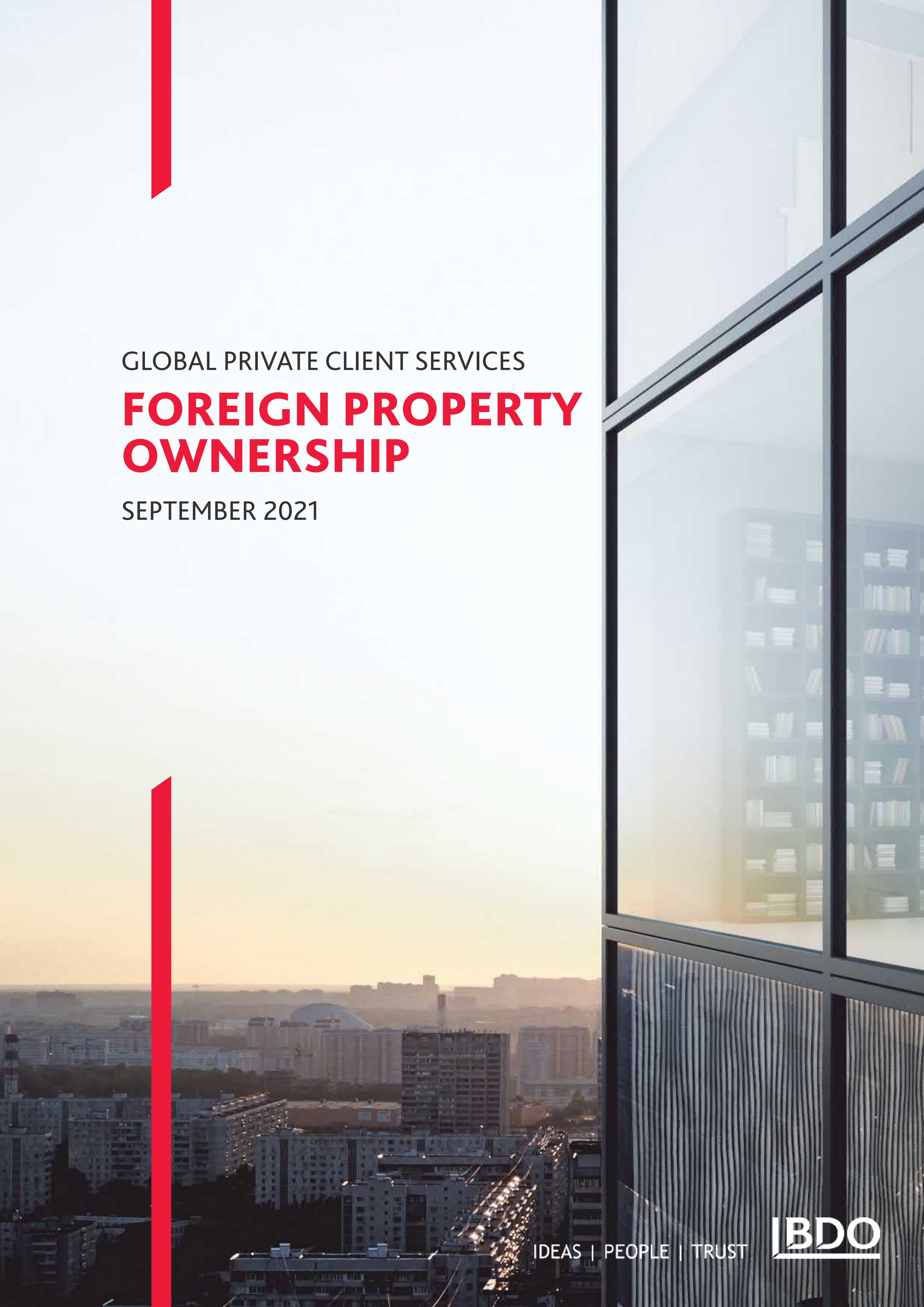
GLOBAL PRIVATE CLIENT SERVICES

FOREIGN PROPERTY OWNERSHIP

SEPTEMBER 2021



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INTRODUCTION

As global mobility increases it is becoming common for high net wealth families to own homes in a number of countries, as well as investing in commercial and other real estate outside of their country. Often this can be driven by their children who have chosen to undertake their university studies abroad or alternatively the desire to retire to another country once their business's have been sold.

As a result of this, Governments around the world are closely examining investment in real estate by foreigners with many countries restricting ownership only to newly built houses to try and drive the construction industry. An emerging trend across a number of jurisdictions is the perception that foreigners are driving up domestic residential house prices resulting in governments restricting domestic banks to loan funds to foreigners to purchase a new house and also the introduction of a 'vacancy levy' or 'empty homes tax' to encourage property owners to either live in their property or make it available for rent thus adding to the supply of housing availability and affordability.

What is also apparent is that many countries have been lax in recording of foreign ownership of property with some moving towards a register of beneficial ownership to bring some transparency to the degree of ownership by people living abroad.

This combined with the introduction of the Common Reporting Standard (CRS) has greatly increased the level of transparency with families with real estate and bank accounts in many countries throughout the world. The CRS will improve tax transparency from 2017 onwards where financial institutions will release information each year to the tax authority in their country which will be shared with tax authorities in other countries. At this stage over 112 countries have committed to the CRS including most of the 'tax haven' countries like BVI, Guernsey, Jersey.

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

MARK POLLOCK
Private Client Strategy Group - Asia Pacific

BDO INTERNATIONAL

US$10.3 billion
2019/2020 REVENUE

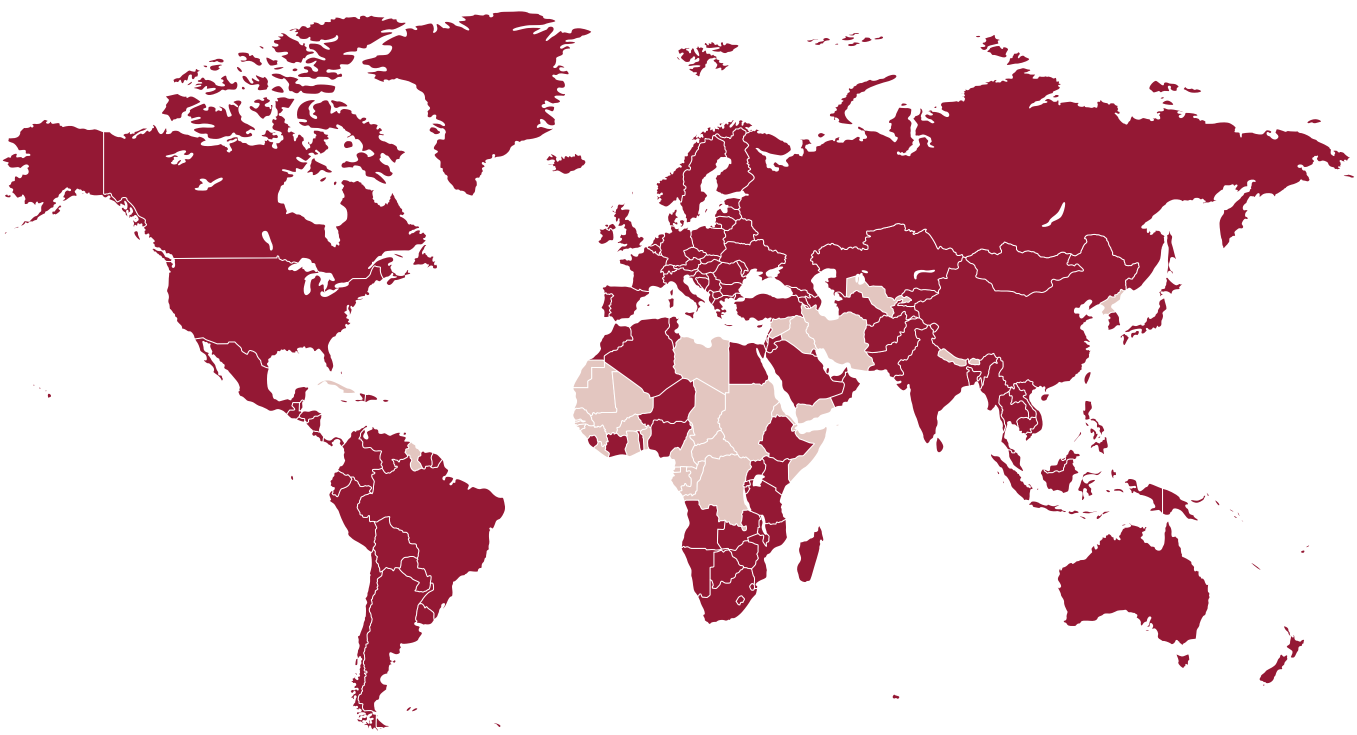
A YEAR ON YEAR INCREASE OF **7.8%**[1]

167 Countries

1,600 Offices

91,000 Staff

1. At constant exchange rate.



ABOUT BDO

GLOBAL PRIVATE CLIENT SERVICES

Wealthy individuals, their families, and their businesses' financial interests often cross international borders. BDO's Global Private Client Services team is experienced working with high net worth and ultrahigh net worth individuals and their families, entrepreneurs, and family offices.

We work with our clients to structure their domestic and international affairs in an efficient and compliant manner. Our goal is to ensure clients' wealth is structured effectively for long-term preservation and in compliance with the demands of regulators.

BDO's Global Private Client Services team is a global network of private client specialists who have a multi-jurisdictional understanding of leading issues and a commitment to exceptional client service. The professionals on our Global Private Client team work together to provide a complete range of tax services to individuals, including:

- Advice for tax efficient relocation to other countries
- Tax advice on investing money effectively around the globe
- Estate and gift tax planning
- Tax advice on investing in real estate in other jurisdictions.

BDO ensures that clients get the best tax advice no matter where they live or invest.

