# Asia Pacific Property Investment Guide

2015

## Joint foreword to the Asia Pacific Property Investment Guide 2015

Published jointly by Jones Lang LaSalle and Ashurst, the fifth edition of the Asia Pacific Property Investment Guide provides practical information on the laws regulating the real estate industry and an overview of the principal issues that investors need to consider when investing in real estate around the region.

The guide includes the most up to date information available for investing in the region, covering issues from property tenure to foreign investment incentives, tax matters to real estate investment trusts.

### About JLL

JLL (NYSE: JLL) is a professional services and investment management firm offering specialized real estate services to clients seeking increased value by owning, occupying and investing in real estate. With annual fee revenue of $4.7 billion and gross revenue of $5.4 billion, JLL has more than 230 corporate offices, operates in 80 countries and has a global workforce of approximately 58,000. On behalf of its clients, the firm provides management and real estate outsourcing services for a property portfolio of 3.4 billion square feet, or 316 million square meters, and completed $118 billion in sales, acquisitions and finance transactions in 2014. Its investment management business, LaSalle Investment Management, has $53.6 billion of real estate assets under management. JLL is the brand name, and a registered trademark, of Jones Lang LaSalle Incorporated. For further information, visit www.jll.com.

### About Ashurst

Ashurst is a leading international law firm with 26 offices in 15 countries, as well as associated offices in Jakarta and Jeddah, and a best-friend referral relationship with an Indian law firm. With over 400 partners and 1,700 lawyers in total, we offer clients the international insight of a global network combined with local market knowledge.

We have a well-established presence in the Asia-Pacific region with a global network of offices in Singapore, Hong Kong, Beijing, Shanghai, Tokyo, Australia as well as a close association with Oentoeng Suria & Partners in Jakarta. With more than 900 legal professionals in Asia and Australia, including 213 partners, we offer an unprecedented breadth and depth of legal capability in the Asia-Pacific region. For further information, visit www.ashurst.com.

We trust you will find this guide an informative and invaluable business tool.

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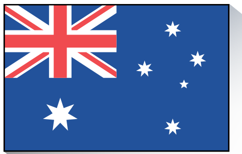


## Property tenure/ownership

Three main types of legal estates exist:

- Freehold
  - Freehold land (also known as an "estate in fee simple") is the most common form of land ownership in Australia. Most of the developed, privately held land in Australia (other than the Australian Capital Territory (ACT)) is freehold
- Crown land
  - Land is vested in the government, although the government may give another person the ability to manage or control that land
- Leasehold
  - Leasehold land is land that is leased to a person either by the government or by the freehold owner. Land in the ACT is leasehold from the government

All mineral rights are reserved to the Crown, where applicable.

Two primary systems of land title exist, although the policy in Australia is for land to be registered under the Torrens Title System where possible:

- Old Title System (also known as general law land)
  - Title is established from a series of instruments by means of which the ownership of the title can be traced
  - There is no government guarantee to title
  - The onus is on the owner to prove ownership of title
- Torrens Title System
  - A state-guaranteed title, where a certificate of title contains the owner's details and the various dealings with that land (e.g., leases, mortgages, easements, etc.) are registered in a central register. It can detail land above and below the surface either to a certain height limit or without a limit
  - Torrens Title System has largely replaced the Old Title System
  - Torrens Title System is the most common form of title in Australia
  - Strata Title is a type of Torrens Title that allows for the subdivision of land or property through the creation of a strata plan. The main difference is that an owner owns a particular parcel of land or part of a building in the strata scheme together with a share in common property that is shared with other owners in the strata scheme
  - Most commonly used in the case of multi-unit housing, but retail and commercial developments may also be sold on a strata title basis

## Major property legislation

Property law in Australia is state and territory based. There is no uniform property legislation in Australia. Each state and territory has individual pieces of legislation covering key areas such as:

- Local government, town planning and building
- Environment
- Real estate practises
- Land titles and conveyancing
- Property taxation
- Leasing

There is also a range of other legislation that indirectly affects property.

## Operational requirements for foreign corporations

All foreign companies that wish to carry on a business in Australia must either register with the Australian Securities and Investments Commission (ASIC) or form a subsidiary company that will be incorporated in Australia through which the business can be conducted.

### Foreign company

A foreign company is taken to be carrying on business in Australia for this purpose generally if it has a place of business in Australia. In particular, carrying on a business in Australia includes a reference to the company administering, managing, or otherwise dealing with property in Australia as an agent or trustee.

However, a foreign company will not be taken to be carrying on business in Australia merely because the company:

- Conducts an isolated transaction in Australia that is completed within a period of 31 days (and that transaction is not one of a number of similar transactions repeated from time to time) or
- Invests any of its funds or holds any property in Australia

A registered foreign company requires a person to be appointed as a local agent for various purposes, including the service of legal process. The registered foreign company must, along with other regulatory requirements, lodge financial statements with ASIC each calendar year.

A registered foreign company is required to set out on all its public documents and negotiable instruments that are published or signed in Australia its name, the expression "Australian Registered Body Number" (ARBN) followed by the ARBN issued to it on registration, its place of origin and the notice of the limited liability of its members (if the liability of its members is limited, but is not apparent from its name).

A registered foreign company must lodge notice of various administrative changes with ASIC.

**Company incorporated in Australia**

A private subsidiary company established in Australia is required to have at least one director resident in Australia (or two directors resident in Australia if incorporated as a public company) and must have a registered office in the country. It is required to set out on all public documents and negotiable instruments its name and its Australian Company Number (ACN), or its Australian Business Number (ABN) if the last nine numbers are the same as those of its ACN.

A subsidiary company must lodge notice of certain changes with ASIC, and is also required to confirm annually its details (and pay a fee). It must maintain financial accounts and, depending on the nature of the company that has been established, it may also be required to file accounts periodically with ASIC.

## Foreign investment regulation

Foreign investment in Australia is regulated primarily through a regime established under the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA). Foreign investment may also be regulated under other federal, state and territory laws applicable to Australian and foreign investors because of the particular investment activity (for example, foreign ownership in the banking sector must be consistent with the Banking Act 1959 and other applicable legislation).

The FATA regime is administered by the Australian Treasurer through the Foreign Investment Review Board (FIRB).

Under FATA:

- Notification to or approval by the FIRB is compulsory for the acquisition of certain interests in Australian land and in securities in Australian corporations and trusts that are considered to be Australian urban land corporations or trust estates
- The Treasurer has powers to prohibit foreign investment proposals and to order divestiture or unwinding of foreign investment arrangements if they are considered contrary to the national interest

Foreign persons are subject to the provisions of FATA. Such foreign persons include:

- A natural person not ordinarily resident in Australia
- Any corporation, business or trust in which there is a substantial foreign interest, i.e., if any single foreigner has ownership of 15 percent or more, or any group of foreigners has an aggregated interest of 40 percent or more

Australia has entered into international agreements with a number of countries, which has the effect of relaxing the notification and approval thresholds for eligible investors from those countries:

- On January 1, 2005 the Free Trade Agreement between Australia and the United States of America came into force and had the effect of relaxing the notification and approval thresholds for eligible United States investors
- On February 16, 2011, Australia signed an Investment Protocol with New Zealand. The Investment Protocol was implemented on March 1, 2013, making New Zealand investors subject to the same thresholds that applied to United States investors
- On December 12, 2014 the Korea–Australia Free Trade Agreement entered into force, making eligible investors from South Korea subject to the same thresholds that applied to New Zealand and United States investors. This reflects the most-favoured nation commitment Australia provided to Chile as part of the Australia–Chile Free Trade Agreement, from the same date Chilean investors are subject to the same thresholds that applied to New Zealand, South Korean, and United States investors
- On January 15, 2015 the Japan–Australia Economic Partnership Agreement between Australia and Japan entered into force and had the effect of making eligible Japanese investors subject to the same thresholds that apply to the above investors

The current approval thresholds are detailed below.

According to the current FIRB regulations and FIRB policy as set out in Australia's Foreign Investment Policy (2013), the types of proposals by foreign persons to invest in Australia, which require prior approval and, therefore, are notifiable to the government, are:

- Acquisition of a substantial foreign interest in existing Australian companies and businesses valued over AUD 252 million (USD 201 million) (indexed annually). For Chilean, Japanese, Korean, New Zealand and United States investors, a notification threshold of AUD 1,094 million (USD 874 million) applies, except for investments in prescribed sensitive sectors. The value of a company or business is the higher of the value of the total issued shares of the company, or its total gross assets. Prescribed sensitive sectors include, among other things, the media, telecommunications and transport
- Investments in the media of 5 percent or more, regardless of the value of the investment
- Acquisition of a substantial foreign interest in offshore companies whose Australian subsidiaries or assets are valued at over AUD 252 million (USD 201 million), or the applicable Chilean, Japanese, Korean, New Zealand and United States investor threshold of either AUD 1,094 million (USD 874 million) or AUD 252 million (USD 201 million) (where the investment is in a prescribed sensitive sector)
- Direct investment by foreign governments, their related entities and agencies

- Acquisition of interests in urban land that involve the:
  - Acquisition of developed commercial real estate, where the property is subject to heritage listing, valued at over AUD 5 million (USD 4 million) or more, and the acquirer is not a Chilean, Japanese, Korean, New Zealand, and United States investor, or where the property is not subject to heritage listing, valued at over AUD 55 million (USD 44 million), or AUD 1,094 million (USD 875 million) for Chilean, Japanese, Korean, New Zealand and United States investors
  - Acquisition of vacant non-residential real estate, irrespective of value
  - Acquisition of residential real estate, irrespective of value (subject to some limited exemptions)
  - Acquisition of an interest in an urban land corporation or trust (as defined under FATA)
- Proposals where any doubt exists as to whether they are notifiable

### Foreign investment incentives

Assistance for foreign investors is available through the Australian Trade Commission ("Austrade"). Austrade is a Commonwealth agency established to, among other things, promote inward investment in Australia. Austrade assists international companies in establishing and building their business in Australia. The assistance provided is free and can include services such as:

- Initial coordination of all investment enquiries and assistance
- Information on the Australian business and regulatory environment
- Market intelligence and investment opportunities
- Identification of suitable investment locations and partners in Australia
- Advice on Australian government programs and approval processes

Austrade has investment advisory specialists in locations around the world.

### Restrictions on foreign property ownership

Foreign companies and individuals may require consent from FIRB to purchase land or property in Australia.

This requirement does not apply in respect of acquisitions by the following, who are considered to be domestic purchasers:

- Australian citizens living overseas purchasing either in their own name or through an Australian corporation or trust
- Foreign nationals purchasing residential real estate (as joint tenants) with their Australian citizen spouse
- Foreign nationals holding permanent resident visas purchasing residential real estate either in their own name or through an Australian corporation or trust.

In addition, no approval is required for:

- Interests in time share schemes that allow for use up to four weeks per year
- New dwellings bought from a developer who has a FIRB exemption certificate

According to Australia's Foreign Investment Policy (2013), foreign persons should notify the government and obtain prior approval to acquire an interest in certain types of real estate in Australia, including residential real estate and vacant land, or to buy shares in Australian urban land corporations or trust estates. With respect to developed commercial real estate, the notification requirements apply where the real estate is valued at over AUD 54 million (USD 43 million) and AUD 1,094 million (USD 874 million) for Chilean, Japanese, Korean, New Zealand and United States investors and AUD 5 million (USD 3.9 million) if the real estate is heritage listed. An "interest" includes buying real estate, obtaining or agreeing to enter into a lease or licence, or entering into financing or other profit-sharing arrangements.

Applications should be lodged in advance of a transaction, and transactions should be made conditional on receiving FIRB approval. Approval will be granted where the investment is not contrary to the national interest. The Treasurer has a wide discretion in this regard, although intervention on national interest grounds has historically been infrequent.

Decisions are generally made within 30 days after an application has been lodged, although the Treasurer may extend this period by up to a further 90 days.

The thresholds referred to above are indexed annually, and the Treasurer generally issues a revised version of the Foreign Investment Policy in January each year, and so the applicable thresholds and policy considerations should be checked from year to year.

In Queensland, foreign persons are also required to notify the Foreign Ownership of Land Register of their dealings in land, in accordance with the Foreign Ownership of Land Register Act 1988 (FOLRA). Notification under FOLRA is in addition to the FIRB approval under FATA.

### Foreign exchange controls

"Physical currency" is defined in the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 ("AML/CTF Act") as the coin and printed money of Australia or a foreign country that:

- Is designated as legal tender
- Circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue

Travellers entering and departing Australia are required to report any currency of AUD 10,000 (USD 8,000) or more, or the foreign currency equivalent, they are carrying. Mailing or shipping currency of AUD 10,000 (USD 8,000) or more, or the foreign currency equivalent, must also be reported.

Separately, if a reporting entity (being one that provides one of a range of designated services described in Australia's anti-money laundering laws) sends or receives an instruction to or from a foreign country for a transfer of money or property, either electronically or under a remittance arrangement, they must submit an international funds transfer instruction (IFTI) report to the Australian Transaction Reports and Analysis Centre (AUSTRAC). There is no threshold for reporting of these transactions.

Reporting entities have an obligation to report suspicious matters to the AUSTRAC if these matters are connected to the actual or potential provision of a designated service, and if the reporting entity has a suspicion on reasonable grounds that the client is not who they claim to be or the reporting entity has information that may be relevant to the commission of an offence under Australian laws or of tax evasion.

### Taxes on possession and operation of real estate

In all states and in the ACT (but not in the Northern Territory), land tax is payable on an annual basis on the unimproved value of land, subject to certain exemptions, e.g., for a principal place of residence or land used for primary production. Except in the ACT, tax-free thresholds apply. These thresholds and the land tax rates vary.

In New South Wales (NSW), land tax is applied to most forms of vacant and developed land on a progressive scale of AUD 100, (USD 90) plus 1.6 percent of the land value between the minimum threshold and the premium threshold, and 2 percent thereafter. For the 2015 land tax year, the minimum threshold is AUD 452,000 (USD 361,125) and the premium threshold is AUD 2.641 million (USD 2.11 million).

If the seller of land is liable to pay land tax, the general practice is for the land tax to be adjusted between the seller and the buyer on completion or closing (even if the real estate will not be liable to land tax in the buyer's ownership).

City, municipal and shire councils (and the ACT Government, in the case of the ACT) also levy taxes to fund the provision of services. These are commonly termed "rates" and are charged to landowners on the basis of land values. They vary between council areas.

### Stamp duty on land transfers

All states and territories impose stamp duty at varying rates on land and certain other property transferred with land. This may include goods and certain business assets sold with land.

The rate of stamp duty is charged on an increasing sliding scale. As an example, the rates in NSW start at 1.25 percent and gradually increase to a general top rate of 7 percent for land with a dutiable value in excess of AUD 3 million (USD 2.39 million). Residential property over AUD 3 million (USD 2.7 million) is subject to duty at 7 percent on the excess over AUD 3 million (USD 2.7 million). The rate may also vary depending on the characterisation of the land. For example, the purchase of a principal residence may be subject to concessional rates.

Stamp duty is usually payable by the buyer, although in some states, both parties to the transaction are liable. It is normal commercial practice for the buyer to bear the duty.

Stamp duty is payable from one to three months after the contract for sale is signed (or in the case of Victoria and Tasmania, after settlement), depending on the state or territory. Penalties can apply for late payment. In some states, there are extensions of time for payment of duty on certain off-the-plan purchases, while in Victoria, there is a duty concession for off-the-plan purchases available in certain circumstances. The land transfer cannot be registered until duty has been paid.

### Stamp duty on share and unit transfers (marketable securities duty)

NSW and South Australia impose duty at rates below the rates applicable to transfers of land for transfers of shares in unlisted companies and units in unlisted unit trusts (0.6 percent).

### Landholder duty

To prevent stamp duty on the transfer of land being avoided by interposing an entity, all jurisdictions apply land rich or landholder duty to certain acquisitions of shares in a private company or of units in a private unit trusts that own land. Except for the ACT and Tasmania, all jurisdictions also apply landholder duty to acquisitions of a significant interest in listed companies and unit trusts. However, in New South Wales, Queensland, South Australia and Victoria, a concessional rate of 10 percent of the transfer duty rate applies to listed entities. The acquisition of an interest in a landholding entity, whether by way of direct transfer or, for example, by means of the issue or the redemption of units or buy-back of shares, can result in a liability for land rich or landholder duty, which is calculated by reference to the proportionate interest in the underlying land at the transfer duty rates.

The land rich/landholder duty provisions vary considerably among jurisdictions. However, in general, the provisions apply to changes or increases in "significant" interests in companies and trusts (generally 50 percent for private companies or unit trusts and 90 percent for listed companies or unit trusts), where the companies or trusts directly or indirectly hold land with a value above a stated threshold. The land value thresholds range from AUD 500,000 (USD 399,620) to AUD 2 million (USD 1.59 million), with no threshold applying in the ACT.

Tasmania is the only jurisdiction that still operates under a land rich model (as opposed to the landholder model). In Tasmania, for the provisions to apply, the land held must also represent 60 percent or more of the entity's total property.

In NSW, Western Australia and South Australia, duty also applies to any dutiable goods of the landholder.

### Lease duty

Lease duty on rents has been abolished in all states and territories. However, the grant or transfer of a lease at a premium generally attracts stamp duty in all states. The rate of duty is the same as for a transfer of land. In Victoria, the grant or transfer of a lease for any consideration other than rent can attract duty by reference to the value of the leased property. Special rules also apply to the grant or transfer of a long-term lease in the ACT.

### Goods and services tax

A broad-based consumption tax called the Goods and Services Tax (GST) is levied at 10 percent on a wide range of goods, services, real property and other things in Australia. Some special rules can apply for the calculation of GST on land transfers (i.e., the margin scheme and GST-free going concern exemption).

### Capital gains tax

The comments in this section do not apply to gains taxed as ordinary income. Some gains can be treated as ordinary income and, hence, may be subject to tax at personal or company tax rates (for example, where the gain is realised from a "profit-making undertaking or scheme").

Capital gains are taxed under the capital gains tax regime. Taxes on capital gains are levied at the federal rather than the state level, and are therefore uniform across Australia. Capital gains and capital losses of a taxpayer in a year of income are aggregated to determine whether there is a net capital gain. If so, that net capital gain is included in assessable income and is subject to income tax. However, a "CGT discount" may be available to reduce the taxable capital gain for certain taxpayers (see further below).

Capital losses may not be deducted against other income for income tax purposes, but may be offset against capital gains realised in the same income year or be carried forward to be offset against future capital gains. There are various factors that may limit a taxpayer's ability to carry forward capital losses to offset future capital gains. Trading losses may be offset against taxable capital gains.

Non-residents are only taxed on capital gains arising from the disposal of a specified list of assets referred to as "taxable Australian property." This includes Australian real property (including mining and petroleum rights) and certain interests in entities that hold Australian real property directly or indirectly (referred to as "indirect Australian real property interests"). In respect to indirect real property interests that consist of shares in a company, the sale of shares by a non-resident of Australia will generally not be subject to Australian capital gains tax provisions unless:

(a) The non-resident holds the shares through a permanent establishment in Australia or the non-resident together with associates (if any), beneficially owns, or owned for a 12-month period that commenced at any time during the period of two years preceding the disposal, 10 percent or more of the issued share capital

(b) More than 50 percent of the value of the entity's assets is attributable to Australian real property

The amount of the taxable gain may be reduced in some situations by the "capital gains tax discount," that is, the taxpayer may be entitled to discount the capital gain after applying capital losses. Where available, the discount for an individual or trust is 50 percent of the gain (although this discount may be effectively reversed for beneficiaries of trusts that are not eligible for the discount) and for a complying superannuation entity, 33.3 percent. In order to qualify for the discount, the general rule is that the asset must have been owned for at least 12 months. Companies are not eligible for the discount. Non-residents (including non-residents holding interests through trusts) are not eligible for the discount with respect to capital gains made after May 8, 2012. Non-residents may still be entitled to the capital gains tax discount for the gain accrued before that time (after offsetting capital losses), provided they choose to value the asset at that time[1].

### Tax depreciation

Plant and equipment used to produce assessable income is depreciable at rates reflecting the plant or equipment's effective life. The effective life may be self-assessed or based on an effective life determined by the Commissioner of Taxation.

Depreciation at a rate of 2.5 percent is available on the following buildings and improvements, the construction for which began after the following dates:

- Eligible hotels and short-term traveller accommodation after August 21, 1979
- Non-residential buildings used for producing income after July 19, 1982

[1] CGT indexation rules may also be applicable as an alternative to the CGT discount, but these rules only apply to assets acquired on or before September 21, 1999

- Residential accommodation used for producing income after July 17, 1985
- Buildings used in conducting R&D after November 20, 1987

A higher depreciation rate of 4 percent is available for eligible hotels, short-term traveller accommodation and industrial property constructed after February 26, 1992, and for certain buildings constructed between August 22, 1984 and September 17, 1987. The deduction on buildings and improvements can only be claimed following completion of the construction.

### Corporate taxation

Resident and non-resident corporations are both subject to corporate tax on taxable income at a flat rate of 30 percent.

Non-resident corporations are generally taxed only on Australian-sourced income, with some additional protection from Australian tax potentially being available under Australia's tax treaties. However, those treaties will generally preserve Australia's right to tax income from Australian real property (e.g., rent) and profits from the sale of Australian real property.

### Thin capitalisation

In Australia, limits can be imposed on the amount of debt deductions that an entity is entitled to claim for income tax purposes. In general, debt deductions are disallowed for the proportion of debt that exceeds an entity's maximum allowable debt. The maximum allowable debt will depend on the circumstances of an entity.

Generally for foreign investors, the maximum allowable debt is the greater of:

- 60 percent of the value of the entity's total adjusted assets
- An "arm's length amount" corresponding to the amount of debt likely to have been able to be borne by a hypothetical independent borrower otherwise identical to the entity
- 100 percent of the gearing level of the entity's worldwide group (provided certain conditions are met)

### Personal taxation

A resident is taxed on his or her worldwide income (subject to certain exemptions and credits) on a graduated scale. For the 2014–2015 tax year, this scale ranges from 19 percent to 45 percent. The first AUD 18,200 is tax-exempt, with the top marginal rate of 45 percent applying to income over AUD 180,000. In addition, a levy of 2 percent of personal income is imposed on all resident taxpayers to cover the cost of Medicare.

Non-residents are taxed on Australian-sourced income at 32.5 percent up to AUD 80,000 and thereafter at resident tax rates (up to 45 percent). No Medicare levy is imposed on non-residents.

In addition, all taxpayers with a taxable income over AUD 180,000 (USD 138,109) are required to pay an additional 2 percent temporary budget repair levy on the excess over AUD 180,000 (USD 138,109). This levy will remain in place until June 30, 2017.

### Tax treaties: Avoidance of double taxation

The Australian Federal Treasury maintains a list of Australia's double tax conventions. This list is available at http://www.treasury.gov.au/Policy-Topics/Taxation/Tax-Treaties/HTML/Income-Tax-Treaties.

### Proposed changes

The government has indicated that it will proceed with the previously announced withholding rules for sales of Australian real property (including "land rich" entities). These new rules are proposed to apply from July 1, 2016 and will require purchasers of Australian real property assets (including shares in land rich entities) to withhold tax on purchases from non-residents. The withholding rate is proposed to be 10 percent of the gross purchase price. If the seller, in fact, suffered a loss on the sale, the tax is refundable—but a tax return may need to be filed, although the government is considering whether variations to the amount to be withheld may be allowed. The proposed withholding rules are currently subject to consultation.

The government has also indicated that it will conduct a comprehensive review of Australia's tax system, although major changes would not be implemented until after the next federal election in 2016 and would be subject to the current government being re-elected.

### Real Estate Investment Trusts

#### Introduction

Property trusts are vehicles that facilitate collective investment in property assets. Australia has one of the largest, most mature and most transparent indirect investment markets in the world, with property trusts forming a major part of this market (which also comprises syndicates and other joint investment vehicles).

Australia's first listed real estate investment trust (REIT) was established in 1971, and REITs now extend across most real estate asset classes.

There are two broad types of property trusts in Australia:

- Listed Australian real estate investment trusts (A-REITs)
- A range of unlisted vehicles

A-REITs are listed on the Australian Stock Exchange, and units can be traded in the same way as shares in listed companies. A-REITs are "open-ended vehicles" in that they do not have a defined life span. A-REITs have become a well-established part of the property investment market in Australia, with a risk/return profile generally between that of direct real estate and equity investment.

In addition to A-REITs, there is a range of unlisted investment vehicles available in the Australian market. The structures of these vehicles vary greatly as do the types of property in which they invest.

Typically, investors in property trusts derive income from the rents generated by the property assets held in the trust, together with the proceeds from the sale of assets. The income is typically distributed to unit holders in the form of distributions made quarterly or semi-annually. Many A-REITs have dividend reinvestment plans that allow unit holders to reinvest their dividends in additional units at a discount to the trading price of the unit.

The general law of trusts provides a comprehensive set of core legal principles governing the relationship between trustees (as the holders of the fund), the investors (as the beneficiaries) and the fund assets. Overlaid onto this general law is a detailed regulatory structure that applies to collective investment vehicles implemented through the Corporations Act 2001. REITs that are regulated under this legislation are called "registered schemes."

They are required, among other things, to have a responsible entity to manage the fund and to issue a product disclosure statement when interests in the fund are offered for investment to retail investors, as well as to comply with the ongoing management and disclosure requirements applying to registered managed investment schemes. A-REITs and other property trusts with more than 100 retail investors are required to provide an enhanced level of disclosure in their product disclosure statements.

## Borrowing and trading levels

Gearing levels are calculated as the ratio of debt to total assets. Generally, A-REITs have a gearing ratio of between 20 percent and 40 percent of total assets. In recent years, there has also been a modest improvement in A-REITs' market prices compared with their net tangible assets (NTAs)—the balance sheet value of the underlying properties less debt in an A-REIT. As A-REITs traded in the aftermath of the 2008 financial crisis at steep discounts to NTA, this has resulted in a reasonably high level of restructures and acquisitions in this sector in recent years.

## Legal form and distribution

In the typical REIT structure, the real estate holding vehicle is a passive trust that distributes 100 percent of the net taxable income it derives from its assets. This allows A-REITs to maximise their yields, but it is, in turn, dependent on their ability to raise equity in the market for refurbishment and other management requirements. The regulatory structure supports this raising of equity though rigorous disclosure as well as licencing and registration requirements, all designed to promote transparency and investor confidence.

## Taxation

Australian investors in A-REITs are taxed as ordinary beneficiaries of a trust. To the extent that the distributions exceed the investor's share of the net taxable income of the trust (e.g., cash distributions that are sheltered by building or plant depreciation), the excess has generally been treated as "tax deferred" in that the excess may not be immediately taxable if it can reduce the investor's cost base of its interest in the trust. If the cost base is reduced to nil, a capital gain is realised for the remaining excess.

Property trusts that qualify as "managed investment trusts" (MITs) are eligible for special tax concessions. These include a concessional rate of withholding tax of 15 percent on distributions to investors resident in "exchange of information" (EOI) countries (30 percent withholding rate applies otherwise). This is further reduced to 10 percent if the MIT only holds newly constructed energy-efficient commercial buildings.

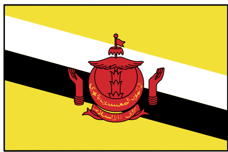
The government intends to introduce a separate comprehensive regime for the tax treatment of trusts that qualify as MITs. Significantly, the announcements included a proposed new regime under which unit holders will be taxed on the MITs' net taxable income based on the trustee's fair and reasonable allocation of the net taxable income to them (consistent with their entitlements under the trust deed), irrespective of whether or not the MIT makes any distributions of income to the unit holder. Draft legislation has not yet been released to implement the proposals but it is currently expected that the new MIT regime would apply from July 1, 2015.

For more information on investing in Australian real estate, please go to the publications page at www.ashurst.com and search for our publication entitled "Australian Real Estate – A legal guide for foreign investors."

## Common Terms of Lease Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square metres |
| **Rental payments** | |
| Rents | Quoted in AUD/m2/year (net area). |
| Can be charged net or gross of maintenance cost | 3–5 years, 6–10 years for larger occupiers |
| Typical lease term | 3–5 years, 6–10 years for larger occupiers |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months' rent) | Six months' gross rent |
| Security of tenure | A right which a tenant has to remain in possession of property |
| Does tenant have statutory rights to renewal? | No, unless an option to renew is agreed at the outset and is specified in the lease |
| Basis of rent increases or rent review | Open market rental value (with or without ratchet) at option or mid-way through term. During term, there usually is a fixed increase (3.5–4.5%) or an increase linked to the consumer price index |
| Frequency of rent increase or rent review | Annual fixed increases with three yearly upward-only reviews to market |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for service charge/management fee | To be paid monthly in advance<br>Net basis – tenant will be responsible for their proportion of the total operating costs<br>Gross basis – tenant will only be liable for any increase in outgoings above the base year |
| Responsibility for utilities | Electricity and telecommunication consumption are separately metred and payable by each tenant; water consumption is included in the management charges |
| Car parking | Offices: Separate monthly lease for an additional rent or licence fee<br>Industrial: Included in the lease |
| Responsibility for internal repairs | Tenant (a "redecoration clause" is usually included) |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc.) | Landlord (charged back via service charge) |
| Responsibility for external/structural repairs | Landlord |
| Responsibility for building insurance | Landlord (charged back via service charge) |
| **Disposal of leases** | |
| Tenant subleasing and assignment rights | Generally full assignment to third parties is accepted, subject to landlord's approval |
| Tenant early termination rights | Only by break clause |
| Tenant's building reinstatement responsibilities at lease-end | Reinstated to original condition |

Source: JLL



## Property tenure/ownership

Brunei operates a modified system of registration of title.

The main types of land tenure are:

- Freehold. Registered title may be granted in perpetuity. Ownership may be transferred with the approval of His Majesty the Sultan in Council.
- Leasehold. Registered title in landed property may be granted by the state for a term of years. Terms range from 25, 50 to 99 years. Title may be transferred with the approval of His Majesty the Sultan in Council. Title may be extended on expiry of the lease term with the approval of His Majesty the Sultan in Council and the payment of a premium.
- Strata title. Strata title may be obtained in a building for a period of up to 99 years.
- Lease interests. Long-term leases in commercial property may be granted by registered owners of land. Leases may be registered for terms of up to 60 years. Lessees have a right to sublease. Leases of over seven years require registration, with the approval of His Majesty the Sultan in Council.
- The government may grant temporary occupation permits over state land to applicants, for licences to occupy land for agricultural, commercial, housing or industrial purposes. These licences are not registered, and are granted for renewable annual terms.

## Major property legislation

- Stamp Act (Cap. 34)
- Land Code (Cap. 40)
- Land Acquisition Act (Cap. 41)
- Licensed Land Surveyors Act (Cap. 100)
- Description of Land Act (Cap. 101)
- Town and Country Planning (Development Control) Act (Cap.143)
- Land Code (Strata) Act (Cap. 189)
- The Housing Developers (Control and Licensing) Order 2012 was published in August 2012, but as of December 2014 has not yet come into force

## Operational requirements for foreign corporations

### Modes of entry

- Incorporation of a local company under the Companies Act (Cap. 39)
- Registration of a branch of an overseas incorporated company under Part IX of the Companies Act (Cap.39)

## Registration/licencing requirements

### Incorporation of a local company

Local companies may be incorporated with limited liability to the value unpaid on shares held by its members (limited by shares) or to the value guaranteed by its members on a winding up (limited by guarantee). Companies may also be incorporated with unlimited liability on the part of its members.

Most locally incorporated companies are private limited companies ("sendirian berhad" or "sdn bhd") and, as such, the right of transfer of shares is limited to 50 members, and there is a prohibition on any invitation to the public for the subscription of shares.

After reservation and approval of a proposed company name, incorporation is completed by the subscription to a minimum of two shares in the proposed company by two shareholders, the registration with the Registrar of Companies (ROC) of two sets of the memorandum and the articles of association, the registration of a place of business in Brunei Darussalam, the appointment and registration of at least two directors, and the payment to the ROC of the registration fee. Companies may generally undertake any type of business, subject to licencing requirements. There may be licencing or approval requirements, depending on the type of business undertaken. The types of businesses that generally require a licence or approval include:

- Banking and finance
- Insurance and insurance agents
- Restaurants
- Retail stores
- Workshops
- Factories and manufacturing
- Security companies
- Employment agencies
- Property agents
- Motor vehicle dealers
- Travel agents

The Housing Developers (Control and Licensing) Order 2012 provides for the licencing and regulation of property developers. As of December 2014, this order has not yet been gazetted as coming into force.

For the purposes of incorporation, there is no restriction on foreign ownership of shares. There is a minimum requirement of two directors. At least half of the directors must be residents in Brunei. A Brunei citizen or a permanent resident is deemed a resident in Brunei. A person from overseas may apply to the ROC for resident status for the purposes of holding a directorship and satisfying the requirement that at least half of the directors be residents in Brunei.

### Registration of a branch of an overseas incorporated company

An overseas incorporated company may register a branch in Brunei pursuant to Part IX of the Companies Act by registering with the ROC the following documents, as provided by Section 299 of the Companies Act:

- Certified true copy of the certificate of incorporation
- Certified true copy of the charter, statute or memorandum and articles, or other instrument that establishes or defines the constitution of the company
- A list of the directors of the company that gives their names, nationality, residential address, passport numbers and occupations. Where the list includes directors who are resident in Brunei, a memorandum executed by or on behalf of the company incorporated outside Brunei stating the powers of the local directors must also be filed
- A memorandum of appointment or a power of attorney under the seal of the company incorporated outside Brunei, or on its behalf, stating the names and addresses of two or more individuals who are residents in Brunei, authorised to accept service of process and any notices on the company
- A notice of situation of the registered office in Brunei Darussalam

Registration fees are calculated on the registered authorised capital of the company.

A branch of an overseas incorporated company registered under Part IX may undertake the same business or activities that a locally incorporated company may undertake.

Registration under Part IX does not create a separate legal entity. The rights, liabilities and obligations of the branch are the rights, liabilities and obligations of the overseas incorporated company.

A branch is obliged to lodge balance sheets every year with the ROC and to register with the ROC any changes made to its:

- Constitutional documents
- Board of directors
- Shareholding
- Names and addresses of persons authorised to accept service
- Registered office in and/or outside Brunei
- Its name
- Any changes to the power of any directors within Brunei

## Foreign employment requirements

Overseas employees may only enter Brunei Darussalam for the purposes of work or employment under an employment pass issued by the Department of Immigration.

To employ overseas workers or employees, a company must obtain from the Commissioner of Labour a licence to employ overseas workers. This licence will state the positions, nationalities and number of overseas workers or employees allowed.

A company intending to employ a particular overseas worker or employee will need to obtain approval from the Commissioner for that worker to fill an available position on the company's licence. Once approval is obtained, an employment pass will be granted by the Department of Immigration. The employee will undergo a health screening for his or her work permit to be issued. This work permit is required if the employee intends to stay and work in Brunei for a period of two years or more. Work permits are generally renewable after two years.

## Tax incentives

Investment incentives are under the purview of the Investment Incentives Order 2001 (the Order). The ambit of this legislation is *"to make provisions for encouraging the establishment and development in Brunei Darussalam of industrial and economic enterprises, for economic expansion and for incidental and related purposes."*

The main purpose of the Order is to provide for tax and other related incentives and reliefs to various new industries encouraged to be set up within Brunei Darussalam. Such industries are identified in the Order as:

- Pioneer industries, pioneer service companies, expansion of established enterprises as "approved industry" production of product or produce as an export product or export produce
- Companies engaged in international trade
- Warehousing and servicing industries
- Investment in new technology companies; overseas investment and venture capital undertaking, and henceforth

The Order provides, *"any company that is desirous of producing a pioneer product may make an application in writing to the Minister to be approved as a pioneer enterprise."*

Any company that has been granted a pioneer certificate will be given the pioneer incentives, provided that the following requirements are met:

- If the Minister is satisfied that it is expedient in the public interest to do so
- The industry has not been carried out in Brunei on a scale adequate to the economic needs of Brunei
- There are favourable prospects of development to be a pioneer industry, and any specific product of that industry to be a pioneer product

- Every pioneer certificate issued under Section 5 of the Order shall specify the date on or before which it is expected that the pioneer enterprise will commence to produce, in marketable quantities, the product specified in the certificate as well as the date on or before which it is expected that the rate of production of that product will be attained — and that date shall be deemed to be the production day of the pioneer enterprise under Section 5(3). The purpose of fixing a production date is because, pursuant to Section 6, the relief from income tax commences from the production date.

Tax relief shall commence on its production day and shall continue for a period of:

- 5 years, where the fixed capital expenditure is not less BND 500,000.00 (USD 369,970), but is less than BND 2.5 million
- 8 years, where the fixed capital expenditure is more than BND 2.5 million (USD 1.85 million)
- 11 years, where it is located in a high-technology park

The production day is designated as the date on or before which the pioneer enterprise will commence to produce the pioneer product in marketable quantities.

Further extension of the tax relief period is possible. The Minister may extend such period as he may determine, provided that the tax relief shall not, in aggregate, exceed 11 years.

Where the pioneer enterprise is one that is located in a high-technology park, the extended tax relief period shall not exceed five years at any one time as the Minister may determine, provided that the total tax relief shall not, in total, exceed 20 years.



