeable gain.

The extended charge also only applies where the entity disposes of property directly and not indirectly, e.g. by selling shares in an underlying company.

From 6 April 2015 – Other Non-UK Residents

From 6 April 2015, the CGT charge was extended to disposals of UK residential properties by nonresident individuals, partnerships, trusts and closely held companies. There are exemptions for:

- Pension funds and collective investment schemes with genuinely diverse ownership
- Properties used for communal accommodation, eg boarding schools, halls of residence, care homes, armed forces accommodation and prisons.

Principal private residence (PPR) relief will be available where a property has been an individual's main residence during its ownership, to fully or partly relieve the gain. However, PPR relief will not apply for a tax year during which the person (or their spouse/civil partner) did not spend at least 90 midnights in that property (or other properties in the UK).

This charge is different to the ATED-related CGT charge (see above) in that it applies to:

- Properties owned by any nonresident individual or entity
- Properties of any value
- Properties that are part of an investment business, such as property rental businesses.

Where both charges apply, the ATED-related CGT charge is taken into account when calculating the tax payable.

Only gains accrued from 6 April 2015 are taxed – vendors can choose to use the value on that date as base cost, or use the original cost and time-apportion gains.

The rates of tax are:

- **Individuals:** 18% or 28%, depending on total taxable gains and UK income. The annual exemption (£11,100 for 2015/16) will be available
- **Trustees:** 28%. The annual exemption will be available (half of the amount for individuals)
- **Companies:** 20% (if ATED-related CGT charge at 28% does not apply).

Capital losses can only be used against residential properties arising to same person in the same or a later tax year.

Vendors must report disposals to HMRC, claim any PPR relief, and pay any tax due within 30 days of completion, unless they already submit annual self-assessment returns to HMRC, in which case they must still report disposals within 30 days on those returns, but can pay tax on the normal self-assessment due date.

VAT

The first sale of a freehold or the first grant of a long lease in residential property by the person constructing (or converting from commercial) that property is zero-rated. Other sales or letting of residential property are exempt from VAT.

The freehold sale of new commercial property (less than 3 years old) is subject to VAT at the standard rate. Other sales or lettings of commercial property are exempt from VAT, subject to the option to tax. Certain disposals of commercial investment property can qualify as business transfers (TOGC) and will be free of VAT.

Tax Advantaged Property Investment Fund Structures

There are two types of tax-advantaged property investment structures: Real Estate Investment Trusts (REITs) and Property Authorised Investment Funds (PAIFs). The main advantages are that the company is not liable to corporation tax on investment property income or investment property gains, and the point of taxation is shifted.

Inheritance Tax

On death, non-UK domiciled individuals are liable to IHT at a rate of 40% on the value of their UK sited assets in excess of £325,000 (the nil-rate band (NRB)). Surviving spouses and civil partners can claim the proportion of the NRB that was not utilised by the deceased spouse or civil partner.

Transfers between spouses/civil partners may be exempt from IHT, depending on their domicile status.

Companies are not subject to IHT. Therefore many non-UK investors have in the past used offshore holding companies to avoid IHT, but liability to ATED and CGT on residential properties held by corporate and other bodies now needs to be taken into consideration.

The government recently announced that, from April 2017, it intends to bring all UK residential property held directly or indirectly by foreign domiciled persons into charge for IHT purposes. This applies even when the property is owned through an indirect structure, such as an offshore company or partnership.

Value Added Tax (VAT)

The standard VAT rate is currently 20%, and for 2015/16 registration for VAT is required where taxable supplies (standard rated, reduced rated or zero-rated) exceed £82,000.

Sales and lettings of property are generally exempt from VAT, but where an option to tax has been made on commercial property, VAT is charged at the standard rate. When making an option to tax, consideration needs to be given both the impact on the seller/landlord's VAT recovery position and to the buyer/ tenant's VAT position. As outlined above the sales of newly built property are subject to specific rules.

Where a property disposal or letting is exempt no VAT is chargeable on the rent or disposal consideration, although VAT suffered on associated costs cannot be reclaimed.

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TAX ADVISORS THROUGHOUT THE ASIA PACIFIC REGION

For more information on any of our services, or for assistance with any international tax query, please do not hesitate to get in touch with your usual BDO adviser or one of the individuals listed below. Our policy is to offer an initial consultation on a no fee/no obligation basis followed up with a full proposal for services and a fee quote.

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