Find out more about Private Client Services at BDO at: www.bdo.global/en-gb/services/tax/global-privateclient-services

GLOBAL REAL ESTATE

BDO's global real estate and construction team is available to collaborate with you, wherever you do business. Our best-in-class people utilise the resources and global footprint of our cross-border network to give you key audit, tax, and consultative advice, as well as risk management, transaction services, corporate finance, direct taxation, VAT and forensic services. By staying focussed on your issues and opportunities we can help you navigate the challenges of our dynamic industry efficiently and with confidence.

Our experienced local teams will take the time to get to know you and your real estate business. Whether you are a developer, an investor or a fund manager, we will deliver tailored, commercially focussed and technically proficient solutions to you as a client active in one of the world's largest and most important industries.

Find out more about our global real estate services at: www.bdo.global/en-gb/industries/real-estate-construction

EXPERT LOCAL HELP ON YOUR REAL ESTATE ISSUES

BDO Private Client services is a leading advisor to wealthy individuals, their families and their businesses – domestically and internationally. Our goal is to give our clients the reassurance that their wealth is compliant with the demands of regulators and structured effectively for long term preservation.

If you would like to get in touch with a BDO adviser in another country, please see the contact details below:

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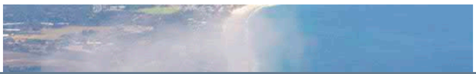
AUSTRALIA



INTRODUCTION

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

See figure 1a and 1b for a high level summary of the rules.

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') who are 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 Australia property, whether that be for residential, commercial or agricultural purposes subject to specific exemptions.

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

1. Residential
2. Commercial
3. Rural /Agricultural land

Each is considered in more detail.

Figure 1a

RESIDENTIAL PROPERTY

TYPE OF PROPERTY	TEMPORARY RESIDENT	NON RESIDENT
New house/apartment (for residence)	Yes*	Yes*
Existing houses (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

Figure 1b

COMMERCIAL AND RURAL PROPERTY

TYPE OF PROPERTY	TEMPORARY AND NON RESIDENTS
Commercial – Mines and Public Infrastructure	<A$61m – No approval required
	>A$61m – FIRB approval required
Commercial – Developed	<A$281m – No approval required
	>A$281m** – FIRB approval required
Vacant land for commercial development	FIRB approval required
Agricultural land	<A$15m – No approval required
	>A$15m – FIRB approval required

**some countries have higher threshold of $1,216m

RESIDENTIAL REAL ESTATE

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

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

Applications to purchase vacant land for development are normally approved subject to certain conditions; for example, 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, the Federal Treasurer ordered the sale of a $A39 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 $85,000, imprisonment of two years, or both.

COMMERCIAL REAL ESTATE

Investment proposals for existing developed commercial real estate, including offices, factories, retail outlets and hotels, do not require approval where the value of the real estate is less than $61m for mines and public infrastructure or $A281m million for developed commercial properties. If the real estate is heritage listed, a lower threshold of $5 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.

AGRICULTURAL LAND

All foreign persons must apply for FIRB approval for a proposed acquisition of an interest in agricultural land where the cumulative value of the land owned by the foreign investor, including the proposed purchased, exceeds $A15 million. This threshold has substantially reduced from the previous threshold of $A252 million.

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

FIRB FEES AND PENALTIES

There are fees to apply for FIRB approval. Business, commercial real estate and agribusiness investments would be subject to applications fees ranging from $5,000 to $100,000 depending on the size of the investment and the sector it operates in.

In addition to the current criminal penalties, the Government has also introduced civil pecuniary penalties and infringement notices for breaches of the foreign property ownership rules. These changes could see infringement notices ranging from $2,040 to $51,000 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.

New laws from 1 July 2015 will require real estate agents to apply a 12.5% withholding tax to the disposal by foreign residents of certain 'taxable Australian property', which will cover everything except residential property with value less than $750,000. This will include commercial property, agricultural property, mining interests and residential property over this threshold.

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. Some States also impose a stamp duty surcharge on residential property for foreign buyers. The **maximum** rates are as per Figure 1.c.

LAND TAX SURCHARGES

All States impose land tax on certain types of property with New South Wales, Queensland, ACT and Victoria also imposing surcharges for foreign investors.

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 laws from 1 July 2015 will require real estate agents to apply a 12.5% withholding tax to the disposal by foreign residents of certain ‘taxable Australian property’, which will cover everything except residential property with value less than $750,000. This will include commercial property, agricultural property, mining interests and residential property over this threshold.

These measures have been introduced as the government believe that a number of foreigners are buying and selling real estate in Australia and evading Australian tax. This withholding tax is designed really to bring foreigners onto the ‘radar’ of the tax authorities as they have no other way of detecting them. The amount withheld is a non-final withholding tax and will be credited to the account of the foreign resident payee when calculating their final income tax position for the relevant tax year. The foreign resident will still be required to have a tax file number and will have to lodge an Australian income tax return disclosing the sale of the property.

VACANCY LEVY

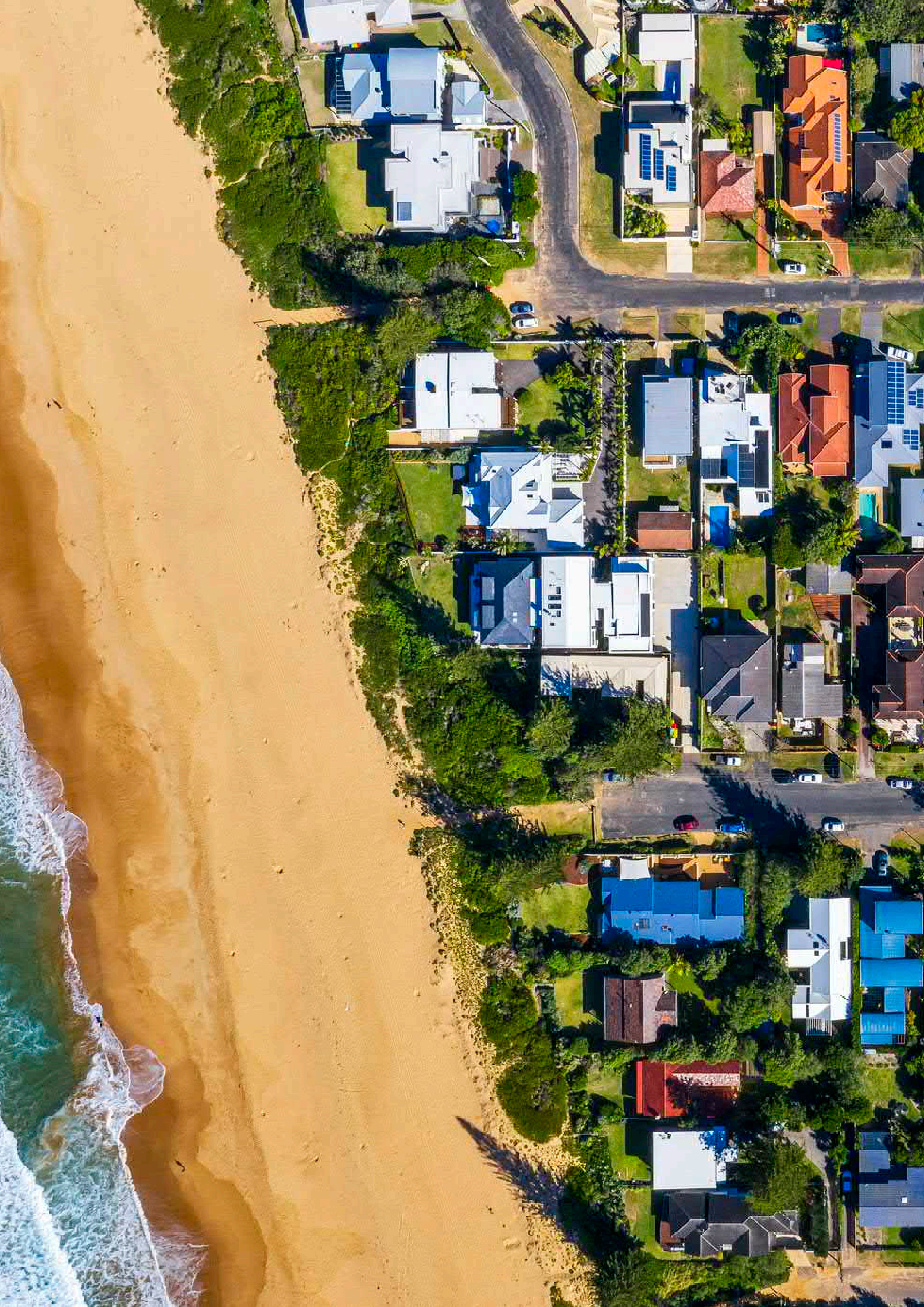
Foreigners who purchase a new house or apartment after 9 May 2017 will be subject to a levy unless the property is occupied for 6 months a year either by the owners or being rented to tenants.

GIFT, INHERITANCE, ESTATE TAXES

Australia does not impose any gift, inheritance, or estate taxes on the death of an owner. On death, the beneficiary of an estate inherits the cost base of the property of the deceased. 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.

Figure 1c.

CITY	STATE	RATE OF STAMP DUTY	SURCHARGE
Adelaide	SA	5.50% over $500,000	7%
Brisbane	QLD	5.75% over $1,000,000	7%
Darwin	NT	5.95% over $5million	0%
Perth	WA	5.15% over $725,000	7%
Melbourne	VIC	6.5% over $2million	8%
Sydney	NSW	7.00% over $3.1million	8%
Hobart	TAS	4.5% over $725,000	8%
Canberra	ACT	5.0% over $1.5million	0%



CANADA

INTRODUCTION

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.

It is relevant to note that the BC and Ontario have implemented an additional tax on foreign buyers and the Federal Government has announced that they are looking to implement a National Foreign Buyers tax with details to be announced.

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 3%-5% 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.