### Restrictions on ownership of property by foreigners

Any transfer of freehold and leasehold landed property may only be registered with approval of His Majesty the Sultan in Council. Generally, only individual citizens of Brunei may be registered as owners of these types of landed property.

Individuals who are residents (citizens, permanent residents or foreigners with work permits) of Brunei may be registered as owners of strata units.

Locally incorporated or registered companies and residents of Brunei Darussalam may be registered as a long-term lessee of up to 60 years over an industrial or commercial property. Registration of leases of over seven years requires approval of His Majesty the Sultan in Council.

Application may be made to the government for a temporary occupation permit of state land by locally incorporated or registered company or residents.

### Foreign exchange controls

There are no restrictions on the remittance or repatriation of capital or profits outside Brunei Darussalam.

### Taxes on possession and operation of real estate

Annual ground rent is payable by registered owners of land depending on the conditions of use attached to the land at the following rates (in Brunei dollars):

| | |
|---|---|
| Padi | BND 2.00 (USD 1.48)/acre |
| Agriculture | BND 5.00 (USD 3.70)/acre |
| Rubber | BND 5.00 (USD 3.70)/acre |
| Residential | BND 10.00 (USD 7.40) per 1/4 acre [outside Development Control Competent Authority (DCCA) area], BND 50.00 (USD 36.99) per 1/4 acre (within DCCA) |
| Residential and minor commercial | BND 12.50 (USD 9.25) per 1/4 acre (outside DCCA), BND 62.50 (USD 46.24) per 1/4 acre (within DCCA) |
| Residential and commercial | BND 125.00 (USD 92.48) per 1/4 acre |
| Flats | BND 100.00 (USD 73.99) per 1/4 acre |
| Flat and commercial | BND 125.00 (USD 92.48) per 1/4 acre |
| Commercial | BND 150.00 (USD 110.98) per 1/4 acre |
| Commercial and industrial | BND 150.00 (USD 110.98) per 1/4 acre |
| Industrial | BND 150.00 (USD 110.98) per 1/4 acre |
| Institutional building | BND 62.50 (USD 46.24) per 1/4 acre |
| Institutional building, commercial and industrial | BND 150.00 (USD 110.98) per 1/4 acre |
| Hotel | BND 150.00 (USD 110.98) per 1/4 acre |
| Filling/petrol station | BND 125.00 (USD 92.48) per 1/4 acre |
| Diplomatic | BND 62.50 (USD 46.24) per 1/4 acre |

### Taxes on acquisition and transfer of real estate

Stamp duty is payable on documents relating to transactions involving immovable property.

The main documents involved, and the stamp duty that they would attract are as follows:-

| | |
|---|---|
| Agreements | BND 1.00 (USD 0.74) |
| Powers of attorney | BND 10.00 (USD 7.40) |
| Trust deeds | BND 10.00 (USD 7.40) |
| Leases | At an ad valorem rate.<br>If the lease is for less than one year, the stamp duty is calculated at BND 3.50 (USD 2.59) for the first BND 500.00 (USD 369.92) of annual rent and BND 1.00 (USD 0.74) for every BND 250.00 (USD 184.97) of annual rent thereafter.<br>If the lease is for more than one year, but less than five years, the stamp duty is calculated at BND 7.50 (USD 5.55) for the first BND 500.00 (USD 369.92) of annual rent and BND 2.00 (USD 1.48) for every BND 250.00 (USD 184.97) of annual rent thereafter.<br>If the lease is for more than five years, the stamp duty is calculated at BND 14.00 (USD 10.36) for the first BND 500.00 (USD 369.92) of annual rent and BND 4.00 (USD 2.96) for every BND 250.00 (USD 184.97) of annual rent thereafter. |
| Memorandum of charge | For the first BND 500.00 (USD 369.92) of security created, the stamp duty is BND 1.85 (USD 1.37) and BND 1.00 (USD 0.74) for every BND 500.00 (USD 369.92) of security created thereafter.<br>On approval for the transfer of landed property, stamp duty for the transfer is charged at an ad valorem rate, based on a valuation of the property by the Land Office. Stamp duty is charged at BND 5.00 (USD 3.70) for the first BND 500.00 (USD 369.92) of value and BND 1.50 (USD 1.11) for every BND 250.00 (USD 184.97) of value thereafter. |

## Income tax

There is no personal income tax charged in Brunei Darussalam.

## Goods and services tax

There is no goods and services tax charged in Brunei Darussalam.

## Corporate tax

Brunei companies are liable to income tax on income derived from or accrued in Brunei Darussalam or received from overseas.

Companies are subject to tax on the following types of income:

- Gains of profits from any trade, business or vocation
- Dividends received from companies not previously assessed for tax in Brunei Darussalam
- Interest and discounts
- Rents, royalties, premiums, and any other profits arising from properties

Corporate income tax is paid at a rate of 20 percent. From year end 2012, the following tax thresholds apply:

- For the first BND 100,000.00 (USD 73,989) of chargeable income, tax is charged at 25 percent of the applicable tax rate
- For the next BND 150,000.00 (USD 110,984) of chargeable income, tax is charged at 50 percent of the applicable tax rate
- The remaining balance of chargeable income is paid at the applicable tax rate of 20 percent

For newly incorporated companies, a tax exemption will be granted for the first BND 100,000 (USD 73,989) of the chargeable income of the company during the first three consecutive Years of Assessment falling within or after Year of Assessment 2008. The chargeable income above BND 100,000 (USD 73,989) shall be charged with tax at the applicable rate.

Withholding tax is payable on payments made by Brunei residents to nonresidents at the following rates:

- Interest, commission, fee or other payment in connection with any loan or indebtedness – 15 percent
- Royalties or other lump sum payments for the use of movable properties – 10 percent
- Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information – 10 percent
- Rendering technical assistance and service fees – 20 percent
- Management fees – 20 percent
- Rent or other payments for the use of movable property – 10 percent
- Nonresident directors' remuneration – 20 percent

## Double tax relief

Brunei Darussalam has entered into double taxation treaties with the following countries:

- United Kingdom
- Bahrain
- China
- Hong Kong
- Japan
- Kuwait
- Indonesia
- Malaysia
- Oman
- Pakistan
- Singapore
- Vietnam
- Laos
- United Arab Emirates

## Real estate investment trusts

REITS are not commonly utilised in Brunei Darussalam.

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of Measurement** | |
| Unit of Measurement | Square feet |
| **Rental Payments** | |
| Rents | BND/month, vexclusive of service charge |
| Typical lease term | Two years or longer |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as X month's rent) | Two to three months |
| Security of tenure | For the duration of the tenancy. There is no guarantee beyond the original term |
| Does tenant have statutory rights to renewal? | No, unless an option to renew is agreed at the outset and specified in the tenancy agreement |
| Basis of rent increases or rent review | Open market rental value |
| Frequency of rent increases or rent review | Every two years |
| **Service Charges, Operating Costs, Repairs & Insurance** | |
| Responsibility for utilities | Electricity, telecommunication and water consumption are separately metered and payable by each tenant |
| Car parking | Typically not provided |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts | Landlord (charged back via service charge) |
| Responsibility for external/structural repairs | Landlord |
| Responsibility for building insurance | Landlord |
| **Disposal of Leases** | |
| Tenant subleasing & assignment rights | Subletting or assignment to third parties is usually accepted (subject to the landlord's approval) |
| Tenant early termination rights | Only if a predetermination clause is provided for in the tenancy agreement |
| Tenant's building reinstatement responsibilities | Reinstated to original condition on expiry/termination |

Source: JLL

## Property tenure/ownership

Cambodia adopted a freehold system of land tenure under the 2001 Land Law. Private ownership of land is permissible for certain types of land. Under prior laws, ownership was permitted for residential property only, and agricultural land was reserved for state ownership, with limited 'possession' status only being granted to private citizens.

Currently, three main types of land tenure exist:

- Freehold: fee simple, unrestricted
- Leasehold: long-term leaseholds (15-50 years) create 'in rem' rights. Long-term leases exist up to 50 years and are renewable once for another 50 years
- Concessions: conditional leases granted by the government over state private land. Concessions are used for specific development purposes, with the land subject to specific conditions of use, primarily for agricultural projects, island development and mineral exploitation

## Major legislation

- The Constitution, promulgated on September 21, 1993, as amended
- The Land Law, promulgated on August 30, 2001, sets out the rights of tenure and the different classifications of land (State Public, State Private, Private, Monastery, Indigenous Land)
- Law on Natural Protected Areas, promulgated on February 15, 2008
- Law on Finance for year 2010, introducing Property Tax
- Law on Investment of the Kingdom of Cambodia 1994 (as amended in 2003)
- Sub-decree No. 111 on the Implementation of the Amendment to Law on Investment of the Kingdom of Cambodia, dated September 27, 2005
- Law on Expropriation, promulgated on February 26, 2010
- Sub-decree No. 126 on the Management and Use of Co-owned Buildings, dated August 12, 2009
- Sub-decree No. 146 on Economic Land Concession, dated December 27, 2005, as amended on September 15, 2008
- Prakas No. 493 of the Ministry of Economy and Finance on Collection of Property Tax, dated July 19, 2010
- Prakas No. 371 on Taxable Rate on Immovable Properties, dated May 5, 2011
- Prakas No. 1222 on Real Estate Development Business Management, dated December 15, 2009
- Law on Providing Foreigners With Ownership Rights in Private Units of Co-owned Buildings, dated May 27, 2010
- Sub-decree No. 82 on Determination of Proportion and Method of Calculation of Private Unites to Be Owned by Foreigners within a Co-owned Building, dated July 29, 2010
- Civil Code, effective on December 8, 2007, enforceable on December 21, 2011
- Law on the Implementation of the Civil Code, effective on May 31, 2011, enforceable on December 21, 2011
- Sub-decree No. 86 on Construction Permit, dated December 19, 1997
- Royal Decree on Transitional Principles and Provisions for the Transfer of Public Properties of the State and of Public Entities, dated August 3, 2006
- Sub-decree on Rules and Procedure for Transfer of Public Properties of the State and of Public Entities, dated November 27, 2006
- Inter-ministerial Prakas No. 59 on Registration of Immovable Property based on the Civil Code, dated June 3, 2011
- Sub-decree No. 39 on Management of Borey, dated March 10, 2011
- 2013 Law on Financial Management, dated December 26, 2012

## Operation requirements for foreign corporations

Companies are registered at the Ministry of Commerce (MOC) and the Council for the Development of Cambodia (CDC) for Investment Companies (entitled to investment benefits)

There are three forms of commercial enterprises:

- Limited company (MOC)
- Branch office (MOC)
- Representative office (MOC)

## Registration/licensing requirements

Registration is a straightforward process at the MOC (and CDC, in the case of investment companies), although it is time-consuming and document-intensive compared to other jurisdictions. Most enterprises can begin operations upon the issuance of the approval letter from the MOC. Certain sectors require a specific operating license issued by the relevant ministry (e.g., mining, telecommunications, hotels and restaurants, banking, real estate and securities).

### Foreign employment requirements

Month-long business visas are available on arrival, with the right to extend on a yearly basis. Workers register at the Ministry of Labor for employment permits, renewable annually. There are no limitations on the number of renewals. Companies are entitled to hire foreigners to cover up to 10 percent of its workforce. Exemptions (for over 10 percent of the workforce) are available upon request to the Ministry.

### Foreign investment incentives

The CDC grants investment incentives to qualified investment projects (QIP) in the form of profit tax holidays (of up to nine years) and exemption on import duty for production equipment, raw materials and inputs to manufacturing. Rather than a tax holiday, a QIP may elect to take accelerated depreciation on manufacturing assets.

The Sub-decree No. 111 provides the 'Negative List', which restricts certain activities from eligibility for some or all investment incentives available to companies approved as a QIP.

On an annual basis, the CDC requires all QIPs to apply for a Certificate of Compliance to enable the QIP to continue receiving the incentives granted.

### Restrictions on foreign property ownership

Ownership of land is restricted to Cambodian citizens. Cambodian citizens include individuals and legal entities in which 51 percent or more of the shares are held by Cambodian citizens.

Foreigners may acquire leasehold and concessions. In addition, since the implementation of the Law on the Provision of Ownership Rights over Co-owned Buildings to Foreigners in 2010, foreigners may acquire apartments in registered co-owned buildings above the ground floor to a maximum of 70 percent of any one apartment building, provided that the building has applied for and obtained "strata title", which generally only applies to new construction.

### Foreign exchange controls

There are no restrictions on the remittance or repatriation of capital or profits into or out of Cambodia, so long as the transfers are conducted through registered financial institutions.

The Amended Law on Investment guarantees the rights of foreign investors to remit foreign currencies abroad for the following:

- Payment of imports and repayment of principal and interest on foreign loans
- Payment of royalties and management fees
- Remittance of profits
- Repatriation of invested capital on dissolution of investment projects

Whereas the Riel (KHR) is the official currency, most transactions are conducted and denominated in the US dollar. Remittances are subject only to the applicable withholding taxes.

### Taxes on possession and operation of real estate

Property tax is levied on immoveable property in Cambodia in the following manner:

- Except for unused land, property tax of approximately 0.1 percent is levied on 80 percent of properties valued at over KHR 100 million (equivalent to approximately USD 25,000). The tax is levied annually.
- An unused land tax of 2 percent is levied on all unused properties. It is calculated on the market price per square metre, as assessed by the Committee for the Valuation of Unused Land. This tax may be paid annually (by September 30) or will be levied at the time of transfer (with back taxes assessed since last payment).
- For leased properties, a withholding tax of 10 percent is levied on the rental amount.

### Taxes on acquisition and transfer of real estate

A transfer tax of 4 percent is levied on all 'hard title' property transfers (transfer of title). It is important to note that currently, a vast majority of private properties are registered only with the local authorities (commonly referred to as 'soft title', and technically constitutes a weak 'possession' status only). Transfers of such properties (at the local level) do not attract a transfer tax. Only properties for which national level title deeds (commonly referred to as 'hard title') have been issued attract a 4 percent transfer tax. Typically, the General Department of Taxation will assess the value of properties based on its determined ranges, for the purpose of assessing transfer tax (and not rely on the price stated in the sale contract).

A regulation imposing a Capital Gains Tax of 20 percent has been drafted, but is yet to be implemented. For the time being, all profits realised by a company (including capital gains on the sale of real estate) are taxed at the prevailing profit tax rates.

A VAT of 10 percent is applied on sales of buildings.

Resident enterprises are taxed on all profits derived from both inside and outside of Cambodia. Non-resident enterprises are taxed on Cambodian-sourced income. A resident enterprise is one that has a place of management and carries on business in Cambodia.

Taxable income is the net profit realised from all business operations, including capital gains realised from the sale of real property during or at the cessation of business.

The current corporate profit tax rate is 20 percent. However, certain industries, such as oil and gas production, as well as mining enterprises, are taxed at a higher rate of 30 percent.

There is a 0 percent tax rate applied on the profit of CDC approved projects for the duration of the approved tax holiday (up to nine years).

Companies are subject to a monthly prepayment of tax on profit, self-assessed at 1 percent of the monthly turnover, inclusive of all taxes except VAT.

A withholding tax on dividends is levied at 14 percent; however, this is only applied to non-resident shareholders.

Other forms of withholding tax are as follows:

**Payments made to a resident entity**

- Payment for services to a physical person: 15 percent
- Royalty payments for intangible assets and interests in minerals, oil and natural gas: 15 percent
- Interest payments to a physical person or enterprise, except for interest paid to a domestic bank or savings institution: 15 percent
- Rental on moveable or immovable properties: 10 percent
- Interest payments on a fixed deposit made by a domestic bank or savings institution to a resident taxpayer: 6 percent
- Interest payments on a savings account made by a domestic bank or savings institution to a resident taxpayer: 4 percent

**Payments made to a non-resident**

- Interest: 14 percent
- Royalties, rent: 14 percent
- Management or technical services: 14 percent
- Dividends: 14 percent

### Personal taxation

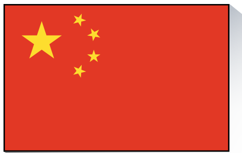
Individual residents are liable to income tax/tax on salary on Cambodian and foreign source income. Non-residents are subject to income tax on Cambodian source income only.

Residents are taxed on salary after certain deductions are made for child relief. Salary taxes are levied on a graduated scale, ranging from 5 percent to 20 percent, with 20 percent being levied at the KHR 12,500,000 (approximately USD 3,100) upward.

| Annual income (in KHR) | Rate |
|---|---|
| Up to 500,000<br>(approximately USD 124) | 0% |
| From 500,001–1,250,000<br>(approximately USD 124–300) | 5% |
| From 1,250,001–8,500,000<br>(approximately USD 300–2,100) | 10% |
| From 8,500,001–12,500,000<br>(approximately USD 2,100–3,100) | 15% |
| Over 12,500,000<br>(approximately USD 3,100) | 20% |

### Tax treaties: Avoidance of double taxation

Cambodia has not, as yet, entered into any tax treaties with other countries. However, foreign tax credits are available (subject to certain conditions) to resident taxpayers with regard to any foreign taxes paid.



## Property tenure/ownership

While all land in China is still owned by the state, an amendment to Article 10 of the Constitution of the People's Republic of China (PRC), made in April 1988, allows the transfer of land use rights for value (Land Use Rights).

The ownership of Land Use Rights is the main form of property ownership applicable to foreign investors. Land Use Rights can be transferred, assigned, leased and mortgaged. Land Use Rights can be acquired through a negotiated agreement, an auction or a tender. Previously, a majority of Land Use Rights were assigned through negotiation, but now, all rights for new developments are obtained through a public tender or an auction process. Although the purchase of land from private developers can be negotiated privately, the transaction information in Shanghai has to be posted on the public government website.

Land Use Rights for real estate developments are typically for terms of 40–70 years and are granted in consideration of an upfront premium. The national standard for maximum periods of Land Use Rights are:

| Usage | Use period |
|---|---|
| Residential | 70 years |
| Commercial, tourist, recreational | 40 years |
| Industrial | 50 years |
| Educational, scientific, cultural, public health, physical education | 50 years |
| Mixed-use | 50 years |

## Major property legislation

- PRC Law of Administration of Urban Real Estate
- (issued on August 30, 2007 and revised on August 27, 2009 and September 23, 2012)
- PRC Land Administration Law (revised and effective on August 28, 2004)
- Implementation Rules of PRC Land Administration Law (issued on December 27, 1998; effective on January 1, 1999; revised on January 8, 2011 and July 29, 2014)
- Regulations on Administration of Development and Operations of Urban Real Estate (issued and effective on July 20, 1998, revised on January 8, 2011)
- Opinions for Regulating the Access by and Administration on Foreign Investment in the Real Estate Market (issued and effective on July 11, 2006)
- Provisional Regulations/Interim Regulations of the PRC concerning the Grant and Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas
- Urban Real Estate Management Law of PRC (revised in August 2007)
- Land Management Law of PRC (issued and effective on May 19, 1990 and revised on August 28, 2004)
- Measures on Administration of Foreign Investment on Development of Land (issued on May 19, 1990)

Specific legislation concerning the implementation of national law often exists at the provincial level.

In February 2003, the Ministry of Land and Resources PRC (MLR) announced restrictions on the sale of land zoned for villa use to developers countrywide. This was largely aimed at ensuring that banked land was developed. In addition, the MLR and the National Development and Reform Commission (NDRC) jointly issued the Catalog of Prohibited Uses of Land and the Catalog of Restricted Uses of Land on December 12, 2006. This completely prohibited the use of land for real property development of villas and golf courses. Such catalogs were supplemented by the MLR in 2009, showing the trend of more restrictions on land use.

In late 2003, floor area ratios were reduced in Shanghai to limit the buildable area of residential developments to 2.5 times of plot size and office developments to 4 times of plot area. Previous developments had been built at nearly double these ratios.

In 2004, the government banned the use of loans to purchase land, effectively requiring developers to purchase the land outright. In addition, the government limited borrowings by developers to 65 percent of the development cost. Individuals borrowing for residential property were also limited to 70 percent of the property value for second-hand transactions, and up to 80 percent for new developments. However, government policies toward bank loans to real properties have shown the trend of tightening in recent years.

In July 2006, several PRC authorities jointly announced a requirement for foreign investors making investments in the PRC real estate sector to establish a business presence in China and to invest via that entity. More stringent requirements with regard to obtaining offshore finance and paid-in registered capital were also put in place.

In May 2007, the Chinese Ministry of Commerce (MOFCOM) and the State Administration of Foreign Exchange (SAFE) jointly issued a new notice, requiring foreign investors to purchase land use rights or building ownership rights before applying to establish a foreign invested real estate enterprise in China. Effective on June 1, 2007, SAFE no longer processes foreign exchange registrations, currency conversions or debt registrations for foreign-invested real estate enterprise business capital accounts (i.e., debt funding to purchase land use or building ownership rights can no longer come from overseas). In addition, any form of direct or indirect fixed return in favour of the foreign partner in a joint venture real estate enterprise is now prohibited. All foreign invested real estate projects approved at provincial level must be filed with the central MOFCOM.

In June 2008, MOFCOM delegated its verification powers regarding the filing of foreign investment in real estate to provincial level commerce authorities, signaling an easing on the requirements for foreign investment in the real estate industry.

The Foreign Investment Guiding Catalog (the Catalog) has been jointly revised and promulgated by the NDRC and MOFCOM on December 24, 2011, with the construction and operation of villas being moved from the category of ‘restricted’ in the Catalog (then in force) to the category of ‘prohibited’, showing the trend of prohibition on certain types of foreign investment on real property.

The Ministry of Housing and Urban–Rural Development (MOHURD, the successor of MLR) issued the Administrative Measures for Floor Area Ratio of Construction Land on February 17, 2012 that stipulated more specific rules and stricter standards on floor area ratios to impose stricter control on development of real property.

## Operational requirements for foreign corporations

### Office

**Modes of entry**

- Foreign investment enterprises
  - Wholly foreign-owned enterprises (referred to as WFOE)
  - Equity joint ventures
  - Cooperative joint ventures
- Representative offices
- Partnership

**Registration/licensing requirements**

1) Foreign investment enterprises

- Initial approval of proposal, contract and articles of association – MOFCOM
- Name registration – Municipal Administrative Bureau for Industry and Commerce (AIC)
- Business registration – AIC

The following documents should be presented:

- Application form
- Certificate of name registration
- Approval certificate
- Contract, articles of association and feasibility report and their approvals by MOFCOM
- Capital credit document
- Identification documents of the investor
- Appointment of general manager, vice-general manager and directors, and copies of valid identification documents
- Appointment of legal representative and copies of his/her valid identification documents
- Office premises lease contract and copy of deeds to property
- Power of attorney issued by the investor to the relevant attorney for the registration process
- Letter of authorisation regarding the delivery of legal documents signed by the investor and the person who is authorised to receive the legal documents on behalf of the investor

2) Representative offices

- Initial approval certificate from MOFCOM
- Business registration – AIC

The following documents should be presented:

- Application signed by the chairman or president of the enterprise
- Articles of association of the enterprise
- Approval certificate
- Copies of a legitimate certificate for operation for at least two years issued by the relevant government authority of its host country
- Original capital credit certificate issued by the bank with which the enterprise does business
- Appointment letter for the chief representative and representatives signed by the chairman of the board of directors or general manager of the enterprise, together with each of their resumes and copies of their identification cards
- Office premises lease contract and copy of deeds to property

3) Partnership

- Initial approval certificate from MOFCOM
- Business registration – AIC

The following documents should be presented:

- Application signed by all partners
- Partnership contract
- Copies of identification documentation of all partners
- Approval certificate
- Office premises lease contract and copy of deeds to property

- Power of attorney issued by all partners to the relevant attorney for the registration process
- Statement regarding compliance with state investment policy
- Contribution confirmation
- Capital credit certificate issued by the bank with which the foreign partner does business
- Letter of authorisation regarding the delivery of legal documents signed by the foreign partner and the person who is authorised to receive the legal documents on behalf of the foreign partner

### Retail Trade

After entry into the World Trade Organization (WTO) in December 2002, China has undertaken major commitments to reduce restrictions on business. Retailers are now allowed to set up independent entities and are no longer required to set up joint ventures.

The establishment of a wholly foreign-owned retail business requires any license application to be accompanied by a suitable retail premises lease agreement.

All geographic restrictions have been lifted, and there are no longer any restrictions on franchising other than the requirements of the "2+1" rule. This rule mandates franchisors to operate two company-owned stores (anywhere in the world) before commencing franchising activities in China. The previous requirement that the two stores be in China was removed in 2007, but, in practice, franchisors are usually required to provide additional information if they do not have a presence in China.

The retailing and distribution of chemical fertilizers, processed oil and crude oil are now allowed. In addition, foreign service suppliers are now permitted to engage in the retailing of all products, and foreign chain store operators will have the freedom of choice of any partner, legally established in China.

### Industrial

#### Registration/licensing requirements

Please refer to the "Foreign Investment Enterprises" section under "Office".

#### Foreign investment incentives

In China, there is a wide range of incentives for foreign investors depending on the industry type and location.

Foreign investment projects are divided into three types—encouraged, restricted or banned by the central government. Projects encouraged are typically production-oriented projects, especially high-technology and export-oriented production, as well as infrastructure projects. The categorisation of foreign investment projects is regularly reviewed. The latest updated Catalog, made effective from January 30, 2012, had made significant changes to the existing former version. Moreover, in November 2014, a new proposed revision draft of the Catalog was promulgated for public comments. The new revision demonstrates the likely trend for restrictions being lifted in certain industries and being imposed in a small number of cases.

Foreign investment incentives are more readily available and more wide-ranging in China's special economic zones and open coastal cities, as well as in national-level high and new technology industrial zones.

Typical tax incentives for foreign investors have been cancelled since the implementation of the new Corporation Income Tax Law in 2008, but foreign investors engaging in high-technology operations and investing in China's western areas continue to enjoy tax incentives such as tax holidays and reduced corporate income tax.

To attract foreign investment, some local governments have now adopted incentive schemes. In Shanghai, some district governments return a portion of taxes paid to foreign investors.

Property development does not qualify as a production-oriented enterprise and, therefore, tax holidays are limited.

#### Restrictions on foreign property ownership

Land ownership for all local and foreign users is limited to land rights granted by the state or assigned from a current land user.

There is no restriction against foreign investors purchasing property zoned for residential, commercial, tourist, entertainment or financial services in Shanghai and Beijing. Foreign investors are allowed to invest in local residential projects.

#### Foreign exchange controls

The Chinese currency, the renminbi (RMB), is not freely convertible at present, although free convertibility is expected in the midterm, according to the WTO schedule.

The State Administration of Exchange Control regulates the flow of foreign exchange in China and controls all foreign expenditure and outward remittances.

On December 1, 1996, the RMB became convertible under the current account, which includes trade, labour, tourism and short-term banking. Currency exchange relating to direct investment, international loans and securities trading is still restricted.

## Taxes on possession and operation of real estate

### Real estate tax

Real estate tax applies to the holders of property titles in China. Currently, in most of the cities around China, real estate tax is not levied upon real property owned by individuals for nonbusiness purposes.

Since 2011, both the Shanghai and Chongqing municipal governments have introduced new real estate taxes to curb speculation. These real estate taxes are levied on individual owners who have more than one property. Real estate tax is levied as follows:

- For owner-occupied properties in Shanghai, real estate tax rate is from 0.4 percent to 0.6 percent of 70 percent of the original value of the property. In Chongqing, real estate tax rate is from 0.5 to 1.2 percent
- For leased properties in Shanghai, real estate tax is levied at 12 percent of rent for both foreign and local companies
- For leased properties without rental income, real estate tax is levied at 1.2 percent of the annual value

From January 1, 2009, real estate tax also applies to foreign-invested enterprises and foreign individuals.

### Land use tax

Land use tax is levied on Land Use Right holders and is charged at rates ranging from RMB 1.50 (USD 0.25) per square metre per annum to RMB 30 (USD 4.93) per square metre per annum in Shanghai, depending on the location and use.

### Taxes on leasing income

When taxing rental income in China, the government sometimes defines the taxes in three categories—property tax, business tax and income tax. Other times, the government lumps the taxes together and calls it a ‘comprehensive’ tax. The taxes are applied in Beijing, Shanghai and Guangzhou, as follows:

### Residential property

- Beijing
  - Leased by an individual landlord: 5 percent comprehensive
  - Leased by a corporate landlord: real estate tax (12 percent of rental income) + urban and township land use tax (RMB 1.50–30.0 per square metre or USD 0.25–4.93) + business tax (5 percent of rental income) + city maintenance and construction tax (7 percent of business tax) + education fee supplement (3 percent of business tax) + stamp tax (0.1 percent of rental income) + corporate income tax (25 percent of the income from property leasing)
- Shanghai
  - Leased by an individual landlord: 5 percent comprehensive
  - Leased by a corporate landlord: real estate tax (12 percent of rental income) + urban and township land use tax (RMB 1.50–30.0 per square metre or USD 0.25–4.93) + business tax (5 percent of rental income) + city maintenance and construction tax (7 percent of business tax) + education fee supplement (5 percent of business tax)+ stamp tax (0.1 percent of rental income) + corporate income tax (25 percent of the income from property leasing)
- Guangzhou

| | Monthly rental < RMB 2,000 (USD 328) | Monthly rental between RMB 2,000 (RMB 328) (inclusive) and RMB 30,000 (USD 4,918) | Monthly rental ≥ RMB 30,000 (USD 4,918) (inclusive) |
|---|---|---|---|
| Individual | 4% | 6% | 8% |

### Nonresidential property

- Beijing
  - Leased by an individual landlord:
    - Monthly rental < RMB 5,000 (USD 821): 12 percent comprehensive
    - Monthly rental ≥ RMB 5,000 (USD 821): 7 percent comprehensive
  - Leased by a corporate landlord: real estate tax (12 percent of rental income) + urban and township land use tax (RMB 1.50-30.0 per square metre or USD 0.25-4.93) + business tax (5 percent of rental income) + city maintenance and construction tax (7 percent of business tax) + education fee supplement (3 percent of business tax) + stamp tax (0.1 percent of rental income) + corporate income tax (25 percent of the income from property leasing)
- Shanghai
  - Leased by an individual landlord: real estate tax (12 percent of rental income) + urban and township land use tax + business tax (5 percent of rental income) + city maintenance and construction tax (1 percent to 7 percent of business tax) + education fee supplement (5 percent of business tax) + stamp tax (0.1 percent of rental income) + individual income tax (20 percent of the income from property leasing, deducted of certain amounts)
  - Leased by a corporate landlord: real estate tax (12 percent of rental income) + urban and township land use tax (RMB 1.50-30.0 per square metre or USD 0.25-4.93) business tax (5 percent of rental income) + city maintenance and construction tax (1 percent to 7 percent of business tax) + education fee supplement (5 percent of business tax) + stamp tax (0.1 percent of rental income) + corporate income tax (25 percent of the income from property leasing)

- Guangzhou

| | Monthly rental < RMB 2,000 (USD 328) | Monthly rental RMB 2,000–30,000 (USD 328–4,918) | Monthly rental ≥ RMB 30,000 (USD 4,918) (inclusive) |
|---|---|---|---|
| Individual | 5% | 8% | 14% |

## Taxes on acquisition and transfer of real estate

### Stamp duty and legal costs

Under the 1988 provisional regulations on stamp duty, local governments are allowed to decide the stamp duty within a given range. Stamp duty on sale or lease agreements for real estate is assessed at 0.05 percent of the value for sales or 0.1 percent of the leasing fee.

Since 1994, all foreign-invested enterprises and foreign enterprises are subject to stamp duty.

Notarisation fees are charged at rates ranging from 0.3 percent to 0.01 percent of the property's purchase price. Sometimes, a discount may be given at the discretion of the notary agency, although this is not written in the tax regulations.

Registration fees for mortgage contracts are charged at RMB 80 (USD 13) per set for a residential property and RMB 550 (USD 90) per set for a nonresidential property.

### Deed tax

Deed tax is levied on purchasers of real property at the rate of 3 percent to 5 percent, determined by the local government at the provincial level. However, from October 1, 2010, for those who purchase a sole property for family occupation, the deed tax will be reduced to half of the original rate. If the area of the property is under 90 square metres, the deed tax will be levied at the rate of 1 percent.

### Business tax

Business tax is levied at 5 percent on gross rental income for property leases and 5 percent on profit for property sales.

From January 18, 2011, if an individual sells a residential property that has been owned for less than five years, the individual shall pay the business tax in full amount. If an individual sells a non-ordinary residential property that has been owned for more than five years (inclusive), the individual shall pay a business tax based on the balance of its sale proceeds, after deduction of the price of the property. If an individual sells an ordinary residential property that has been procured for more than five years (inclusive), then the business tax shall be exempted.

### City maintenance and construction tax

City maintenance and construction tax is levied at three levels, namely 1 percent, 5 percent and 7 percent, of business tax, depending on the location of the taxpayer. The highest rate is applicable to downtown locations. From December 1, 2010, foreign companies and foreign individuals are also subject to this tax at the same level as imposed to domestic companies and PRC nationals.

### Land appreciation tax

The land appreciation tax (LAT) was introduced in January 1994. LAT applies to the sale of real estate and is levied at rates between 30 percent and 60 percent on profits from real estates sales:

| Profit band | LAT rate |
|---|---|
| On the portion of profit not exceeding 50% of deductible items | 30% |
| For the portion over 50%, but not exceeding 100% | 40% |
| For the portion over 100%, but not exceeding 200% | 50% |
| For the portion exceeding 200% | 60% |

Costs deductible for the calculation of profits include the original cost of Land Use Rights, land development costs, construction costs, interest, business tax, stamp duty, and the assessed value of old houses or buildings. A property developer may deduct 120 percent of the original cost of Land Use Rights, cost of land development and construction cost.

Owner-occupiers who have used a property for at least five years will be exempted from this tax, which is aimed at curbing speculative development in particular.

## Tax depreciation

Depreciation of real property must be computed on a straight-line method over a 20-year period. Depreciation is normally at 4.5 percent of cost per year, leaving a 10 percent residual value.

However, it is possible to negotiate an accelerated rate of tax depreciation if, for example, the venture has a life of less than 20 years.

## Corporate taxation

Under the corporate income tax law introduced in 2008, a flat rate of 25 percent is levied on all enterprises, including foreign investment enterprises.

As outlined under the section "Tax Incentives," there are tax reductions and tax holidays available for enterprises, including foreign investment enterprises, depending on the nature and industry of the enterprise and its location.

## Personal taxation

The recently revised Individual Income Tax law of the PRC came into effect from September 1, 2011.

Individual Income Tax (IIT) is levied on Chinese residents on their worldwide income and, for nonresidents, on all income derived from within China.

Wages and salaries for both PRC citizens and expatriates are taxed at progressive rates ranging from 5 percent to 45 percent:

| Monthly taxable income * | IIT rate | Deduction |
|---|---|---|
| Up to RMB 1,500 (USD 246) | 3% | - |
| RMB 1,501–4,500 (USD 246–739) | 10% | RMB 105 (USD 17) |
| RMB 4,501–9,000 (USD 739–1,479) | 20% | RMB 555 (USD 91) |
| RMB 9,001–35,000 (USD 739–5,751) | 25% | RMB 1,005 (USD 165) |
| RMB 35,001–55,000 (USD 5,751–9,037) | 30% | RMB 2,755 (USD 452) |
| RMB 55,001–80,000 (USD 9,037–13,145) | 35% | RMB 5,505 (USD 904) |
| Over RMB 80,000 (USD 13,145) | 45% | RMB 13,505 (USD 2,219) |

* PRC citizens have a standard tax-free allowance of RMB 3,500 (USD 575) per month. For expatriates, this allowance is RMB 4,800 (USD 788) per month. The monthly taxable income refers to the amount remaining after deducting the standard tax-free allowance.

## Tax treaties: Avoidance of double taxation

Treaties in existence:

Albania
Algeria
Armenia
Australia
Austria
Azerbaijan
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Brazil
Brunei
Bulgaria
Canada
Croatia
Cuba
Cyprus
Czech
Denmark
Egypt
Estonia
Ethiopia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
India
Indonesia
Iran
Ireland
Israel
Italy
Jamaica
Japan
Katar
Kazakhstan
Korea
Kuwait
Kyrgyzstan
Laos
Latvia
Lithuania
Luxembourg
Macedonia
Malaysia
Malta
Mauritius
Mexico
Moldova
Mongolia
Montenegro
Morocco
Nepal
Netherlands
New Zealand
Nigeria
Norway
Oman
Pakistan
Papua New Guinea
Philippines
Poland
Portugal
Romania
Russia
Saudi Arabia
Seychelles
Singapore
Slovakia
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syria
Tajikistan
Thailand
Trinidad and Tobago
Tunis
Turkey
Turkmenistan
UK
Ukraine
United Arab Emirates
USA
Uzbekistan
Venezuela
Vietnam
Yugoslavia
Zambia

## Real Estate Investment Trusts

Real estate investment trusts (REITs) have not been established in mainland China. The China Securities Regulatory Commission is currently drafting the China Investment Fund Management Law, but there is no approval from the People's Congress so far.

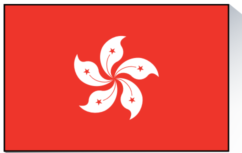
JLL ashurst

CHINA

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square Meters |
| **Rental payments** | |
| Rents | Shanghai: RMB per sqm of gross space per day |
| Typical lease term | Generally minimum 2 years (usually with an option for the tenant to renew for an additional 2 or 3 year term at market rates). Standard lease is normally 3-5 years |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months rent) | 3 months of rent and management fees payable in cash or check. Bank guarantee/letter of credit is not accepted by most of the property due to the local banking environment. |
| Security of tenure | Only for the duration of the tenancy, no guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal | Yes but it is a common practice to stipulate an option to renew if tenants require |
| Basis of rent increases or rent review | Open market rental value. Renewed rental cap to be negotiated |
| Frequency of rent increases or rent review | Generally at lease renewal, but if an agreed lease is over 5 years, rent is normally reviewed every 3 or 5 years |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges |
| Car parking | Allocated parking is very limited. Where parking is available, it is held under a separate monthly lease for an additional rent, charged at a fixed monthly cost. |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord responsible, but costs sometimes charged back to tenant via service charge |
| Responsibility for external/structural repairs | Usually landlord responsible, but costs sometimes charged back to tenant via service charge |
| Responsibility for building insurance | Usually landlord |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally accepted to tenant's affiliated companies and not to unrelated third parties (subject to the landlords approval) |
| Tenant early termination rights | Only by break clause, usually subject to penalty |
| Tenant's building reinstatement responsibilities at lease end | Original condition, allowing for wear and tear |

Source: JLL



## Property tenure/ownership

All land in Hong Kong is leasehold land, with the exception of St. John's Cathedral being the only freehold property in Hong Kong.

Land rights are generally provided by way of government lease. A government lease conveys certain rights to occupy, develop and use parcels of land in the territory in return for payment of government rent. The terms of government leases vary (50, 75, 99 or 999 years), with or without the right of renewal.

It is common in Hong Kong to sell a strata-title interest in a multistorey building (effectively a long leasehold interest). A Deed of Mutual Covenant (DMC) notionally divides the building and the land granted under government lease into a number of equal undivided shares. Each individual unit in the building is allocated a number of undivided shares, which convey the right to the exclusive use and possession of the unit. The DMC is binding on all owners of the units in the building and their successors and governs responsibilities for the upkeep and management of the building.

There is an active market in leasing commercial and residential properties.

## Major property legislation

- Buildings Ordinance
- Companies Ordinance
- Conveyancing and Property Ordinance
- Government Leases Ordinance
- Inland Revenue Ordinance
- Land Registration Ordinance
- Landlord and Tenant (Consolidation) Ordinance
- Building Management Ordinance
- Stamp Duty Ordinance
- Town Planning Ordinance

## Operational requirements for foreign corporations

### Limited company

A company incorporated in Hong Kong with limited liability is the most commonly used company type in Hong Kong.

### Overseas company

If a company incorporated outside Hong Kong establishes a place of business in Hong Kong, it must register with the Companies Registry as a 'Non-Hong Kong Company' within one month of establishment.

### Partnership

A business commenced in the form of one person or by a group of people.

### Registration/licencing requirements

Business Registration Certificate

All companies (local or otherwise) are required to apply for a Business Registration Certificate from the Business Registration Office of the Inland Revenue Department to commence business in Hong Kong.

## Foreign investment regulations

There are no specific incentives for foreign investment, no restrictions to foreigners owning or operating businesses, and no residency requirements for directors and shareholders.

The Hong Kong government has suspended the Capital Investment Entrant Scheme (a scheme to facilitate the entry for residence by capital investment entrants, i.e., persons who make capital investment in Hong Kong but would not be engaged in the running of any business in Hong Kong), with effect from January 15, 2015 until further notice.

## Restrictions on foreign property ownership

None

## Foreign exchange controls

None

## Taxes on possession and operation of real estate

### Government rent

Certain types of properties are liable to pay government rent at an annual rate of 3 percent of the rateable value of the property and are adjusted in step with any subsequent changes in the rateable value. These include properties:

- In the New Territories and New Kowloon north of Boundary Street
- With land leases granted on or after May 27, 1985
- With their nonrenewable land leases extended on or after May 27, 1985 at a government rent of 3 percent of the rateable value of the lot from time to time

### Rates

Rates are payable at a percentage of the rateable value of the property. For financial year 2014–2015, the percentage is 5 percent. The rateable value of a property is reviewed annually and is an estimate of the annual rental value of the property at a designated valuation reference date, assuming that the property was then vacant and to let.

### Property tax

Property tax is levied on owners of property situated in Hong Kong on rental income derived from letting the properties. However, any person that sublets premises is considered to be carrying on a business, and the corresponding rental income is subject to profits tax rather than property tax. For financial year 2008/2009 onward, the property tax rate is 15 percent. For property tax purposes, a flat rate of 20 percent of the assessable value is deductible from gross rental income as a notional allowance for outgoings (regardless of the actual outgoings incurred). In addition, rates are deductible, provided that they are paid by the owner of the property. Bad debts (i.e., irrevocable rent) are also deductible.

## Taxes in acquisition and transfer of real estate

### Stamp duty and legal costs

Property transactions are recorded with the land registry. Stamp duty is levied on the sale of property and is generally borne by the buyer.

To regulate the property price in Hong Kong, the government has introduced new ad valorem stamp duty, special stamp duty and buyer's stamp duty.

On February 22, 2013, the Financial Secretary announced, among other things, the adjustment to the ad valorem stamp duty (AVD) rates. Any residential property (subject to certain exceptions) and nonresidential property acquired on or after February 23, 2013, either by an individual or a company (regardless of where it is incorporated), will be subject to the new rates of AVD. Transactions that took place before February 23, 2013 will be subject to the original stamp duty regime.

The New AVD does not apply to an agreement/conveyance for a residential property where the purchaser/transferee is a Hong Kong permanent resident (HKPR) acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition; only the old AVD rates will apply to such agreement/conveyance.

If an HKPR is acquiring a residential Property A while seeking to dispose of Property B (being his/her only other residential property), he/she will be subject to the New AVD in the first instance, but may seek a refund of the stamp duty paid in excess of that under the old AVD upon proof that Property B has been disposed of within six months from the date he or she executed the agreement to acquire Property A.

## New AVD rate

**CONSIDERATION**

| Exceeds | Does not exceed | Rate |
|---|---|---|
| – | HKD 2,000,000 (USD 257, 980) | 1.5% |
| HKD 2,000,001 (USD 257,980) | HKD 2,176,470 (USD 280,743) | HKD 30,000 (USD 3,870) + 20% of excess over HKD 2,000,000 (USD 257, 980) |
| HKD 2,176,471 (USD 280,743) | HKD 3,000,000 (USD 386,970) | 3% |
| HKD 3,000,001 (USD 386,970) | HKD 3,290,330 (USD 424,420) | HKD 90,000 (USD 11,609) + 20% of excess over HKD 3,000,000 (USD 386,970) |
| HKD 3,290,331 (USD 424,420) | HKD 4,000,000 (USD 515,960) | 4.5% |
| HKD 4,000,001 (USD 515,960) | HKD 4,428,580 (USD 571,245) | HKD 180,000 (USD 23,218) + 20% of excess over HKD 4,000,000 (USD 515,960) |
| HKD 4,428,581 (USD 571,245) | HKD 6,000,000 (USD 773,944) | 6% |
| HKD 6,000,001 (USD 773,944) | HKD 6,720,000 (USD 866,817) | HKD 360,000 (USD 46,437) + 20% of excess over HKD 6,000,000 (USD 773,944) |
| HKD 6,720,001 (USD 866,817) | HKD 20,000,000 (USD 2,579,815) | 7.5% |
| HKD 20,000,001 (USD 2,579,815) | HKD 21,739,130 (USD 2,804,147) | HKD 1,500,000 (USD 193,486) 20% of excess over HKD 20,000,000 (USD 2,579,815) |
| HKD 21,739,130 (USD 2,804,147) | | 8.5% |

### Old AVD rate

| CONSIDERATION | | |
|---|---|---|
| **Exceeds** | **Does not exceed** | **Rate** |
| – | HKD 2,000,000 (USD 257,980) | HKD 100 (USD 12.90) |
| HKD 2,000,000 (USD 257, 980) | HKD 2,351,760 (USD 303,355) | HKD 100 (USD 12.90) + 10% of excess over HKD 2,000,000 (USD 257,980) |
| HKD 2,351,760 (USD 303,355) | HKD 3,000,000 (USD 386,970) | 1.5% |
| HKD 3,000,000 (USD 386,970) | HKD 3,290,320 (USD 424,418) | HKD 45,000 (USD 5,804) + 10% of excess over HKD 3,000,000 (USD 386,970) |
| HKD 3,290,320 (USD 424,418) | HKD 4,000,000 (USD 515,960) | 2.25% |
| HKD 4,000,000 (USD 515,960) | HKD 4,428,570 (USD 571,240) | HKD 90,000 (USD 11,609) + 10% of excess over HKD 4,000,000 (USD 515,960) |
| HKD 4,428,570 (USD 571,240) | HKD 6,000,000 (USD 773,944) | 3% |
| HKD 6,000,000 (USD 773,944) | HKD 6,720,000 (USD 866,817) | HKD 180,000 (USD 23,218) + 10% of excess over HKD 6,000,000 (USD 773,944) |
| HKD 6,720,000 (USD 866,817) | HKD 20,000,000 (USD 2,579,815) | 3.75% |
| HKD 20,000,000 (USD 2,579,815) | HKD 21,739,120 (USD 2,804,147) | HKD 750,000 (USD 96,742) + 10% of excess over HKD 20,000,000 (USD 2,579,815) |
| HKD 21,739,120 (USD 2,804,147) | – | 4.25% |

Stamp duty is also payable on leasing transactions, with the rate dependent on the rent payable and lease term. Stamp duty on a lease transaction is normally borne equally by the landlord and the tenant.

It is a usual practice for each party to bear its own legal costs in a property transaction.

#### Special Stamp Duty

In addition to the ad valorem stamp duty, 'special stamp duty' (SSD) is imposed on the disposal of any residential property acquired either by an individual or company (regardless of where it is incorporated) on or after November 20, 2010 and resold within 24 or 36 months (as the case may be) after acquisition.

SSD is calculated based on the stated consideration for the transaction or the market value of the property, whichever is higher, at the following rates:

If the property was acquired between November 20, 2010 and October 26, 2012:

- 15 percent if the vendor has held the property for six months or less
- 10 percent if the vendor has held the property for more than six months but for 12 months or less
- 5 percent if the vendor has held the property for more than 12 months but for 24 months or less

If the property was acquired on or after October 27, 2012:

- 20 percent if the vendor has held the property for six months or less
- 15 percent if the vendor has held the property for more than six months but for 12 months or less
- 10 percent if the vendor has held the property for more than 12 months but for 36 months or less

#### Buyer's Stamp Duty

Buyer's stamp duty of 15 percent of the market value or stated consideration of the property (whichever is higher) is imposed on top of the ad valorem stamp duty and SSD (where applicable for the acquisition of any residential property executed on or after October 27, 2012. This is unless the buyer is a Hong Kong permanent resident or the transaction is subject to an exemption.

#### Capital Gains Tax

None. However, where gains form part of normal trading activities, they are liable to profits tax.

### Value Added Tax/Goods and Services Tax

None.

## Tax depreciation

The following types of depreciation allowances are available:

| | Industrial building allowances on industrial buildings and structures | Commercial building allowances on commercial buildings and structures | Plant and machinery |
|---|---|---|---|
| **Initial allowance** | 20% on the cost of construction of the premises | – | 60% on the cost of the plant/ machinery |
| **Annual allowance** | 4% on the cost of construction of the premises | 4% on the cost of construction of the premises | 10%, 20% or 30%, as prescribed by the Board of Inland Revenue in the Inland Revenue Rules on the reducing value of the asset |
| **Balancing allowance or charge** | Due upon disposal of the premises | Due upon disposal of the premises | Available only on cessation of a business to which there is no successor |

## Corporate taxation

From financial year 2008/2009 onward, the rate of corporate taxation for:

- Incorporated entities is 16.5 percent
- Unincorporated entities is 15 percent

Net losses may be carried forward indefinitely.

## Personal taxation

Individuals are subject to tax on income from properties, salaries and profits of sole proprietor businesses. Persons staying in Hong Kong for periods of less than 60 days within a year of assessment are not subject to salaries tax. Owner-occupiers are allowed to deduct interest payments from taxable income up to a maximum of HKD 100,000 (USD 12,896) per year per property for 15 years of assessment.

Tax is levied on earnings arising in, or derived from, Hong Kong. It is calculated as the lesser of the following:

- A graduated scale of tax rates applied after taking into account a range of deductions and allowances
- A standard tax rate applied to total net income without allowances (15 percent for year 2008/2009 onward)

## Tax treaties

Treaties in relation to avoidance of double taxation in existence:

| | |
|---|---|
| Austria | Liechtenstein |
| Belgium | Luxembourg |
| Brunei | Malaysia |
| Canada | Malta |
| China | Mexico |
| Czech Republic | The Netherlands |
| France | New Zealand |
| Guernsey | Portugal |
| Hungary | Qatar |
| Indonesia | *South Africa |
| Ireland | Spain |
| *Italy | Switzerland |
| Japan | Thailand |
| Jersey | *United Arab Emirates |
| *Korea | United Kingdom |
| Kuwait | Vietnam |

*Treaty that has not yet come into force

## Real estate investment trusts

### Introduction

Real estate investment trusts (REITs) are mainly governed by the Code on Real Estate Investment Trusts. The Code, however, does not have the force of law and shall not be interpreted in a way that will override the provision of any law.

A REIT is a collective investment scheme constituted as a trust that invests primarily in real estate, with the aim to provide unit holders with returns derived from the rental income of the real estate. Funds obtained by a REIT from the sale of units in the REIT are used in accordance with the constitutive documents to maintain, manage and acquire real estate within its portfolio.

The assets of a REIT shall be held in a trust and segregated from the assets of its trustee, management company, related entities, other collective investment schemes and any other entity.

With effect from June 2005, Securities and Futures Commission (SFC)-authorised REITs are allowed to invest in overseas properties in accordance with the provisions of the Code and Practice Note issued by the SFC.

**Restrictions on REITs**

- A REIT may acquire uncompleted units in a building, but the aggregate contract value of such real estate shall not exceed 10 percent of the REIT's total net asset value at the time of acquisition
- No investment in vacant land or property development activities is allowed
- The REIT shall hold each property for a period of at least two years
- If the name of the REIT indicates a particular type of real estate, at least 70 percent of the REIT's noncash assets shall be invested in such type of real estate
- A REIT may borrow for the purpose of financing investments or operations, but the aggregate gearing shall not exceed 45 percent of its total gross asset value
- A REIT shall distribute to unit holders as dividends each year an amount not less than 90 percent of its audited annual net income after tax

**Taxation for REITs**

A REIT is liable for tax as other ordinary companies are in Hong Kong.

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square Feet |
| **Rental payments** | |
| Rents | HKD/sq ft/month |
| Typical lease term | Typically 3–6 years with 6–12 years for larger occupiers |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months rent) | 3 months |
| Security of tenure | Not guaranteed beyond the original lease term. The period of prior notice is subject to the terms prescribed in the underlying contract |
| Does tenant have statutory rights to renewal | No, unless an option to renew is agreed at the outset and specified in the lease |
| Basis of rent increases or rent review | Open market rental value |
| Frequency of rent increases or rent review | At lease renewal or every three years in longer leases |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for service charge/ management fee | Monthly in advance. Tenant is responsible for respective pro-rata share. |
| Responsibility for utilities | Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption for industrial facilities is typically separately metered and payable by each tenant |
| Car parking | Where parking is available, it is typically held under a separate monthly lease for an additional rent |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord but costs charged back to tenant via service charge |
| Responsibility for external/structural repairs | Usually landlord responsible, but costs charged back to tenant via service charge |
| Responsibility for building insurance | Usually landlord responsible, but costs charged back to tenant via service charge. The tenancy agreement may also require the tenant to purchase insurance coverage on leased space. |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Subletting up to 25% of acquired space is generally possible for larger anchor occupiers |
| Tenant early termination rights | Only by break clause |
| Tenant's building reinstatement responsibilities at lease end | Original condition |

Source: JLL

## Property tenure/ownership

There are mainly two types of real estate:

- Freehold title
- Leasehold title

## Major property central legislation

- Transfer of Property Act, 1882
- Indian Easements Act, 1882
- Registration Act, 1908
- Environment (Protection) Act, 1986
- Forest (Conservation) Act, 1980
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
- Slum Areas (Improvement and Clearance) Act, 1956
- Benami Transactions (Prohibition) Act, 1988
- Indian Stamp Act, 1899
- Special Economic Zones Act, 2005
- Development Control Regulations – These regulations apply to building activities and development works and are issued by the local municipal authorities of each city, such as Mumbai and Delhi.

There are various other state legislations applicable to real estate (particularly construction-related, such as master plan, zonal plan, fire safety laws and electricity laws), stamp duty laws, registration laws, rent control laws and labour laws.

Further, the Real Estate (Regulation and Development) Bill provides for a uniform regulatory environment to protect consumer interests and ensure orderly growth of the real estate sector. The aforesaid bill seeks to reduce frauds and delays[1].

## Operational requirements for foreign corporations

### Modes of entry

A foreign company planning to establish business operations in India can do so in the following ways:

- In accordance with the provisions of the (Indian) Companies Act, 2013 (Companies Act) by incorporating a company, as a joint venture or a wholly owned subsidiary[2]
- In accordance with the provisions of the Foreign Direct Investment (FDI) Policy, by investing in an existing company or limited liability partnership, subject to the conditions mentioned therein
- In accordance with the provisions of the Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 and the Companies Act, through a place of business in India, being one of the following:
  - Liaison/representative office
  - Project office
  - Branch office

Some general conditions applicable to liaison/branch/project offices of foreign entities in India are:

A liaison office/branch office can be established in India by obtaining prior permission from the Reserve Bank of India (RBI) under the relevant provisions of the Foreign Exchange Management Act (FEMA), 1999. Applications for establishing a liaison office/branch office need to be forwarded by the foreign entity through a designated AD category bank to the relevant department of the RBI that considers the applications under the following two routes:

(1) Reserve bank route – Where the principal business of the foreign entity falls under the sectors where 100 percent FDI is permissible under the automatic route

(2) Government route – Where the principal business of the foreign entity falls under the sectors where 100 percent FDI is not permissible under the automatic route

The RBI grants general permission to foreign entities to establish project offices in India, provided such foreign entities have secured a contract from an Indian company to execute a project in India, subject to certain conditions.

- No person, being a citizen of/entity registered in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau can establish in India a branch/liaison/project office (or any other place of business) without the prior permission of the RBI.
- Partnership/proprietary concerns set up abroad are not allowed to establish a branch/liaison/project office in India.
- Entities from Nepal are allowed to establish only liaison offices in India.
- Branch/project offices of a foreign entity, excluding liaison offices, are permitted to acquire immovable property for their own use and to carry out permitted/incidental activities, but not for leasing or renting out the property. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not allowed to acquire immovable property in India for a branch/project office without prior RBI approval.

[1]The Real Estate (Regulation and Development) Bill is pending before the Upper House of the Indian Parliament.

[2]Companies in India are usually incorporated as companies limited by shares either as a private limited company or a public limited company.

- All branch/project offices (including liaison offices) have general permission to lease a property for a period not exceeding five years.
- Branch/liaison/project offices are allowed to open non-interest bearing INR current accounts in India.

Foreign companies have to initiate the process of registration with the relevant Registrar of Companies (ROC) within 30 days of setting up a place of business in India as an Indian company under the (Indian) Companies Act through:

- A joint venture
- A wholly owned subsidiary

Foreign equity investment in Indian companies can be up to 100 percent, depending on FDI Policy. The FDI Policy specifies various caps on foreign holdings in Indian companies, depending on the activity of the Indian company. The FDI Policy also has regard to the business plan of the foreign investor, the prevailing government investment policies and the attainment of requisite approvals. Further, all investments are subject to the pricing guidelines issued by the RBI and to entry conditions (i.e., minimum capitalisation, lock-in period, etc., if any) contained in the FDI Policy, in addition to sectorial/state laws, rules and regulations and applicable tax laws in India.



## Registration/filing requirements

While no approvals/registrations are required in case of investments made under the 'automatic route', prior approval of the Foreign Investment Promotion Board (FIPB) is required where the investment falls under the government approval route. In case the investment falls under the approval route, then:

(a) Proposals with total foreign equity inflow less than or equal to INR 12 billion (~ USD 193 million) are considered by the FIPB.

(b) Proposals with total foreign equity inflow of more than INR 12 billion (~ USD 193 million) are placed for consideration of the Cabinet Committee on Economic Affairs (CCEA). The CCEA also considers proposals that may be referred to it by the FIPB/Minister of Finance (in-charge of the FIPB).

Irrespective of the route under which the investment has been made, post-investment filings have to be made with the RBI.

Apart from the above-mentioned approvals and filings, additional approvals may have to be obtained from authorities, such as the Competition Commission of India, and filings may have to be made with other authorities, such as the ROC, depending on the manner in which the investment has been made.

A number of approvals may be required from state governmental bodies under relevant local regulations for the acquisition of assets and the carrying out of construction activities.

## Foreign employment limitations

Indian companies are allowed to engage the services of foreign nationals without any approval, but subject to the relevant visa policy guidelines. However, an employment visa must be obtained from the Indian Consulate in the foreign national's country of residence before departure for India.

Foreign nationals, including their family members, are required to register with the Foreign Resident Registration Office (Ministry of Home Affairs) within 2 (two) weeks[3] of their arrival in India if they intend to stay in India for a period of 180 days or more.

A 'Resident Permit' may be issued for the validity of the visa period.

Foreign nationals that reside in India and are in employment with an Indian company are allowed to open local bank accounts and to repatriate funds to their country of residence, net of applicable taxes.

Foreign nationals who are employed by an Indian company are required to obtain tax registration ('Permanent Account Numbers') with the Income Tax Department.

## Foreign investment

Foreign investments into Indian companies may come through two routes:

- **Automatic route** – For certain industries (to the extent permitted), the RBI or the government automatically approves all proposals involving foreign investment, subject to the fulfilment of prescribed parameters. Under the 'automatic route', the Indian company, having received FDI, needs to inform the RBI within 30 days of receipt of inward remittances and file the required documents within 30 days from the date of issue of shares.
- **Government approval** – In cases where the proposed foreign investment would exceed the extent permitted under the automatic route, or where the activities are not covered under the automatic route, prior approval from the FIPB (or CCEA, if applicable) is required.

The government allows FDI of between 26 percent and 100 percent in the following sectors (subject to the prior approval of the FIPB, where required):

- Agriculture and animal husbandry
  - Floriculture, horticulture, apiculture and cultivation of vegetables and mushrooms under controlled conditions

[3]Pakistan nationals are required to register within 24 hours.

- Development and production of seeds and planting material
- Animal husbandry (including breeding of dogs), pisciculture and aquaculture under controlled conditions
- Services related to agro and allied sectors
  *(Besides the aforesaid activities, FDI is not permitted in any other agricultural activity)*

- Tea plantations
- Mining
  - Mining and exploration of metal and non-metal ores
  - Coal and lignite
  - Mining and mineral separation of titanium-bearing minerals and ores, its value addition and integrated activities, subject to sectorial regulations and the Mines and Minerals (Development and Regulation Act, 1957)
- Petroleum and natural gas
- Manufacturing
  - Manufacture of items reserved for production in micro and small enterprises (**MSEs**)
- Defence
- Broadcasting
  - Broadcasting carriage services
  - Broadcasting content services
- Print media
- Civil aviation
  - Airports
  - Air transport services
  - Other services under civil aviation sector (such as ground-handling services, maintenance and repair organisations and flying training institutes)
- Courier services
- Construction development
  - Townships, housing, built-up infrastructure and construction development projects (including, but not restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional-level infrastructure)
- Industrial parks (new and existing)
- Satellites (establishment and operation)
- Private security agencies
- Telecom services
- Trading
  - Cash and carry wholesale trading/wholesale trading (including sourcing from MSEs)
  - E-commerce activities
  - Retail (single and multi-brand)
- Railway infrastructure
- Financial services
  - Asset reconstruction companies
  - Banking – private sector
  - Banking – public sector
  - Commodity exchanges
  - Credit information companies
  - Infrastructure companies in the securities markets
  - Insurance
  - Nonbanking finance companies
- Pharmaceuticals
  - Greenfield
  - Brownfield
- Power exchanges

Certain other sector-specific approvals may be required, and certain conditions may need to be fulfilled for foreign investment in certain sectors on a case-to-case basis.

No FDI is allowed in:

- Lottery business, including government/private lottery, online lotteries, etc.
- Gambling and betting, including casinos, etc.
- Chit funds
- Nidhi company
- Trading in transferable development rights (**TDR**)
- Real estate business or construction of farm houses
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities/sectors not open to private sector investment, e.g., atomic energy and railway operations (other than the permitted activities under the FDI Policy)

*(Foreign technology collaboration in any form, including licencing for franchise, trademark, brand name and management contract, is also prohibited for lottery business, gambling and betting activities)*

'Real estate business' means dealing in land and immovable property with a view to earning profit or earning income therefrom, and does not include development of townships, construction of residential/commercial premises, roads or bridges, educational institutions, recreational facilities, city-level and regional level infrastructure, and townships.

### Continued liberalisation – Real estate

The government has allowed FDI of up to 100 percent under the automatic route in construction-development projects (which would be inclusive of, but not restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, and city-level and regional-level infrastructure). Some of the key conditions to be satisfied prior to any foreign investment are as follows:

- Minimum area to be developed under each project:
  - For construction-development projects, a minimum floor area of 20,000 square metres is required.
  - For development of serviced housing plots, no minimum land area is required.
- The investment would further be subject to the following conditions:
  - The investee company will be required to bring in minimum capitalisation of USD 5 million within six months of commencement of the project, i.e., from the date of approval by the statutory authority. Subsequent tranches of FDI can be brought in until the period of 10 years from the commencement of the project or before the completion of such project, whichever expires earlier.
  - The investor will be permitted to exit on completion of the project or after the development of trunk infrastructure, which includes roads, water supply, street lighting, drainage and sewerage.
  - The government may, in view of the facts, permit repatriation of FDI or transfer of stake by one non-resident investor to another non-resident investor before completion of the project. The FIPB may consider these proposals from case-to-case basis.
  - The investee company will be permitted to sell only 'developed plots' (i.e., plots where trunk infrastructure—i.e., roads, water supply, street lighting, drainage and sewerage—have been made available).
  - The project must conform to the norms and standards (including land-use requirements and provision of community amenities and common facilities) as laid down in the applicable building control regulations, by-laws, rules and other regulations of the state government or the municipal/local body concerned. Further, the Indian investee company is responsible for obtaining all necessary approvals and consents, as may be applicable under the regulations, rules or by-laws of the concerned state government/municipal/local body concerned.
  - The requirements and conditions relating to minimum area development, minimum capitalisation, exit(s) and repatriation do not apply to hotels and tourist resorts, hospitals, special economic zones (SEZs), educational institutions, old age homes and investments by non-resident Indians. Additionally, the requirements and conditions relating to minimum area development and minimum capitalisation do not apply to investee/joint venture companies that commit at least 30 percent of the total project cost for low-cost affordable housing.



Special tax incentive packages have also been developed for developers in SEZs and for companies operating from the SEZs.

## Restrictions on property ownership

The general provisions with respect to purchase/sale of immovable property by foreign corporate bodies or individuals are set out in the FEMA and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000. No person resident outside India is permitted to transfer any immovable property in India, unless with the approval of the RBI.

A person resident outside India who has established in India, in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, a branch/project office or other place of business (excluding a liaison office) for carrying on in India any permitted activity can acquire any immovable property in India that is necessary for or incidental to carrying on such activity, subject to compliance with other applicable laws and RBI reporting in a prescribed format.

Generally, funds for the transaction must be provided by way of an inward remittance of foreign currency through normal banking channels, but there will be no automatic right of repatriation of either principal sum or profit from capital appreciation if the property is subsequently sold.

A foreign national of non-Indian origin, resident outside India, cannot acquire any immovable property in India unless such property is acquired by way of an inheritance from a person who was a resident in India. However, they can acquire or transfer immovable property in India, on lease, not exceeding five years, without the prior permission of the RBI.

Foreign nationals of non-Indian origin, other than a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, can acquire immovable property in India on becoming resident in India as per the conditions mentioned in the FEMA. A foreign national resident in India can purchase immovable property in India.

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, without prior permission of the RBI, can acquire or transfer an immovable property in India, other than lease, not exceeding five years.

## Foreign exchange controls

Foreign capital investment can be repatriated along with capital gains after the payment of tax, except in the case of real estate where the remittance would be subject to certain conditions prescribed by the FEMA and the regulations issued thereunder.

Profit and dividends earned in India can be repatriated after the deduction of taxes due on them.

## Taxes on possession and operation of real estate

Property tax is levied as a percentage of the rateable value (**RV**) or capital value (**CV**) of the property. Calculation of RV, CV and the tax rate payable varies between states. The property tax payable also varies, depending on whether the property is owner-occupied or leased. The RV is calculated on the basis of actual rent if the property is leased. If the property is owner-occupied, the RV is calculated on the basis of the comparable rent that the property can achieve.

For example, in Bangalore, the assessment of RV has been finalised according to the zones. The Municipal Corporation of Greater Mumbai has introduced the CV-based property tax system, where the property tax would be based on the market value as per the stamp duty ready reckoner.

## Taxes on acquisition and transfer of real estate

### Stamp duty and legal costs

Stamp duty and registration charges are payable on most instruments associated with the transfer of property, including sale, long lease, mortgage instruments, etc. The actual rates vary from state to state. Stamp duty and registration charges on conveyance, applicable in important cities, in India are as follows:

| City | Stamp duty | Registration charge |
|---|---|---|
| Delhi | 6% (with municipal levies) (men)<br>4% (with municipal levies) (women) | 1% |
| Mumbai | 5% of the market value of the property (urban) | 1% [subject to a maximum of INR 30,000 (~ USD 482)] |
| Bangalore | 5% of the market value (including local surcharge) | 1% |
| Chennai | 7% of the market value (including local surcharge) | 1% |

Legal costs are borne by each party involved. Legal fees in India range between INR 6,000–20,000 (~ USD 100–330) per hour.

### Capital gains tax

Gains on the sale of capital assets held for three years or more (or one year for equity and preference shares, other listed securities, zero-coupon bonds, or mutual fund units) are treated as long-term capital gains and are taxed at concessionary rates compared to short-term capital gains, which are gains on the sale of investments held for a period of less than three years (or one year for equity and preference shares or other listed securities).

### Indirect taxes

Excise duty is imposed on goods manufactured in India. Different rates (as specified in the annual budget) are applicable for different commodities. To avoid the cascading effect of excise duty, CENVAT credit is available on earlier amounts of excise duty paid on input raw materials and plant or machinery used in making a product.

Customs duty is levied on imports at rates specified in the annual budget. Different rates are specified for different commodities.

With effect from April 1, 2005, the state sales tax (levies on the sale of a commodity that is produced or imported and sold for the first time) has been replaced by the value-added tax (VAT) in all states. VAT is applicable to different commodities and varies from state to state.

A luxury tax of up to 15 percent is levied on the cost of a room in a luxury hotel. This tax varies from state to state and is according to the room rent charges.

Service tax at a rate of 12.36 percent on usage charges is levied on certain services, including:

- Telephone
- Insurance (other than life insurance)
- Real estate and stock broking
- Pipeline transport of goods
- Site formation, demolition, and similar services
- Membership of clubs and associations
- Packaging and specialised mailing services
- Survey and map-making services
- Dredging services in rivers and harbours
- Cleaning services for commercial buildings and similar premises
- Construction of planned residential complexes with more than 12 dwelling units, developed by builders
- Legal consultancy services (not including court appearances), applicable where parties are not individuals
- Health service undertaken by hospitals or medical establishments
- Electricity exchange services
- Services provided by builder in relation to preferential location, internal/external developments, etc.

### Corporate taxation

The rates of corporate taxation for the financial year 2014–2015 are as follows:

| Category | Rate (excluding cess) |
|---|---|
| Domestic company | 30% of the total income<br>+<br>5% surcharge [if net income exceeds INR 10,000,000 (~ USD 160,821) but does not exceed INR 100,000,000 (~ USD 1,608,385)]<br>OR<br>10% surcharge [if net income exceeds INR 100,000,000 (~ USD 1,608,385)] |
| Foreign company<br>– Income from royalty and fees for technical services | 50% |
| – Other income | 40%<br>*Surcharge:*<br>2% surcharge [if net income exceeds INR 10,000,000 (~ USD 160,821) but does not exceed INR 100,000,000 (~ USD 1,608,385)]<br>OR<br>5% surcharge [if net income exceeds INR 100,000,000 (~ USD 1,608,385)] |

The following exemptions are allowed:

- Companies engaged in the business of biotechnology or the manufacture or production of specific articles or things are eligible for a weighted deduction of 200 percent of expenditure on in-house research and development facilities
- 100 percent deduction of expenditure for companies carrying out scientific research and development, as approved by the Department of Scientific and Industrial Research

### Tax depreciation

Depreciation allowances vary according to the types of asset:

- Plant and machinery: 15 percent
- Furniture and fittings: 10 percent
- Vehicles: 60 percent
- Shipping: 20 percent
- Computer hardware: 80 percent
- Residential building: 5 percent
- Hotels: 10 percent
- Wooden structures: 100 percent
- All other buildings (including commercial and industrial): 10 percent

### Personal taxation

Income tax rate for Indian nationals and expatriate residents are:

- For resident senior citizen (60 years up to 80 years at any time during the previous year):

| Net income range | Rate (excluding cess) |
|---|---|
| Up to INR 300,000 (~ USD 4,825) | Nil |
| INR 300,001–500,000 (~ USD 4,825–8,040) | 10% of total income exceeding INR 300,000 (~ USD 4,825) |
| INR 500,001–1,000,000 (~ USD 8,040–16,082) | INR 20,000 (~ USD 321) + 20% on total income exceeding INR 500,000 (~ USD 8,040) |
| Above INR 1,000,000 (~ USD 16,082) | INR 120,000 (~ USD 1,930) + 30% of total income exceeding INR 1,000,000 (~ USD 16,082) |

- For resident super senior citizen (80 years or more at any time during the previous year):

| Net income range | Income tax rate (excluding cess) |
|---|---|
| Up to INR 500,000 (~ USD 8,040) | Nil |
| INR 500,001–1,000,000 (~ USD 8,040–16,082) | 20% of total income exceeding INR 500,000 (~ USD 8,040) |
| Above INR 1,000,000 (~ USD 16,082) | INR 100,000 (~ USD 1,608) + 30% of total income exceeding INR 1,000,000 (~ USD 16,082) |

- For any other individual, every Hindu Undivided Family (HUF) or Association of Persons (AOP) or body of individuals or every artificial juridical person as per the provisions of Income Tax Act, 1961:

| Net income range | Income tax rate (excluding cess) |
|---|---|
| Up to INR 250,000 (~ USD 4,020) | Nil |
| INR 250,001–500,000 (~ USD 4,020–8,040) | 10% of the amount by which total income exceeds INR 250,000 (~ USD 4,020) |
| INR 500,001–1,000,000 (~ USD 8,040–16,082) | INR 25,000 (~ USD 402) + 20% of the amount by which the total income exceeds INR 500,000 (~ USD 8,040) |
| Above INR 1,000,000 (~ USD 16,082) | INR 125,000 (~ USD 2,010) + 30% of the amount by which the total income exceeds INR 1,000,000 (~ USD 16,082) |

Additionally, income of every individual or HUF or AOP or body of individuals or every artificial juridical person having a total income exceeding INR 10,000,000 (~ USD 160,821), shall be increased by a surcharge calculated at the rate of 10 percent of such income-tax.

A deduction in total income with regard to investment made by individuals/HUF is limited to INR 150,000 (~ USD 2,412). In addition to the above, the following general deductions are available for individuals:

- Interest paid on housing loan for self-occupied residential property
- Medical insurance premiums
- Specific expenditure on disabled dependent
- Expenses for medical treatment of self or dependent or member of HUF
- Interest paid on loan for pursuing higher studies
- Deduction of person with disability

## Tax treaties: Avoidance of double taxation

Comprehensive tax treaties are in existence with the following countries:

| | |
|---|---|
| Albania | Korea |
| Armenia | Kuwait |
| Australia | Kyrgyz Republic |
| Austria | Latvia |
| Bangladesh | Libya |
| Belarus | Lithuania |
| Belgium | Luxembourg |
| Bhutan | Malaysia |
| Botswana | Malta |
| Brazil | Mauritius |
| Bulgaria | Mexico |
| Canada | Mongolia |
| Chile | Montenegro |
| China | Morocco |
| Columbia | Mozambique |
| Cyprus | Myanmar |
| Czech Republic | Namibia |
| Denmark | Nepal |
| Egypt | The Netherlands |
| Estonia | New Zealand |
| Ethiopia | Nigeria |
| Fiji | Norway |
| Finland | Oman |
| France | Oriental Republic of Uruguay |
| Gambia | Pakistan |
| Georgia | Philippines |
| Germany | Poland |
| Gold Coast | Portuguese Republic |
| Greece | Qatar |
| Hashemite Kingdom of Jordan | Romania |
| Hungary | Russia |
| Iceland | Saudi Arabia |
| Indonesia | Serbia |
| Ireland | Sierra Leone |
| Israel | Singapore |
| Italy | Slovak Republic |
| Japan | Slovenia |
| Kazakhstan | South Africa |
| Kenya | Spain |

| | |
|---|---|
| Sri Lanka | Turkmenistan |
| Sudan | United Arab Emirates |
| Sweden | United Arab Republic |
| Swiss Confederation | Uganda |
| Syrian Arab Republic | United Kingdom |
| Taipei | Ukraine |
| Tajikistan | United States of America |
| Tanganyika | Uzbekistan |
| Tanzania | Vietnam |
| Thailand | Zambia |
| Trinidad and Tobago | Zanzibar |
| Turkey | |

In addition, limited tax treaties (with respect to income of airlines/merchant shipping) are in existence in the following countries:

| | |
|---|---|
| Afghanistan | Pakistan |
| Ethiopia | Yemen |
| Iran | South Asian Association for Regional Cooperation Countries |
| Lebanon | |
| Maldives | |

## Real estate mutual funds

In 2008, the Securities and Exchange Board of India (SEBI), the apex regulatory body in India for the securities markets, approved the guidelines for real estate mutual funds (REMFs). As per the guidelines, all the schemes having an objective to invest, directly or indirectly, in real estate assets or other permissible assets are governed by the provisions and guidelines under the SEBI (Mutual Funds) Regulations, 1996.