FOREIGN BUYERS TAX

In In addition to the land transfer tax, foreign buyers (including individuals who are not citizens or permanent residents of Canada, as well as foreign corporations and entities) will pay an extra tax of 15 – 20% on the purchase of a residential property in certain jurisdictions. The additional foreign buyers tax came into effect on August 2, 2016 for residential real properties located in certain areas around and in the Vancouver, British Columbia area. The additional foreign buyers tax also came into effect on April 22, 2017 in certain areas around and in the Toronto, Ontario area. **The Federal Government is also considering the implementation of a National Foreign Buyers Tax.**

EMPTY HOMES TAX

On January 1, 2018, the City of Vancouver, British Columbia implemented an empty homes tax ('Vacancy Tax') being 1% of the property's assessed taxable value for homes that are not being occupied as a principal residence or homes that have not been rented for at least 6 months of the calendar year.

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 onresident 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 RA has the ability to enforce this liability. ecause of this potential purchaser's liability, it is standard practice for a purchaser's legal advisor to either require he vendor to certify in writing as to the vendor's Canadian residency status or require withholding of this tax.

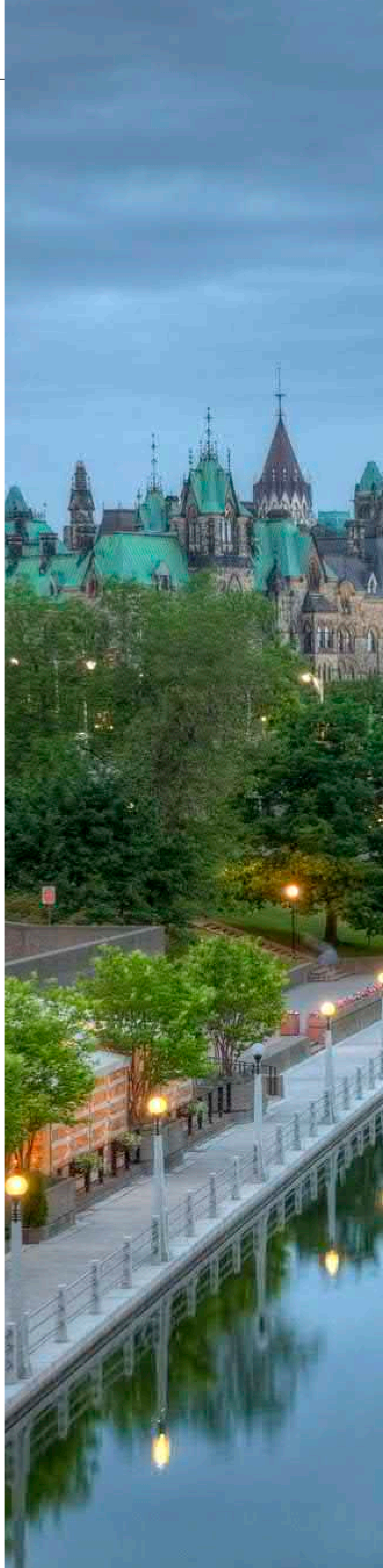
The withholding tax requirements can be reduced or eliminated if the non-resident vendor obtains a Certificate of Compliance from CRA on a timely basis. This process requires the filing of a form with CRA in advance of the disposition or within 10 days thereafter, together with evidence as to the sale 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.

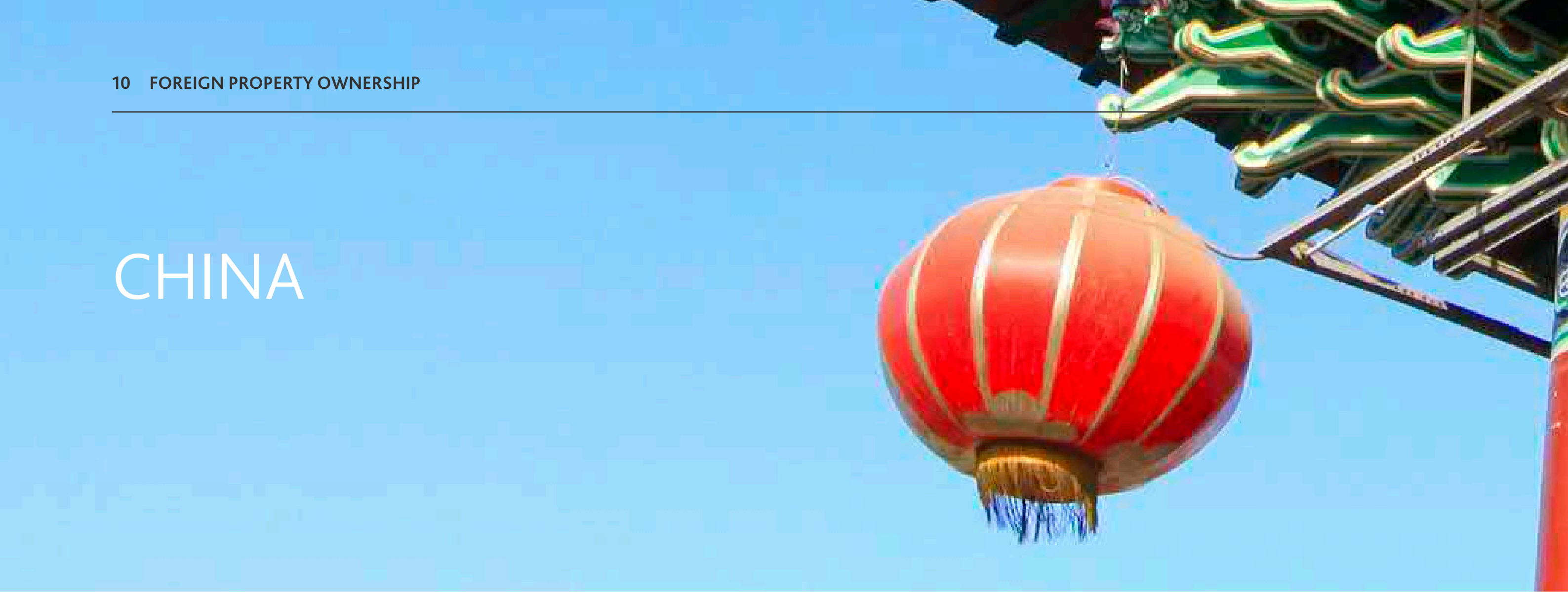
The process described in the previous section relates to withholding tax only. The actual Canadian income tax liability is determined by filing a Canadian tax return by the due date. That return will usually only include the property disposition, and often results in a refund of tax to the non-resident 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 o a related individual, or the death of the owner results in a deemed disposition of he property at fair market value at the time of the event. A Canadian income tax eturn 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.





CHINA

INTRODUCTION

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 advisors or relevant local authorities in which the property is located, before implementing any purchase plans.

LEGAL REQUIREMENTS

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

- A natural person foreigner 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 commercial 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, he / she needs 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.

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 computed 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 transferors and transferees). Currently, the transfer of residential properties by individuals is temporarily exempted from stamp duty in China.

VALUE-ADDED TAX

The sale of real estate and land use right is subject to VAT of 9% effective from 1 April 2019. A Chinese enterprise registered as a general VAT taxpayer may select the general taxation method (VAT rate at 9%) or simplified taxation method (VAT rate at 5%) for the sale of old real estate property that is acquired or self-built by taxpayer on or before 30 April 2016.

For general VAT taxpayers which acquire real estate property under general taxation method and record the property as fixed assets for financial and accounting purposes, the input VAT can be credited against output VAT.

The sale of self-built and self-occupied residential property by individual is exempt from VAT. It should be noted that the sale of residential property by individuals may follow different VAT treatments depending on the holding period and specific location of the property concerned.

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.

HONG KONG

INTRODUCTION

Foreigners (including Chinese, Macau and Taiwan residents) are virtually allowed to buy and sell, without restriction, residential properties (such as apartments, condominiums, etc.) and non-residential 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 overseas.

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

TAX RULES

STAMP DUTY

Ad Valorem stamp duty (AVD)

AVD is levied on the sale or transfer of properties. The transfer of residential properties on or after 5 November 2016 by individuals (including foreigners) or companies (irrespective of their place of incorporation) is subject to AVD at a flat rate of 15%. The rate may be reduced to 4.25% or lower but such concession only applies to Hong Kong permanent residents under certain circumstances. For transfer of non-residential properties, AVD is levied at a maximum rate of 8.5% which is lowered to 4.25% effective from 26 November 2020. AVD is levied on the consideration or market value of the property, whichever is higher. By law, both the seller and the buyer are jointly and severally liable for paying AVD (1).

Special stamp duty (SSD)

For residential properties acquired on or after 27 October 2012 by individuals (including foreigners) or companies (irrespective of their place of incorporation) and resold within 36 months of acquisition, SSD will be levied at rates ranging from 10% to 20% on the consideration or market value of the property, whichever is higher. The maximum rate of 20% applies if the residential property is resold within 6 months of acquisition.

SSD is payable on top of AVD. Both the seller and the buyer are jointly and severally liable for paying SSD by law (2).

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 or market value of the property, whichever is higher. 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. Property tax is charged at 15% on all the rental income less (1) a 20% statutory deduction for repairs and outgoings and (2) any rates paid by the owner of the property.

PROFITS TAX

Rental income received by a corporation (irrespective of its place of incorporation) will be subject to profits tax instead of property tax. Profits tax is currently charged at 16.5% (3).

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.

(1) In practice, AVD is usually borne by the buyer.
(2) In practice, SSD is usually borne by the buyer.
(3) Under the two-tier profits tax system, the tax rate for the first HKD2 million assessable profits of eligible entities will be reduced by half starting from the year of assessment 2018/19.

INDONESIA

INTRODUCTION

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 recognized in Indonesia. These rights are summarized below.

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.

Qualified Party: 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.

Qualified Party: 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.

Qualified Party: 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.

Qualified Party: 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.

Qualified Party: 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.

Qualified Party: Open to resident foreigners, Indonesian citizens, Indonesia-incorporated companies and foreign companies that have a representative office in Indonesia.

As seen from 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 non-resident 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 30 years, and can be extended for a maximum of 20 years and can be renewed for a maximum of 30 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 $USD738,951) 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 rights to 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 2.5% of the gross transfer value (tax base) and must be paid at the time the rights to 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 non-business 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 non-taxable threshold. The non-taxable threshold amount for BPHTB varies by region, and the minimum threshold currently is IDR 60 million (approximately $USD4,433).