The key features of the guidelines are as follows:

- REMFs should be closed-end funds, and its units should be listed on a recognised stock exchange. The net asset value should be declared at the close of each business day on the basis of the most current valuation of the real estate assets held by the scheme.
- Title deeds pertaining to the real estate assets should be kept in safe custody with the custodian of the REMF.
- No lending or housing finance activities should be taken up by REMFs.
- The investments by an REMF are to be made in the prescribed ratios among real estate assets, mortgage-backed securities (but not in mortgages), equity shares or debentures of companies (whether listed or not) engaged in dealing in real estate assets or in undertaking real estate development projects and other securities.
- Real estate assets may be let out or leased out if the term of such lease or letting does not extend beyond the period of maturity of the REMF.

## Real estate investment trusts

The SEBI has recently approved the SEBI (Real Estate Investment Trusts) Regulations, 2014 (**REIT Regulations**). The key features of the REIT Regulations are:

- REITs are required to be set up as a trust and registered with the SEBI and include designated persons such as trustee, sponsor(s) and manager (as defined under the REIT Regulations). The trustee (of a REIT) is required to be a SEBI-registered debenture trustee who should not be an associate of the sponsor/manager. The roles and duties of trustees, sponsors and managers are enumerated in the REIT Regulations.
- REITs are permitted to invest in commercial real estate assets, either directly or through special purpose vehicles (SPVs). In such SPVs, a REIT should hold or propose to hold controlling interest and not less than 50 percent of the equity share capital or interest. Further, such SPVs should hold not less than 80 percent of its assets directly in properties and should not invest in other SPVs.
- Upon registration, the REIT should raise funds through an initial offer, provided the value of all assets owned by such REIT is not less than INR 500 crores (~ USD 80 million); the units proposed to be offered to the public is not less than 25 percent of the total outstanding units of the REIT; and the units being offered by way of the offer document and the offer size is not less than INR 250 crores (~ USD 40.5 million). Subsequently, funds may be raised through a follow-on offer, rights issue, qualified institutional placement, bonus issue, offer for sale or any other mechanism and in the manner as specified by the SEBI.
- Units of REITs are required to be mandatorily listed on a recognised stock exchange within a period of 12 days from the date of closure of the initial offer, and REITs are required to make continuous disclosures in terms of the listing agreement.
- REITs should redeem units only by way of buy-back or at the time of delisting of units.
- Investment by REITs should only be in SPVs or properties or securities or TDR in India, in accordance with the REIT Regulations and the investment strategy as set out in the offer document.

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of Measurement** | |
| Unit of Measurement | Square Feet |
| **Rental Payments** | |
| Rents | Rupees per square feet per month<br>Tier I cities: Rent quoted is exclusive of 12.36% service tax<br>Tier II cities: Rent quoted is inclusive of taxes in the CBD, while it is quoted without taxes in peripherals |
| Typical lease term | Normal commercial lease terms: 3+3+3 years |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as X month's rent) | Tier I cities: 3–6 months' rent<br>Tier II cities: 6–12 months' rent |
| Security of tenure | – For the duration of the tenancy, the landlord generally has no termination rights<br>– Lock-in depends on the condition of the office space (furnished/ unfurnished) |
| Does tenant have statutory rights to renewal? | Tier I cities: Right to renewal is generally available after expiration of the 'lock-in period'<br>Tier II cities: Termination rights generally available after expiration of the 'lock-in period' |
| Basis of rent increases or rent review | Fixed increment negotiated and agreed at the outset of the lease; typically between 15–20% every three years |
| Frequency of rent increases or rent review | Every three years |
| **Service Charges, Operating Costs, Repairs & Insurance** | |
| Responsibility for service charge/management fee | Tier I cities: Monthly, in advance<br>Tier II cities: Monthly, in advance |
| Responsibility for utilities | Tier I cities: Electricity and water are separately metered and payable by each tenant<br>Tier II cities: Only electricity is separately metred and payable by each tenant |
| Car parking | Tier I cities: Allocated parking is on a per square feet ratio (e.g., one bay per 1,000 square feet). It is held under a separate monthly lease for an additional rent<br>Tier II cities: Allocated parking is on a per square feet ratio and varies within micro markets (e.g., one bay per 2,000 square feet in the CBD and one bay per 1,000 square feet or one bay per 1,250 s.f. in peripherals). It is held under a separate monthly lease for an additional rent |
| Responsibility for minor internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc.) | Landlord (charged back via service charge) |
| Responsibility for external/structural repairs | Landlord (charged back via service charge) |
| Responsibility for building insurance | Landlord (charged back via service charge) |
| **Disposal of Leases** | |
| Tenant subleasing & assignment rights | Generally prohibited (subject to landlord approval) |
| Tenant early termination rights | Termination rights generally available after expiration of the 'lock-in period' |
| Tenant's building reinstatement responsibilities | Reinstated to original condition |

Source: JLL

## Property tenure/ownership

Land rights can be divided into two categories:

- *Adat* land (customary land)
  - Not registered with the relevant land office (*Badan Pertanahan Nasional* (BPN) or National Land Agency)
  - Usually held through a (hereditary) traditional joint community ownership structure
  - A (joint) community may temporarily 'release' valid customary land to be used for agricultural purposes by granting another person a Right of Cultivation (*Hak Guna Usaha*) and/or a Right of Use (*Hak Pakai*) over the customary land for a limited tenure
  - Rights held under this category can be converted to certified titles
- Certified land
  - Title is governed by the Basic Agrarian Law of 1960 and is registered at the local land office.
  - There are basically five types of land rights held under the Agrarian Law:

1. Right of Ownership (*Hak Milik*)
   - Absolute ownership of land and corresponds to a fee simple or freehold title in common law jurisdiction. This right is hereditary and held only by Indonesian citizens. Certain legal entities specified by the Indonesian government can hold a Right of Ownership, namely state banks, community agriculture cooperatives and religious or social organisations designated by the Minister of Agriculture or Minister of Agrarian Matters
   - This land right can be sold, transferred, bequeathed or hypothecated (mortgaged)
2. Right of Cultivation (*Hak Guna Usaha*)
   - Right to cultivate or exploit state-owned land for agricultural, fishery or husbandry purposes
   - Valid for a maximum of 35 years, but extendable for another 25-year period, with a possibility for renewal
   - Can be held by Indonesian individuals or entities, as well as Indonesian incorporated foreign joint venture companies
   - This land right can be mortgaged
3. Right to Build (*Hak Guna Bangunan*)
   - Right to develop and own buildings on land owned by others
   - Right to build is granted over state-owned land, Right of Ownership and Right to Operate/Manage (*Hak Pengelolaan*) land
   - Granted for a maximum initial period of 30 years and extendable for another 20-year period, with a possibility for renewal
   - Can be held directly by Indonesian entities or foreign joint venture companies
   - This land right can be sold, exchanged, transferred, bequeathed or mortgaged
4. Right of Use (*Hak Pakai*)
   - Right to use state-owned land or land owned by others for a specific purpose, as agreed by both parties, such as for social activities, religious worship, embassies and international organisations
   - Right of Use granted over state-owned land is valid for a maximum of 25 years, but extendable for another period of 20 years or occasionally for an indefinite period, as stated in its grant or agreement (if it is granted to embassies, nondepartment government institutions, representative of international organisations, or religious or social institutions)
   - Right of Use granted over an underlying Right of Ownership title is valid for a maximum of 25 years and cannot be extended. However, subject to mutual agreement between the land owner and the Right of Use holder, the Right of Use can be renewed
   - Can be held by Indonesian citizens and entities, foreign-invested entities, individual foreigners residing in Indonesia, foreign embassies, or representative offices of foreign entities
   - This land right can be sold, exchanged or transferred, subject to approval of the land owner in each case
5. Right to operate/manage (*Hak Pengelolaan*)
   - Right to operate state-owned land for a specific purpose, as approved by the authorities
   - Given exclusively to government institutions or state-owned companies for an unspecified period
   - Can be transferred to a third party in the form of '*Hak Guna Bangunan*' or '*Hak Pakai*'

*Hak Guna Usaha, Hak Guna Bangunan* and *Hak Pakai* titles are available to companies registered under current Indonesian laws, including foreign-owned companies and foreign joint venture companies.

Other rights of cultivation include Right to Crop Forest Products (*Hak Memungut Hasil Hutan*) and Right to Clear Land (*Hak Membuka Tanah*).

Besides the above types of land rights, there is a law governing the right of ownership relating to multistorey buildings (*Hak Milik atas Satuan Rumah Susun*) (Law No. 16 of 1985, as revoked and substituted by Law No. 20 of 2011), issued to owners of residential/commercial/retail units in multistorey buildings such as condominiums, strata-title office buildings or trade centres. The validity period depends on the expiry date of the land right of the plot on which the building is constructed.

**Major property legislation**

- Basic Agrarian Law (and its implementing regulations)
- Investment Law
- Taxation Law

**Regional autonomy**

Law No. 22 of 1999 on regional autonomy (subsequently substituted by Law No. 32 of 2004 and its amendments) and Law No. 25 of 1999, as substituted by Law No. 33 of 2004 on financial balancing between central and local government, were issued to implement the decentralisation of autonomy for all Indonesian provinces and regencies, effective from January 1, 2001.

This package of laws allows each regional government to issue new government regulations on taxes and retributions for their regions. These laws, together with several government regulations, also give the regional government the authority to issue permits for investment in forestry, fishery, mining (except oil and gas), etc.

## Operational requirements for foreign corporations

### Office

**Modes of entry**

- Foreign joint venture company (either joint venture with an Indonesian party or 100 percent foreign ownership)
- Registered permanent establishment (mainly for oil and gas participants under a Production Sharing Contract)
- Representative office

**Registration/licencing requirements**

- Foreign joint venture company
  - Principal licence and business licence registration from the Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*, or BKPM)
  - BKPM is authorised to issue business licences on behalf of government ministries in accordance with applicable law and regulations of the related ministries (e.g., Ministry of Public Works, Ministry of Trade, Ministry of Agriculture, Ministry of Industry, Ministry of Tourism, Ministry of Health, Ministry of Transportation, Ministry of Public Housing, Ministry of Communication and Informatics, Ministry of Maritime Affairs and Fisheries, Indonesia Police Force, Ministry of Forestry, Ministry of Energy and Mineral Resources and the Ministry of Education and Culture)
  - Location permit (*Ijin Lokasi*) from the relevant regional authority
  - Recommendation from relevant government body (for business licence)
  - Articles of association ratification from the Ministry of Law and Human Rights
- Representative office
  - General representative offices must obtain a licence from the BKPM for general corporate and investment preparation purposes (among others, to prepare the establishment and development of the relevant company's business in Indonesia)
  - Trading representative offices should obtain licences from the BKPM for marketing and market research purposes
  - Oil and gas representative offices should obtain a licence from the Directorate General of Oil and Gas of the Ministry of Energy and Mineral Resources
- Online company folders

BKPM recently issued a circular letter requiring all companies under its jurisdiction—namely foreign investment companies (PMA) and domestic investment companies (PMDN)—to create online company folders with BKPM (through its official website) for the purpose of document submission. The creation of these folders is required to be completed (for existing companies) prior to October 1, 2014. As of that date, any applications made to BKPM will only be processed once the company folders have been created.

**Foreign employment limitations**

Expatriates are allowed to hold positions where qualified Indonesian nationals are not available, and subject to the condition that such position is open for expatriates, provided there is gradual Indonesianisation of these positions. In practice, the limit of foreign employees in a company shall be determined by the Directorate of Foreign Manpower Utilisation from the Ministry of Manpower upon application for approval of a company's or representative office's foreign manpower utilisation plan, taking into consideration the amount of equity and the number of intended employees.

Foreign employees must obtain an entry/exit permit for entering/leaving the country and a police certificate card.

All expatriates resident in Indonesia are required to register with the Indonesian Tax Office and file personal income tax returns on a worldwide basis.

### Retail trade

Government Regulations No.15/1998 and 46/1998 (amending various preceding regulations) were issued in 1998 to allow foreign investors in the manufacturing sector to set up retail companies and/or export import companies in Indonesia.

Currently, foreign companies are generally still operating under technical assistance agreements or franchise agreements with local-owned companies.

## Foreign Investment Incentives

Foreign investment incentives for investment projects approved by the BKPM include:

- Possible exemption from import duties and VAT on the import of capital goods, machines or equipment
- For designated provinces and investment in certain business sectors that satisfy certain criteria, 'tax allowances' are potentially available, including an investment allowance of 30 percent over six years, accelerated depreciation, extended loss carried forward in excess of five years, and 10 percent dividend withholding tax for non-resident shareholders, if required
- A 'tax holiday' of up to 10 years has recently been introduced for investments over IDR 1 trillion (USD 77,255,871.45) for five designated business sectors. Further developments and details are awaited

## Restrictions on foreign property ownership

Generally, foreign individuals or foreign companies that are not registered under current Indonesian laws enjoy only the Right of Use (*Hak Pakai*).

Under Government Regulation No. 41/1996 issued in June 1996, individual foreigners are allowed to own residential property. Foreigners who provide benefits to the national development, reside permanently or temporarily in Indonesia, and have immigration documents or visa, may purchase:

- Nonsubsidised houses on land with Right of Use title
- Strata-titled apartment units on land with Right of Use title
- Vacant land with Right of Use title or other land use agreements with the land title holder, and build a house on the land

The Indonesian government is currently reviewing the 1996 Government Regulation, with a view to possibly opening up the ability for foreign individuals to hold a Right of Use (*Hak Pakai*) title for a longer period of time (i.e., for 95 years and extendable), although it may be restricted to properties valued over a certain threshold. Whether these changes are implemented remains to be seen.

## Foreign exchange controls

Indonesia has limited foreign exchange controls. The rupiah has been, and in general is, freely convertible within or from Indonesia. However, to maintain the stability of the rupiah and prevent the utilisation of the rupiah for speculative purposes by nonresidents, Bank Indonesia has introduced regulations to restrict the movement of rupiah from banks within Indonesia to offshore banks, offshore branches of Indonesian banks, or any investments denominated in rupiah by foreign parties and/or Indonesian parties domiciled or permanently residing outside Indonesia, thereby limiting offshore trading to existing sources of liquidity. In addition, Bank Indonesia has the authority to request information and data concerning the foreign exchange activities of all people and legal entities that are domiciled, or who plan to be domiciled, in Indonesia for at least one year.

Bank Indonesia Regulation No. 14/21/PBI/2012 on Foreign Exchange Reporting (PBI 14/21/2012) requires bank institutions, nonbank financial institutions, nonfinancial institutions, state/regional-owned companies, private companies, business entities and individuals to submit a report to Bank Indonesia on their foreign exchange activities. The report is required to include:

- Trade activities in goods, services and other transactions between residents and nonresidents of Indonesia
- The position and changes in the balance of foreign financial assets and/or foreign financial liabilities
- Any plan to incur foreign debt and/or its implementation

Indonesian companies are required to submit a foreign exchange report for any activities stipulated under PBI 14/21/2012 (except in connection with any reporting requirements for offshore borrowings, which are still regulated under Bank Indonesia Regulation No. 12/24/2010 and Bank Indonesia Regulation No. 12/1/2010 until their revocation on August 1, 2013), to Bank Indonesia, by no later than the 15th day of the subsequent month. Any plan to obtain an offshore loan is required to be submitted to Bank Indonesia by no later than March 15 of the respective year when the plan is formulated by the company. In the event there is a change to the company's plan to obtain an offshore loan, an amendment to such report must be submitted to Bank Indonesia by no later than July 1 of the year of such change. Further, an Indonesian company that obtains an offshore loan is also required to file its financial data with Bank Indonesia no later than June 15 and December 15 of each year. Failure to submit the foreign exchange report could result in the imposition of an administrative sanction in the amount of IDR 10,000,000 (USD 772.56). Bank Indonesia will issue a warning letter and/or report to the licencing authority should the nonbanking institution fail to submit a report. The aforementioned sanctions are effective as of 2014.

On May 14, 2014, Bank Indonesia issued Bank Indonesia Regulation No. 16/10/PBI/2014 on the Receipt of Export Proceeds and Withdrawal of Offshore Loans in Foreign Currency Reporting and issued its implementing regulation, Bank Indonesia Circular No. 16/10/Dsta on Foreign Exchange Reporting for Offshore Loan and Bank Indonesia Circular No. 16/09/Dsta on Foreign Exchange Reporting for Export Proceeds both issued on May 26, 2014 (PBI 16/10/2014). Under PBI 16/10/2014, Indonesian recipients of export proceeds [with the exception of (i) government export proceeds that are received through Bank Indonesia and (ii) export proceeds that are domestically received in cash, as proven by sufficient supporting documents and deemed reasonable by Bank Indonesia] or offshore loans are required to withdraw proceeds through foreign exchange banks located in Indonesia, and such withdrawal must be reported to Bank Indonesia. PBI 16/10/2014 also stipulates that the accumulated amount of withdrawals for an offshore loan must be equal to the commitment amount of such offshore loan as stated under the relevant offshore loan agreement. If the accumulated amount of withdrawals is not equal to the commitment amount of the offshore loan and the difference is more than IDR 50 million (USD 3,973), the Indonesian debtor must provide a written explanation and supporting documents to Bank Indonesia. Any violation of PBI 16/10/2014 means Indonesian exporters may be subject to a fine of up to IDR 100 million (USD 7,947) (within one month export goods notification period) and will subject Indonesian debtors to a fine in the maximum amount of IDR 50 million (USD 3,973) for each noncomplying withdrawal.

## Taxes on possession and operation of real estate

### Property tax

The property tax (PBB) rate on land and buildings is a maximum of 0.3 percent of the sale value of the property (NJOP) (which is determined by the local government on average every one to three years) less nontaxable NJOP minimum IDR 10 million (USD 772.56).

For example, in DKI Jakarta for year 2014:

Nontaxable NJOP is IDR 80 million (USD 6,180.47).

PBB rate is as follows:

| NJOP value | PBB |
|---|---|
| Less than IDR 200 million (USD 15,451.17) | 0.01% |
| IDR 200 million–2 billion (USD 15,451.17–154,511.74) | 0.1% |
| IDR 2–10 billion (USD 154,511.74–772,558.71) | 0.2% |
| Above IDR 10 billion (USD 772,558.71) | 0.3% |

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

From January 1, 2014, PBB for rural and city areas will be classified as Regional Tax (*Pajak Daerah*) for all regions and will no longer be National Tax regulated by the Directorate General of Tax.

## Withholding tax on property income

Income derived from rental payments and service charges are subject to a final tax of 10 percent of the transaction value. The party from which the payment is due is responsible for the deduction and payment of the withholding tax to the tax authorities. If not, the lessor must pay the 10 percent itself.

## Taxes on acquisition and transfer of real estate

### Stamp duty and legal costs

Stamp duty is levied on various legal documents to which a monetary value is affixed. The rates are fixed, as follows:

| Value | Duty payable |
|---|---|
| Up to IDR 250,000 (USD 19.31) | Nil |
| IDR 250,001–1,000,000 (USD 19.31–77.26) | IDR 3,000 (USD 0.23) |
| Over IDR 1,000,000 (USD 77.26) | IDR 6,000 (USD 0.46) |

Notary fees for the processing of legal documents are usually charged at about 0.5 percent to 1.5 percent of the transacted price.

Individuals or companies obtaining rights to land or buildings are required to pay a Land and Building Transfer Duty (BPHTB) of 5 percent. The 5 percent duty is computed based on the transaction value or the assessed value, whichever is higher.

The nontaxable threshold amount for BPHTB varies by region, and the minimum threshold currently is IDR 60 million (USD 4,635.35). For acquisitions by inheritance, the nontaxable property value is stipulated by the regional authorities, but the minimum is set at IDR 300 million (USD 23,176.76).

### Capital Gains Tax

1. Land and building transfers

- A 5 percent tax on sales value is levied on companies and individuals for the sale/transfer of land rights and/or buildings. For transfers of simple houses and apartments by taxpayers engaged in property development business, the tax rate is 1 percent.
- The 5 percent tax on sales value is final.
- The transfer tax deposit slip (*Surat Setoran Pajak*) must be presented to the National Land Agency office together with the request for land title transfer.

2. Asset revaluations

- The net gains from asset revaluations (approved by the tax authority) are subject to a 10 percent final tax. An additional final income tax of 15 percent is imposed if the revalued assets are sold or transferred within a certain period after revaluation (for example, for land/building assets, the period is less than ten years). This additional tax does not apply to assets transferred to the government or transferred in the course of a tax-free business merger, however such mergers must be for business purposes and not tax driven.

**Shares**

- Foreign companies and individuals are subject to a 20 percent withholding tax on dividends from property companies (subject to tax treaty provisions, where relevant).
- A final tax of 0.1 percent applies to income from the sale of shares at the Indonesian Stock Exchange (collected 'automatically' by the Stock Exchange). The rate is 0.6 percent if the seller is a founding shareholder.
- A 5 percent tax is applicable to the sale of shares by a foreign shareholder, unless it is exempted under a tax treaty.

## Value Added Tax/Goods and Services Tax

A value added tax (VAT) of 10 percent applies to the delivery of most goods and services at import, manufacturing, wholesale and retail levels.

The sale of raw land is not subject to VAT, but the sale of land already prepared for development is subject to a VAT of 10 percent. VAT on rental payments and service charges is 10 percent.

Sales, leasing and construction services rendered for low-cost housing, modest flats and student accommodation may be exempted from VAT.

VAT can generally be passed on to customers, such as from contractors, architects, engineers and consultants to developers, from developers to purchasers, and from owners to tenants.

In addition to VAT, there is a sales tax on luxury goods. This is a one-time tax imposed on a wide range of luxury goods at import or manufacturing levels at rates of 10 percent to 75 percent (but potentially up to 200 percent). A 20 percent sales tax on luxury goods is applicable to luxury houses, apartments, condominiums, tower houses and the like.

## Tax depreciation

Assets in the permanent building category with a useful life of 20 years are depreciated at around 5 percent on a straight-line basis. Assets in the nonpermanent building category with a useful life of ten years are depreciated at around 10 percent on a straight-line basis.

Fixtures/equipment forming a part of buildings are depreciated at around 25 percent on the basis of reducing balance, or around 12.5 percent on a straight-line basis.

The cost incurred in relation to the sale/transfer of land is not depreciable. However, the cost of acquiring intangible property (e.g., acquiring rights to land use from the government) can be amortised over 4, 8, 16 or 20 years based on the useful life of the property.

## Corporate taxation

The income of resident and nonresident corporate entities is taxed at a flat rate of 25 percent. Small enterprises with a turnover no more than IDR 50 billion (USD 3,862,793.57) are entitled to a 50 percent discount off the standard rate, imposed proportionally on the taxable income of the part of gross turnover up to IDR 4.8 billion (USD 370,828.18). For certain small companies with turnover not more than IDR 4.8 billion (USD 370,828.18) the corporate tax is 1 percent of turnover and it is a final tax. Public companies that have at least 40 percent of their shares listed are entitled to a tax discount of 5 percent, essentially giving them an effective tax rate of 20 percent.

Resident corporations are taxed on their worldwide income, with an allowable credit for taxes paid to foreign countries. Nonresident corporations are taxed only on income derived in Indonesia as regulated under Article 26 of the Income Tax Law or Tax Treaties (see below).

Dividends of a nonresident corporation not covered by tax treaty protection are subject to a 20 percent withholding tax.

Losses may be carried forward for five years. For certain categories of business in certain regions provided with 'tax incentives allowances', losses may be carried forward up to ten years. No carry back of losses is allowed.

## Personal taxation

Residents (i.e., those staying in Indonesia for at least 183 days per annum) are taxed on their worldwide income, subject to certain allowances and deductions, on a graduated scale ranging from 5 percent to 30 percent.

| Annual income | Rate |
|---|---|
| Up to IDR 50,000,000 (USD 3,862.79) | 5% |
| IDR 50,000,001–250,000,000 (USD 3,862.79 –19,313.97) | 15% |
| IDR 250,000,001–500,000,000 (USD 19,313.97–38,627.94) | 25% |
| Over IDR 500,000,000 (USD 38,627.94) | 30% |

Nonresidents are taxed at 20 percent of gross income derived in Indonesia.

Employing entities are responsible for collecting and paying the tax due on employee remuneration (be it cash or 'benefits-in-kind' BIK). Cash income is taxed on a monthly basis. BIKs, e.g., cars, housing etc. provided by the company to the employee, are not taxable in the hands of the employee, but the full cost of BIKs is nondeductible to the company (except for employees of companies under final tax regime and representative offices, where the cost of the BIKs must be taxed in the hands of employees the same as cash remuneration).

## Tax treaties: Avoidance of double taxation

Treaties in existence:

| | |
|---|---|
| Algeria | New Zealand |
| Australia | North Korea |
| Austria | Norway |
| Bangladesh | Pakistan |
| Belgium | Papua New Guinea |
| Brunei Darussalam | Philippines |
| Bulgaria | Poland |
| Canada | Portugal |
| China | Qatar |
| Croatia | Romania |
| Czech Republic | Russia |
| Denmark | Saudi Arabia (limited treaty) |
| Egypt | Seychelles |
| Finland | Singapore |
| France | Slovakia |
| Germany | South Africa |
| Hong Kong | South Korea |
| Hungary | Spain |
| India | Sri Lanka |
| Iran | Sudan |
| Italy | Suriname |
| Japan | Sweden |
| Jordan | Switzerland |
| Kuwait | Syria |
| Luxembourg | Taiwan |
| Malaysia | Thailand |
| Mexico | Tunisia |
| Mongolia | Turkey |
| Morocco | Ukraine |
| The Netherlands | United Arab Emirates |
| United Kingdom | Venezuela |
| United States of America | Vietnam |
| Uzbekistan | Zimbabwe |

## Real Estate Investment Trusts

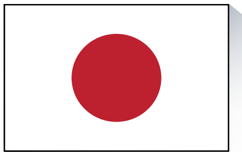
Real estate investment trusts (REITs) have not been established in Indonesia, and there are no REIT-specific regulations in the country. Currently, individuals in Indonesia who wish to invest in income-producing properties can do so through listed property companies or through real estate investment funds (REIFs, otherwise known as *Dana Investasi Real Estate* or DIRE).

A DIRE scheme involves a custodian bank and an investment manager who makes a collective investment in, among others, real estate and assets that are related to real estate. This excludes investments in vacant lots and investments in property that are still under development. A DIRE can invest its fund in a special purpose company, established specifically to achieve the DIREs' investment purpose. DIREs are regulated by the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or OJK).

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square Meters |
| **Rental payments** | |
| Rents | RP/sqm/month, except for grade A buildings, where rents are quoted in USD. Rents are usually quoted as net of service charges and other outgoings |
| Typical lease term | 3 years, and 5-10 years for larger space users |
| Frequency of rent payable (in advance) | Quarterly |
| Typical rent deposit (expressed as x months rent) | 3 months |
| Security of tenure | Only for the duration of the tenancy, no guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal | No, unless an option to renew is agreed at the outset and specified in the lease |
| Basis of rent increases or rent review | Open market rental value or fixed increment agreed at the offset of the lease |
| Frequency of rent increases or rent review | At lease renewal or 3 yearly in longer leases |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | Water consumption is included in the management charges |
| Car parking | Allocation (for reserved parking) is usually based on one parking lot per 50-100 sqm of leased space and is payable annually in advance |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord (charged back to tenant via service charge) |
| Responsibility for external/structural repairs | Landlord |
| Responsibility for building insurance | Landlord (charged back to tenant via service charge) |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally full assignment to third parties is accepted (subject to landlord approval) |
| Tenant early termination rights | Only by break clause, usually subject to penalty |
| Tenant's building reinstatement responsibilities at lease end | Reinstated to original condition |

Source: JLL



## Property tenure/ownership

Real estate in Japan consists of land and fixtures affixed to land (such as buildings). Land and buildings are treated separately with respect to the tenure/ownership, which means, for example, that a parcel of land and a building on such land can be owned by different persons or entities.

Land and buildings are registered in the real estate register (*fudosan tokibo*), which records certain information including the address, size and name of owner thereof.

There are several types of tenure with respect to real estate in Japan:

### Ownership

Ownership (*shoyuken*) is a right to freely use, obtain profit from, and dispose of the relevant property for an indefinite period, subject to certain restrictions (such as restrictions on its use for city planning purposes).

Ownership in land extends to above and below the surface of the land, subject to the restrictions prescribed by laws and regulations.

An acquisition of, disposition of, or change to the ownership of real estate may not be asserted against third parties unless they are registered in the real estate register.

### Leasehold

Leasehold (*chinshakuken*) is a right to occupy and use the relevant property under a contract directly or indirectly entered into with the owner of such property.

A leasehold interest can be registered in the real estate register, but in the case of a leasehold of land for the purpose of owning a building thereon, it is normal practice that instead of the registration of the leasehold, a lessee of the land registers the building on the land to perfect its leasehold interest under the Act on Land and Building Leases.

Although the terms and conditions of a lease can be set out in an agreement between the lessor and the lessee, they are subject to various mandatory provisions under the Act on Land and Building Leases and certain court precedents that are intended to protect the lessee. These include provisions relating to the term, renewal and termination that prevail over the agreement between the lessor and the lessee.

### Trust beneficiary interest

In many transactions related to investments in real estate in Japan, an investment is made to a trust beneficiary interest (*shintaku juekiken*) in the relevant real estate. In such a case, the relevant real estate is transferred to a trust bank or a trust company as trustee, who becomes the registered owner of such real estate and holds the real estate on trust for beneficiaries of the trust. Trust beneficiary interests can be freely transferred, subject to contractual restrictions.

### Others

A superficies (*chijoken*) is a right to use the land of others to own structures (including buildings), trees or bamboo, on that land. Economically, this right can be similar to a leasehold interest, but it is given different legal characteristics.

A servitude (*chiekiken*) is a right to use the land of others for certain specific purposes on a non-exclusive basis.

A security interest (*tanpoken*) is a right created to secure the performance of an obligation, including a mortgage and a pledge.

## Major property legislation

### Laws relating to real estate

- Civil Code
- Act on Land and Building Leases
- Act on Building Unit Ownership, etc.
- Real Property Registration Act
- Building Standards Act
- City Planning Act
- Fire Service Act

### Laws relating to real estate investments

- Financial Instruments and Exchange Act
- Real Estate Specified Joint Enterprise Act
- Act on Investment Trusts and Investment Corporations

## Operational requirements for foreign corporations

A foreign company may not carry on its business in Japan unless it incorporates a local company or registers itself as a foreign company in Japan.

### Incorporation of a local subsidiary

A foreign company may incorporate a subsidiary in Japan. Such subsidiary is usually established as a limited company (*kabushiki kaisha*) or a limited liability company (*godo kaisha*). The requirements for incorporating a limited company are as follows:

- Head office: Required to be located in Japan
- Capital: JPY 1 (USD .01) or more
- Business purpose: A company must register specific business purposes in Japan

- Officers: At least one director is required. In case a company establishes a board of directors, at least three directors are necessary. One or more of the directors with representative capacity shall be a resident in Japan.

A foreign company must submit a prior notification or make a report after establishment of its subsidiary in Japan under the Foreign Exchange and Foreign Trade Act, depending on factors including the business purpose of such subsidiary and the nationality of such foreign company.

### Registration as a foreign company

A foreign company may establish a branch office in Japan and register itself as a foreign company. Unlike the establishment of a local subsidiary, a branch office is not a separate legal entity from the relevant foreign company, and all rights and obligations of the branch belong to the relevant foreign company.

To establish a branch office, a foreign company needs to appoint one or more of its representatives in Japan, and at least one of them shall be a resident in Japan.

Establishment of a branch office in Japan is also subject to the notification or report obligation under the Foreign Exchange and Foreign Trade Act.

## Foreign investment incentives

There is no specific incentive regime with respect to the investment in real estates in Japan by foreign persons.

## Restrictions on foreign property ownership

Currently, there is no restriction on the purchase of real estate in Japan by foreign investors. However, a foreign investor who purchases real estate in Japan shall submit a report to the Minister of Finance within 20 days of such purchase under the Foreign Exchange and Foreign Trade Act, unless such purchase falls under certain exemptions.

## Foreign exchange controls

Certain payments in or out of Japan require prior approval by, or a report made to, the competent minister under the Foreign Exchange and Foreign Trade Act. This depends on factors including the amount to be paid and the country to or from which such payment is made.

## Taxes on possession and operation of real estate

### Fixed Asset Tax

Fixed asset tax is levied on land, buildings, and tangible business assets (hereinafter termed "fixed assets"). A person, regardless of whether resident or non-resident, who is registered as owner of the fixed asset in the tax register book as of January 1 of each year, is obliged to pay the fixed asset tax. The amount of fixed asset tax is determined depending on the applicable tax rate (usually 1.4 percent) and the assessed value of the relevant fixed asset.

### City Planning Tax

City planning tax is a surtax on the fixed asset tax, and is usually levied at a rate of 0.3 percent on land and buildings within city planning zones.

### Business Office Tax

Companies in major cities such as Tokyo and Osaka having facilities exceeding 1,000 square metres in floor space and/or having more than 100 employees are subject to business office taxes. Tax rates are JPY 600 (USD 6) per square metres of floor space and 0.25 percent of the total amount of employee salaries.

## Taxes on acquisition and transfer of real estate

### Stamp Tax

Stamp tax is levied on certain documents such as contracts, bills and share certificates. As a rule, this tax is levied by affixing revenue stamps in the amount equal to the applicable stamp tax. Tax rates vary from JPY 200 (USD 2) to JPY 600,000 (USD 6,152).

### Registration and Licence Tax

Registration and licence tax is levied on the registration with respect to real estate, companies, etc. Tax rates vary depending on factors, such as the type of the transaction and the value of the relevant real estate.

### Real Property Acquisition Tax

A real property acquisition tax is levied on the acquisition of land or buildings at the tax rate of 3 percent (for land and residential buildings) or 4 percent (for non-residential buildings).

### Capital Gains Tax

For individuals, capital gains from the transfer of land and buildings are subject to capital gains tax (consisting of a national [income] tax part and a local [residential] tax part). Capital gains tax is set out below, and shall be calculated separately from income tax on other income.

| Holding period of land | Tax rate |
|---|---|
| Five years or less | Income tax: 30%<br>Residential tax: 9% |
| Over five years | Income tax: 15%<br>Residential tax: 5% |

For corporations, capital gains from the transfer of land and buildings are subject to a capital gains tax rate of 10 percent for properties held for five years or less and 5 percent for properties held for over five years. A special law provides that until March 31, 2017, the capital gains tax does not apply to corporations.

## Value Added Tax/Goods and Services Tax

Transfer or rental/lease of assets, or the provision of services for consideration as a business in Japan by an enterprise, is, except for certain transactions deemed non-taxable, subject to consumption tax. Sale or lease of land and lease of residential buildings are deemed non-taxable. The consumption tax rate is currently 8 percent (a national consumption tax rate of 6.3 percent and a local consumption tax rate of 1.7 percent). The consumption tax rate is expected to be increased to 10 percent (a national consumption tax rate of 7.8 percent and a local consumption tax rate of 2.2 percent) from April 1, 2017.

## Tax depreciation

Depreciation for a building can be deducted as a necessary expense from the amount of income from real estate for Japanese tax purposes. The amount of the deduction depends on the useful life of the property concerned and the depreciation calculation methodology used. The length of the useful life of a building depends on the physical construction of the property. Cost of land cannot be depreciated.

## Corporate taxation

Income generated by activities of a corporation is subject to corporate tax (national tax), corporate inhabitant tax (local tax), corporate enterprise tax (local tax) and special local corporate tax (local tax). Every Japanese company, regardless of domestic or foreign ownership, is treated as a Japanese resident and is liable to pay corporate taxes in Japan on its total income, whether earned in Japan or overseas. A foreign company that has a permanent establishment (including a branch office) in Japan will be charged corporate taxes on all revenue earned in Japan.

The corporate tax rate is currently 25.5 percent. The corporate inhabitant tax includes a per capita levy that varies depending on the amount of capital and number of employees, and a corporate tax levy that varies depending on the amount of capital.

Corporate enterprise tax rates vary depending on the amount of capital and the amount of annual income.

## Personal taxation

A foreign person is classified into one of the following three categories for Japanese tax purposes:

(1) Resident

A resident is an individual who has his/her domicile in Japan, or an individual who has his/her residence in Japan for one year or longer. A resident is further categorised as follows:

- Non-permanent resident
  - A non-permanent resident is a resident who does not have Japanese nationality and has had his/her domicile or residence consistently in Japan for less than five years in the last 10 years.
  - A non-permanent resident is subject to Japanese tax with respect to his/her Japan-sourced income and foreign-sourced income paid in or remitted into Japan.
- Permanent resident
  - A permanent resident is a resident other than non-permanent residents.
  - A permanent resident is subject to Japanese tax with respect to all of his/her income, regardless of whether or not it is earned in or paid into Japan.

(2) Non-resident

- A non-resident is an individual other than residents, including a temporary visitor, who stays in Japan for less than a year.
- A non-resident is subject to Japanese tax with respect to his/her Japan-sourced income.

Income generated by the activities of an individual is subject to income tax (national tax), individual inhabitant tax (local tax) and individual enterprise tax (local tax). An individual who is classified as a non-resident as of January 1 each year is not subject to individual inhabitant tax for such year.

## Tax treaties: Avoidance of double taxation

Treaties for the avoidance of double taxation are in existence and in effect between Japan and the following countries as of end-December 2014:

| | |
|---|---|
| Armenia | Guernsey |
| Australia | Brazil |
| Austria | Brunei Darussalam |
| Azerbaijan | Bulgaria |
| Bahamas | Cayman Islands |
| Bermuda Islands | Canada |
| Bangladesh | China |
| Belarus | Czech Republic |
| Belgium | Denmark |

| | |
|---|---|
| Egypt | Norway |
| Fiji Islands | Pakistan |
| Finland | Philippines |
| France | Poland |
| Georgia | Romania |
| Germany | Russia |
| Hong Kong | Saudi Arabia |
| Portugal | Singapore |
| Hungary | Slovakia |
| India | South Africa |
| Indonesia | South Korea |
| Ireland | Spain |
| Israel | Sri Lanka |
| Italy | Sweden |
| Jersey | Switzerland |
| Kazakhstan | Tajikistan |
| Kuwait | Thailand |
| Kyrgyzstan | Turkey |
| Liechtenstein | Turkmenistan |
| Luxembourg | The Isle of Man |
| Malaysia | Ukraine |
| Mexico | United Kingdom |
| Moldova | United States of America |
| New Zealand | Uzbekistan |
| Norway | Vietnam |
| Oman | Zambia |
| New Zealand | UAE |

## Real Estate Investment Trusts

### Introduction

In Japan, real estate investment trusts (J-REIT) were introduced along with a revision to the Act on Investment Trusts and Investment Corporations (Investment Trust Act) in 2000. In a J-REIT scheme, an investment corporation is established as a special investment vehicle that invests funds gathered from investors in real estate-related assets and distributes income from such investment to investors in the form of dividends. An investment corporation issues its equity securities called "investment securities" to investors, and such investment securities meeting certain criteria for listing can be listed and traded on a stock exchange.

A special investment vehicle can also be formed as an investment trust under the Investment Trust Act, and beneficiary certificates issued by the trustee of the trust can also be listed, but there are currently no trust beneficiary certificates listed on a stock exchange.

Although an investment corporation has legal personality and is technically responsible for owning and managing real properties, in reality, all investment decisions are deferred to its asset management company, which is registered as a financial instruments business operator under the Financial Instruments and Exchange Act.

### Restrictions

1. Establishment

- Under the Investment Trust Act, the total amount of investment in an investment corporation at the time of its establishment shall be at least JPY 100 million (USD 1.03 million), while the minimum amount of net assets regularly held by an investment corporation shall be JPY 50 million (USD 512,712).
- To have investment securities listed on the Tokyo Stock Exchange, there are additional requirements, such as:
  - The total net assets shall be JPY 1 billion (USD 10.3 million) or more
  - The total assets shall be JPY 5 billion (USD 51.3 million) or more
  - The net assets per investment security shall be at least JPY 50,000 (USD 513)
- The incorporator of an investment corporation shall notify the Prime Minister of certain matters required by the Investment Trust Act before establishment of the relevant investment corporation.
- In a J-REIT scheme, an investment corporation needs to be registered by the Prime Minister so that it is able to make investment in real estate related assets.

2. Asset restrictions

- At least 50 percent of the total assets of an investment corporation shall be invested in "specified assets", including securities and real estate.
- To have investment securities listed on the Tokyo Stock Exchange, there are additional requirements such as:
  - Real estate (inclusive of certain limited categories of real estate-related asset classes) must make up at least 70 percent of the total assets under management
  - Real estate (inclusive of certain limited categories of real estate-related asset classes), real estate-related assets and floating assets must make up at least 95 percent of the total assets under management

3. Distribution and unit holders' restrictions

The amount of dividend distributions shall not exceed the amount obtained by deducting the "amount of the net assets threshold" (as defined under the Investment Trust Act) from the amount of net assets stated on the balance sheet.

To have investment securities listed on the Tokyo Stock Exchange, there are additional requirements such as:

- At least 4,000 units shall be listed
- Major unit holders may hold no more than 75 percent of listed units
- There shall be at least 1,000 unit holders
- No redemption of investment securities may be made other than because of dissolution or liquidation of the investment corporation

**Taxation**

Unlike ordinary corporations, which are liable for corporate taxation on profits, investment corporations are exempt from taxation if certain criteria are met, which include, among others:

- The investment corporation not being engaged in any business other than those permitted to REITs
- The investment corporation not being an entity that would be classified as a “family corporation” at the end of its fiscal period
- The investment corporation distributes over 90 percent of its profits to unit holders as dividends for each fiscal period
- Over 50 percent of the “investment units” (toushi-guchi) on an issued amount basis having been offered in Japan

With respect to an acquisition of real estate by an investment corporation, the investment corporation may receive, conditional on certain criteria being satisfied, the benefit of a reduction in the following taxes (among others):

- Applicable registration and licence tax levied on the registration of the transfer of ownership title of the real property
- Applicable real property acquisition tax levied on the acquisition

## Special purpose entity available only to certain property investment: TMK

**Introduction**

A *tokutei mokuteki kaisha* (TMK) is a specified purpose company created under the Act on Securitization of Assets that will purchase real estate as part of securitisation transactions. A TMK gathers funds from investors and uses the funds to purchase real estate. Proceeds obtained from the management of real estate will be distributed to the investors. TMKs are very often used in real estate investment transactions because of their tax benefits and for certain regulatory reasons. In real property transactions using a TMK, the acquisition of underlying real property is funded by loans extended to the TMK and/or bonds, commercial papers or preferred equity interests issued by the TMK.

**“Pay-through” entity**

TMKs are exempted from taxation if certain criteria are met, which include, among others:

- All bonds issued by the TMK are expected to be held by certain qualified institutional investors or all preferred equity interests to be subscribed by certain qualified institutional investors
- In the latter case of the above, the TMK not being an entity that would be classified as a ”family corporation” at the end of its fiscal period
- The TMK distributes over 90 percent of its profits to equity holders as dividends for each fiscal period
- Over 50 percent of the preferred equity and certain equity on an issued amount basis having been offered in Japan

**Reduction of taxes on acquisition of real estate**

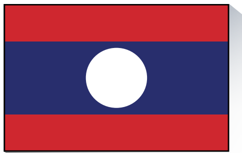
With respect to an acquisition of real estate by a TMK, the TMK may receive, on the condition that certain criteria are satisfied, the benefit of reduction of the following taxes (among others):

- Applicable registration and licence tax levied on the registration of the transfer of ownership title of the real property
- Applicable real property acquisition tax levied on the acquisition

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Tsubo (1 tsubo = 3.3 sqm = 35.58 sq ft) |
| **Rental payments** | |
| Rents | ¥/sqm/month ¥/tsubo/month may also be stated in the lease |
| Typical lease term | Standard leases: 2–3 years with renewal rights.<br>Fixed term leases: 3–5 years, but can be longer. |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months rent) | 12 months |
| Security of tenure | Only for the duration of the tenancy, no guarantee beyond the original lease term (typically has automatic renewal provision in standard leases) |
| Does tenant have statutory rights to renewal | Standard lease term: Yes<br>Fixed lease term: No |
| Basis of rent increases or rent review | Open market rental value |
| Frequency of rent increases or rent review | Typically at lease renewal, but with traditional leases can be any time during term if market rent has substantially increased or decreased. Rents may not be varied for a fixed term, unless otherwise agreed |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | Electricity, water consumption and after core hour HVAC charges are separately metered and payable by each tenant; telecommunication is separately payable typically to vendor |
| Car parking | Where parking is available, it is held under a separate monthly lease for an additional rent and deposit |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord |
| Responsibility for external/structural repairs | Landlord |
| Responsibility for building insurance | Usually landlord |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally accepted to tenant's affiliated companies and rarely to unrelated third parties (subject to the landlord's approval) |
| Tenant early termination rights | Subject to landlord's approval with 6 month's written notice and subject to penalty payment. Termination within initial lease term usually requires repayment of any rent-free period. Typically not allowed under fixed-term lease. |
| Tenant's building reinstatement responsibilities at lease end | Reinstated to original condition |

Source: JLL



## Property tenure/ownership

Property legislation and the Constitution of the Lao People's Democratic Republic (Lao PDR) provide that land is owned by the "national community"—it is impossible for any individual or entity, Lao or foreign, to "own" land. Rather, individuals and entities can be granted land use rights that are akin to freehold ownership or usufruct, a civil law concept granting long-term rights to use land for productive activities. Within this framework, individuals and organisations can acquire land use rights in one of three ways:

- Allocation by the state
- Transfer
- Inheritance

## Major property legislation

- The Land Law No. 04/NA dated October 21, 2003 (Land Law)
- Law No. 01/90/PSA Property (Ownership), dated June 27, 1990
- Law No. 14/NA on State Assets (Amended), dated July 5, 2012
- Law No.02/NA on Investment Promotion, dated July 8, 2009 ("Investment Law")
- Regulation No.500/PMO, NLMA regarding Registration of Land Legal Documents, dated May 9, 2008

Note that the above are supplemented by various regulations, notifications and decrees governing state land ownership, zoning and other land-related matters.

## Requirements for foreign corporations

The main legislation governing foreign investment in the Lao PDR is the Investment Law.

The Investment Law governs:

- The sectors that are open to investment
- The forms of investment available
- The incentives available to investors
- The rights and duties of investors
- The investment-licencing process

The objective of this legal framework is to create an enabling environment for investment in the Lao PDR, to improve economic cooperation with foreign countries and to contribute to national socioeconomic growth.

Under the Investment Law, foreign investors may invest in the following forms:

- Business cooperation by contract
- Joint venture between foreign and domestic investors
- 100 percent foreign-owned enterprise

The requirements for establishing a joint venture between foreign and domestic investors and a 100 percent foreign-owned enterprise are similar—they also share similar rules with respect to taxation, foreign exchange and labour issues.

The most common form of enterprise is a limited liability company. Other available forms of investment are branches and representative offices.

For a branch office, the Enterprise Law No. 46/NA ("Enterprise Law"), dated 26 December 2013, and the Guideline No.1619/ MOICERM for the Establishment of Foreign Enterprise Branch (Legal Entity) in the Lao PDR, dated August 28, 2013 (the "Branch Guideline") specify that a branch of a company is an integrated part of that company (whether foreign or domestic), meaning it does not have a separate legal personality. The Enterprise Law further specifies that the parent company shall be liable for all acts and deeds of the branch office.

For foreign enterprises, the Branch Guideline also limits the establishment of a branch to banks and other financial institutions, insurance companies, international consulting companies and foreign airline companies.

A representative office is usually used by investors who require only a minimal presence for their activities in the Lao PDR to "test the waters" through feasibility studies and preliminary negotiations before making any investment. A representative office is not permitted to conduct revenue-generating activities in the Lao PDR, and the term of registration is limited to three years (subject to limited number of renewals).

Representative offices are appropriate for investors wishing to:

- Supervise distributors and agents
- Collect local information for the offshore parent
- Promote and market goods and services of the parent

## Foreign investment incentives

To encourage investment in the country, the Investment Law provides investors with certain rights, protections and incentives.

The protections include:

- A legal regime that protects the assets and investments of foreign investors from seizure, confiscation or nationalisation
- Allowing investors to lease land, transfer leasehold interests and build on or make improvements to a leased land
- Allowing investors to remit foreign currencies abroad (in accordance with other laws and regulations)

In addition, investors have obligations to:

- Protect the environment
- Protect the health of their employees
- Ensure that their activities do not negatively affect the public or national security

Certain tax incentives are provided to promoted sectors. Depending on the economic sector in which an investor operates, varying rates of tax incentive apply.

The level of tax incentives provided to promoted sectors also depends on the location of the relevant investment.

To facilitate investment, the greatest tax incentives are provided to promote sector investments in remote areas with no economic infrastructure, classified as Zone 1. Zones with a moderate level of economic infrastructure are classified as Zone 2. Zones with established infrastructure to support investments are classified as Zone 3.

The sector in which an investor operates will determine whether they fall into Level 1, 2 or 3.

In Zone 1

- Level 1 investments are entitled to a profit tax exemption for ten years.
- Level 2 investments are entitled to a profit tax exemption for six years.
- Level 3 investments are entitled to a profit tax exemption for four years.

In Zone 2

- Level 1 investments are entitled to a profit tax exemption for eight years.
- Level 2 investments are entitled to a profit tax exemption for four years.
- Level 3 investments are entitled to a profit tax exemption for two years.

In Zone 3

- Level 1 investments are entitled to a profit tax exemption for six years.
- Level 2 investments are entitled to a profit tax exemption for two years.
- Level 3 investments are entitled to a profit tax exemption for one year.

Profit tax exemption commences on the date on which the foreign investment enterprise commences operations. For new production of goods and for research and creation of new technology activities, profit tax exemption commences from the date on which the enterprise starts making a profit. Once the profit tax exemption period is over, the enterprise must pay profit tax in accordance with Tax Law No.05/NA, dated December 20, 2011 (the Tax Law). Further, tax exemptions granted to concessionary investments may be provided for in the relevant concession agreement and must comply with the relevant laws that apply to those sectors.

Additionally, enterprises may be entitled to:

- An exemption from profit tax in the following accounting year when net profit is spent to expand business operations
- Exemptions from import duties and taxes on equipment, spare parts, vehicles and raw materials not available in the Lao PDR, that are used directly for production
- Exemptions from export duties on exported products
- Deduction of annual losses from profit in the following year, within a period of three years

Foreign investment is permitted in sectors falling outside the promoted activities; however, such investments are not eligible for the tax incentives that are available to promoted activities. In addition, various restrictions may apply to investments in non-promoted sectors, based on applicable government policy and the laws and regulations governing the sector concerned.

The Investment Law also provides for favourable investment incentives through the creation of special economic zones as highlighted under the specific regulations established for each zone.

## Concession Rights

A concession involves authorisation from the government, allowing a legal entity to use the government's property according to the terms and conditions of a concession agreement. Concession-related activities include investments in the areas of telecommunications, communications, transportation, mining, electricity and plantation agriculture. To engage in a concession-related activity, an investor must enter into a special agreement or multiple agreements—depending on the sector concerned—with the government, which will govern the activities to be conducted. In the mining and electricity sectors, the investor will generally be required to offer the government a negotiated equity stake in the project company.

## Restrictions on foreign property ownership

Foreign individuals and foreign-invested companies, including minority foreign-owned companies, are restricted to:

- Leasing land
- Receiving land concessions from the state (generally granted to large investments)

A land concession granted by the state to foreign-invested enterprises is limited to 50 years. The lease of land by a Lao citizen to a foreign-invested company registered in the Lao PDR is limited to 30 years. In both cases, leases are usually renewable. Leases of land in SEZs are limited to 75 years.

Under the Investment Law, foreigners and foreign-invested entities that invest at least USD500,000 (approx. LAK 4.05 billion) in equity in the Lao PDR are permitted to hold land use rights for residential, office or unspecified business purposes. However, this aspect of the Investment Law has not been implemented in practice.

Foreigners who lease land or receive land concessions from the state must fulfil certain obligations, including:

- Using the land in accordance with relevant zoning objectives
- Taking steps to protect the environment
- Respecting the land use rights of neighbouring persons
- Paying land lease or concession fees on time
- Complying with the Lao PDR laws generally

Under the Investment Law, the property of investors is protected from nationalisation or expropriation, except for public purposes and upon payment of compensation.

Foreign investors are entitled to own structures and developments that they build or purchase on leased land. This right is protected under the Land Law and the Investment Law. However, upon expiration of the lease or concession term, all fixtures will revert to the lessor or the state without compensation.

Subject to obtaining prior approval from the state, foreign investors are permitted to:

- Use fixed assets on land leased as security
- Sublease their land use rights
- Use a lease or concession right as capital contribution in a Lao PDR entity

The land title system in the Lao PDR has a direct impact on the operations of foreign investors in the country.

While foreign investors cannot own land use rights, their security in any leased land will depend on the validity of the lessor's land rights. To be able to lease land to a foreign investor, a Lao citizen must have obtained formal title, as this is the main document evidencing permanent land use rights and the right to lease land. All legal transactions relating to land must be registered with the Department of Natural Resources and Environment (DONRE). This process involves having the land transaction recorded in the book for registration of legal transactions at the DONRE office where the land is located.

## Foreign exchange control

The Lao PDR has enacted a strict regime of foreign exchange and capital controls. The list of permissible transactions in foreign currency is relatively limited.

Presidential Decree Law No. 01/P ("Foreign Exchange Decree"), dated March 17, 2008 and governing the management of foreign exchange and precious metals, prohibits individuals and legal entities operating in the Lao PDR from paying or receiving foreign exchange for the goods and services rendered to them or by them, or from settling debts in foreign exchange within the Lao PDR, without approval from the Bank of Lao PDR (BoL). The decree further provides that foreign exchange can be used to achieve certain objectives, including paying for imported goods, paying for import-related and export-related services, repaying foreign debts in accordance with a loan agreement that has been approved by the BoL and repatriating or transferring profits, dividends, capital, interest or salaries by foreign investors to a third country, provided that such use is compliant with regulations issued by the BoL.

Derivative transactions such as foreign exchange, interest rate and commodities hedging transactions fall into a general catch-all requirement of BoL approval. Foreign investors are required to use the Lao PDR banking system and domestic bank accounts for all transactions, unless BoL approval has been obtained for the use of offshore bank accounts.

## Taxation

### Sale or transfer of property through a company in the Lao PDR

#### Profit tax

A company must report profit tax on the sale of properties or leasehold rights. In general, a company's income from the sale of properties or leasehold rights less the deductible expenses will be subject to profit tax at the rate of 24 percent.

#### Value added tax (VAT)

The standard rate of VAT is 10 percent in the Lao PDR. The Lao PDR VAT system follows the conventional VAT system, where the VAT paid ("input VAT") can be deducted from the VAT charged ("output VAT"). Under the Lao VAT Law, the supply of immovable property or parts thereof is subject to VAT if:

- The immovable property is located in the Lao PDR
- The supply is made for a consideration by a registered VAT taxpayer whose business consists of, at least in part, the purchase and supply of immovable property, acting as such
- The immovable property is used or intended to be used by a registered VAT taxpayer, at least in part, as a business asset

Registered VAT taxpayers carrying out a business of land development, construction or purchase for re-selling or leasing are required to pay VAT according to the selling or leasing value, excluding the VAT of the sold or leased property to another registered VAT taxpayer.

Rental payments are subject to VAT of 10%. The company can deduct input VAT with respect to renovation, construction and maintenance of the property.

### Transfer fees

In addition to profit tax and VAT, the sale of land usage rights will be subject to a transfer fee of 1 percent. The transfer fee is calculated on the basis of the value of the property that can vary depending on the zone and type of land.

### Stamp tax

Stamp tax applies to international organisations, individuals, legal entities, Lao citizens, aliens and foreigners operating activities or earning their livelihood in the Lao PDR.

The stamp tax of LAK 10,000 (USD 1.27) must be paid when the land sale and purchase agreement is submitted for registration with the government authorities.

### Notarisation fees

There are notarisation fees applicable to a sale and purchase agreement. Notarisation fees include charges of LAK 20,000 (USD 2.54) per page and service fees of LAK 35,000 (USD 4.45) per page.

### Individuals selling or transferring property in the Lao PDR

#### Income tax

Under the Tax Law, an income tax of 5 percent is applied to the following types of income:

- Sale and purchase of land
- Transfer of land use rights
- Sale and purchase/transfer of structures or land with the existence of structures (excluding a sale and purchase/ transfer between direct relatives, such as father, mother, husband, wife and children).

### Companies with rental income

#### Profit tax

Rental income is included in a company's taxable income and is subject to a profit tax of 24 percent. The basis of the taxable income is the gross rental income, less the deductible expenses for rental income, including maintenance costs, interest on loan, property tax, insurance premium and depreciation on the buildings.

### Individuals with rental income

#### Income tax

Under the Tax Law, income from the lease of houses, land or other assets is subject to income tax at 10 percent.

The lessor is required to file a tax declaration with the Tax Department within 10 days of receipt of the rental income. The Tax Department will assess the declaration and issue a payment order. In cases where the lessor receives an advance payment, the tax will be calculated on the full amount of the advance payment.

The Tax Department has the authority to reassess the value of the rent in the event that the rental is deemed to be below the market value, or the lessee makes capital improvements to the property.

## Tax treaties: Avoidance of double taxation

The Lao PDR has double tax agreements in force with the following countries:

| | |
|---|---|
| People's Republic of China | Vietnam |
| Thailand | Malaysia |
| North Korea | Myanmar |
| South Korea | Luxembourg |
| Brunei | Singapore |

## Land tenure/property ownership

Macau government grants the use of reclaimed or vacant land by means of public tender, pursuant to which a land concession agreement is executed between the parties. The land concession agreement is subject to publication in the official gazette of the Macau government and registration at the land registry (Land Concession Agreement), which constitutes the land title. There are only a small number of freehold property interests in Macau, typically found in the older part of the region.

The land concession is granted for an initial term not exceeding 25 years, subject to renewal upon request of the concessionaire or any interested party, for successive terms of 10 years until 2049.

Once the land is granted to a foreign or local individual or company (concessionaire), the concessionaire undertakes the obligation of developing the land for a particular commercial purpose (e.g., gaming, hospitality, retail, office, residential, industrial, etc.), within a certain period of time. The land concession is deemed provisional until completion of the development, upon which it is converted into definitive.

Under the Land Concession Agreement, the concessionaire shall pay a premium and an annual rent.

Once the superstructure is completed, it may be registered as individualised units under the strata title system, after which, it can be sold to third parties, who may then hold full private ownership rights over such properties.

The recent land law in Macau introduced the possibility of public land concession for private use in cases where it is considered necessary and of public utility to perform investments on fixed installations, such as gas stations, road circulation service stations and installations with equipment for the supply of services of telecommunications, electricity, natural gas and water supply. The land concession for private use is granted for an initial term of 15 years, subject to renewal for successive terms of 10 years, upon request of the concessionaire.

The Macau land title system is similar to the "Torrens title system," where the registration of land or property ownership recorded in the land registry guarantees indefeasible title to the relevant land/property owners.

## Major property legislation

| | | |
|---|---|---|
| Macau Civil Code | Articles 1264 to 1312<br>Articles 1313 to 1372<br><br>Articles 865 to 932 | Ownership Right<br>Horizontal Property (strata title) Regime<br>Sale and Purchase Contract |
| Land Law | Law 10/2013 | |

## New developments in Macau property law in 2012/2013:

**Legal Regime on Promissory Agreements for Sale and Purchase of Buildings Under Construction.**

Law 7/2013, which sets out the Legal Regime on Promissory Agreements for the Sale and Purchase of Buildings Under Construction, has been enacted and entered into force on June 1, 2013. Law 7/2013 is intended to regulate the real estate market, enhance transparency regarding the transactions, and ensure the legitimate rights and interests of parties in real estate transactions over buildings under construction.

Law 7/2013 applies to transactions over:

- Any real estate properties that are still in project stage, under construction or have been completed but have not been issued a usage licence; or
- Buildings already erected and with strata title that is still registered as provisional.

With the aim to reduce the risk of buildings' construction being repeatedly delayed and to protect the interests of purchasers, Law 7/2013 has introduced a requirement of prior authorisation for the sale of buildings under construction, to be issued by the Land, Public Works and Transport Bureau of Macau (DSSOPT).

Prior authorisation by the DSSOPT is subject to the following requirements:

- Issuance of licence to operate the construction
- Completion of the foundation and basement of the building
- Provisional registration of the strata title

If a sale is made without prior authorisation, fines for administrative violations will be incurred, and the sales contract will be void.

The DSSOPT is appointed as the regulatory authority in charge of supervising the compliance with the terms of the law and applying any administrative sanctions in case of breach.

## Real estate agencies and agents

Law 16/2012 and its supplementary administrative regulation, 4/2013, both of which took effect on July 1, 2013, set forth the legal regime of real estate agencies and agents and regulate the access and exercise of real estate intermediation activity in Macau.

Real estate agencies and agents are intended to promote (on behalf and in the interest of the client by means of a contract executed between the two):

- The acquisition, disposal or leasing of real estate
- The acquisition or disposal of commercial or industrial establishments
- The assignment of lease contracts

Under this regime, real estate agents shall have certain statutory responsibilities toward their clients, namely those of reasonable diligence and disclosure of information, as well as various other responsibilities toward the regulator.

The real estate agents activity is subject to a licence to be issued by the Housing Bureau once certain legal requirements are met. Such licence is valid for three years, renewable for equal periods and non-transferable. It may be cancelled or suspended if the real estate agent does not comply with its legal obligations.

Real estate agents doing business without a valid licence will incur an administrative offence punishable with a fine between MOP 20,000 (USD 2,505) and MOP 300,000 (USD 37,570).

## Operational requirements for foreign corporations

**Modes of entry**

Apart from specially regulated activities (e.g., gaming, banking, insurance, offshore, travel agencies, etc.), there are no foreign investment restrictions, which mean that individuals or companies from any country may incorporate Macau companies and own the whole share capital. Moreover, there is no local director requirement or director nationality restriction, which means that individuals from any country may act as directors in Macau companies.

There are also no substance requirements, i.e., a company can be maintained without business or operations for an unlimited term.

Macau companies must file annual tax returns. Audited accounts are only required to be submitted in joint-stock companies or in companies with a continuous high-level of annual profits.

The process of incorporating a company in Macau requires the preparation and execution of a number of mandatory documents, some of which are subject to local notarisation. The whole incorporation process, until full registration at the Macau Commercial Registry, takes around 15 days.

## Registration/licencing requirements/types of commercial entities

Generally, there are no restrictions on the type of business that can be operated in Macau, notwithstanding any licencing requirements for certain regulated activities (e.g., gaming, banking, insurance, offshore, travel agencies, etc.).

To do business in Macau, any individuals or entities may incorporate a Macau company, register a branch or, on a non-permanent basis, simply register with the Macau Finance Bureau, if providing services to a Macau entity under a contractual arrangement.

The forms of corporate entities are:

- Sole shareholder company
- Limited liability company
- Joint-stock company

| | | |
|---|---|---|
| Sole shareholder company | 1 shareholder | Minimum share capital of MOP 25,000 (USD 3,131) |
| Limited liability company | 2–30 shareholders | Minimum share capital of MOP 25,000 (USD 3,131) |
| Joint-stock company | At least 3 shareholders | Minimum share capital of MOP 1,000,000 (USD 125,236) |

Consortiums or economic interest groups are contractual and commercial arrangements, whereby two or more companies join together to facilitate or develop a certain project or a joint economic activity, without affecting each of the members' autonomous legal capacity.

## Foreign employment limitations

Non-Macau residents must apply for a work permit to be able to work in Macau or be employed by a Macau entity.

There is a specific procedure to obtain an "investment residency," which will provide the applicant with a temporary residency identification card for managerial personnel, technical and professional qualification holders, as well as major investors and investments plans. This procedure runs through the Macau Trade and Investment Promotion Institute (IPIM), www.ipim.gov.mo.

Temporary residency applications for fixed assets purchases (e.g., real estate) have been suspended since 2007.

## Investment incentives

For foreign investment projects that promote economic diversification, contribute to promote exports to new markets, add value to the economy and contribute to technological modernisation, there are fiscal incentives available.

Major tax incentives available to investors include:

- Total exemption of property tax granted to real estate purchases for industrial purposes
- Total exemption of up to five years in Macau, and 10 years on Taipa and Coloane, for new real estate rented for industrial purposes
- 50 percent reduction in complementary tax

There are no withholding taxes on dividends, interest, royalties or any other source of income paid to non-residents.

Imported new vehicles to be used by hotels and travel agencies are exempted from vehicle tax.

There are also financial incentives as well as refundable and non-refundable subsidies for investment projects, which are granted on a case-by-case basis and considered mainly for projects that address the diversification of the economy, environmental protection, technology innovation, new products and antipollution equipment.

## Restrictions on foreign property ownership

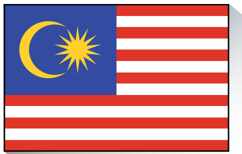
There are no restrictions on foreign property ownership in Macau.

## Foreign exchange controls

There are no foreign exchange controls in Macau. Accordingly, money denominated in all currencies may move into and out of Macau freely. The Macau Pataca (MOP) is currently pegged to the Hong Kong dollar via the United States dollar.

## Summary of tax regime

| Designation | Incidence |
|---|---|
| Property tax | For a leased property, tax is levied at 16% on the net rental income.<br>For a non-leased property, tax is levied at 10% for a property with an annual rental amount that is below the assessable rental value. |
| Complementary tax (i.e., corporate tax) | Levied on corporate net profit derived from any commercial or industrial business.<br>Sliding scale tax varying between 3% and 12%.<br>Corporate profit up to MOP 32,000 (USD 4,007) is exempted.<br>From MOP 32,001 (USD 4,007) up to MOP 65,000 (USD 8,140) – 3%.<br>From MOP 65,001 (USD 8,140) up to MOP 100,000 (USD 12,524) – 5%.<br>From MOP 100,001 (USD 12,524) up to MOP 200,000 (USD 25,047) – 7%.<br>From MOP 200,001 (USD 25,047) up to MOP 300,000 (USD 37,571) – 9%.<br>Above MOP 300,000 (USD 37,571) – 12%. |
| Professional tax | Levied on individuals with an annual income in excess of MOP 120,000 (USD 15,028), at rates varying between 7% and 12%, applicable to employees receiving daily wages and monthly salary as well as self-employed professionals (e.g., lawyers, medical doctors, accountants and consultants). |
| Stamp duty | Stamp duty is generally payable on documents relating to transactions involving immovable property, including all sales and sub-sales, mortgages and leases of such property. This applies to all types of property, both residential and non-residential, and regardless of whether the property is complete or incomplete.<br><br>Real estate:<br>Stamp duty is charged on the sale and purchase agreement, and is payable by the purchaser.<br>The transfer of a property worth up to MOP 2 million (USD 250,473) is subject to 1% stamp duty, 2% stamp duty on a property worth between MOP 2 million (USD 250,473) and MOP 4 million (USD 500,947), and 3% stamp duty on a property worth over MOP 4 million (USD 500,947). Free transfer of property or registered assets and rights worth over USD 6,262 (MOP 50,000) are subject to a standard rate of 5%. A 0.5% stamp duty is levied on the intermediate transfer of property.<br>In 2011 (Law 6/2011), a special stamp duty was imposed on the seller for transfers of real estate for residential purposes that are aimed at cooling down the property market and speculation. The subsequent amendments brought by Law 15/2012, extended the special stamp duty to transfers of real estate for commercial purposes, offices and parking spaces for motor vehicles. The rates of stamp duty are fixed at 10% or 20%, depending on specific cases.<br>Leases:<br>Stamp duty is also charged on the lease instrument. The stamp duty is payable by the lessor based on the rental for the entire length of the lease. The rate of stamp duty is 5%. |
| Tourism tax | Levied on services provided by hotels, restaurants and bars, corresponding to 5% of the price of the services provided. |
| Social security contributions | The monthly contribution made by the employer is MOP 30 (USD 3.76) per resident employee and MOP 45 (USD 5.63) per non-resident employee. |



## Property tenure/ownership

Malaysia operates under Torrens Land Registration System. Ownership of real property under this system is created by registration under the National Land Code 1965. Subsequent transactions are registered against the title.

There are two types of tenure:

- Freehold
- Leasehold (a term not exceeding 99 years, and if the lease relates to a part of a land, 30 years).

## Major property legislation

| Environmental Quality Act 1974 | Goods and Services Tax Act 2014 |
|---|---|
| Housing Development (Control and Licensing) Act 1966 | Land Acquisition Act 1960 |
| Land Conservation Act 1960 | Local Government Act 1976 |
| Malay Reservation Enactment F.M.S. Cap 142 | National Land Code 1965 |
| Real Property Gains Tax Act 1976 | Stamp Act 1949 |
| State Land Rules* | Strata Management Act 2013 (not yet in force) |
| Strata Titles Act 1985 | Street, Drainage and Building Act 1974 |
| Town and Country Planning Act 1976 | Uniform Building By-laws 1984 |

* In addition, each of the states in Malaysia may have its own set of regulations/rules.

## Operational requirements for foreign corporations

### Modes of entry

- Sole proprietorship and partnership
- Incorporation of local company (private or public limited company)
- Foreign company (via branch office, regional office, operational headquarters or OHQ)

**Sole proprietorship and partnership**

Sole proprietorship is the simplest form of business in terms of registration and formulation. A partnership, on the other hand, consists of not less than two and not more than 20 partners. In a partnership, partners are jointly and severally liable for the debts and obligations of the partnership. Formal partnership deeds may be drawn up, setting out the rights and obligations made of each partner, but a formal deed is not obligatory.

Sole proprietors or partners in Malaysia will be personally liable for the debts of business. All sole proprietorships and partnerships in Malaysia must be registered with the Companies Commission of Malaysia (CCM) under the Registration of Businesses Act 1956. Only Malaysian citizens and permanent residents are eligible to register for a sole proprietorship or partnership.

**Incorporation of local company**

The Companies Act 1965 ("Companies Act") governs all companies in Malaysia. The Companies Act stipulates that a person must register a company with the CCM in order to engage in any business activity. It provides for three types of companies:

- A company limited by shares
- An unlimited company
- A company limited by guarantee

*Company limited by shares*

This is the most common legal form of a company in Malaysia. A shareholder's liability in such a company is limited to the quantum of any amount remaining unpaid on their shares. A company having a share capital may be incorporated as a private company (identified through the words "Sendirian Berhad" or "Sdn. Bhd." appearing together with the company's name) or public company (identified through the words "Berhad" or "Bhd." appearing together with the company's name).

*Private company ("Sendirian Berhad/Sdn. Bhd.")*

A private company limited by shares will have provisions in its memorandum and articles of association that:

- Restrict the right to transfer its shares
- Limit the number of its members to 50, excluding employees and some former employees
- Prohibit any invitation to the public to subscribe for its shares and debentures
- Prohibit any invitation to the public to deposit money with the company

*Public company ("Berhad/Bhd.")*

A public company can be formed or a private company can be converted into a public company, subject to the requirements of the Companies Act. A public company limited by shares can offer shares to the public if it has registered a prospectus with the Securities Commission and has lodged a copy of the prospectus with the CCM on or before the date of its issue.

A public company can apply to have its shares quoted on Bursa Malaysia (the Malaysian stock exchange) subject to compliance with the requirements laid down by Bursa Malaysia and the Securities Commission.

*Requirements of a locally incorporated company*

The requirements to form a company are:

- A minimum of two subscribers to the shares of the company (Section 14 Companies Act)
- A minimum of 2 directors (Section 122 Companies Act)
- A company secretary who can be either:
  - An individual who is a member of a professional body prescribed by the Minister of Domestic Trade and Consumer Affairs
  - An individual licenced by the CCM

Both the director and company secretary shall have their principal or only place of residence within Malaysia. Directors of public companies or subsidiaries of public companies normally must not be of or over 70 years of age. It is not required that a company director must also be a shareholder.

A company must maintain a registered office in Malaysia where all books and documents required under the provisions of the Companies Act are kept. The name of the company shall appear in legible Romanised letters, together with the company number, on its seal and documents.

A company cannot deal with its own shares or hold shares in its holding company. Each equity share of a public company carries only one vote at a poll at any general meeting of the company. A private company may, however, provide for varying voting rights for its shareholders.

**Foreign company**

A foreign company cannot carry on business in Malaysia unless it incorporates a local company or registers the foreign company in Malaysia under CCM. A foreign company refers to a company, corporation, society, association or other body incorporated outside Malaysia that, under the law of its place of origin, may sue or be sued.

Foreign companies must incorporate a local company or register a branch in Malaysia in order to conduct business in Malaysia.

Any documents in a language other than Bahasa Malaysia or English must have an accompanying certified translation. The CCM will bestow upon the applying company the status of a foreign company operating in Malaysia once all procedures are completed and approved.