For acquisitions by inheritance, the non-taxable property value is determined by the regional government, but the minimum is set at IDR 300 million (approximately $USD22,165). 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 maximum 0.3% from the taxable sale value of the tax object (NJOP) less the non-taxable NJOP. The non-taxable NJOP is set at IDR 10 million (approximately $USD739) at the minimum. PBB is payable annually following a Tax Due Notification Letter issued by the Regional Government.

The PBB is exempted on land and buildings used for non-profit 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 organizations 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.

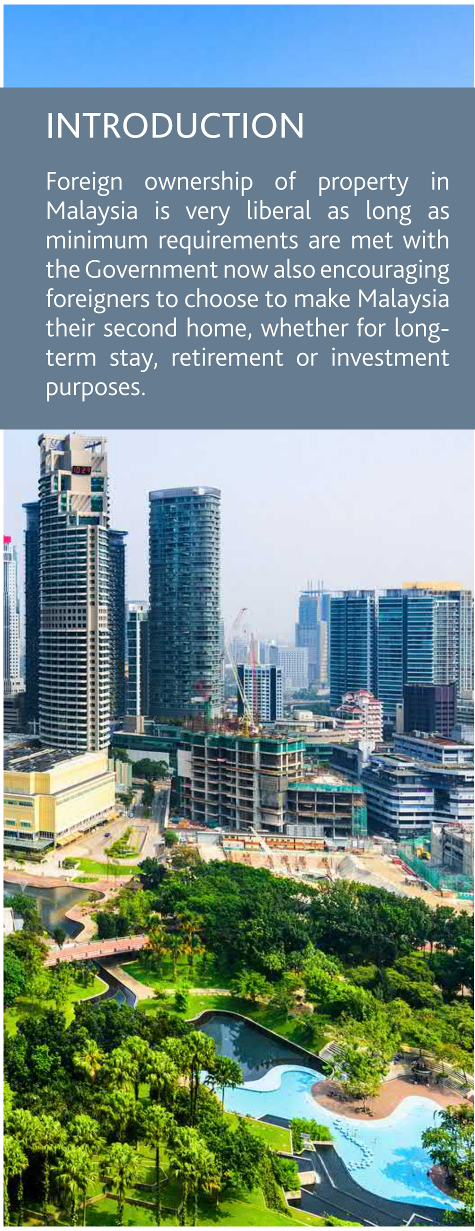
LUXURY SALES TAX (LST)

LST is levied at 20% on non-strata title luxury houses and town houses with minimum threshold amount of IDR 20 billion (approximately $USD1,477,901), and on strata title apartments, condominiums, town houses with minimum threshold amount of IDR 10 billion (approximately $USD738,951).

MALAYSIA

INTRODUCTION

Foreign ownership of property in Malaysia is very liberal as long as minimum requirements are met with the Government now also encouraging foreigners to choose to make Malaysia their second home, whether for long-term stay, retirement or investment purposes.



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 the 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 2019 can be seen in Figure 2a and Figure 2b.

Any gain of up to RM10,000 or 10% of the chargeable gain (whichever is higher) is exempted for an individual. 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 can be seen in Figure 2c.

INCOME TAX

Rental income derived from real property in Malaysia is subjected income tax under either Section 4(a) or Section 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 per Figure 2d.

SALES TAX AND SERVICE TAX (SST)

Malaysia has re-implemented SST effective from 1 September 2018 to replace the previous Goods and Services Tax (GST). The sale of real property in Malaysia by a taxable person who is registered for SST is not subject to SST. The rental income derived from real property in Malaysia is also not subject to SST.

OTHER TAXES

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

Figure 2a

FOREIGN INDIVIDUAL *	RATE OF RPGT (%)
Disposal within 5 years from the date of acquisition	30
Disposal after 5 years from the date of acquisition	10

**An individual who is not a citizen and not a permanent resident*

Figure 2b

OTHER INDIVIDUALS (NON-FOREIGN INDIVIDUALS)*	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	5

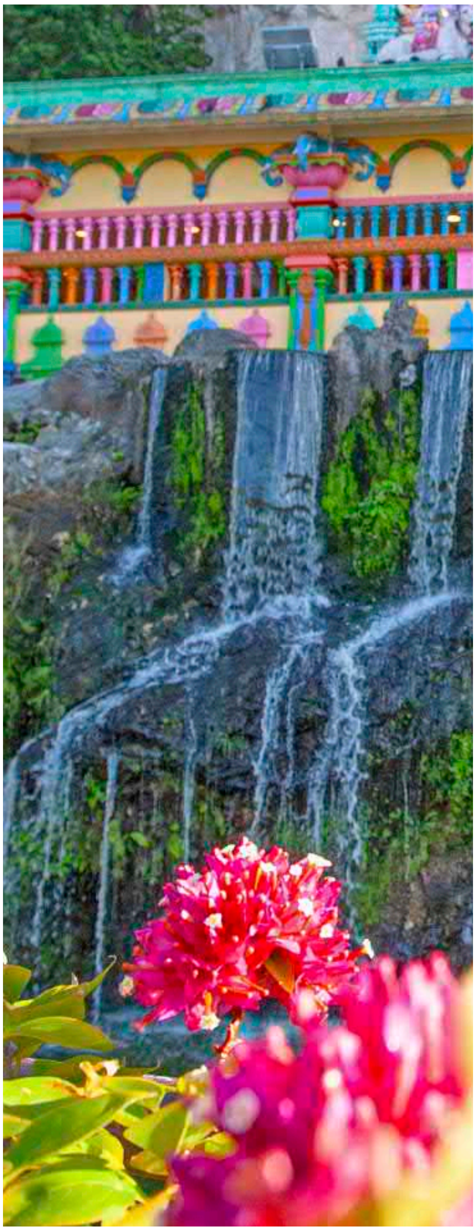
**An individual who is a citizen or a permanent resident*

Figure 2c

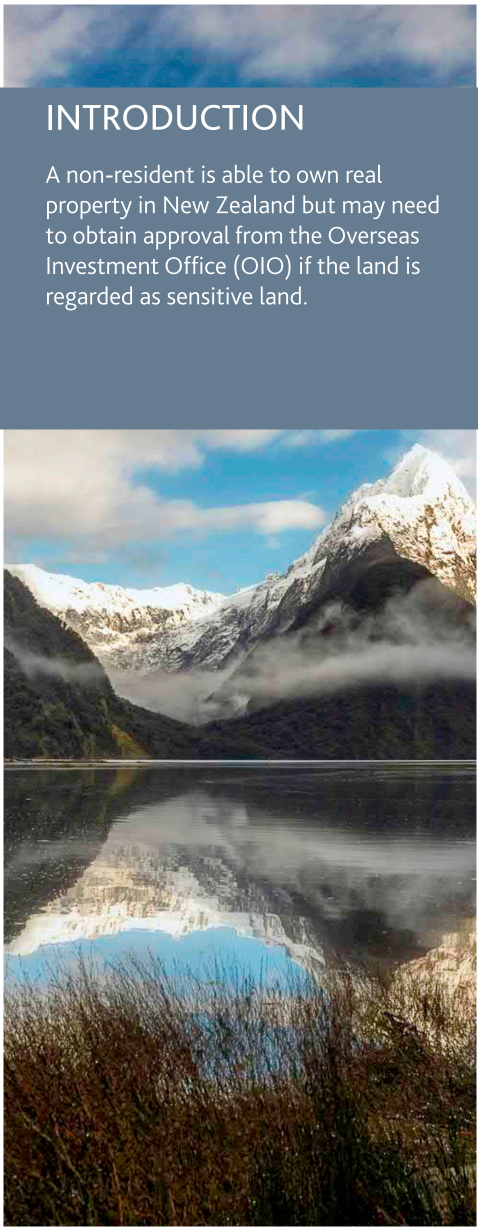
VALUE OF PROPERTY (RM)	AD VALOREM STAMP DUTY RATE (%)
≤RM100,000	1
>RM100,000 – RM500,000	2
>RM500,000 – RM1,000,000	3
>RM1,000,000	4

Figure 2d

OWNER	RATE
Resident individual	Progressive; maximum of 30% (year of assessment 2020 onwards)
Non-resident individual	30% (year of assessment 2020 onwards)



NEW ZEALAND



INTRODUCTION

A non-resident is able to own real property in New Zealand but may need to obtain approval from the Overseas Investment Office (OIO) if the land is regarded as sensitive land.

New Zealand taxes income based on source and residence. Tax residents are liable on their worldwide income but a non-resident is only liable on New Zealand sourced income. Income derived from property situated in New Zealand has a New Zealand source.

New Zealand does not have a specific capital gains tax but there are specific provisions relating to land which can tax the proceeds from the sale of a property in certain situations.

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

LEGAL REQUIREMENTS

A non-resident looking to purchase land in New Zealand may need 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 a move to try and reduce the cost of housing to New Zealanders, residential land has been added to the definition of sensitive land. Consequently a non-resident will be required to apply for OIO consent to purchase residential land.

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. Similarly forestry rights over an area of less than 1000 hectares are not subject to OIO approval but larger areas of forestry will be.

Applicants for consent must satisfy a number of criteria, including the core “investor test” criteria being of good character, with business acumen and financial commitment to the investment. They will also need to satisfy one of the following tests:

- The commitment to New Zealand test – eg the relevant overseas person intends to reside in New Zealand permanently;
- The benefit to New Zealand test - eg create jobs; introduce new technology or increase export potential;
- The increased housing on residential land test - eg through the construction of new housing.

In addition there are various legislation around building consents; resource management and the environment and local council zonings all of which may need to be taken into account depending on what you plan to do with the property.

Specific advice should be obtained.

TAX RULES

INCOME TAX

A non-resident 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. The income is liable to tax at the non-residents 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 (unless the trust passes the income on as beneficiary income).

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 industrial and commercial buildings but not residential property. 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 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 non-resident is overseas but occupied by them during a holiday in New Zealand. The rules for 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 non-resident, 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 non-resident withholding tax at 15% or 10% if a DTA applies or an approved issuer levy at 2% if the interest is paid to a third party. Specific advice should be sought. Legislation is to be introduced to deny Interest deductions on debt borrowed to acquire residential rental properties except for new builds (see future developments below).

Where the taxpayer incurs a residential rental loss, the loss cannot be offset against other income of the taxpayer. Instead it is ring-fenced and carried forward to offset against future residential rental income or if the person is taxed on the sale of the land. This applies from 1 April 2019 for the 2019/20 income year.

SALE OF PROPERTY

When land is sold it is necessary to determine if any of the land transaction rules could apply to deem a gain arising on the sale of the land as being taxable.

The land transaction rules are comprehensive and capture:

- land which was acquired with an intention or purpose of resale even if that intention or purpose is only one of a number of intentions or purposes at the time the land is acquired.
- Residential land which is sold within five or ten years of being acquired (depending on which bright-line test applies, see below).
- 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 the above taxing provisions. Each situation needs to be reviewed.

For passive investors in residential land two areas are worth further comment.

BRIGHT LINE TEST

Residential property which was acquired on or after 27 March 2021 and is sold within ten years of being acquired the sale is taxed as income unless an exemption applies. This is irrespective of any intention or purpose at the time the land is acquired. Residential land acquired on or after 29 March 2018 and before 27 March 2021 is subject to a five-year bright line test, and prior to 29 March 2018 land acquired after 1 October 2015 the period of ownership was two-years.

The exemptions are 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 "bright line" rule acts to make it unequivocal that a gain on sale of property within that time frame is taxable, and gives both Inland Revenue and the taxpayer certainty of application.

Note the exemption for the main family home, requires the land to have been used predominantly, for most of the time of ownership, as a dwelling that was the main home for the owner or a beneficiary of a trust if the owner is a trustee of the trust. The main home exclusion applies only on an apportioned basis (for land acquired on or after 27 March 2021) where the property has been used partly as a main home and partly for rental purposes.

Note the exemption does not apply if the person has used the main home exemption two or more times within two years immediately preceding the bright line date for the residential land or has engaged in a regular pattern of acquiring and disposing of residential land.

For the purposes of the bright-line rule, residential land does not include farmland or business premises.

RESIDENTIAL LAND WITHHOLDING TAX

A residential land withholding tax (RLWT) applies to provide a collection mechanism when a non-resident is selling land which is subject to the bright line test above.

The RLWT is required to be withheld by the vendor's conveyancer who is deemed to be the vendor's agent in relation to the RLWT. If the vendor does not have conveyancer, the purchaser's conveyancer will be the paying agent.

There are three methods available to calculate the amount of RLWT required to be paid.

The first method is to apply the RLWT rate (33% for individuals and trusts, increasing to 39% from 1 April 2021, 28% for companies) to the difference between the current purchase price and the vendor's acquisition cost.

The second method calculates the RLWT as 10% to the current purchase price.

Generally the RLWT payable will be the lower of the amounts calculated under these first two methods.

A third method is available when the vendor or vendor's conveyancer is the person who will pay the RLWT. RLWT is payable on settlement and is paid before other disbursements. Where the vendor has a mortgage obligation the calculation of RLWT under the first two methods may result in there being insufficient funds to discharge the vendor's mortgage.

INTENTION OR PURPOSE

Land which is bought with the intention or purpose of resale remains taxable. The intention or purpose does not have to be a dominant purpose or intention. Instead it may only be one of a number of intentions or purposes.

The intention or purpose of resale has to exist at the time the land is acquired and be more than a vague notion that a person can sell a property in the future if their circumstances change.

It is important for purchasers to document why they are buying the land and how they intend to use the land – eg live in the property or hold for long term rental income - at the time the land is acquired.

Residential land which is acquired with a purpose or intention of resale will remain taxable even if the bright-line period has expired. Satisfying the bright line test noted above does not take residential land out of the tax net where a purpose or intention of resale existed at the time the land was acquired.

TAX FILE NUMBERS

Both the vendor and purchaser are required to provide an IRD number when land is bought and sold. This is a requirement for registering the change in ownership with the Land Transfer Office and makes 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 non-resident may 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 non-resident is subject to compliance with anti-money laundering and automatic exchange of information 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 non-registered 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.

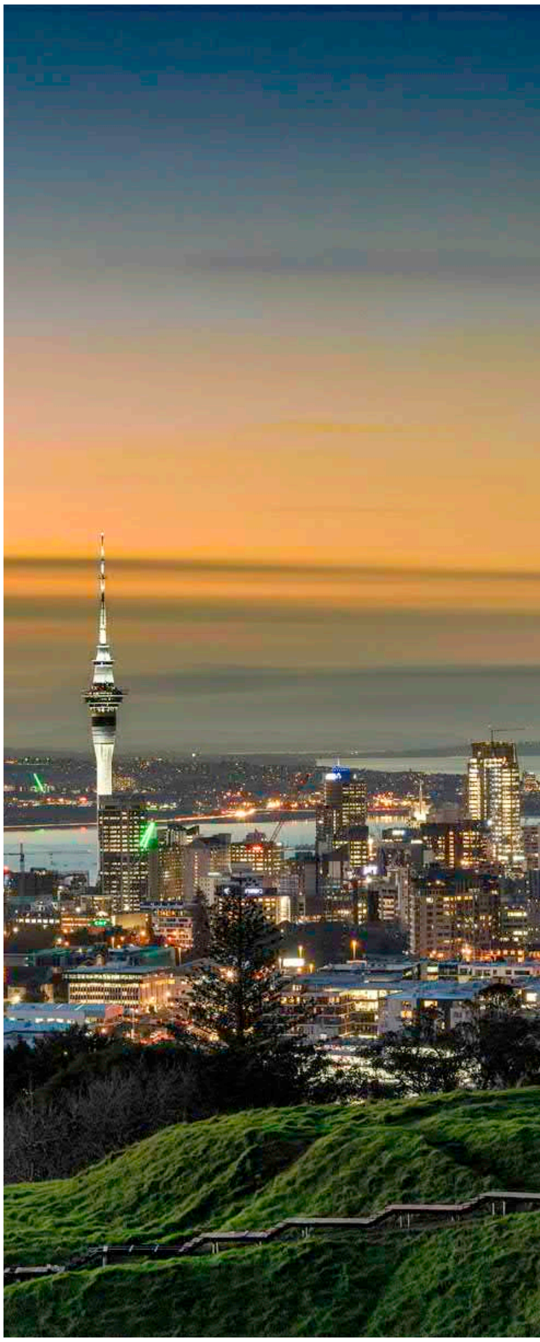
A purchaser can be registered for GST where they intend to make taxable supplies. For example where the property is commercial property and is being rented to tenants or used in carrying on a business to supply goods and services. The renting out of residential property is generally not subject to GST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

FUTURE DEVELOPMENTS

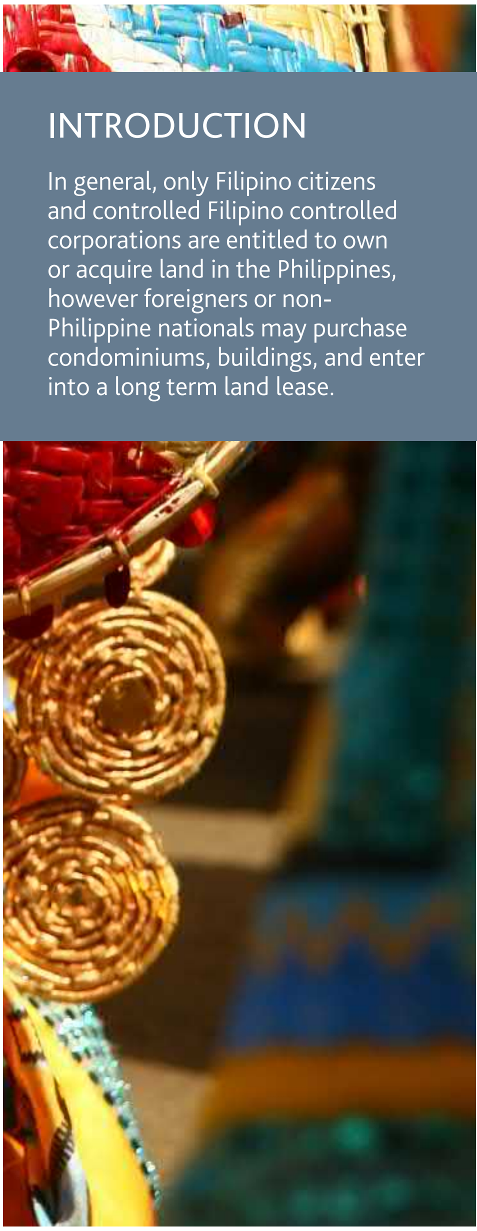
Inland The Government have announced that interest deductions on residential rental properties will be denied from 1 October 2021. For residential properties which were acquired before 27 March 2021 the interest deduction will be phased out over four years. For residential rental properties acquired after that date interest incurred on debt to acquire the property will be non-deductible from 1 October 2021.

Exemptions are to be introduced for property developers and for owners of new builds. Also initial or early owners of new builds will be subject to a five year bright line test and not the extended ten years noted above. The measures are intended to increase housing supply in New Zealand.

A Discussion Document was issued by the Government outlining options on how these new rules could be designed with the intention for legislation to passed later in the year with effect from 1 October 2021.



PHILIPPINES



INTRODUCTION

In general, only Filipino citizens and controlled Filipino controlled corporations are entitled to own or acquire land in the Philippines, however foreigners or non-Philippine nationals may purchase condominiums, buildings, and enter into a long term land lease.

LEGAL REQUIREMENTS

Under the 1987 Constitution of the Philippines, only Filipino citizens and corporations or partnerships that are at least 60% Philippine owned are entitled to acquire or own land in the Philippines. Land ownership are reserved strictly for persons or entities considered as Philippine nationals or Filipino citizens. A corporation which is 60% owned by Filipino citizens is regarded as a Philippine national.