**Typical foreign business ventures**

The following are the available options for a foreign company that intends to carry on a business in Malaysia:

- Register a branch office if the investor is a foreign company
- Incorporate a separate Malaysian company as its subsidiary
- Acquire all or a majority of the shares of an existing Malaysian company
- Enter into a joint venture with a Malaysian company or individual, typically through holding shares in a newly incorporated joint venture company
- Register as Labuan International Company under Labuan Companies Act 1990

**Branch office**

If the foreign company intends to open a branch in Malaysia to carry on business within Malaysia, it has to register with the CCM before it commences business or establishes a place of business in the country. The foreign company that is registered has power to hold immovable property in Malaysia. Such applications can be submitted via management companies that offer incorporation and company secretarial services to the CCM.

**Representative office and regional office**

Foreign companies or organisations involved in the manufacturing and services sectors may establish representative and regional offices in Malaysia to perform permissible activities for their head office or principal. The representative or regional office does not undertake any commercial activities and only represents its head office or principal to undertake designated functions. Such offices should be totally funded from sources outside Malaysia and are not required to be incorporated or registered with the CCM under the Companies Act. However, they must obtain the approval by the government. Applications for the establishment of representative or regional offices should be submitted to Malaysian Industrial Development Authority ("MIDA").

A representative office collects relevant information regarding investment and business opportunities to develop bilateral trade relations, promote the export of Malaysian goods and services and carry out research and development (R&D).

A regional office serves as the coordination centre for its affiliates, subsidiaries and agents within Asia Pacific. It is responsible for conducting designated activities within the region it operates.

Activities allowed to be conducted by a representative or regional offices are:

- Planning or coordinating business activities
- Gathering and analysing information, or undertaking feasibility studies on investment and business opportunities in Malaysia and in the region

- Identifying sources of raw materials, components or other industrial products
- Undertaking research and product development
- Acting as a coordination centre for the corporation's affiliates, subsidiaries and agents in the region

Activities not allowed to be conducted by a representative or regional offices are:

- Engaging in any trading (including import and export), business or any form of commercial activity
- Leasing warehousing facilities – any shipment/transhipment or storage of goods must be carried out through a local agent or distributor
- Signing business contracts on behalf of the foreign corporation or providing services for a fee
- Participating in the daily management of any of its subsidiaries, affiliates or branches in Malaysia

Expatriate posts are allowed in representative and regional offices depending on the functions and activities of the representative or regional office. Expatriates will only be considered for managerial and technical posts. An expatriate working in a representative office is subject to normal income tax. However, expatriates working in regional offices are taxed only on the portion of their chargeable income attributable to the number of days they are in Malaysia.

**Approved operational headquarters (OHQ)**

An approved OHQ generally refers to a company that provides qualifying services to its offices or related companies regionally and globally.

A company that establishes an OHQ in Malaysia can be considered for tax incentives and facilities under the OHQ incentive program which includes tax exemption for a period of 10 years on income from:

- Qualifying services rendered to its offices or related companies outside Malaysia
- Interest on foreign currency loans extended to its offices or related companies outside Malaysia
- Royalties received from research and development work carried out on behalf of its offices or related companies outside Malaysia

The income generated by an OHQ company in providing qualifying services to its offices and related companies in Malaysia will not be taxed during its tax-exempt period, provided such income does not exceed 20 percent of its overall income derived by providing qualifying services.

The qualifying services are as follows:

- General management and administration
- Business planning and coordination
- Coordination of procurement of raw materials, components and finished products
- Technical support and maintenance
- Marketing control and sales promotion planning
- Data/information management and processing
- R&D work carried out in Malaysia on behalf of its offices or related companies within or outside Malaysia
- Training and personnel management for its offices or related companies within or outside Malaysia
- Treasury and fund management services to its offices or related companies outside Malaysia
- Corporate financial advisory services to its offices and related companies outside Malaysia

**International procurement centre/regional distribution centre**

An international procurement centre (IPC) is a locally incorporated company that carries on a business in Malaysia to undertake procurement and sale of raw materials, components and finished products for its group of related companies and unrelated companies in Malaysia and abroad.

A regional distribution centre (RDC) is a collection and consolidation centre for finished goods, components and spare parts produced by its own group of companies for its own brand to be distributed to dealers, importers or its subsidiaries or other unrelated companies within or outside the country. Among the value-added activities involved are bulk breaking, repackaging and labelling.

An approved IPC/RDC status company is eligible for full tax exemption of its statutory income for 10 years and dividends paid from the exempt income will be relieved from tax in the hands of its shareholders if it fulfils the following additional criteria:

- An annual sales turnover of at least MYR 100 million (USD 28.1 million)[1] , of which the annual value of export sales achieves MYR 80 million (USD 22.48 million), and the value of direct export sales achieves MYR 50 million (USD 14.05 million) concerning the qualifying activities in the basis period for a year of assessment
- At least 80 percent of the IPC/RDC products must be exported, including 30 percent via drop shipment
- Sales to the domestic market including sales to free zones and licenced manufacturing warehouses, are limited to 20 percent of its sales turnover

Applications for an IPC/RDC status, incentives and expatriate posts should be submitted to MIDA.

**Labuan International Company under Labuan Companies Act 1990**

Depending on the nature of business, not all types of companies in Malaysia are allowed foreign controlled ownership of more than 50 percent shareholding. Business nature such as import,

[1] MYR 1= USD 0.280984

export, trading, consultancy, and restaurant businesses may require the permission of the Ministry of Consumerism Trade and Cooperatives for foreign ownership.

However, there are some attractions for Labuan International Companies:

- Incorporation can be 100 percent foreign-owned, without Malaysian partners
- Paid-up capital of the company is low
- Simple structure with only one director and one shareholder required and both positions can be held by the same person
- Incorporation is fast and is often completed within 14 days
- No trade licences are required for trading, e-commerce, import, export and consultancy businesses
- Corporate bank account and personal account can be opened anywhere in Malaysia in Ringgit Malaysia and in any other foreign currencies
- No Sales and Services Tax and Goods and Services Tax (GST) applicable for sales transaction
- No Withholding Tax for dividend, interest, management, technical, royalty, lease rental
- Yearly taxation on profit for trading company is only 3 percent or maximum MYR 20,000 (USD 5,619.68) based upon election
- No tax is applicable on Investment Holding Company structure
- Business visa is available for application, immediately after the incorporation of a Labuan International Company
- Business visa application takes approximately 30–60 days only
- Business visa is two-year multiple entry and is renewable
- Spouses and children can join as dependents in the business visa
- Business visa holders can reside anywhere in Labuan and West Malaysia

### Equity policy in the manufacturing sector

#### Equity policy for new, expansion or diversification projects

Since June 2003, foreign investors can hold 100 percent of the equity in all investments in new projects, as well as investments in expansion/diversification projects by existing companies, regardless of the level of exports and without excluding any product or activity.

The equity policy also applies to:

- Companies previously exempted from obtaining a manufacturing licence but whose shareholders' funds have now reached MYR 2.5 million (USD 702,460) or have now engaged 75 or more full-time employees and are, thus, required to be licenced
- Existing licenced companies previously exempted from complying with equity conditions, but are now required to comply due to their shareholders' funds having reached MYR 2.5 million (USD 702,460)

#### Equity policy applicable to existing companies

Equity and export conditions imposed on companies before June 17, 2003 will be maintained. However, companies can request for these conditions to be removed and approval will be given based on the merits of each case.

For more information, go to www.mida.gov.my

### Foreign employment in Malaysia

Depending on the sector or industry, applications for employment of expatriates have to be submitted to the relevant agencies and approved before applications for work permits or submissions of employment passes for endorsement are submitted to the Immigration Department. There are six authorised bodies/agencies that can approve such applications/submissions based on the core business of the applying company. The agencies and the corresponding sectors are as follows:

- Malaysian Industrial Development Authority (MIDA)
  - Manufacturing company that is involved in expansion plans
  - Manufacturing-related services – regional office, operational headquarters, overseas mission, international procurement centre, etc.
  - Hotel and tourism industry
  - R&D sector
- Multimedia Development Corporation (MDeC)
  - Expatriate posts and skilled foreign workers in information technology-based companies that have been granted "Multimedia Super Corridor" (MSC) status
- Public Service Department (PSD)
  - Doctors and nurses in government hospitals or clinics
  - Lecturers and tutors employed in government institutes of higher education (IPTA)
  - Contract posts in public services
  - Recruitment process (job offer by Public Sector Commission (SPA) or government-related agencies)
- Central Bank Malaysia (BNM)
  - Employment in the banking, finance and insurance sectors
- Securities Commission (SC)
  - Employment in the securities and share market
- Expatriate Committee (EC)
  - Employment in the private and public sectors that are not under the jurisdiction of MIDA, MDeC, PSD, BNM or SC

**Application to MIDA**

Companies undertaking manufacturing activities, R&D activities, hotels with four-star rating or higher, tourism projects and other services may employ expatriates, subject to a minimum paid-up capital of the companies as follows:

- 100 percent Malaysian-owned company: MYR 250,000 (USD 70,246)
- Jointly owned by foreign and Malaysian: MYR 350,000 (USD 98,344)
- 100 percent foreign-owned company: MYR 500,000 (USD 140,492)

The applications for expatriate posts for OHQs, RDCs and IPCs can be considered based on a minimum paid-up capital of MYR 500,000 (USD 140,492). A representative office/regional office of a foreign company based in Malaysia is also allowed to employ expatriates at the professional, managerial and technical level with a minimum operating expenditure of at least MYR 300,000 (USD 84,295) per annum.

For more information, go to www.mida.gov.my

**Application to the EC**

In relation to the application to the EC, there are a few criteria that will be considered. They are:

- Minimum paid-up capital

The minimum paid-up capital for private limited companies and public listed companies, effective January 1, 2009, is based on the percentage of equity held by locals/foreigners. For 100 percent locally owned companies, the paid-up capital is MYR 250,000 (USD 70,246); for local and foreign-owned companies, the paid-up capital is MYR 350,000 (USD 98,344); and for 100 percent foreign-owned companies, the paid-up capital is MYR 500,000 (USD 140,492).

- Recommendations from ministry/monitoring agencies

Depending on the field/sector, the related ministry/agencies have the discretion/responsibility to make recommendations to the EC in relation to any application to employ expatriates. The related agencies and the corresponding field/sector are as follows:

  - Ministry of Higher Education/Ministry of Education – lecturer, tutor and teacher
  - Ministry of Health – medical doctor, nurse and traditional medical practitioner
  - Football Association Malaysia – footballer
  - National Sports Council – athlete and coach
  - Civil Aviation Department, Malaysia – pilot and civil aviator
  - Ministry of Tourism – tourism agencies
  - Malaysian Professional Golf Associates – golf-related activities
  - Biotechnology Corporation of Malaysia – biotechnology-related activities

- Registration with the ministry/monitoring agencies

Depending on the field/sector, the applying company is required to register with the related ministry/agencies. The related ministry/agencies and the corresponding field/sector are as follows:

  - Construction Industry Development Board (CIDB) – for companies that undertake activities related to construction and maintenance
  - Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) – for companies with foreign equity involving in wholesaling, marketing and retailing (including restaurants) and direct selling

- The EC also considers the following criteria:
  - The company's equity
  - The company's activities
  - Local human resource
  - Relevance of the post to the company's activities
  - -Monthly income
  - Age and working experience

**Application to MDeC**

This type of work permit enables a foreign knowledge worker to take up employment under a contract of service with an organisation in Malaysia. The duration varies from a minimum of 12 months to a maximum of 60 months, depending on the nature of employment and the need of such employment. The Immigration Department of Malaysia will issue an employment pass upon approval of employment positions by MDeC in MSC Malaysia. A dependant pass may be issued to any person being the spouse or dependent child to accompany the foreign knowledge worker while in Malaysia, and a permission to study may be issued to the child to take up schooling in Malaysia.

For more information, go to http://www.imi.gov.my/

## Foreign investment incentives

Tax incentives, direct and indirect, are provided for in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976 and Free Zones Act 1990. These acts cover investments in the manufacturing, agriculture, tourism (including hotel) and approved services sectors as well as R&D, training and environmental protection activities.

Direct tax incentives grant partial or total relief from income tax payment for a limited period, while indirect tax incentives come in the form of exemptions from import duty, sales tax and excise duty.

**Manufacturing sector**

Major tax incentives for companies investing in the manufacturing sector are "pioneer status" and "investment tax allowance." Eligibility for pioneer status and investment tax allowance is based on certain priorities, including the level of value add, technology used and the industrial linkages. Eligible activities and products are termed as "promoted activities" or "promoted products."

- Pioneer status
  - Companies granted pioneer status pay tax on only 30 percent of their statutory income, with the exemption granted for five years commencing from the start of production day (defined as the day its production level reaches 30 percent of its capacity)
  - Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company
- Investment tax allowance (ITA)
  - As an alternative to pioneer status, a company may apply for an ITA. Companies granted an ITA will be given a stipend of 60 percent on its qualifying capital expenditure (factory, plant, machinery or other equipment used for the approved project) incurred within five years from the date on which the first qualifying capital expenditure is incurred. The allowance is restricted to a maximum of 70 percent of their statutory income for each year of assessment
  - Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30 percent of their statutory income will be taxed at the prevailing corporate tax rate
- Reinvestment allowance (RA)
  - RA is given to existing companies engaged in manufacturing and selected agricultural activities that reinvest for the purposes of expansion, automation, modernisation or diversification of its existing business into any related products within the same industry operating for at least 36 months effective from the Year of Assessment 2009
  - The RA is 60 percent of qualifying capital expenditure, and can be offset against 70 percent of the company's statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised
  - A company can offset the RA against 100 percent of its statutory income for the year of assessment if the company attains a productivity level exceeding the level determined by the Ministry of Finance
  - The RA will be given for 15 consecutive years commencing from the year the first reinvestment is made
- Accelerated capital allowance (ACA)
  - After the 15-year period of eligibility for RA, a company reinvesting in the manufacture of promoted products is eligible to apply for ACA
  - The ACA provides a special allowance, whereby the capital expenditure can be written off within three years, i.e., an initial annual allowance of 40 percent plus annual allowance of 20 percent for first year and an annual allowance of 20 percent for the following two years

Other additional incentives are also available, the details of which can be accessed from www.mida.gov.my.

**Research and development (R&D)**

Major tax incentives for R&D are as follows:

- Pioneer status

Tax exemption of 100 percent of the statutory income for five years is given to contract R&D companies (i.e., a company that provides R&D services in Malaysia to a company other than its related company).

- ITA
  - For contract R&D companies and R&D companies – 100 percent of the qualifying capital expenditure incurred within 10 years can be offset against 70 percent of the statutory income in the year of assessment
  - For companies that undertake in-house research to further enhance their business – 50 percent of the qualifying capital expenditure incurred within 10 years can be offset against 70 percent of the statutory income in the year of assessment
- Second-round incentives of pioneer status for another five years or ITA for a further 10 years
  - For contract R&D companies, R&D companies and companies that undertake in-house research
- Incentives for commercialisation of public sector R&D
  - The subsidiary company that undertakes the commercialisation is eligible for pioneer status with income tax exemption of 100 percent of statutory income for 10 years
  - A company that invests in its subsidiary company engaged in the commercialisation of the R&D findings is eligible for tax deduction equivalent to the amount of investment made in the subsidiary company
- Double deduction for R&D
  - A company can enjoy a double deduction on its revenue (noncapital) expenditure for research that is directly undertaken and approved by the Minister of Finance

- Double deduction can be claimed for cash contributions or donations to approved research institutes, as well as payments for the use of the services of approved research institutes, approved research companies, R&D companies or contract R&D companies
- Approved R&D expenditure incurred during a tax relief period for companies with pioneer status can be accumulated and deducted after the tax relief period
- Expenditure on R&D activities undertaken overseas, including training Malaysians, will be considered on a case-by-case basis

• Incentives for researchers to commercialise research findings

A 50 percent tax exemption is given for five years on the income they receive from the commercialisation of research findings. The undertaking has to be verified by the Ministry of Science, Technology and Innovation

**Operational headquarters (OHQs)**

• Allowed 100 percent foreign equity ownership
• Eligible for 100 percent income tax exemption for 10 years, provided conditions are met

**Multimedia Super Corridor (MSC)**

An MSC Malaysia status is recognition by the government of Malaysia through the MDeC for information and communications technology (ICT) and ICT-facilitated business that develop or use multimedia technologies to produce and enhance their products and services. The status can only be awarded to private limited companies, institutions of higher learning and incubators.

• Financial incentives for MSC status companies are as follows:
  - Pioneer status – Companies setting up new businesses in an MSC Malaysia-designated cyber city will receive exemption from tax on their statutory income for five years. A company may reapply to renew the exemption for a second five-year term
  - Alternatively, new companies will receive a 100 percent ITA, which allows a 100 percent deduction on the qualifying capital expenditure from its statutory income for five years
  - Freedom to source capital and borrow funds globally
  - Duty-free importation of multimedia equipment
  - Eligibility for R&D grants (for majority Malaysian-owned MSC Malaysia status companies)
• Nonfinancial incentives include:
  - Intellectual property protection and a comprehensive framework of cyber laws
  - No censorship of the Internet
  - A high-powered implementation agency (MDeC) to act as an effective one-stop super shop
  - World-class physical and IT infrastructure within MSC Malaysia
  - Globally competitive telecommunication tariffs and services for companies located within MSC Malaysia
  - Excellent R&D facilities and green environment protected zones within MSC Malaysia

For more details on incentives, please visit www.mida.gov.my

More details on the MSC can be obtained at www.mscmalaysia.my

## Foreign property ownership

In line with the announcement made by the government on June 30, 2009 to liberalise property acquisition by foreigners, the Foreign Investment Committee (FIC) guidelines were repealed. Previously, any acquisition of property by foreign interest requires the approval of the FIC under the FIC guidelines.

The approval for property acquisitions will now only be required from the Economic Planning Unit of the Prime Minister's Department (EPU) where the acquisition involves a dilution of bumiputera or government interests for properties valued at MYR 20 million (USD 5.62 million) and above, whether acquired directly or indirectly (via the acquisition of shares in the company that holds the property). All other property transactions (be it residential or commercial), including those between foreigners and non-bumiputeras, will no longer require FIC or EPU approval, subject to a general pricing threshold of MYR 1,000,000 (USD 280,984) and above per unit.

Financing from external and internal sources is allowed for all acquisition of properties.

**Conditions if EPU approval is required**

Where approval from the EPU is required, the proposed acquisition is subject to equity and paid-up capital conditions as follows:

**Equity condition**

• Companies to have at least 30 percent bumiputera interest shareholding

**Paid-up capital conditions**

• Local company owned by local interest to have at least MYR 100,000 (USD 28,098) paid-up capital
• Local company owned by foreign interest to have at least MYR 250,000 (USD 70,246) paid-up capital

For direct acquisition of property, the equity and paid-up capital conditions imposed by the EPU must be complied with before the transfer of the property's ownership.

For indirect acquisition of property, the equity and paid-up capital conditions imposed by the EPU must be complied with within one year after the issuance of written approval.

**Foreign interest is not allowed to acquire:**

- Properties valued less than MYR 1,000,000 (USD 280,984) per unit
- Residential units under the category of low and low-medium cost, as determined by the state authority
- Properties built on Malay reserved land
- Properties allocated to bumiputera interest in any property development project, as determined by the state authority

**The following transactions are exempted from requiring the approval of the EPU:**

- Acquisition of residential units by local and foreign interest. However, a foreign interest is only allowed to acquire a residential unit valued at more than MYR 1,000,000 (USD 280,984) per unit
- Any acquisition of a residential unit under the "Malaysia My Second Home" program
- MSC status companies are allowed to acquire any property in the MSC area provided that the property is only used for their operational activities, including as a residence for their employees
- Acquisition of properties in the approved area in any regional development corridor by companies that have been granted the status by the local authority, as determined by the government
- Acquisition of properties by a company that has obtained the endorsement from the Secretariat of the Malaysian International Islamic Financial Centre (MIFC)
- Acquisition of residential units to be occupied as a hostel for a company's employees. However, local companies owned by a foreign interest are only allowed to acquire residential units valued at MYR 100,000 (USD 28,098) and above, and this matter is under the jurisdiction of the relevant state authorities
- Transfer of property to a foreign interest pursuant to a will and court order
- Acquisition of industrial land by a manufacturing company
- Acquisition of properties by ministries and government departments (federal and state), Ministry of Finance Incorporated, Menteri Besar Incorporated, Chief Minister Incorporated, State Secretary Incorporated and listed government-linked companies
- Acquisition of properties under a privatisation project, whether at the federal or state level, provided that it involves companies that are the original signatories in the contracts for the privatised projects
- Acquisition of properties in companies that have been granted the status of IPC, OHQ, representative offices, regional offices, Labuan offshore companies and BioNexus or other special status by the Ministry of Finance, Ministry of International Trade and Industry and other ministries
- Acquisition of agriculture land valued at MYR 1,000,000 (USD 280,984) and above or at least five acres in area by a foreign interest to undertake agriculture activities on a commercial scale using modern or high technology or to undertake agro-tourism projects or agriculture/agro-based industrial activities for the production of goods for export
- Acquisition of industrial land valued at MYR 1,000,000 (USD 280,984) by a foreign interest;
- Transfer of property to a foreigner based on family ties is only allowed among immediate family members
- Acquisition of properties under the privatisation projects, whether at the federal or state level, provided that it involves companies that are the original signatories in the contracts for the privatised projects

**State authority's consent still required**

Despite the repeal of the FIC guidelines and the limited applicability of the need to obtain EPU approval, acquisition of properties by foreigners is still governed by section 433B of the National Land Code 1965, which stipulates the need to obtain the prior approval upon an application in writing to the relevant state authority for any acquisition of interest in property (other than land categorised for industrial use) by foreigners. In granting its approval, the state authority is at liberty to impose any other conditions and the payment of such levy as it deems fit. The application will usually be submitted on the acquirer's behalf by the local solicitors handling the proposed acquisition. It should be noted that several states in Malaysia have adopted the EPU's requirement that the property purchased by a foreigner must be valued at least MYR 1,000,000 (USD 280,984) while some other states have maintained the threshold limit at the lower level. As land matters are within the jurisdiction of each state, it is advisable to check with local solicitors on the actual threshold limit applicable to each state in Malaysia, as the threshold limit may vary from state to state and from time to time without much publicity.

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| Item | Effective date | Minimum threshold |
|---|---|---|
| Johor | May 1, 2014 | MYR 1 million (USD 280,984) for all types of property[2] |
| Penang | February 1, 2014 | MYR 1 million (USD 280,984) for all types of property;<br>MYR 2 million (USD 561,968) for land property on the island |
| KL/Putrajaya/ Labuan | March 1, 2014 | MYR 1 million (USD 280,984) for all types of property[3] |
| Selangor | September 1, 2014 | MYR 2 million (USD 561,968) for property in Zone 1 and 2<br>Zone 1<br>District of :<br>1. Petaling<br>2. Gombak<br>3. Hulu Langat<br>4. Sepang<br>Zone 2<br>District of:<br>1. Kuala Selangor<br>2. Kuala Langat<br>MYR 1 million (USD 280,984) for property in Zone 3:<br>District of:<br>1. Hulu Selangor<br>2. Sabak Bernam<br>Foreigners, permanent residents and foreign companies are only permitted to acquire commercial and industrial properties at a minimum price of MYR 3 million (USD 842,952) in all three zones.<br>These groups of people are not permitted to buy landed properties unless such properties are in a gated community, which has a landed strata title.[4] |

**Malaysia My Second Home Program (MM2H)**

The MM2H program is promoted by the government of Malaysia to allow foreigners who fulfil certain criteria, to stay in Malaysia on a multiple-entry social visit pass. The social visit pass is granted according to the validity of the passport for a maximum period of 10 years and is renewable. The program allows applicants to bring with them their spouses, parents and unmarried children below the age of 21. Foreign spouses of Malaysians and expatriates who wish to retire in Malaysia after expiry of their employment passes are also eligible to apply to stay in Malaysia on this program. Purchase of residential units is exempted from EPU's approval under the MM2H program, but such purchase is subject to the minimum price established for foreigners by the different states. This program also allows foreigners to apply for one domestic maid and bring in their own personal car, or to purchase a locally-assembled car. On or after April 1, 2015, any car that is purchased in or imported into Malaysia under this programme is subject to GST unless it is given exemption by the Ministry of Finance.

The participants must maintain their fixed deposit at all times at any bank in Malaysia. Withdrawal of fixed deposit must have the prior approval of the MM2H Centre under the Ministry of Tourism and Culture Malaysia. Failure to comply with this condition could result in the immediate cancellation of the MM2H Social Visit Pass (Multiple Entry).

More details are available from www.mm2h.gov.my

[2]See Circular by Director of Johor Lands and Mines Office Bill 02 Year 2014 (Pekeliling Pengarah Tanah Dan Galian Johor Bil. 2 Tahun 2014)

[3]See Guideline on the Acquisition of Properties 2014

[4]See Guidelines for Acquisition of Property by Foreign Nationals/ Permanent Residents/Foreign Companies in the State of Selangor

## Foreign exchange controls

A non-resident is permitted by the Controller of Foreign Exchange to undertake direct or portfolio investment in Malaysia, subject to certain rules and guidelines. A non-resident refers to:

- Any person other than a resident
- An overseas branch, a subsidiary, regional office, sales office or representative office of a resident company
- Embassies, consulates, high commission, supranational and international organisations or
- A Malaysian citizen who has obtained permanent resident status of a country or territory outside Malaysia and is residing outside Malaysia

Among the main exchange control requirements are:

**Foreign direct investment (FDI)**

- There are no restrictions for non-residents to purchase ringgit assets, such as landed properties and securities, and the settlement of investment in ringgit can be undertaken either in ringgit or foreign currency.
- Foreign direct investors are freely allowed to repatriate their investment, including capital, profits and dividends from divestment upon conversion into foreign currency, without being subject to any levy.

**Buying or selling of currency**

- Ringgit
  - Non-residents are free to buy or sell ringgit against foreign currency with licenced onshore banks (excluding licenced international Islamic banks), on spot and forward basis, for both current and financial account transactions.
  - Non-residents may also buy or sell ringgit against foreign currency with any non-resident financial institution for settlement of trade in goods or services or the purchase or sale of ringgit assets with a resident or with an appointed overseas office of a licenced onshore bank's banking group.
- Foreign currency
  - Non-residents are only free to buy or sell foreign currency against another foreign currency in Malaysia with a licenced onshore bank or a person who is licenced under the Money Services Business Act 2011 on spot basis.

**Extension of credit facilities to non-residents**

- Ringgit borrowing
  - Resident nonbank companies, licenced onshore banks (excluding licenced international Islamic banks), employers or individuals who are immediate family members may extend any amount of Ringgit credit facilities to a non-resident (other than financial institutions), provided the utilisation of such borrowings is to finance activities in the real estate sector in Malaysia or finance/refinance the purchase of residential and commercial properties in Malaysia, excluding the purchase of land only, subject to their own internal credit assessment guidelines.
  - Resident entities with a stockbroking licence may extend margin financing, where else licenced insurer or a licenced takaful operator may extend only up to the attained cash surrender value of any life insurance policy or family takaful certificate purchased by the non-resident.
  - Non-resident custodian banks or non-resident stock broking corporations may obtain overdraft facilities to facilitate the settlement of shares or ringgit instruments traded on Bursa Malaysia or through the Real Time Electronic Transfer of Funds and Securities, from licenced onshore banks (excluding licenced international Islamic banks).
- Foreign currency borrowing
  - Non-residents are free to borrow any amount of foreign currency from licenced onshore banks, another nonresident in Malaysia or immediate family member.
  - Non-residents are free to borrow only a limited amount of foreign currency from other residents.
  - Non-residents are allowed to issue foreign-currency denominated sukuk/bonds in Malaysia for use in or outside Malaysia.
- Import and export of ringgit and foreign currency by non-resident travellers

Non-residents travellers are allowed to carry ringgit only up to USD 10,000 equivalent upon arriving or leaving Malaysia. However, there are no limitations on the import or export of foreign currency notes and traveller's cheques by non-residents. A written application to the Foreign Exchange Administration Department must be made for any import and export of ringgit exceeding permitted limits.

- Opening of foreign currency accounts (FCA) and ringgit accounts (external accounts)
  - Non-residents are free to open foreign currency accounts with licenced onshore banks in Malaysia and ringgit accounts in Malaysia. Funds in these accounts are free to be remitted abroad in foreign currency.
  - There are also no limitations in opening external accounts by non-residents with financial institutions in Malaysia, and non-residents are allowed to convert the funds into foreign currency with licenced onshore banks for repatriation abroad. The funds in the external account can be used for a number of purposes, including, among others, to pay for goods or services in Malaysia or to purchase ringgit assets in Malaysia. However, there shall be no ringgit financing provided by a non-resident intermediary or non-resident financial institution to its non-resident clients.

- Approved operational headquarters (OHQs)
  - OHQs are free to invest any amount in foreign currency assets, to be funded with own foreign currency funds or foreign currency borrowing.
  - OHQs are allowed to borrow any amount of foreign currency from onshore banks, licenced international Islamic Banks, other resident companies within the same corporate group in Malaysia and any non-residents, provided the OHQ does not on-lend the funds to other residents or raise the funds on behalf of any resident.
  - OHQs are allowed to obtain any amount of foreign currency trade financing from non-residents to finance import payments.
  - No restriction for payment in ringgit between resident companies.
  - OHQs may invest any amount abroad, including extending credit facilities to their related overseas companies, to be funded with foreign currency funds or borrowing. They may also convert any amount to finance investment abroad if they have no domestic credit facilities, or up to MYR 50 million (USD 14.0492 million) per calendar year if they have domestic credit facilities, into foreign currency for investment abroad.
- International Procurement Centre (IPCs) and Regional Distribution Centre (RDCs)
  - IPCs and RDCs are free to hedge with onshore banks and licenced international Islamic Banks for payments for the import and export of goods and services based on a firm underlying commitment or on anticipatory basis.
  - Hedging involving ringgit shall only be undertaken with licenced onshore banks.
  - No restriction for payment in ringgit between resident companies.
  - IPCs and RDCs are free to pay other resident companies in foreign currency for the settlement of goods and services sourced from its foreign currency account if the IPC/RDC has exports earnings (either from export of goods and services).
- Iskandar Development Region (IDR)

Companies approved by the Ministry of Finance and awarded IDR status by the Iskandar Regional Development Authority (IDRA) to undertake qualifying activities under the six targeted service based sectors in the IRDA approved zones, i.e., creative, education, financial advisory and consulting, healthcare, logistics and tourism, are granted exemption from most of the provisions of the foreign exchange administration rules and are afforded certain flexibilities.

More details on foreign exchange administration can be obtained at www.bnm.gov.my, www.sc.com.my, www.mifc.com and www.mida.gov.my

## Taxes on possession and operation of real estate

### Quit rent

No specific tax is levied on property owners. However, individual state governments levy a land tax known as “quit rent,” which is payable yearly. The rate varies with land category and size.

### Assessment

Properties within local authorities’ boundaries are also required to pay an “assessment.” This tax is calculated as a percentage of annual value and varies with the property type and the location of the property.

## Taxes on acquisition and transfer of real estate

### Stamp duty and legal costs

The stamp duty payable by purchasers of property is based on the higher of the money value of the consideration or current market value at the following rates:

| Consideration or current market value | Scale of rates |
|---|---|
| For the first MYR 100,000 (USD 28,098) | 1% |
| For the next MYR 400,000 (USD 112,393) | 2% |
| Remainder (Excess of MYR 500,000) (USD 140,492) | 3% |

Legal fees for sales, purchases or other forms of conveyances for completing any transaction involving immovable properties are fixed at rates based on the consideration or adjudicated value:

| Consideration or adjudicated value | Scale of fees |
|---|---|
| First MYR 150,000 (USD 42,147) | 1% [subject to a minimum of MYR 300 (USD 84.3) or MYR 250 (USD 70.2), if the consideration is below MYR 45,000 (USD 12,644.28)] |
| Next MYR 850,000 (USD 238,836) | 0.7% |
| Next MYR 2,000,000 (USD 561,968) | 0.6% |
| Next MYR 2,000,000 (USD 561,968) | 0.5% |
| Next MYR 2,500,000 (USD 702,460) | 0.4% |
| Remainder (Excess of MYR 7,500,000) (USD 2.1 million) | Negotiable, but shall not exceed 0.4% of such excess |

### Capital gains tax

Capital gains are generally not subject to income tax in Malaysia. However, real property gains tax (RPGT) is levied on chargeable gains arising from the disposal of real property situated in Malaysia, or on any interest, option or other rights in or over such land, as well as the disposal of shares in real property companies.

The RPGT rates for non-resident individuals are as follows:

| Time of sale | Tax rate |
|---|---|
| Disposal within five years after the date of acquisition | 30% |
| Disposal in the sixth year after the date of acquisition or thereafter | 5% |

For foreign companies, the rates are as follows:

| Time of sale | Tax rate |
|---|---|
| Disposal within two years after the date of acquisition | 30% |
| Disposal in the third year after the date of acquisition | 20% |
| Disposal in the fourth year after the date of acquisition | 15% |
| Disposal in the fifth year after the date of the acquisition or thereafter | 5% |

### Goods and services tax (GST)

**Introduction**

The effective date for the imposition of GST is from April 1, 2015 onward. GST replaces the sales tax and services tax with a rate of 6 percent (standard rate).

GST shall be levied and charged on the taxable supply of goods and services made in the course or furtherance of business in Malaysia by a taxable person. It is also charged on the importation of goods and services.

A taxable supply is a supply that is standard-rated or zero-rated. Exempt supplies (such as financial services, education services, childcare service, healthcare services, residential land, agricultural land and general use land, accommodation, transport services, tolled highway or bridge, funeral, burial and cremation services, supplies made by societies and similar organisation) and out-of-scope supplies (such as supply from a place outside Malaysia to another place outside Malaysia) are not taxable supplies. GST will be levied and charged on the value of taxable supply.

To collect GST from customers, the business must be registered under GST. Registration is compulsory if its annual turnover of taxable supplies is more than MYR 500,000 (USD 140,492). Nevertheless, a business can apply to be registered voluntarily when the annual turnover is less than MYR 500,000 (USD 140,492).

**Property investor**

As the sale and letting out of residential properties are exempt, a person is liable to be GST- registered only if the annual turnover from letting out commercial property and, in some circumstances, the disposal of commercial property exceeds MYR 500,000 (USD 140,492). When a GST-registered person lets out or disposes of commercial properties, he has to issue a tax invoice and account for GST. This may not disadvantage the tenant or purchaser if such tenant or purchaser is a GST-registered person since he can claim input tax credit.

**Property management corporations**

Property management fees, sinking fund contributions, maintenance fee, rental of hall and other charges imposed by a management corporation or joint management body to provide services to the occupants are standard-rated, regardless whether they relate to a residential property or commercial property.

**Construction company**

Construction services, regardless whether they relate to residential or commercial property, are charged standard-rated.

If the building materials are supplied (regardless whether at cost or with profit basis) by the developer to the construction company, the developer should issue a tax invoice and account for output tax. The construction company can claim input tax credit on such “acquisition.” In exceptional situation where the construction contract requires the materials to be provided by the developer without any charge, the developer does not have to account for output tax on the materials.

**Property developer**

The supply of residential properties is GST-exempt. However, care is needed to distinguish between the supply of such property or land from supply of closely associated taxable supplies. For example, the Royal Malaysian Customs (RMC) is of the opinion that the sale of a car park in an apartment and administrative charges are subject to GST. For sale of residential properties with furniture and fittings, GST may also be imposed.

The supply of commercial and industrial properties is standard-rated. The recently developed concept of small office home office (SoHo), small office virtue office (SoVo) and small office flexible office (SoFo) are regarded as commercial properties by the RMC. An acquirer of commercial or industrial properties can claim input tax credit on the GST incurred if he is a GST-registered person.

GST does not have to be accounted for on booking deposits until they are applied to the supply, which usually occurs when the sale and purchase agreement is signed. However, GST is accounted for on the first stage of payment made on the signing of the sale and purchase agreement and then on each of the subsequent progress payments at the earlier of the invoice date and the date payment is received. The date of architect certification on the degree of completion is irrelevant.

### Income tax

Income of any person, including a company, accrued in or derived from Malaysia is subject to income tax. The self-assessment system is applicable and the assessment of income tax is based on a current year basis. Chargeable income is derived after adjusting for allowable expenses incurred in the production of the income, capital allowances and incentives, where applicable.

The following sources of income are liable to tax:

- Gains and profits from a trade, profession and business
- Gains or profits from employment (salaries, remunerations, etc.)
- Dividends, interests or discounts
- Rents, royalties or premiums
- Pensions, annuities or other periodical payments
- Other gains or profits of an income nature

Section 34 of the Income Tax Act 1967 allows specific provisions for bad or doubtful debts. However, no deduction for book depreciation is allowed, although capital allowances are granted. Unabsorbed business losses may be carried forward indefinitely to offset against business income including companies with pioneer status, provided that the cessation of the period falls on or after September 30, 2005.

### Corporate taxation

A company, whether resident or not, is assessed on income accrued in or derived from Malaysia. Income derived from sources outside Malaysia and remitted by a resident company is exempted from tax, except in the case of the banking and insurance business, and sea and air transport undertakings. A company is considered a resident in Malaysia if the control and management of its affairs are exercised in Malaysia. Resident and non-resident companies are taxed at 25 percent on taxable income. Pursuant to the Budget issued by the government for 2015, it has been proposed that the corporate income tax rate be reduced to 24 percent. Resident small and medium-sized companies [i.e., companies capitalised at MYR 2.5 million (USD 702,460) or less] are taxed at -19 percent on the first MYR 500,000 (USD 140,492) chargeable income, with the balance at the corporate tax rate of 24 percent. These changes will be effective from the Year of Assessment 2016. Nevertheless, the corporate tax rate is remained as 25 percent and for small and medium sized enterprises is remained as 20 percent on the first MYR 500,000 (USD 140,492) chargeable income, with the balance at 25 percent on the remaining chargeable income in the Year of Assessment 2015.