As an exception to this rule, a foreign individual or entity can acquire real estate in the Philippines in the following cases:

- Acquisition before the 1935 constitution
- Acquisition through hereditary succession, if the foreigner 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 a foreigner retains their Philippine citizenship, unless by his act or omission he is deemed to have renounced his Philippine citizenship. The maximum area allowed is as follows:

- One Thousand (1,000) square meters for residential land;
- One (1) hectare for agricultural or farm land;
- For business purpose – 5,000 square meters of urban land and three (3) hectares of rural land.

Foreign nationals or corporation may lease land for a period of fifty (50) years and renewable for another twenty-five (25) years.

A foreign national or corporation may own a condominium unit and shares in the condominium corporation up to 40% of the total and outstanding capital stock of a Filipino owned or controlled corporation.

TAX RULES

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

If the real property is classified as an ordinary asset which means that the latter is used in business of the taxpayer, the seller shall be liable to pay.

INCOME TAX

For corporate sellers – regular corporate income tax rate of 25% is imposed on the gain on sale. It shall form part of the taxable income for the year.

For individual sellers – individual income tax rate of 0% to 35% is imposed on the gain on sale. This forms part of the taxable income for the year.

WITHHOLDING TAX (WHT)

If 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 P500,00 or less

- 3.0% if the selling price is more than P500,000 but not more than P2,000,000
- 5.0% if the selling price is more than P2,000,000

Where the seller is not habitually engaged in the real estate business, the creditable withholding tax is 6%

VALUE-ADDED TAX (VAT)

Sale of residential house and lot, dwelling, condominium unit is subject to VAT of 12% of the selling price exceeds P3,199,200. This threshold amount does not apply to other categories of real properties, such as commercial or industrial.

DOCUMENTARY STAMP TAX (DST)

DST 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 (FMV), whichever is higher.

If the real property is 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, the following taxes are imposed:

CAPITAL GAINS TAX (CGT)

Six percent (6%) CGT 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

DST of 1.5% is imposed based on the Gross Selling Price or FMV, whichever is higher. The sale is neither subject to VAT nor WHT.

As an owner or possessor of real property, the foreigner is 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 January 31 of every year.

SINGAPORE

INTRODUCTION

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

LEGAL REQUIREMENTS

The Residential Property Act defines a 'foreign person' as any person who is not -

- a citizen of Singapore;
- a Singapore company
- a Singapore limited liability partnership; or
- a Singapore soceity.

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 3 months to process.

The following are foreigners who may apply:

- permanent residents of Singapore for at least 5 years;
- 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; and
- 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 and the legal personal representative of the foreign beneficiary is bound to sell such properties to a citizen or approved purchaser within a

period of five 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 2 years from the day he ceases to be Singapore permanent resident.

An alternative solution for a foreigner who wishes to stay in a landed residential property without having to go through the hassle 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 contains 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 7 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); and
- Executive condominium unit, 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 computed on the purchase price as stated in the document to be stamped or market value of the residential property (whichever is the higher).

PURCHASE PRICE OR MARKET VALUE OF THE RESIDENTIAL PROPERTY	BSD RATES
First $180,000	1%
Next $180,000	2%
Next $640,000	3%
Remaining Amount	4%

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 residential property. The rates are as follows:

PROFILE OF BUYER	ABSD RATES WITH EFFECT FROM 6 JUL 2018
Singapore Citizens (SC) buying first residential property	Not applicable
SC buying second residential property	12%
SC[1] buying third and subsequent residential property	15%
Singapore Permanent Residents (SPR)[1] buying first residential property	5%
SPR[1] buying second and subsequent residential property	15%
Foreigners buying any residential property	20%
Entities[2] buying any residential property	25%[3] Plus additional 5% for Housing Developers[4] (non-remitable)[5]

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.*

3. As entities, developers will also be subject to the ABSD rate of 25%. Developers may apply for remission of this 25% ABSD, subject to conditions.

4. Housing Developers refer to entities in the business of housing development (i.e. construction and sale of housing units) with respect to the subject property acquired.

5. This 5% for Housing Developers is in addition to the 25% ABSD for all entities. This 5% will not be remitted, and is to be paid upfront upon purchase of residential property.

Seller Stamp Duty (SSD) is applicable on property purchased on and after 20 Feb 2010 and sold within certain duration.

Note: The rates of SSD (as disclosed in this Singapore segment) applies to residential properties only.

The rates of SSD applicable are summarized in the table on the next page.:

In 2017, Additional Conveyance Duty (ACD) was introduced. ACD would apply on the transfer of Property Holding Entities (PHE). A PHE, broadly speaking, is an entity with at least 50% of its tangible value derived from residential property holdings.

Prior to the introduction of ACD, property investors could avoid BSD and SSD if their properties were owned by a separate legal entity, such as a company. Instead of selling the underlying property, they would sell the shares of the company, which is only subject to buyer stamp duty for shares at a rate of 0.2% of the consideration or market value of the property, whichever is higher.

ACD serves to eliminate this benefit, by charging the equivalent of BSD, ABSD and SSD due on a transfer of the underlying property, in addition to the buyer stamp duty on the transfer of shares of the company.

It should be noted that exemptions may be available. For example, stamp duty for the transfer of shares may not be applicable if the shares are of a company incorporated outside Singapore and has its share register held outside Singapore. Given this landscape, it would be prudent for property owners to obtain tax advice before transferring their properties, whether directly or indirectly.

DATE OF PURCHASE OR DATE OF CHANGE OF ZONING / USE	HOLDING PERIOD	*SSD RATE (ON THE ACTUAL PRICE OR MARKET VALUE, WHICHEVER IS HIGHER)
Between 20 Feb 2010 and 29 Aug 2010 (all inclusive)	Up to 1 year	1% on first $180,000
		2% on next $180,000
		3% on remainder
	More than 1 year	No SSD payable
Between 30 Aug 2010 and 13 Jan 2011 (all inclusive)	Up to 1 year	1% on first $180,000
		2% on next $180,000
		3% on remainder
	More than 1 year and up to 2 years	0.67% on first $180,000
		1.33% on next $180,000
		2% on remainder
	More than 2 years and up to 3 years	0.33% on first $180,000
		0.67% on next $180,000
		1% on remainder
	More than 3 years	No SSD payable
Between 14 Jan 2011 and 10 Mar 2017 (all inclusive)	Up to 1 year	16%
	More than 1 year and up to 2 years	12%
	More than 2 years and up to 3 years	8%
	More than 3 years and up to 4 years	4%
	More than 4 years	No SSD payable
On and after 11 Mar 2017	Up to 1 year	12%
	More than 1 year and up to 2 years	8%
	More than 2 years and up to 3 years	4%
	More than 3 years	No SSD payable

**The rates of SSD applies to residential properties only.*

THAILAND

INTRODUCTION

Foreign individuals or companies can own land in Thailand in limited situations only. 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.

LEGAL REQUIREMENTS

ACQUISITION OF LAND BY FOREIGNERS

Foreigners may acquire land in Thailand in three cases:

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.

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 by law. Approval to acquire the land must be obtained from the Interior Minister.

Investment for residential use

A foreigner that brings into Thailand not 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 ON THE ACQUISITION OF REAL ESTATE IN THAILAND

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 Figure 3a.

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.

PROPERTY TAX

The property tax legislation applies to land as well as condominiums, apartments, and buildings, including houses, or any construction which can be used as a residence or for storage, industrial or commercial purposes. The tax base shall be the appraised value of the property as determined for the purpose of collecting registration fees under the Land Code. The ceiling rates range from 0.15% to 1.2% depending on the category of the property involved. These tax rates may be further reduced depending on the type of land and building.

INHERITANCE TAX (IHT)

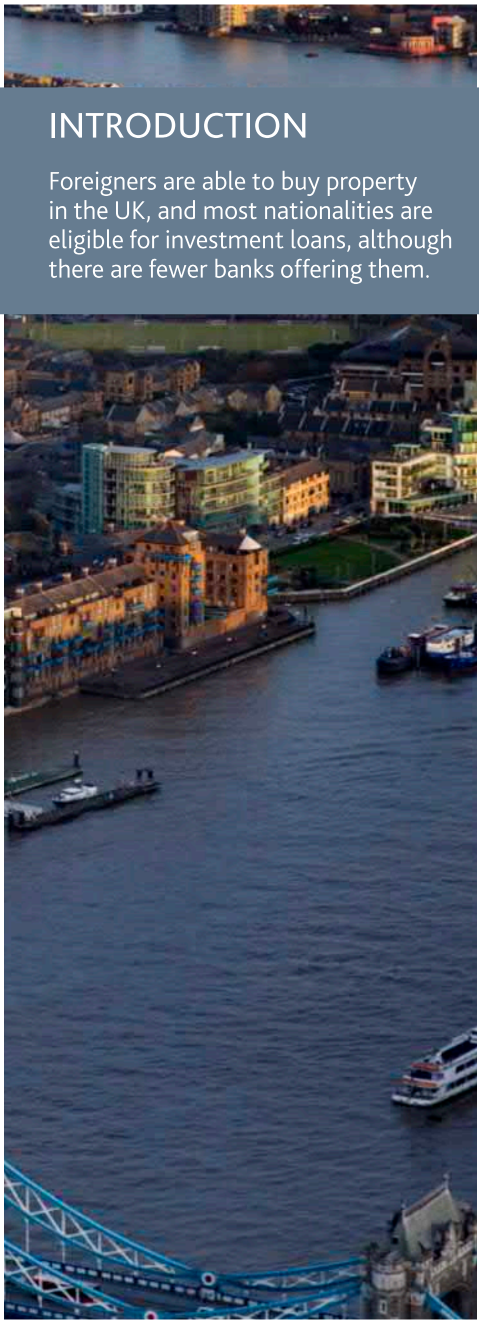
Inheritance tax ("IHT") applies to certain assets inherited including real estate. Non-Thai individuals shall be subject to IHT on inherited assets located in Thailand.