### Personal taxation

The rate of tax of an individual depends on the individual's resident status, which is determined by the duration of his or her stay in Malaysia. Generally, an individual who is in Malaysia for at least 182 days in a calendar year is regarded as a tax resident. Income remitted to Malaysia by a resident individual is exempted from tax. A non-resident individual will be taxed only on income earned in Malaysia.

A resident individual is taxed on his chargeable income after deducting personal reliefs at a graduated scale ranging from 0 percent to 26 percent. Non-resident individuals are liable to tax at a rate of 26 percent without any personal relief. However, a non-resident individual can claim rebates in respect of fees paid to the government for the issuance of an employment work permit.

Pursuant to the budget issued by the government for 2015, it is proposed that the income tax rates for resident individuals are to be reduced by 1–3 percent. For non-resident individuals, income tax rate is to be reduced by 1 percent from 26 percent to 25 percent. These changes will be effective from Year of Assessment 2015.

## Tax treaties: Avoidance of double taxation

As at September 24, 2013, the effective Double Taxation Agreements, which seek to avoid double taxation by defining the taxing rights of each country with regard to cross-border flows of income and providing for tax credits or exemptions are as follows:

| | |
|---|---|
| Albania | Finland |
| Argentina* | France |
| Australia | Germany |
| Austria | Hong Kong |
| Bahrain | Hungary |
| Bangladesh | India |
| Belgium | Indonesia |
| Brunei | Iran |
| Canada | Ireland |
| China | Italy |
| Chile | Japan |
| Croatia | Jordan |
| Czech Republic | Kazakhstan |
| Denmark | Korea, Republic |
| Egypt | Kuwait |
| Fiji | Kyrgyz, Republic |

Laos
Lebanon
Luxembourg
Malta
Mauritius
Mongolia
Morocco
Myanmar
Namibia
Netherlands
New Zealand
Norway
Pakistan
Papua New Guinea
Philippines
Poland
Qatar
Romania
Russia
San Marino
Saudi Arabia
Seychelles
Singapore
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syria
Taiwan
Thailand
Turkey
Turkmenistan
United Arab Emirates
United Kingdom
United States of America*
Uzbekistan
Vietnam
Venezuela
Zimbabwe



* Limited Agreement

More details on taxation can be obtained at www.mida.gov.my and www.hasil.gov.my

## Real estate investment trusts (REIT)

### Introduction

The Securities Commission issued a new set of guidelines on REITs on August 21, 2008 ("New REITs Guidelines"), which supersedes the earlier REIT Guidelines issued on January 3, 2005. The New REITs Guidelines were last updated on December 28, 2012.

### Equity structure of REIT manager

Following the measures announced in Budget 2008 to encourage foreign REIT managers to set up operations in Malaysia and list their REITs on Bursa Malaysia, the New REITs Guidelines now allow up to 70 percent foreign shareholding in the REIT manager. The REIT Guidelines updated on July 13, 2011 introduced an eligibility requirement for a management company of a REIT to have a minimum of 30 percent local equity.

### Permitted investments

Instead of having different thresholds for listed and unlisted REITs, the New REITs Guidelines has prescribed one threshold for both listed and unlisted REITs, that is, at least 50 percent of a REIT's total asset value must be invested in real estate and/or single-purpose companies at all times. However, investment in non-real estate-related assets and/or cash, deposits and money market instruments must never exceed 25 percent of a REIT's total asset value. In addition, REIT managers are given more freedom to manage their REITs' portfolio mix, including investment in foreign real estate.

Investment in real estate where it does not have a majority ownership and control is permitted provided that their respective requirements are met. To safeguard investors' interest, a REIT is not allowed to conduct:

- Activities of extension of loans and any other credit facility
- Acquisition of vacant land
- Property development

However, the restriction on property development does not apply to refurbishment, retrofitting, renovations or extensions carried out on existing real estate within a fund's investment portfolio.

### Borrowings and raising fund by issuance of units

Subject to certain rules of the New REITs Guidelines, REIT managers are now able to raise funds speedily for acquisitions or capital expenditure purposes. The New REITs Guidelines expressly permits a REIT, in addition to other conventional means of financing from licenced institutions, to raise funds through the issuance of debentures. Total borrowings of a fund should not exceed 50 percent of the total asset value of a REIT at the time the borrowings are incurred. Where this limit is exceeded, the sanction of unit holders by way of an ordinary resolution is required. To secure borrowings, the REIT manager may pledge the fund's property with the consent of the REIT trustee. In relation to the issue of units for cash (other than rights issues) concerning a listed REIT, REIT managers are only required to seek a general mandate via a resolution in a general meeting from unit holders for issuance of units up to 20 percent of its fund size (subject to certain requirements).

The New REITs Guidelines specifically prohibit new REIT units from being placed to interested persons of the REIT manager, persons connected to the said interested persons, or nominee companies. Otherwise, the REIT manager must obtain unit holders' approval for the precise terms of such issue or placement, and interested persons must also abstain from voting on the resolution.

### Special tax exemptions for REITs

Generally, after deducting tax allowable expenses, a REIT income comprising rental, interest and other investment income derived from or accrued in Malaysia will be taxable at the normal corporate tax rate of 25 percent. Nevertheless a REIT is exempted from such taxes in an assessment year if the REIT distributes at least 90 percent of its total taxable income to its unit holders in the same assessment year.

Special treatment has been accorded to the taxation of rental income from the letting of real property received by REIT. Rental income is now treated as business income, but there are limitations imposed.

Where 90 percent or more of the REIT's total taxable income is distributed, dividends paid by the REIT to its unit holders will be subject to a withholding tax as follows:-

- A 10 percent withholding tax – all individuals and non-corporate investors, such as institutional investors (regardless of whether they are tax resident or not)
- A 25 percent withholding tax – non-resident company (incorporated body)

The above reduced withholding tax of 10 percent on individual and non-corporate investors was initially available up to December 31, 2011 only. The government has now extended the incentives for a period of five years, commencing January 1, 2012 up to December, 31 2016.

The withholding tax will be withheld by the REIT before paying out the dividends to unit holders. In other words, unit holders will be receiving dividends, net of withholding tax.

All instruments of transfer or assignment relating to the purchase of real property between a REIT and the vendor are exempted from stamp duty.

Gains on disposal of investments by a REIT will not normally be subject to income tax. However, where the investments represent real property and shares in real property companies, then such gains will be subject to RPGT. With effect from January 1, 2014, a company is required to pay RPGT of 30 percent when a disposal is made within three years after the date of acquisition, 20 percent in the fourth year, 15 percent in the fifth year and 5 percent in the sixth year and beyond, on the gains of disposal of share in real property companies. Likewise, a foreigner is required to pay RPGT of 30 percent when disposal of shares is made within five years and 5 percent in the sixth year and beyond.

**GST**

For the services supplied by a management company of a REIT, the management fee will be subject to GST at 6 percent from April 1, 2015.

Services provided by the property manager to a REIT are property management services, lease management services and marketing services. These services are subject to GST at 6 percent as well.

For GST purposes, the services of a trustee to a REIT are also subject to GST at 6 percent.

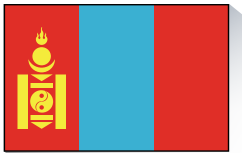
An investor is entitled to receive income distributions from the REIT. The income distribution in the form of dividend is not subject to GST. For REIT units listed and traded on Bursa Malaysia, the buying and selling of REIT units is also an exempt supply and is not subject to GST. However, any brokerage commission or clearing fee on the buying and selling of the REIT units is subject to GST at 6 percent. The investor is not entitled to claim the GST incurred on the buying and selling of the REIT units since it is an exempt supply.

MALAYSIA

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square Feet (Sq Ft) of Gross Floor Area and Net Lettable Area (NLA) as defined by Uniform Method of Measurement of Buildings (The Institution Of Surveyors Malaysia) |
| **Rental payments** | |
| Rents | Net Rent – MYR/Sq Ft/Month of Net Lettable Area<br>Gross Rent – MYR/Sq Ft/Month of NLA, inclusive of service charge<br>Service Charge – Between MYR 1 – 2 /Sq Ft/Month of NLA |
| Typical lease term | 3 years or longer |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months rent) | 3 months |
| Security of tenure | For the duration of the tenancy, no guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal | No |
| Basis of rent increases or rent review | Open market rental value (Fixed increases are less common) |
| Frequency of rent increases or rent review | Every 3 years |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | Electricity and telecommunication consumption are usually separately metered and payable by each tenant |
| Car parking | Allocation is usually on a per sq ft ratio based on 1 parking lot per 1000 sq ft leased |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord (charged back via service charge) |
| Responsibility for external/structural repairs | Landlord |
| Responsibility for building insurance | Landlord |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally full assignment to third parties is accepted (subject to landlord approval) |
| Tenant early termination rights | Only by break clause |
| Tenant’s building reinstatement responsibilities at lease end | Renistated to original condition |

Source: JLL



## Property tenure/ownership

Property tenure/ownership in Mongolia is interesting because of its history and distinctions. In most countries, real estate usually includes both the land and the buildings. In Mongolia, there are different levels of ownership for properties on land. For example, land is usually owned by the government, whereas the title to the land belongs to an individual holding possession right, and the building on top of the land may be owned by another individual. "Immovable property" is, as its name indicates, a property that cannot be moved and an important distinction in a country populated by nomads. Essentially, it refers to buildings and houses. The precise legal definition for the ownership of immovable property in Mongolia is termed as "floating freehold". It signifies that the property owners hold a freehold interest over the property, but not over the land on which it sits.

## Major property legislation

In respect of the real estate sector, the following laws are the most relevant:

- The Constitution
- Civil Code
- General Law on Taxation
- Law on Registration of Immovable Property
- Law on Investment
- Law on Immovable Property Tax
- Law on Personal Income Tax
- Law on Land
- Law on Land Fees
- Law on Allocation of Land to Mongolian Citizens for Ownership
- Law on State Registration of Property Ownership Right and Other Related Property Rights
- Law on Urban Planning
- Company Law
- Law on Licencing

Laws on Mongolian property rights protect foreign investors' rights and interests.

## Operational requirements for foreign corporations

As provided by law, a foreign investor is a foreign legal person or citizen (a foreign citizen or stateless person who is a non-resident in Mongolia or a citizen of Mongolia who is residing in a foreign country permanently) making an investment in Mongolia.

To invest in Mongolia, a foreign legal person/citizen may:

- Incorporate a company or a representative office
- Purchase shares, bonds and other securities
- Establish agreements specified by law

One of the sectors where foreign direct investment (FDI) is usually channelled is "movable and immovable property".

Foreign-investment entities are able to own, use their properties (except land) and dispose of the income derived from their properties.

Foreign investors have the following rights with respect to their property:

- To possess, use, and dispose of their property
- To repatriate investments that contributed to the equity of a business entity with foreign investment
- To manage or participate in the management of a business entity with foreign investment
- To transfer their rights and obligations to others, as provided for by legislation
- To remit income, such as profit and payments, abroad
- To pay shareholders' income and dividends
- To transfer service fees and charges for letting others use their intellectual property
- To receive income after sale of assets and securities
- To transfer their property rights to others
- To terminate an investment agreement and liquidate a business entity
- To pay principal debts and interest as well as other equivalent payments
- To receive compensation payment for confiscated property
- To receive other income gained in conformity with the legislation of Mongolia
- To enjoy such other rights as conferred by legislation

Foreign investors are required to:

- Observe the laws of Mongolia
- Perform the obligations set forth in the investment agreement and statutes of the business entity with foreign investment
- Implement measures to ensure the protection and restoration of the natural environment
- Respect the national tradition and custom of the people of Mongolia.

MONGOLIA

Investment, including foreign investment, in Mongolia is regulated primarily through the Law on Investment, which was enacted by the Parliament on October 3, 2013. This Investment Law removed most requirements and restrictions on foreign investors and aims to support and encourage investors, as well as attract more investments to Mongolia. The main objectives of the Law on Investment are:

- Not to distinguish between foreign and domestic investors
- To issue stabilisation certificates to qualifying entities. The holders of stabilisation certificates will enjoy stable treatment with respect to certain tax rates and amounts
- To establish a ministry approval process for foreign investments by foreign state-owned entities

Under this Law, the state central administrative body in charge of investment affairs (Prime Minister of Mongolia[1]) has the powerto issue approvals to state-owned entities holding 33 percent or more of the total issued shares in a Mongolian legal entity to operate in the mining, banking and finance, media and communication sectors.

While the state administrative body in charge of investment affairs, namely the Investment Agency has the power to issue stabilization certificates to legal entities that satisfy the certain requirements.

In addition, a foreign investor that satisfies certain requirements may enter into an investment agreement to enjoy certain stable tax rates and amounts with the Cabinet member in charge of investment affairs under which the government guarantees that any change in taxation laws to increase the relevant tax rates and amounts will not apply to the investor during the term of the investment agreement.

The basic requirement to establish a foreign investment entity is to have at least MNT 189.2[2] million (USD 100,000) invested by each foreign investor, where more than 25 percent of the total issued shares are owned by the foreign investor.

Stages for incorporation of a foreign invested limited liability company are as follows:

- Secure proposed name of the company at the State Registration Office (SRO)
- Open temporary bank account
- Transfer the statutory investment to the company's bank account
- Submit all application materials, including a bank statement, to SRO
- Obtain local tax registration
- Obtain a company registration certificate
- Make the company seal
- Seal registration and notarisation
- Bank account becoming operational
- Notify the local tax office of the jurisdiction that applies to the company

### Restrictions on foreign property ownership

Except for land, there are currently no restrictions on foreign residents or non-residents owning property (building, apartment) in Mongolia. Certified copies of the buyers' passports have to be submitted to the Property Registration Office, along with the demand for a new certificate.

While immovable property can be owned outright by foreign investors, land can only be leased by foreign investors.

According to the Law of Mongolia on Land, dated June 7, 2002, the land may only be owned by Mongolian citizens. However, as provided by clause 12.1.1 of the Law on Investment, "land may be possessed or used with an agreement for up to 60 years, with a single extension of up to 40 years on the same conditions as the original agreement in a form of nontax incentive by an entity duly registered in Mongolia, regardless of the investment being domestic or foreign."

### Foreign exchange controls

All transactions within the territory of Mongolia are legislatively required to be carried out using national currency, togrog ("MNT").

However, it is usual for prices to be quoted in other currencies (predominantly USD), particularly in international trade and the tourism industry and there are presently no restrictions on foreign exchange transactions. No restrictions are placed on the inflow and outflow of foreign capital to and from the country. Currency risks associated with Mongolia are usually considered relatively low, as both the economy and the political environment are stable.

### Taxation

#### Property tax

Mongolian property taxes are easy to understand and follow.

In general, there are only a few applicable taxes. The tax regime will differ depending on whether the property is owned by a corporate or personal entity. The tax regime will also differ if the entity is a registered Mongolian resident entity or a nonresident foreign entity.

The differences between the various tax regimes can be significant. For instance, a legal resident in Mongolia who holds the property in his/her own name will only be liable for a 10 percent income tax on the rental income. However, if the legal resident purchases the property in the name of a foreign

[1]The government structure of Mongolia has been changed at the end of the year 2014, and as of January 8, 2015 the Prime Minister of Mongolia is in charge of investment affairs and policies.

[2]The denominated rate in MNT is based on the rate of Central Bank of Mongolia as of January 6, 2015.

company based abroad, the foreign company will be liable for a 30 percent tax rate [20 percent income + 10 percent value added tax (VAT)]. The government is becoming increasingly apt at communication between its different departments. Inspectors are sent to conduct regular checks on the status of tax payments.

### Real estate tax

Persons who own immovable property in Mongolia have to register their ownership with the tax authority. An annual tax of minimum 0.6 percent the total value of immovable property is payable by the owner. The value is determined with its state registration valuation or insurance on the property or based on the book value. Apartments are exempted from such tax. As to immovable properties that are located in the Capital City of Mongolia, depending on its location, size, market demand and supply of such immovable property, the annual tax rate fluctuates between 0.6 percent and 1.0 percent[3].

### Property purchase tax

Property purchase tax is relatively straightforward. A 2 percent stamp duty is payable on the declared purchase price. Payment can be easily made in most banks. Property purchase tax is normally split between the buyer and the seller, but is also generally open to negotiations.

### Real estate leasing tax

A 10 percent income tax on the amount derived from the property, essentially on the lease amount and payable quarterly.

### VAT

It is applicable to a Mongolian registered corporate entity, a citizen and a permanent establishment of foreign legal entity and to revenues derived from a property amounting to MNT 10 million (USD 5,283) or above. Such legal persons will become a registered Mongolian VAT payer. A VAT number can be obtained from the Mongolian Tax Authority.

### Land fees

The government determines the land base rate, and land fees are calculated from this rate. Land fees are determined according to the type of the land, such as pasture land, cultivation land or land for household needs.

## Tax treaties: Avoidance of double taxation

As of January 2015, the effective double taxation agreements are as follows:

Country

1. The People's Republic of China
2. The Republic of Korea
3. The Federal Republic of Germany
4. The Republic of India
5. The Socialist Republic of Vietnam
6. The Republic of Turkey
7. The United Kingdom of Great Britain and Northern Ireland
8. The Republic of Hungary
9. Malaysia
10. The Russian Federation
11. The Republic of Indonesia
12. The State of Kuwait[4]
13. The Republic of France
14. Czech Republic
15. The Kingdom of Belgium
16. The Republic of Kazakhstan
17. The Republic of Kyrgyz
18. The Republic of Poland
19. The Republic of Bulgaria
20. The Swiss Confederation
21. Ukraine
22. Canada
23. The Republic of Singapore
24. The Democratic People's Republic of Korea
25. The Republic of Austria
26. The Republic of Belarus
27. Italian Republic

## Real estate investment trusts

The real estate investment trusts (REITs) concept is not known in Mongolia, and such trusts have not been established in Mongolia.

## Conclusion

The legal environment regarding real estate in Mongolia is evolving. Currently a "package" of land and taxation laws is before the Parliament. The proposed laws may substantially alter the legal landscape for real estate to encourage more private ownership of land plots, consultation and planning together with the landowners, willingness to take a more market-based approach with regards to valuation of lands, involuntary resettlement, and development as well as to combat corruption. According to the proposed taxation laws, several types of taxes may be created, and certain tax rates and amounts may be increased.

[3]According to the recent draft resolution by the state authority in charge of determining the annual tax rate applicable in the territory of Capital City, the tax rate is likely to increase up to 2.0 percent.

[4]The agreement between Mongolia and the State of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income is terminated – in force until April 1, 2015.

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of Measurement** | |
| Unit of Measurement | Square metres ($m^2$) |
| **Rental Payments** | |
| Rents | Quoted in MNT/$m^2$/year (net area) |
| Typical lease term | 1–3 years, with 4–10 years for larger tenants |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as X months' rent) | Three months gross rent – generally payable by tenant in advance |
| Security of tenure | Only for the duration of the tenancy, no guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal? | No, unless an option to renew is agreed by the landlord or specified in the lease |
| Basis of rent increases or rent review | Open market rental value |
| Frequency of rent increases or rent review | Generally at lease renewal, but can be any time if market rent has substantially increased or decreased |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | Generally open to negotiation, but the landlord is responsible for fees such as heating, water and apartment owners' association. Electricity, communication and Internet consumption is payable by each tenant |
| Car parking | Where parking is available, it is held under a separate monthly lease for an additional rent |
| Responsibility for internal repairs | Responsibility for internal repairs |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc.) | Usually apartment owners' association or landlord |
| Responsibility for building insurance | Rare, and landlord is responsible for it if it is required |
| **Disposal of leases** | |
| Tenant subleasing and assignment rights | Usually not permitted |
| Tenant early termination rights | Subject to landlord's approval, with one month's written notice and subject to penalty payment |
| Tenant's building reinstatement responsibilities at lease end | Original condition, allowing for wear and tear – major damage cost will be deducted from the deposit |

## Property tenure/ownership

### Main Features of Land Holding

Constitution of the Republic of the Union of Myanmar (2008) (the Constitution) guarantees that the Union of Myanmar ('Union') shall permit citizens the right of private property and inheritance, in accordance with the existing laws. The Land and Revenue Act 1879 provides the landholder permanent, heritable and transferable rights of use and occupancy. These rights are subject to:

- payment of taxes;
- government power to acquire the land for public purposes; and
- government control over mines and minerals.

Under the Constitution, the Union is the ultimate owner of all lands and natural resources and will supervise the use or extraction of them.

Under the Land Acquisition Act 1894('LAA'), the government may acquire or temporarily occupy land for public purposes. The President of the Union may also grant a company the same occupancy for public purposes. In such cases, the LAA governs compensation given to the original landholder.

State land, belonging to or at the disposal of the government, is defined in the Upper Burma Land and Revenue Regulations 1889. The occupier's right is non-inheritable and non-transferable.

Freehold land is transferable, inheritable and exempt from land revenue, and it can only be expropriated if it is in the public interest, subject to the payment of compensation. Freehold land is primarily located in larger cities or towns.

Grant land is granted or leased by the government from 10 to 90 years. The right is transferable, and the grant holder is subject to land revenue. The state does not have access to the land during the grant period, but can reclaim it under the LAA. Grant land is primarily located in cities and towns.

In general, land is classified by its use. Different regulations may apply to different land uses.

'Cultivable' land, 'fallow' land and 'waste' land may be granted to local or foreign investors for agricultural purposes involving technology, expertise and capital, under the Procedures Conferring the law on Right to Cultivate Land/Right to Utilize Land for Agriculture, Livestock Poultry Farming and Aquaculture Purposes 1991. The acreage of grant may be up to 5,000 acres for 30 years. The maximum 30-year period can be extended with the approval of the government. Foreigner investors' applications and requests for larger grants of 50,000 acres or more must be approved by the Myanmar Investment Commission ('MIC').Exemptions from land revenue, income tax and other duties are available.

**Farm Land** – Farm land means designated land as; paddy land, ya land, kaing land, perennial plant land, dhani land, garden land, land for growing of vegetables and flowers and alluvial island. In this expression, it does not include land situated within any town or village boundary used for dwelling, religious building and premises and public–owned land which is not used for agriculture purposes.

A person who has the permission of right for farming must utilize the land for farming purpose only. Such land should not be sold, pawned, leased, exchanged or donated to any foreigner or organization containing foreigner without the permission of State Government.

But for the long-term national interest of the State, the respective implemented Ministry shall utilize the farmland for the use of the Project, by the permission of the Cabinet of the Union Government after getting the remarks of the Central Farmland Management Body.

In respect of the application to utilize the farmland for other purposes in the interest of the public:-

(a) The Central Farmland Management Body shall give permission to utilize the paddy land for other purposes, with the recommendation of the Region or State Farmland Management Body;

(b) The respective Region or State Government shall give permission to utilize the farmland for other purposes except paddy land, with the recommendation of the Region or State Farmland Management Body;

**Forest land** – Forest land is declared by the Ministry of Environmental Conservation and Forestry (the Ministry) in accordance with the Forest Law and its rules and regulations. The Forest Law 1992empowers the Minister of Forestry to demarcate lands as 'reserved forests' or 'conservation areas' for certain other purposes. The Forest Law governs licensing and practice for economic use of forest land. It is not transferable. Permission is required from the Ministry in extracting timber, cutting fire-wood, producing charcoal or catching fish from a Reserved Forest Area. Land administration is assigned to various government departments.

### Other Land Legislation

Transfer of Property Act 1882('TPA') applies to contracts, sales, mortgages, charges, gifts, exchanges, leases and other transfers.TPA is not superseded by more recent laws. It is still enforceable. Please see Transferable of Immovable Property Restriction Law (1987) as mentioned below.

Previously, the Towns Act 1907covered denomination, administration and tax collection from those holding land within towns. The Village Act 1907served similar purposes for village tracts (lands outside towns).The Ward or Village Tract Administration Law 2012 repealed and replaced these two Acts, intending to modernize colonial systems, introduce secret ballot voting of local officials and create greater safeguards against forced labor.

The Water Power Act 1927and accompanying rules govern the use of public water for energy or mining purposes.

The Code of Civil Procedure1908 addresses attachments. Lands, houses or other buildings, and all other saleable property, movable or immovable, belonging to or under the control of a judgment debtor, whether held in name or in trust, are liable to attachment and sale in execution of the decree.

## Restrictions on foreign property ownership

Foreigners or foreign-owned companies may not purchase land or condominiums. The Transfer of Immovable Property Restriction Law 1987 ('TIPRL') prohibits the transfer of immovable property between citizens and foreigners. Therefore, TIPRL prevents foreigners from accepting land in mortgages as security. TIPRL does not apply to companies or organizations in contract with the state and exemptions can be granted to embassies.

### Land Lease

In the past, foreigners can obtain land use rights by leasing from the government, government department, government organization and private land owned by the citizen or by contributing to a joint venture with a government agency with the prior approval of the Union Government. It is common for foreigners investing in property development to lease the land from the government and enter into a build, operate and transfer (BOT) agreement with the government for the development project (known as the BOT system). The project can be wholly owned by the investor, or can be a joint venture with a government partner.

On 3 November 2012, a new Foreign Investment Law 2012 ('FIL') came into force, replacing the Myanmar Foreign Investment Law 10/1988. Investors registered under the new FIL are eligible for a lease term of up to 50 years, with the option of two consecutive ten-year renewals. The MIC may even grant lease terms greater than 50 years where an investor invests in remote or economically underdeveloped areas. In both cases, MIC has discretion over lease terms; investors should make clear requests for long-term leases and provide business justifications and project plans requesting in their MIC proposal. Leases are not granted for:

- religious lands;
- Cultural heritage regions, natural heritage region which are designated by the relevant Union Ministries;
- land restricted for state defense and security;
- lands under litigation; and
- lands restricted by the state from time to time;
- place or land where exists building which may cause situation such as impact on public environment , noise , pollution, impact on culture within urban residential area due to the business of the investor.

## Operational requirements for foreign corporations

### Registration

The Registration Act 1909 requires registration of mortgages and all non-testamentary instruments that create or extinguish a present or future interest in immovable property. Leases of immovable property require registration if they last over one year or have yearly rent. An instrument gifting immovable property must be registered. The Registration Act exempts instruments relating to shares in a joint-stock company, even if the assets of the company include immovable property.

No documents other than a will shall be accepted for registration unless presented for that purpose to propose officer within four months from the date of its execution. If owing to urgent necessity or unavoidable accident, any document executed in the Union of Myanmar is not presented for registration till after the expiration of the time hereinbefore prescribed on that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration –fee, such document shall be accepted for registration. When a document purporting to have been executed by all or any of the parties out of the Union of Myanmar is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied:-

a) that the instrument was so executed; and

b) that it has been presented for registration within four months after its arrival in the Union of Myanmar;

may, on payment of the proper registration-fee, accept such document for registration.

Under the Myanmar Companies Act 1914, a company must register any charge or mortgage with the Registrar's Office, including copies of the implementing instrument. The company must also keep records of each charge or mortgage.

### Permit to trade

All foreign companies (100% owned, joint venture or branch/ representative office, but not in a government joint venture), wishing to do business in Myanmar must obtain a 'permit to trade'(now known as 'business permit' or 'DICA permit') from the Ministry of National Planning and Economic Development. The investor must meet the minimum imported capital requirements. The permit to trade is applied for at the Companies Registration Office.

### MIC Permit

Foreign companies wishing to operate and receive incentives under the FIL may apply for an MIC permit.

The foreign investment rules, enacted on 31 January 2012, prohibit foreigners from operating certain enterprises and require them to have a joint venture with Myanmar citizens in certain industry sectors.

MIC Notification 1/2013 lists a number of industry sectors and the applicable restrictions and/or specific approvals required. The Notification No.1/2013 issued by the Myanmar Investment Commission on 31st January2013 is repealed by Notification.49/2014 of MIC on 14th August 2014. MIC notified three notifications such as Notification 49/2014, 50/2014 and 51/2014. In Notification 49/2014 it is mentioned the Classification of Types of Economic Activities, List of Economic Activities under Prohibition, List of Economic Activities to be allowed only in the form of Joint Venture with Myanmar Citizens , List of Economic Activities Permitted with the Specific Condition and List of Economic Activities Permitted with Other Conditions and required Joint Venture.

The Economic Activities excluded from this notification can be carried out 100% foreign investment.

The Economic Activities which require Environmental Impact Assessment are prescribed in Notification 50/2014 and Investment Business Activities that are not required to grant exemption and relief from tax are prescribed in Notification 51/2014.

If the company is a government-owned enterprise or a joint venture with a state entity, it must be incorporated under the Special Companies Act 1950. The company may apply under the FIL. If approved, the MIC permit will be issued.

## Foreign exchange controls

### Foreign Currency

Myanmar has recently gone through a currency reform and has implemented a manageable floating exchange rate.

The Foreign Exchange Management Law 2012 governs outward remittances, making a distinction from current transactions that include:

- payments due in connection with foreign trade and other current business, including services, normal short-term banking and credit facilities;
- payments due as interest on loans and as net income from other investments;
- payments of moderate amounts for amortization of loans for the depreciation of direct investments; and
- moderate remittances for family living expenses and capital transactions.

No restrictions are imposed on transactions concerning current transactions. However, capital transactions will require approval by the Central Bank of Myanmar. Investing under the FIL and its subsequent notifications guarantees repatriation of funds, subject to satisfying certain requirements. Organizations and individuals acting under an MIC permit shall carry out financial transactions through foreign currency and Myanmar kyat accounts with a bank licensed to carry out foreign currency transactions.

According to the Foreign Exchange Management Law the Central Bank shall monitor and record the funds brought in as a foreign investment, as a reference for the repatriation of principal, interests, profits, dividends and other payments related to the investment. Subject to the Foreign Exchange Management Law foreign investors shall declare their funds and prove the evidence of their funds brought into the Central Bank for each transaction. Foreign investors who fail to present the documentary evidence may not be permitted to repatriate the funds abroad. In the case where the investment period has ended or the investment activities are partially or completely ceased, the foreign investor may repatriate his/her investment funds to his/her own country or to a third country in accordance with the existing laws.

Foreign Exchange Management Regulations was enacted on 30th September 2014. Its implement details of the provisions of the Foreign Exchange Management Law.

## Taxation

### Taxes

Property and income taxes are collected by the Internal Revenue Department of the Ministry of Finance.

Myanmar tax structure comprises 15 different taxes and duties under four major heads:

- Taxes levied on domestic production and public consumption: excise duty; license fees on imported goods; state lottery; and taxes on transport, commercial tax and sale proceeds of stamps;
- Taxes levied on income and ownership-income tax;
- Customs duties; and,
- Taxes levied on utility of state-owned properties: taxes on land; water tax; embankment tax; and taxes on extraction of forest products, minerals, rubber and fisheries.

**Income tax** is assessed from property, salary, business and other sources. For income tax, foreigners and foreign organizations are separated into resident and non-resident foreigners. A foreign employee working for a company under the FIL may be considered a resident foreigner. A resident foreigner is either an individual present in Myanmar for 183 days during the income year, an association with control in Myanmar, or a company or enterprise formed under the Myanmar law. A branch of a foreign-incorporated company registered under the Companies Act is categorized as a non-resident.

**Withholding taxes** are prescribed by Notification No. 41/2010, issued by the Ministry of Finance and Revenue, enforced under section 15, subsection (e) of the Income Tax Law 1974. Withholding taxes apply at different rates to income from interest, royalties and purchases of goods and services in Myanmar, or by an entity created by the Myanmar law. The amount must be deducted and remitted in the same currency as the payment. The Notification No. 41/2010 is replaced by the Notification No. 167/ 2011 issued on 26 August 2011.

Deducted rates are different betweens residents, resident foreigners and non-resident foreigners. Pursuant to Notification 167/2011, no withholding tax is required for interest paid to residents and resident foreigner but 15% for non-resident foreigners; regarding to the royalties for the license, trademarks and patent right, withholding tax to be deducted shall be 15% on payment to residents and 20% to non-resident foreigners; payments for work done by foreign contractors, withholding tax deducted shall be 2% on payments to residents and 3.5% to non-resident foreigners; and payment made to contractors for goods and services performed in the Union or purchase of goods from the Union shall deduct 2% on payments to residents and 3.5% to non-resident foreigners.



### Land Revenue

The Upper Burma Land and Revenue Regulations and the Land and Revenue Act (applying to Lower Burma and the Thayetmyo District of Upper Burma) enforce land revenue for all property, unless otherwise exempted. For example, land revenue and income tax exemptions apply for different periods of time, depending on the use of agricultural land.

### Stamp Duty

The Myanmar Stamp Act 1899, as amended, prescribes stamp duties for instruments that transfer or create property interests. Rates for instruments attracting stamp duty and instruments exempted are enumerated in the schedules subsequently enacted by notifications.

Pursuant to section 17 of the Myanmar Stamp Act all instruments chargeable with duty and executed by any person in the Republic of the Union of Myanmar shall be stamped before or at the time of execution. Under section 18 of the above Act instruments other than bills and notes executed out of the Republic of the Union of Myanmar may be stamped within three months after it has been first received in the Republic of the Union of Myanmar.

If the instruments expressed in foreign currency such duty shall be calculated on the value of such money in the currency of the Republic of the Union of Myanmar according to the current rate of exchange on the day of the date of the instrument.

### Double Taxation Treaties

Myanmar has double taxation treaties with the United Kingdom, Singapore, Malaysia, Vietnam, Indonesia, South Korea and Thailand.

## Investment incentives

### Special Economic Zones

A specific regime applies to special economic zones under the Myanmar Special Economic Zone Law (2014) Pyithu Hluttaw Law No (1) of 2014. This law repealed the Special Economic Zone Law 2011 and the Dawei Special Economic Zone Law. Investors may secure land leases or permissions for use. The initial period granted is 50 years. If the investor is desirous of continuing to operate after the expiry of the permitted term, it may renew for another 25 years.

Within the permitted period of land use, an investor may rent, mortgage or sell the land and building to another person for investment business.

An investor receives the right to operate in foreign currency, to open a foreign account with any bank, to receive and pay money in foreign currency, and to exchange and transmit their own foreign currency within the zone or abroad. Incentives include tax breaks.

Duties of the investor include bearing the expenses of any required transfer of human settlement and obtaining permission before altering the topography.

On 3rd October 2014, MIC issued Notification 59/2014 and specifies an area of 4,075,153.029 square meters (1007 acres) within the boundaries of specified area located in the Kokang Self Administered Zone as the “Kokang Economic Zone” with effect as from the date of issuance of this notification.

On 1st October 2014, the Ministry of Planning and Economic Development issued the Notification 81/2014 as Thilawa Special Economic Zone Regulations.

### Foreign Investment Law

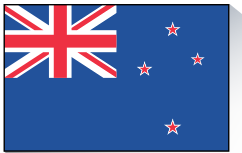
The FIL provides many incentives in addition to the enhanced lease terms. All investors registering under the FIL are entitled to an income tax exemption for a period up to five consecutive years. Investors may further apply for additional incentives, including:

- exemption from income tax on profits maintained in a reserve fund and reinvested in Myanmar within one year;
- enhanced depreciation of capital assets used in the business, deductible from taxable profits;
- income tax relief to a maximum of 50% on export profits;
- right to deduct research and development expenses from assessable income, where such activities are necessary for the business and carried out within Myanmar;

- right to carry forward and offset a loss for up to three consecutive years from the year the loss is sustained, where such loss is sustained within two years immediately following the expiration of the initial tax holiday;
- relief from customs duty and internal taxes on the imports of industrial materials required to establish the enterprise, or where such imports support an expansion of the initial investment;
- relief from customs duty and internal taxes on raw materials imported for the first three years of commercial production; and
- relief from trading tax on goods produced for export.

Beyond tax incentives, registering under the FIL:

- guarantees against nationalization during the term of investment;
- permits the investor to remit net profits derived from annual business earnings;
- guarantees that the investor may remit foreign currency upon termination of investment; and
- gives precedence to contractual dispute resolution mechanisms, stipulated in contracts relating to the business activities, over local state laws.



## Property tenure/ownership

New Zealand has a well-established and transparent land ownership system. There are relatively few barriers to purchasing land. However, the exceptions to this general proposition may involve considerable complexities (for example: buying land from government bodies, land that triggers the Overseas Investment Office review and Maori land).

New Zealand operates under the Torrens land registration system. The ownership of land under this system is created by registration under the Land Transfer Act 1952 and recorded against the title to the land. A copy of the title is readily accessible, and searching the title is always the first step in reviewing what interests affect the land. There are also interests in land that are not registered. These may or may not bind the persons taking interest in the land.

Almost all titles, plans and instruments are converted into an electronic format, allowing up-to-date searching and electronic registration of land transactions. The New Zealand government guarantees the accuracy of the title register, further enhancing its reliability.

The types of land ownership in New Zealand are:

- Freehold title
- Leasehold title
- Unit title
- Strata title
- Cross-lease

The majority of land in New Zealand is freehold, often referred to as an estate in fee simple.