The first Baht 100 million of inherited assets is not subject to IHT. Parents or descendants are taxed at the rate of 5 % and other heirs taxed at 10%. Certain heirs such as the deceased's spouse and state organizations are exempt from IHT. A 5% gift tax applies to gifts over Baht 20 million to a spouse, parents or descendants and to gifts over Baht 10 million in other cases.

Figure 3a

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.

UNITED KINGDOM



INTRODUCTION

Foreigners are able to buy property in the UK, and most nationalities are eligible for investment loans, although there are fewer banks offering them.

LEGAL REQUIREMENTS

The Government is currently in the process of legislating to create a register of beneficial ownership information for overseas companies or other legal entities that own or buy UK property or participate in UK central government procurement. The intention is that overseas entities will not be able to buy, sell or take a lease of longer than seven years on a property in the UK, unless they have provided information about their beneficial owners for the new register. Trusts will not be included – HMRC's Trust Registration Service includes details of trust beneficiaries, and law enforcement agencies can access this data. After a transitional period (not yet specified), all overseas entities that already own UK property will have to register and update their details every two years. The register is intended to be established by the end of 2021. However, the legislation to enact it has still not passed the UK Parliament and so this may be delayed.

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 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.

Until 30 September 2021, this is from 5% on properties above £250,000 to 12% on properties above £1.5m. From 1 October 2021, this will be from 2% on properties above £125,000 to 12% on properties above £1.5m. Reduced rates for first time home buyers apply.

A higher rate of 15% applies on certain purchases by non-natural persons of properties over £500,000.

An additional 3% is charged on top of the main residential rate in each band for purchases of a residential property costing over £40,000 by:

- people buying an additional residential property, unless the additional property replaces a main residence sold within the last 36 months (this applies even if the first residential property is outside the UK), and
- non-natural persons buying a residential property, where the 15% rate does not apply.

An additional 2% surcharge applies to purchases of UK residential property by non-UK residents and by UK companies owned by non UK residents. This charge is in addition to the 3% surcharge and 15% rate where applicable.

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 on slices from 2% on properties between £150,001 - £250,000 and 5% on properties over £250,000.

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 for commercial leases at 1% from £150,001 - £5 million, and 2% over £5 million.

There is currently 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 and on the capital element of premiums for residential leases is levied at rates on a sliding scale from 2% on properties over £145,000 to 12% on properties over £750,000.

An additional 4% is charged on top of the main residential rate in each band for purchases of a dwelling costing over £40,000 by:

- An individual buying an additional dwelling, unless the additional property replaces a main dwelling sold within the last 18 months (this applies even if the first residential property is outside the UK)
- An individual who makes the acquisition in the course of a business carried on, alone or in partnership, the sole or main activity of which is investing or dealing in chargeable interests
- An individual who is the trustee of a trust, and there is no beneficiary entitled to occupy the dwelling for life, or entitled to the income from the dwelling, or
- A buyer who is not an individual.

LBTT on commercial freehold property purchases or on the premium paid for grant or assignment of a commercial property lease is levied at rates on a sliding scale from 1% on properties between £150,000 - £250,000 and 5% on properties over £250,000.

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

Further LBTT returns are required every three years and, where the terms of the lease have changed (e.g. a rent increase), a further payment of LBTT may be needed.

WELSH LAND TRANSACTIONS TAX (LTT)

In Wales, LTT on the consideration for the purchase of a property is payable by the purchaser. LTT on wholly residential freehold property purchases is levied at rates on a sliding scale from 3.5% on properties above £180,000 to 12% on properties above £1.5m.

For those purchasing an additional residential property (which applies even if the first residential property is outside the UK), separate rates apply where the purchase consideration exceeds £40,000. These are from 3% on properties above £40,000 to 15% on properties above £1.5m.

LTT on commercial freehold property purchases is levied at rates on a sliding scale from 1% on properties above £225,000 to 6% on properties over £1 million.

LTT on the rental element on grant of a lease on commercial property purchases is charged at 1% on the net present value (NPV) of the rent for leases between £225,001 - £2 million, and at 2% on NPV over £2 million.

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 £500,000 on or after 1 April 2017, 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: for 2021/22 rates range from £3,700 for properties valued between £500,001 - £1m to £237,400 for properties over £20m, depending on the value of the property on 1 April 2017 if then held, or on a later acquisition or revaluation date. Properties must be revalued every five years so are next due to be revalued on 1 April 2022 which would then be effective for the 2023/24 period.

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

Where received by individuals and trusts, net rental income after allowable expenses, including repair costs, is chargeable to UK income tax and calculated on an accruals basis where annual rents exceed £150,000, or on a cash basis where rents are lower.

Deductions can be made in certain restricted circumstances for tax depreciation (see below). Interest is not deductible, but instead basic rate tax relief (20%) is given for interest incurred in the personal income tax calculation of the landlord.

Progressive income tax rates apply 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. Tenants will have a withholding tax obligation in respect of rents paid to an overseas landlord who has not registered to file tax returns.

Income tax is settled in three instalments: on 31 January during the relevant Tax Year, on 31 July following the end of the Tax Year and on 31 January following the end of 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.

Corporation tax

Non-UK resident companies undertaking a trade in UK land or which are in receipt of net rental income are chargeable to corporation tax on their trading or rental profits. Currently this is at a rate of 19% but from April 2023 this will increase to 25% for companies with profits over £250,000. Non–UK resident companies making capital gains on the disposal of UK investment property or on shares deriving their value from UK property are also chargeable to UK corporation tax.

There are significant differences in the tax rules between income tax and corporation tax. In particular, companies and groups chargeable to corporation tax are subject to a restriction in the deductibility of interest. Subject to an election to benefit from a public infrastructure exemption, the rule will apply for groups on an aggregated UK basis to restrict annual net interest deductions to the higher of:

- £2m ('de minimis')
- 30% of 'tax-EBITDA'
- 'Tax-EBITDA' multiplied by the group's ratio of external interest to EBITDA.

Companies in a real estate investment group could be 'qualifying companies' able to elect for the public infrastructure exemption if they meet the following conditions:

- All of the company's profits and gains are fully chargeable to UK tax.
- The company, along with any other associated qualifying companies, does not have significantly more debt than other comparable companies in the group.
- The debt for which exemption is sought must be secured only on the 'qualifying exempt assets' or shares of the company or the qualifying assets or shares of other qualifying companies (the 'recourse' condition).
- Other than to an insignificant extent, the assets and income of the company must relate to qualifying activities.

For a real estate investment group, qualifying activities are most likely to be:

- Holding UK property which is let, or which is to be let, to an unrelated party for a term of less than 50 years.
- Holding shares in qualifying companies (for example shares in a subsidiary letting property to an unrelated party).
- Making loans to qualifying companies (for example lending down to a subsidiary letting property to an unrelated party).

Tax Depreciation

In general, capital expenditure and related expenditure, such as land and acquisition costs, are not deductible.

The cost of replacing soft furnishings and moveable furniture in residential properties may be claimed against the rental income on the letting of a furnished residential property.

An annual deduction of 3% is given for the original cost of construction and/or enhancement of commercial buildings.

An annual deduction at rates of either 6% or 18% is given for specific fixtures, plant and machinery in commercial properties.

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.

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 new 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

Non-UK Resident Individuals and Trusts

Capital gains tax (CGT) is charged at rates of up to 28% for gains accrued on or after 6 April 2015 arising on the disposal of UK residential property by non-UK resident individuals and trusts.

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).

CGT will also be charged at rates of up to 20% on gains accrued on or after 6 April 2019 arising on the disposal of: UK commercial property; holdings in collective investment vehicles deriving 75% or more of their value from UK property, and shares in narrowly controlled companies which derive 75% or more of their value from UK property.

An annual exemption from gains is available to individuals (£12,300 for 2021/22) and trusts (£6,150 for 2021/22).

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.

Non-UK Resident Companies

Companies are chargeable to UK corporation tax on gains arising from: the disposal of UK property held for the purposes of investment; the disposal of holdings in collective investment vehicles deriving 75% or more of their value from UK property, and the disposal of shares in narrowly controlled companies which derive 75% or more of their value from UK property. Corporation tax is currently charged at a rate of 19% but this will increase to 25% from 1 April 2023 for companies with profits over £250,000.

Historically, non-resident companies were not chargeable to UK tax on gains. The extension of UK tax to the gains of non-residents has been phased in since 6 April 2013. Accordingly, the chargeable gain actually chargeable on disposals is calculated by reference to the market value on a variety of potential historical dates depending on the circumstances, or the acquisition cost if later. For most residential properties, the valuation date for this purpose will be 6 April 2015 but in some cases could be 6 April 2019 (for example care homes and properties held by collective investment schemes with diverse ownership).

It will generally be necessary for companies to register for corporation tax within three months of the date of sale of the property/shares, if not already registered for corporation tax in respect of rental income derived from the property. The due date of payment for the tax is linked to the company's accounting period (the date to which it makes up its tax return). In most cases this is the date to which the company makes up its accounts but can be earlier, for example in circumstances where the only exposure to UK corporation tax is a gain on the disposal of a property. Generally, corporation tax is due 9 months and 1 day after the end of the accounting period, but could be payable in instalments if certain thresholds linked to the level of taxable profit and the number of associated companies are exceeded.

DEALING IN OR DEVELOPING UK LAND

Development profits

Profits of resident and non-resident companies and individuals arising from disposals of land used in a trade of dealing in or developing UK land, including disposals of assets such as shares deriving their value from land which has been developed, are chargeable to UK corporation tax (companies) or income tax (individuals), irrespective of the residence status of the landowner, and regardless of whether or not the activity is conducted through a permanent establishment.

The legislation is detailed, but amounts are treated as profits of a trade of dealing in or developing UK land where one or more of the following conditions are met:

- The main purpose, or one of the main purposes, of acquiring the land was to realise a profit or gain from disposing of the land
- The main purpose, or one of the main purposes, of acquiring any property deriving its value from the land (e.g. shares in a property development company) was to realise a profit or gain from its disposal
- The land is held as trading stock
- (Where the land has been developed) the main purpose or one of the main purposes of developing the land was to realise a profit or gain from disposing of the land.

These rules can apply to assets deriving their value from land, such as shares, in which case any gain on the disposal of the shares would be taxable as an income receipt instead of as a capital receipt. In the case of non-residents, this would mean that the tax base of the shares would be the market value on 6 April 2016 (or the date of acquisition if later), rather than the revaluation dates considered above in respect of assets held for the purposes of investment.

Residential Property Developer Tax (RPDT) and Gateway 2 Developer Levy

RPDT is currently subject to public consultation in the expectation of being legislated to take effect from April 2022 and so many aspects of it are currently uncertain. Following a tragic tower block fire in 2017, the UK Government has been incurring significant costs in respect of remediating cladding issues highlighted by the fire. This expenditure is to be funded by RPDT which will be charged (at a currently unspecified rate) on chargeable profits (which are to be calculated as the amount before any deduction of interest) of property developers falling within the scope of RPDT. Developers within the charge are expected to be those who are part of a group (currently undefined) which achieves profits ('profits' for this purpose is again to be before the deduction of interest) from UK residential property development activity in excess of £25m.

An additional tax (currently known as Gateway 2 Developer Levy) is expected to apply to residential property developments in excess of 18m in height.

VALUE ADDED TAX (VAT)

The standard VAT rate is currently 20%, and for 2021/22 registration for VAT is required where taxable supplies (standard rated, reduced rated or zero-rated) exceed £85,000. 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.

The first sale of a freehold or the first grant of a long lease in new 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. 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.

The freehold sale of new commercial property (less than three 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. When making an option to tax, consideration needs to be given both to the impact on the seller/landlord's VAT recovery position and to the buyer/tenant's VAT position. 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 four types of tax-advantaged property investment structures:

1. Real Estate Investment Trusts (REITs)
2. Property Authorised Investment Funds (PAIFs)
3. Collective Investment Vehicles which

have made an exemption election (CIVs)

4. Investment Trust Companies (ITCs)

The main advantage of these structures is that these entities are not liable to corporation tax on investment property income (REITs and PAIFs) or investment property gains (REITs, PAIFs, ITCs and CIVs), and the point of taxation is thereby shifted.

INHERITANCE TAX (IHT)

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)). An additional nil-rate band is available when a residence is passed on death to a direct descendant, or when a person downsizes or ceases to own a home and assets of an equivalent value, up to the value of the additional nil-rate band, are passed on death to direct descendants. The additional nil-rate band is £175,000.

There is a tapered withdrawal of the additional nil-rate band for estates with a net value of more than £2 million, at a withdrawal rate of £1 for every £2 over this threshold.

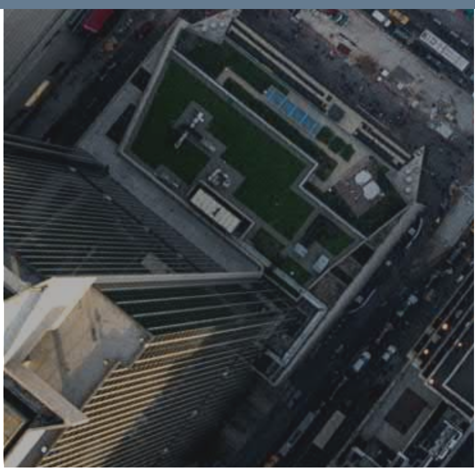
Surviving spouses and civil partners can claim the proportion of the NRB and additional NRB that was not utilised by the deceased spouse or civil partner. Transfers between spouses/civil partners may be exempt from IHT, depending on their domicile status.

Companies are not subject to IHT. Therefore, many non-UK investors have in the past used offshore holding companies to avoid IHT. However, since April 2017, all UK residential property held directly or indirectly by foreign domiciled persons is subject to IHT. This applies even when the property is owned through an indirect structure, such as an offshore company or partnership.

UNITED STATES

INTRODUCTION

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 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 automatically passes to the surviving owners. Since the surviving owners automatically become the new 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 from a tax perspective for foreign investors.

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 structure of ownership through these types of entities has legal and non-legal ramifications, including tax implications, in both the United States and in the investor's country of residence. 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 requires consideration of the overall impact when deciding to make an investment.

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

Typically within the United States, a local jurisdiction within the state collects an annual 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

Generally, 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 owned by a foreign person 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 2021 is 37%. If the real property is owned by a corporation, the corporate maximum marginal rate is 21%; however, in addition to the corporate income tax, shareholders are required to pay individual income tax on any dividends received from the corporation (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). This means that if ownership is structured through a corporation, the income from the property may be subject to double taxation.

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 income tax purposes a 15% withholding tax will be collected at the closing of the sale of the US real property based on the gross sales price. The foreign investor may be able 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 preferential rate for capital gains recognized by a corporation (therefore it is still 21%). Additionally, if the seller is a foreign corporation, there may be a "branch profits tax" imposed on the sale, which is a second layer of tax intended to take the place of the withholding tax that would be imposed on dividends if the foreign corporation were a US 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. (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.)

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 county or city may impose additional income tax.

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 made 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 $159,000 (2021 annual exclusion from gifts to spouse, not a US citizen) would be a taxable gift subject to the US gift tax. The maximum marginal gift tax rate for 2021 is 40%. Moreover, 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 $60,000. In some cases the US may have a treaty with the foreign person's country of residence, which 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 noncitizen spouse. This special trust is called a 'qualified domestic trust' for which the acronym is '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 (the value of this policy is excluded from estate tax for foreign persons).
  - Place a non-recourse mortgage on the 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.
- 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.
- 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 – because 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 structuring 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.

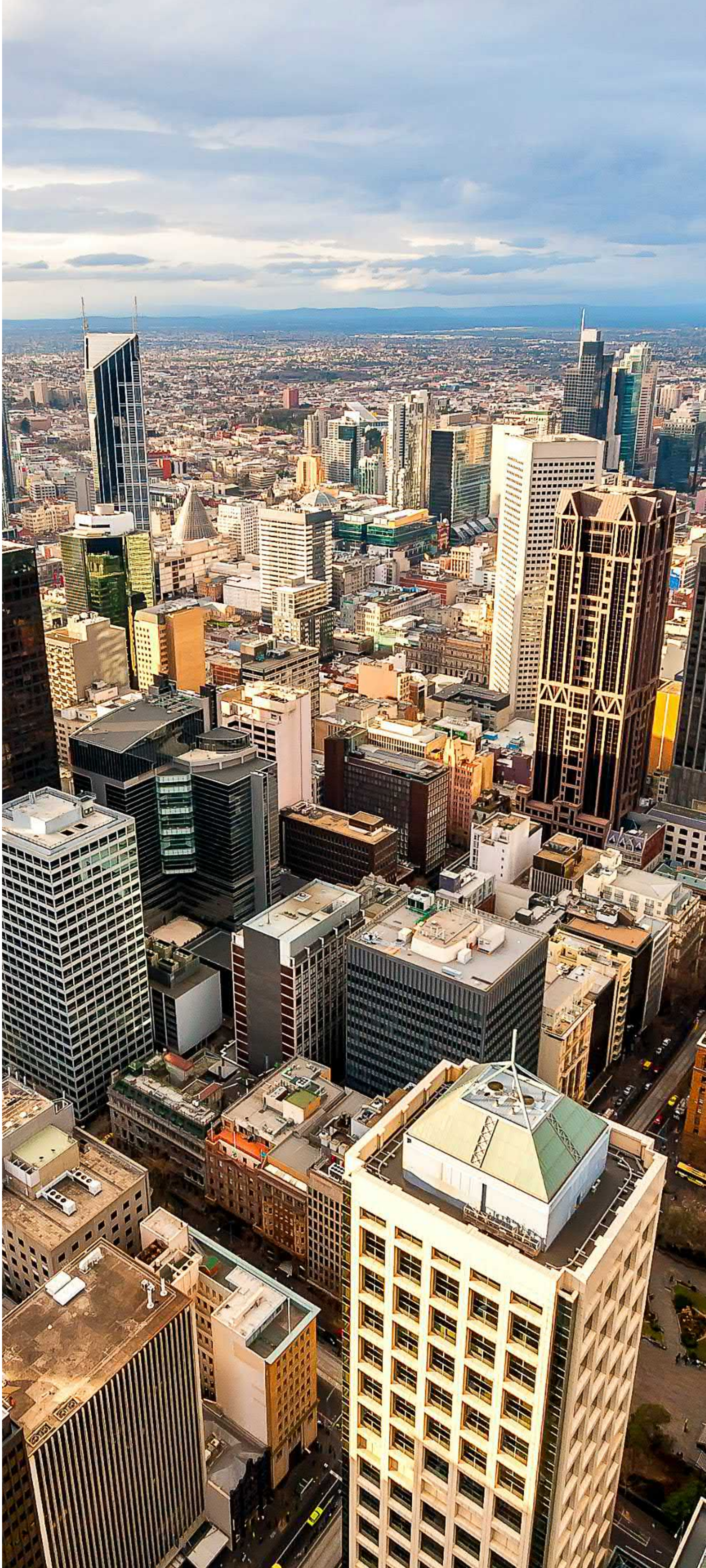
MISCELLANEOUS TAXES

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 transfer tax upon the sale or exchange of real property.

CONCLUSION

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 ramifications, 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.

BDO in general feels that the likelihood of retroactive changes to the tax law are highly unlikely, but they could happen. Any person considering the purchase, sale or rental of US real estate should consult with a BDO tax advisor to determine the current state of the tax laws.



MEET THE TEAM

INTRODUCTION

BDO Private Client services is a leading advisor to wealthy individuals, their families and their businesses – domestically and internationally. Our goal is to give our clients the reassurance that their wealth is compliant with the demands of regulators and structured effectively for long term preservation.

If you would like to get in touch with a BDO adviser in another country, please see the contact details below or contact Tamara Peters van Neijenhof.

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