## Major property legislation

- Land Transfer Act 1952
- Property Law Act 2007
- Land Act 1948
- Building Act 2004
- Local Government Acts 1974 and 2002
- Public Works Act 1981
- Resource Management Act 1991
- Unit Titles Act 2010
- Rating Valuations Act 1998
- Te Ture Whenua Maori Act/Maori Land Act 1993
- Marine and Coastal Area (Takutai Moana) Act 2011
- Overseas Investment Act 2005

There are currently a number of legislative reviews and reforms taking place that will change the law and have implications on overseas investment in real estate in New Zealand.

## Operational requirements for foreign corporations

### Office

#### Modes of entry

Overseas entities proposing to set up business in New Zealand have four main structures available:

- Register a branch
- Form a subsidiary company
- Acquire an existing New Zealand company
- Form a limited partnership

#### Registration/licencing requirements

Companies and limited partnerships incorporated in New Zealand are registered under the Companies Act 1993 and the Limited Partnerships Act 2008, respectively. Overseas companies and overseas limited partnerships are also registered under these acts.

An overseas company or an overseas limited partnership wishing to register a branch in New Zealand must file an application for registration with the Registrar of Companies within 10 working days of commencing business in New Zealand.

Certain other rules apply to “overseas persons” and businesses operating in New Zealand. For example, an overseas person or business considering merging with or buying a New Zealand business must be aware of the restrictions on business acquisitions contained in the Commerce Act 1986 and the Overseas Investment Act 2005. If the New Zealand Company is listed on the New Zealand Stock Exchange (NZX) or has more than 50 shareholders, the Takeovers Code is also likely to apply.

#### Foreign employment limitations

Anyone who is not a New Zealand resident or an Australian national needs a visa to work in New Zealand. Temporary work visas may be granted to people:

- Who have a job offer from a New Zealand employer
- Skilled in occupations that are in demand
- Coming to New Zealand for a particular purpose, season or event
- Who want to gain work experience or work after studying in New Zealand
- Who are students and want to work in New Zealand
- Who want to join a partner or family in New Zealand and work

Certain types of work do not require a work visa. If the employment in New Zealand involves visits for business negotiations, short-term sales trips, work for official trade missions recognised by the New Zealand government or work for overseas governments, a visitor visa may be sufficient.

### Retail and industrial trade

New Zealand has legislation specifically regulating business activities. This legislation applies equally to New Zealand investors and to overseas investors. An overseas person or business may be able to take advantage of the mutual recognition arrangements that New Zealand has in place with other countries through government regulations and treaties.

## Foreign investment incentives

New Zealand has no specific economic incentive regime because of its free trade policy. The New Zealand government, through its bodies such as Tourism New Zealand and New Zealand Trade and Enterprise, provides assistance in certain sectors such as tourism and the export of locally manufactured goods.

## Restrictions on foreign property ownership

Certain types of investment in New Zealand property and business assets by "overseas persons" require the prior consent of the Overseas Investment Office (OIO). An "overseas person" is defined as an individual or business who/that is not a New Zealand resident, or a New Zealand resident company, partnership, unincorporated joint venture, trust or unit trust that is 25 percent or more owned or controlled by an overseas person or business entity. The principal legislation governing the investment in New Zealand by overseas persons is the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.

The approval by the OIO is required for large business/share acquisitions [more than NZD 100 million (USD 82.8 million)] or the acquisition of an interest (including leasehold interest for a term of three or more years) acquisitions in certain types of land referred to as "sensitive land." In general, consent will be required where an interest is to be acquired (whether directly or indirectly, such as on the acquisition of shares in a company holding that interest) in:

- Nonurban land that exceeds 5 hectares in area
- Land located on specified islands
- Land exceeding 0.4 hectares in an area that includes or adjoins lakes, or adjoins the foreshore and seabed, reserves, historic areas and other listed features

The application is by way of letter to the OIO, providing specified details of the applicant, the vendor, the nature of the investment and the likely benefits to the New Zealand economy.

Unless there is an intention to permanently reside in New Zealand, each applicant must show that the investment will, or is likely to, benefit New Zealand.

Where the "sensitive land" is a "farmland," any consent is conditional upon the land first being advertised for sale to the public on the open market.

The OIO and the relevant minister must observe the specified criteria when considering an application and assessing the benefit to New Zealand. The method of assessing the benefits has recently been the subject of litigation in New Zealand's Supreme Court. The OIO has issued guidance, setting down a 50-working-day period for straightforward applications; however, this time frame is often exceeded in the case of farmland. Consent may be granted, but it is subject to conditions and compliance, which will be monitored by the OIO.

For further information on overseas investment in New Zealand, please refer to the Land Information New Zealand – Overseas Investment Office website (http://www.linz.govt.nz/overseas-investment/).

## Additional conditions

A business venture or transaction involving an overseas person's acquisition or holding of fishing quota within New Zealand's exclusive economic zone will also require the consent of the OIO.

## Foreign exchange controls

New Zealand has revoked all foreign exchange controls. Accordingly, there are no such restrictions on the transfer of capital, profits, dividends, royalties or interest into or from New Zealand. However, withholding taxes apply to certain payments out of New Zealand—for example, dividends, interest and royalties (see further at the Personal taxation section below). In addition, withholding taxes also apply to returns of capital gains to non-residents in certain circumstances and on the payment of profits to certain non-resident contractors.

## Taxes on possession and operation of real estate

No land tax is payable, but the local government authorities are empowered to levy taxes, termed as "rates," on all properties within their territorial boundaries. Rates are assessed on either assessed annual rental value, land value or capital value.

### Stamp duty

There is no stamp duty in New Zealand.

### Value-added tax (VAT)/Goods and services tax (GST)

GST is charged on the supply of goods and services made in New Zealand by a registered person in the course or furtherance of a taxable activity, provided that the supply made is not an exempt supply (for example, the supplies of financial services and residential rental accommodation). Registration is optional if supplies do not exceed NZD 60,000 (USD 44,400) in any 12-month period. The standard rate of GST is currently 15 percent. In certain circumstances, supplies are zero-rated, which means that GST is calculated at the rate of 0 percent.

### GST on property transactions

When commercial property is sold, GST may need to be added to the purchase price. A purchaser who pays the tax may be entitled to a refund.

When land is transferred between GST-registered parties, the transaction must be zero-rated for GST, provided that the purchaser intends to use the land to make taxable supplies and the land is not intended to be used as a principal place of residence by the purchaser or an associate. If all these conditions are not satisfied, GST must be charged by a GST-registered vendor, unless the sale is part of a sale of a business as a going concern, which may be zero-rated. A mortgagee sale is subject to GST if the mortgagor would be liable to pay GST on the sale.

### Capital gains tax

There is no comprehensive capital gains tax in New Zealand. However, a profit made on the sale of any asset (including land) is assessable as income, where the asset is purchased as part of a dealing or investment business, or for the purpose of resale or where there was an undertaking or scheme entered into for the purpose of making a profit. Profits from the sale of land are taxable, where construction, development or subdivision is involved, and if a consent or zoning change has or will benefit the land, and if the land is sold within 10 years. Certain exemptions apply in respect of residential land and business premises.

## Tax depreciation

Depreciation can be claimed on building fit-outs, but not on most buildings or land.

Until April 1, 2011, buildings acquired after March 31, 1993 could be depreciated at 4 percent diminishing value or 3 percent straight-line, based on an estimated useful life of 50 years. The plant and capital equipment are depreciated at different rates, reflecting their economic life. Any depreciation claimed in the past is clawed back as income if a building is sold at a profit over the tax book value.

Fit-outs on commercial premises are depreciable at the rates listed in Determination DEP 1. Residential building fit-out is not depreciable. If a fit-out has been historically depreciated at the same rate as the building, 15 percent of the tax book value of the building is treated as equal to the fit-out, and depreciation at 2 percent straight-line is permitted. Any loss on sale is not deductible.

## Corporate taxation

Corporate taxation for New Zealand resident companies is at the rate of 28 percent on their worldwide income. An overseas company is taxed at the same rate, but only in respect of income that has a New Zealand source.

## Personal taxation

Residents are taxed on their worldwide income with certain allowances for foreign taxes paid, while non-residents are taxed only on income deemed to be derived from New Zealand. New tax residents enjoy a four-year tax exemption on foreign passive income.

Income tax is assessed on taxable income, which can be described as assessable income less allowed deductions.

The current personal income tax rates are:

| Income | Tax rate |
|---|---|
| Up to NZD 14,000 (USD 10,360) | 10.5% |
| NZD 14,001 – 48,000 (USD 10,361 – 35,520) | 17.5% |
| NZD 48,001 – 70,000 (USD 35,521 – 51,800) | 30% |
| NZD 70,001 (USD 51,801) and above | 33% |

Resident withholding tax (RWT) is imposed on the residents' interest and dividend income at rates that reflect personal tax. Dividends are also subject to RWT to bring the rate up to 33 percent after allowing for the benefit of imputation credits reflecting tax paid by the company.

## Payments to non-residents

Dividends, interest and royalties paid by a New Zealand resident company to non-residents are subject to non-resident withholding tax (NRWT), which is generally payable at 15 percent on interest and royalties, and 30 percent on dividends. These rates are subject to modification by double tax agreements (DTAs) between New Zealand and the non-resident's country of residence, i.e., the dividend rate has been historically reduced to 15 percent and interest/royalty rates to 10 percent (although the new/revised United States, Australia, Hong Kong, Singapore, Turkey, Canada, Mexico and Chile DTAs reduce these rates even further in a confirmed new trend indicating that each must be individually reviewed as rates frequently differ).

A 0 percent rate of NRWT applies:

- To fully imputed dividends paid to a foreign shareholder with a 10 percent or greater direct voting interest in the New Zealand company paying the dividend
- Where the foreign shareholder has a portfolio interest (less than 10 percent) in a New Zealand company, and the rate of tax that can be imposed on the dividend is less than 15 percent (under the terms of a DTA)

## Approved Issuer Levy (AIL)

NRWT does not need to be deducted from the interest paid on borrowings when:

- The New Zealand borrower and overseas lender are not associated
- The borrower is registered as an approved issuer
- The debt instrument is registered
- The borrower pays a tax-deductible AIL equal to 2 percent of the interest paid and which cost may be passed on contractually to the holder
- The rate of AIL reduces to 0 percent on bonds that meet certain requirements, e.g., offered to the public issued in NZD and listed on a recognised stock exchange or are widely held, and other requirements

## Tax treaties: Avoidance of double taxation

New Zealand currently has DTAs with 39 countries, and many are under negotiation. The DTAs take precedence over the provisions of the Income Tax Act 2007 and contain "tie-breaking" provisions to determine residence and which country has the primary right to tax income. New Zealand has also entered into 21 tax information exchange agreements, with more being frequently added.

**Double taxation agreements:**

| | |
|---|---|
| Australia | Indonesia |
| Austria | Ireland |
| Belgium* | Italy |
| Canada* | Japan |
| Chile | Korea |
| China | Malaysia* |
| Czech Republic | Mexico |
| Denmark | Norway |
| Fiji | Papua New Guinea |
| Finland | Philippines |
| France | Poland |
| Germany | Russian Federation |
| Hong Kong | Singapore |
| India | South Africa |
| Spain | Turkey |
| Sweden | United Arab Emirates |
| Switzerland | United Kingdom |
| Taiwan | United States of America |
| Thailand | Vietnam |
| The Netherlands | |

**signed, but not in force as at July 31, 2014*

**Information exchange agreements:**

| | |
|---|---|
| Anguilla* | Jersey |
| Bahamas* | Marshall Islands* |
| Bermuda* | Netherland Antilles |
| British Virgin Islands* | Niue* |
| Cayman Islands | Samoa |
| Cook Islands | Sint Maarten |
| Curacao | St Christopher and Nevis* |
| Dominica* | St Vincent and Grenadines* |
| Gibraltar | Turks and Caicos Islands |
| Guernsey | Vanuatu* |
| Isle of Man | |

**signed, but not in force as at July 31, 2014*

## Real Estate Investment Trusts

There is no specific real estate investment trust (REIT) legislation to regulate the activity of REITs in New Zealand. Listed property trusts and companies on the NZX are governed by the NZSX/NZDX Listing Rules, the Securities Markets Act 1988, the Companies Act 1993, and their trust deed or constitution. REITs in other forms (for example, unlisted property trusts) are governed by the Securities Act 1978 (if offers are made to the public) and the legislation specific to their legal form (unit trusts, for example, are governed by the Unit Trusts Act 1960).

NEW ZEALAND

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square Meters |
| **Rental payments** | |
| Rents | NZD/sqm/year. In Auckland, rents are charged on a net basis. In Wellington, rents are typically charged on a gross basis |
| Typical lease term | 6-9 years for existing buildings; 9-12 years for new buildings |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months rent) | 2 months |
| Security of tenure | No guarantee, varies according to contract |
| Does tenant have statutory rights to renewal | No, unless an option to renew is agreed at the outset and specified in the lease |
| Basis of rent increases or rent review | Open market rental value (with ratchet). Fixed increases are less common but, can be 2–4% or linked to CPI. |
| Frequency of rent increases or rent review | 3, yearly |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | Electricity and telecommunication consumption are usually separately metered and payable by each tenant |
| Car parking | Separate lease/license agreement for an additional rent, although it can be linked to the office lease. |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord (charged back via service charge) |
| Responsibility for external/structural repairs | Landlord (charged back via service charge with the exception of structural repairs) |
| Responsibility for building insurance | Landlord (charged back via service charge) |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally full assignment to third parties is accepted (subject to landlord's approval) |
| Tenant early termination rights | Only by break clause, usually subject to penalty |
| Tenant's building reinstatement responsibilities at lease end | Reinstated to original condition |

Source: JLL

## Property tenure/ownership

Two types of tenure exist:

- Freehold
  - Private freehold land is only available to Philippine nationals (e.g., Filipino citizens or corporations, of which at least 60 percent of the equity are held by Filipinos)
  - Foreigners and foreign corporations may own condominium units, subject to the provisions of the Condominium Act (see Restrictions on Foreign Property Ownership below)
- Leasehold
  - All public land is available to Philippine nationals on a leasehold tenure only
  - Private land may be leased by foreign corporations, subject to certain restrictions
  - Leasehold rights acquired under long-term lease contracts may be sold, transferred or assigned
  - Where the buyer, transferee or assignee is a foreigner or a foreign-owned enterprise, conditions and limitations for use of the leased property apply

Ownership is generally evidenced by:

- Transfer certificate of title (TCT) – mother title for land
- Condominium certificate of title (CCT) – for condominiums and townhouse properties

## Operational requirements for foreign corporations

### Office

**Modes of entry**

- Subsidiary domestic corporation
- Branch or representative office
- Regional operating headquarters or regional or area headquarters

## Major property legislation

| | |
|---|---|
| 1987 Constitution | Public Land Act (C.A. 141), as amended |
| Property Registration Decree (P.D. 1529), as amended | Urban Development and Housing Act (R.A. 7279) |
| Land Ownership by Filipinos Overseas (B.P. 185) | Investors' Lease Act (R.A. 7652) |
| Local Government Code (R.A. 9640) | Special Economic Zone Act (R.A. 7916), amended by R.A. 8748 |
| Condominium and Lot Buyers Protective Act (P.D. 957) | National Internal Revenue Code (NIRC) of the Philippines (P.D. 1158), amended by R.A. 8424, R.A. 7716, R.A. 9337, R.A. 9361, R.A. 9504, and R.A. 9648 |
| National Building Code (P.D. 1096) | Regional Headquarters Act (R.A. 8756), amending the Omnibus Investment Code (E.O. 226) |
| The Subdivision Development Act (P.D. 1216) | Retail Trade Liberalization Act (R.A. 8762) |
| Urban Land Reform (P.D. 1517) | Rental Reform Act (R.A. 9161) |
| Rent Control Act of 2009 (R.A. 9653) | Special Purpose Vehicle Act (R.A. 9182) |
| Condominium Act (R.A. 4726), amended by R.A. 7899 | Land Use Ordinance |
| Comprehensive Agrarian Reform Program (R.A. 6657), as amended by R.A. 9700 | Zoning Ordinance |
| Foreign Investments Act (R.A. 7042), amended by R.A. 8179 | Real Estate Investment Trust (REIT) Act of 2009 (R.A. 9856) |
| Realty Installment Buyer Protection Act (R.A. 6552) | Indigenous Peoples' Rights Act (R.A. 8371) |
| Intellectual Property Code (R.A. 8293), as amended by R.A. 9502 | |

**Registration/licencing requirements**

- Registration with the Securities and Exchange Commission (SEC)
- Registration with other government agencies is required for some types of industries
- Registration of business to obtain tax and other incentives – Philippine Economic Zone Authority (PEZA) or Board of Investments (BOI), depending on the proposed office location (e.g., PEZA-accredited buildings, IT parks or economic zones) and the type of industry (e.g., call centres, business process outsourcing or other "pioneer" or "sunshine" industries)
- Business permit from the appropriate local government unit
- Registration with the Bureau of Internal Revenue
- Membership in the Philippine Social Security System
- Membership in the government healthcare benefits program – Philippine Health Insurance Corporation
- Membership in the Home Mutual Development Fund

**Requirements for employment of foreigners**

- Visa – Bureau of Immigration
- Alien employment permit – Department of Labor and Employment

**Foreign employment limitations**

Foreigners can only be employed in positions for which there is no available Filipino who is competent, able and willing at the time of the application to perform the services for which the foreign employee is desired. Certain businesses are subject to nationality requirements that restrict the hiring of foreign employees.

### Retail trade

**Retail Trade Liberalization Act of 2000**

Retail enterprises may be wholly owned by foreigners, provided such enterprise has a paid-up capital of at least PHP 107.73 million (USD 2.5 million) and that the investment for establishing a store is at least PHP 35.78 million (USD 830,000), unless the enterprise specialises in high-end or luxury products, in which case, the required minimum paid-up capital per store is PHP 10.78 million (USD 250,000).

### Industrial trade

**Registration/licencing requirements**

- Registration of export firms – PEZA or BOI
- Import duty-free certification – BOI
- Certificate of origin/authority to load – Bureau of Customs
- Registration of operation of customs bonded manufacturing warehouse – Bureau of Customs
- Environmental compliance certification – Department of Environment and Natural Resources
- Trademarks and patents registration – Intellectual Property Office
- Special permits/clearances for selected export businesses

## Foreign investment incentives

**BOI and PEZA incentives for registered enterprises**

Firms that register with either the BOI or the PEZA are entitled to incentive privileges.

BOI incentives include a corporate income tax holiday for three to six years (depending on the type of project), which is extendible in some cases, exemptions from certain taxes, additional tax credits, additional deductions from tax income and nonfiscal incentives.

PEZA incentives include a corporate income tax holiday of four to eight years, after which the registered enterprise may opt to pay a preferential tax of 5 percent of gross income in lieu of all national and local taxes (except for real property tax on land owned by developers). PEZA-registered enterprises also enjoy exemptions from certain types of taxes, additional tax credits, additional deductions from taxable income and nonfiscal incentives.

### Incentives for regional headquarters (RHQs)/regional operating headquarters (ROHQs)

RHQs and ROHQs also enjoy tax incentives. RHQs are exempted from the payment of corporate income tax and value added tax, and their purchases of goods and services and lease of goods and property are zero-rated. ROHQs enjoy a 10 percent preferential income tax rate. Additionally, both ROHQs and RHQs are exempt from all kinds of local taxes, fees and charges (except for real property tax on land improvements and equipment) and may import training materials and equipment free of taxes and customs duties.

Expatriate employees of RHQs and ROHQs also enjoy some tax incentives.

## Restrictions on foreign property ownership

Foreigners are not permitted to own land in the Philippines, except in cases of hereditary succession. However, foreigners investing in the Philippines are allowed to lease private land for 50 years, renewable once for a maximum period of 25 years.

The Condominium Act allows for the ownership of condominium units by foreign investors or multinational corporations in some situations. If the common areas of a condominium project are co-owned by the owners of individual units, the units may be conveyed or transferred only in favour of Filipino citizens (except in cases of hereditary succession) and Filipino corporations. Where the common areas are held by a corporation, the transfer or conveyance of units to non-Filipinos is allowed, provided that the foreigners' interest in the project does not exceed the 40 percent limit provided under the existing laws.

## Foreign exchange controls

Foreign investments must be registered with, and foreign loans approved by, the Bangko Sentral ng Pilipinas (BSP), so these can be serviced, repatriated or paid back using the foreign currency sourced from the local banking system. Certain types of foreign loans must be approved by the BSP, regardless of the source of foreign exchange that will be tapped to service and repay the loan. Outside the banking system, foreign exchange is freely traded.

## Taxes on possession and operation of real estate

### Real Property Tax

An annual ad valorem tax is levied on real property such as land, buildings, machinery and other improvements attached to real property. The total tax rates vary by municipality/local government unit. A range of 1–2 percent of assessed value can be imposed on residential, commercial and industrial properties.

### Special Education Fund Tax (SEFT)

1 percent of the assessed value in addition to the basic real estate tax.

## Taxes and fees on the acquisition and transfer of real estate

The following taxes are imposed on the acquisition, transfer and other transactions involving real estate:

- Documentary stamp tax (DST)
- Local government transfer taxes
- Registration fees to the Register of Deeds
- Capital gains tax (imposed on sales, transfers or exchange of real property that is a capital asset)
- Creditable withholding tax (imposed on sales, transfers or exchange of real property that is not a capital asset)
- Notarial fees (imposed on the notarisation of the sale or transfer document)
- Value added tax (see 'Value added tax/goods and services tax' section)

## Value added tax/goods and services tax

A uniform 12 percent value added tax (VAT) applies to businesses with annual gross receipts/sales over PHP 1.5 million (USD 34,797). All professional services, including brokers in the real estate industry and those rendered by financial and nonfinancial intermediaries, are also subject to this uniform 12 percent VAT.

As a general rule, the sale, barter or exchange of property held primarily for sale to customers or for lease in the ordinary course of trade or business and the use or lease of property are subject to VAT.

## Tax depreciation

In the case of tangible property, depreciation applies to a property that is subject to wear and tear, to decay or decline from natural causes, to exhaustion and to obsolescence due to the normal progress of the art (as where machinery or other property must be replaced by a new invention) or because of the inadequacy of the property in meeting the growing needs of the business. Property kept in repair may, nevertheless, be the subject of a depreciation allowance. The deduction of an allowance for depreciation is limited to property used in the taxpayer's trade or business.

## Corporate taxation

In general, income received from equity investments, savings and time deposits, as well as deposit substitutes, is the received net of withholding taxes imposed at source and is excluded from taxable income.

Domestic corporations are taxed on their worldwide income, while foreign corporations are taxed on income derived from sources within the Philippines.

The corporate income tax for domestic and foreign corporations is 30 percent. A minimum corporate income tax rate of 2 percent of gross income is imposed, beginning in the fourth taxable year, if the minimum income tax is greater than the tax computed under normal tax rules.

Passive income derived by domestic and foreign corporations is also taxed, with the rates varying depending on the type of passive income involved.

A resident foreign corporation is taxed based on its taxable income. After-tax profits remitted by its Philippine branch to its head office abroad are taxed at a fixed rate of 15 percent. However, remitted profits of corporations registered with the PEZA are tax-exempt.

A nonresident foreign corporation not engaged in trade or business in the Philippines is taxed on its gross income.

Enterprises in the Subic Bay Freeport are exempted from all national and local taxes, but are required to pay a 5 percent final tax on gross income earned.

## Personal taxation

Individual resident citizens are taxed on their worldwide income, while nonresident citizens as well as resident and nonresident foreigners are taxed on income derived in the Philippines only.

Individual income is categorised as compensation income, business income and passive income. Different tax rates apply to each category, and subcategories are, at times, also taxed differently. Individual taxpayers also enjoy certain types of personal exemptions.

Nonresident aliens not engaged in trade or business are subject to a flat tax rate of 25 percent on gross income derived from sources within the Philippines, if their stay in the country does not exceed 180 days in a calendar year. Otherwise, they are taxed on the basis of graduated rates.

Aliens who are employed by regional or area headquarters or regional operating headquarters of multinational corporations, representative offices, offshore banking units or petroleum service contractors and subcontractors are subject to a preferential income tax rate of 15 percent of their gross income from such employers (e.g., salaries, annuities, honoraria and allowances).

## Tax treaties: Avoidance of double taxation

Treaties in existence:

| | |
|---|---|
| Australia | Korea |
| Austria | Malaysia |
| Bahrain | New Zealand |
| Bangladesh | Norway |
| Belgium | Pakistan |
| Brazil | Poland |
| Canada | Romania |
| Chile | Russia |
| China | Singapore |
| Czech Republic | Spain |
| Denmark | Sweden |
| Finland | Switzerland |
| France | Thailand |
| Germany | The Netherlands |
| Hungary | Turkey |
| India | United Arab Emirates |
| Indonesia | United Kingdom |
| Israel | United States of America |
| Italy | Vietnam |
| Japan | Yugoslavia |

## Real Estate Investment Trusts (REITs)

### Requirements

RA 9856 allows the creation of REITs, which are investment vehicles through which indirect investments in real property can be made. The principal purpose of a REIT must be the ownership of income-generating real estate assets. A REIT must have a paid-up capital of at least PHP 300 million (USD 6.96 million). It must also be a public company as defined under RA 9856, which means that:

- It has to maintain its status as a listed company
- It must have at least 1,000 public shareholders, each owning at least 50 shares, and who, in the aggregate, own at least 1/3 of the REIT's outstanding capital stock

### Taxation

A REIT is subject to the regular corporate income tax rate of 30 percent on its taxable net income, but is not subject to the minimum corporate income tax. Moreover, dividends distributed by a REIT out of its distributable income are treated as allowable deductions. The DST on the sale or transfer of a real property to REITs and the registration and annotation fees for such transfers are 50 percent less than the DST and registration/annotation fees normally imposed on transfers of real property. However, the sale, exchange, or other disposition of real property, including security interest thereto, to a REIT shall, unless otherwise exempt, is subject to income tax/capital gains tax and value-added tax, if applicable, imposed under the National Internal Revenue Code, depending on whether the subject property is classified as capital asset or ordinary asset.

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square meters |
| **Rental payments** | |
| Rents | PHP/sqm; Rent escalation is incorporated into the lease, usually 5% per annum. Depending on market conditions, the rate of escalation can be higher or lower. (subject to value-added tax and witholding tax) |
| Typical lease term | 3–5 years |
| Frequency of rent payable (in advance) | Monthly or quarterly |
| Typical rent deposit (expressed as x months rent) | 3 months Security Deposit and 3 months Advance Rent. The basis could either be the first year rental rate or the last year rental rate. |
| Security of tenure | Only for the duration of the tenancy, no guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal | No |
| Basis of rent increases or rent review | Rent increases are specified in the lease. For example, P500/sqm/month subject to 5% annual increases commencing on the 3rd year of the lease. |
| Frequency of rent increases or rent review | Rent increases are specified in the lease. |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | The Landlord subscribes directly to the utilities and distributes these to tenants. Electricity, telecommunication and water consumption are separately metered and payable by each tenant |
| Car parking | Allocation is usually one parking slot per 75–100 sqm leased |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord (charged back via service charge) |
| Responsibility for external/structural repairs | Landlord (charged back via service charge whenever possible) |
| Responsibility for building insurance | Landlord (charged back via service charge) |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally prohibited, unless to a subsidiary company of the tenant (subject to landlord's approval) |
| Tenant early termination rights | Only by break clause (subject to penalty notice period) |
| Tenant's building reinstatement responsibilities at lease end | Unless otherwise agreed with the Landlord, leased premises are re-instated to its original condition by Tenant. It is possible for Tenant to negotiate the waiver of this provision. |

Source: JLL

## Property tenure/ownership

Two main types of land tenure are granted:

- Freehold title
  - Fee simple – known as the grant in fee simple (GFS), grant or indenture
  - Estate in perpetuity – known as the statutory land grant (SLG)
- Leasehold title (mainly 30, 60, 99 and 999 years)

Generally, the ownership of private land and buildings are not separate from each other.

## Major property legislation

| | | |
|---|---|---|
| Building Control Act | Building Maintenance and Strata Management Act | Conveyancing and Law of Property Act |
| Executive Condominium Housing Scheme Act | Goods and Services Tax Act | Housing Developers (Control and Licensing) Act |
| Income Tax Act | Land Acquisition Act | Land Titles Act |
| Land Titles (Strata) Act | Planning Act | Property Tax Act |
| Registration of Deeds Act | Residential Property Act | Sale of Commercial Properties Act |
| Stamp Duties Act | State Lands Act | Street Works Act |

## Operational requirements for foreign corporations

### Modes of entry

- Incorporated company – Accounting and Corporate Regulatory Authority (ACRA)
- Branch office – ACRA
- Representative office – Monetary Authority of Singapore (MAS) (for finance-related industries) or International Enterprise (IE) Singapore
- Limited Liability Partnership – ACRA
- Limited Partnership – ACRA

### Registration/licencing requirements

Generally, there is no restriction on the type of business that can be set up in Singapore, but some types of businesses have to apply for special licences from the government (e.g., banks, finance companies, insurance companies and stockbroking firms).

All businesses carried out in Singapore must be registered with ACRA. This also applies to any firm, individual or corporation that carries on business as a nominee, trustee or agent for any foreign corporation.

### Foreign employment limitations

Foreigners are required to obtain the permission of the Controller of Immigration to enter Singapore to take up or continue employment or to engage in business.

Foreigners (excluding permanent residents) may apply for an employment pass if they have a fixed monthly salary of at least SGD 3,300 (USD 2,438) and the acceptable qualifications.

Midlevel skilled foreigners may apply for an "S" pass if they have a fixed monthly salary of at least SGD 2,200 (USD 1,625). Applicants will be assessed on a points system, which takes into account multiple criteria, including salary, educational qualification, skills, job type and work experience.

Foreigners with an employment pass or "S" pass will need to earn a fixed monthly salary of at least SGD 4,000 (USD 2,955) to sponsor the stay of their spouses and unmarried children under 21 years of age in Singapore.

Those who do not satisfy either the basic monthly income or the education criteria are required to apply for work permits.

### Tax incentives

The major incentive schemes available to investors include:

- Productivity and Innovation Credit Scheme
- Land Intensification Allowance Scheme
- Research Incentive Scheme for companies
- Pioneer Incentive
- Integrated Investment Allowance Schemes
- Development and Expansion Incentive
- Finance and Treasury Centre Tax Incentive
- Writing-down allowances for intellectual property acquisition
- Global Trader Program
- Double tax deduction for internationalisation scheme
- Fund Management Incentive Schemes
- Mergers and Acquisitions Scheme
- Land Productivity Grant
- Initiatives in new technology
- International/regional headquarters award

SINGAPORE

## Restrictions on ownership of property by foreigners

Residential properties in Singapore are subject to foreign ownership restrictions, as set out in the Residential Property Act. A foreign person (as defined below) is restricted from owning certain types of residential properties, including:

- Vacant land
- Land zoned for residential purposes
- Any house, building or other premises or any part thereof that is permitted to be used—pursuant to the Planning Act or any other written law—as a dwelling house or that is lawfully used as such
- Any property zoned for any use, where the approved use has, by notification in the Government Gazette, been declared to be residential property for purposes of the Residential Property Act

Any foreign person may purchase:

- Any flat that is part of any building in a development permitted to be used for residential purposes under the Planning Act, and that is not a landed dwelling house
- Any unit in a development that is shown in an approved plan bearing the title "condominium" and is issued by the competent authority under the Planning Act
- Any unit in a development comprising housing accommodation sold under the executive condominium scheme established under the Executive Condominium Housing Scheme Act

Notwithstanding the above, no foreign person shall, without the prior approval of the Land Dealings (Approval) Unit, purchase or acquire (whether in a single transaction or a series of transaction):

- All the flats in every building in a development permitted to be used for residential purposes under the Planning Act
- All the units in a development approved by the competent authority under the Planning Act as a condominium development
- All the units in a development sold under the executive condominium scheme established under the Executive Condominium Housing Scheme Act

A foreign person is a person who is not any of the following:

- A Singapore citizen
- A Singapore company
- A Singapore limited-liability partnership
- A Singapore society

A foreign person must obtain approval from the Land Dealings (Approval) Unit to buy restricted properties.

A special arrangement is applicable for Sentosa Cove, but does not apply to the rest of Singapore. Although approval from the Land Dealings (Approval) Unit is still required, applicants only have to submit a shorter application form.

It should be noted that approvals granted by the Land Dealings (Approval) Unit are typically accompanied with the condition that the restricted properties have to be owner-occupied.

## Foreign exchange controls

There are no restrictions on the remittance or repatriation of capital or profits in or out of Singapore. Non-residents can also borrow Singapore dollars to invest in real estate.

In 2004, the MAS lifted the requirement on non-resident, nonfinancial issuers of Singapore dollar bonds and equities to convert their Singapore dollar proceeds into foreign currencies before remitting it abroad. With this latest relaxation of Singapore dollar restrictions, only the non-resident financial institutions will be subject to this requirement.

In addition, banks are not allowed to extend Singapore dollar credit facilities to non-resident financial institutions if there is reason to believe that the Singapore dollar proceeds may be used for Singapore dollars currency speculation.

## Taxes on possession and operation of real estate

### Property tax

Property tax is levied on all immovable properties in Singapore, including houses, offices, factories, shops, land and Housing and Development Board (HDB) flats. The amount of tax payable by the owner of the property is computed based on a percentage of the annual value of the property.

Owners who occupy their residential properties are eligible for owner-occupiers' tax rates.

Generally, the annual value (which is determined by the Chief Assessor) is the estimated annual rent of the property, excluding the rent for furniture, fittings and service charge.

However, the annual values of the following categories of properties are determined differently:

- For land and development sites, the annual value shall be 5 percent of the estimated freehold market value of the land (notwithstanding that the land may be leasehold)
- Where properties are leased for the payment of a premium, the annual value shall, at the option of the Chief Assessor, be the annual equivalent of the gross rent paid, with consideration given by the Chief Assessor to the premium or lump sum consideration paid for the tenancy
- •For hotels, the annual value of the hotel rooms will be determined at 25 percent of the gross hotel room receipts in the preceding year. For all other areas in the hotels that are not hotel rooms (such as food and beverage outlets, retail shops and car parks), the annual values are based on their estimated prevailing market rentals.

The property tax rate for all properties, except for owner-occupied residential properties, is 10 percent of the annual value.

Progressive tax rates apply to all residential properties as follows:

**Non owner-occupied residential properties (excluding residential land)**

| Annual value | Tax rate |
|---|---|
| First SGD 30,000 (USD 22,159) | 10% |
| Next SGD 15,000 (USD 11,079) | 12% |
| Next SGD 15,000 (USD 11,079) | 14% |
| Next SGD 15,000 (USD 11,079) | 16% |
| Next SGD 15,000 (USD 11,079) | 18% |
| Above SGD 90,000 (USD 66,473) | 20% |

**Owner-occupied residential properties**

| Annual value | Tax rate |
|---|---|
| First SGD 8,000 (USD 5,909) | 0% |
| Next SGD 47,000 (USD 34,715) | 4% |
| Next SGD 15,000 (USD 11,079) | 6% |
| Next SGD 15,000 (USD 11,079) | 8% |
| Next SGD 15,000 (USD 11,079) | 10% |
| Next SGD 15,000 (USD 11,079) | 12% |
| Next SGD 15,000 (USD 11,079) | 14% |
| Above SGD 130,000 (USD 96,009) | 16% |

The following property tax treatments also apply:

- Residential buildings that are unoccupied despite reasonable efforts by the owners to find a tenant will be taxed at the same property tax rates as non-owner-occupied residential buildings
- Non-residential buildings that are undergoing repairs for the purpose of rendering them fit for occupation or are vacant despite reasonable efforts by the owners to find a tenant will be taxed at the prevailing property tax rate of 10% for non-residential buildings
- Vacant land undergoing a housing development intended for owner-occupation can be taxed at the owner-occupier tax rates for residential buildings for the duration of the housing development (up to a maximum of two years). The house must be owner-occupied for at least one year after the completion of the house. All other vacant land will continue to be taxed at 10 percent during the development period

## Taxes on acquisition and transfer of real estate

### Stamp duty and legal costs

Stamp duty is generally payable on the documents relating to transactions involving immovable property, including all sales and sub sales, mortgages and leases of such property. This applies to all types of properties, regardless of whether the construction of the property has been completed.

Stamp duty must be paid within 14 days of execution of the agreement or contract (that is, the date any option to purchase is exercised, or the date of signing the sale and purchase agreement if the date of exercise of any option is not available).

Stamp duty is payable by the relevant parties at fixed rates on the selling/purchase price or market value of the property, whichever is the higher.

### Buyer's stamp duty

Stamp duty, or buyer's stamp duty (BSD), is charged on the sale and purchase agreement and is payable by the buyer, unless the parties agree otherwise. The ad valorem stamp duty is computed based on the total consideration of the transaction. The graduated rates are as follows:

| Amount or value of consideration | BSD rate |
|---|---|
| First SGD 180,000 (USD 132,929) | 1% |
| Next SGD 180,000 (USD 132,929) | 2% |
| Remainder | 3% |

If the consideration is more than SGD 360,000 (USD 265,858), the method of computation of the ad valorem stamp duty is therefore:

Stamp duty = (3% X consideration) – SGD 5,400 (USD 3,987)

### Additional buyer's stamp duty

Additional buyer's stamp duty (ABSD) is also payable by certain buyers of residential properties (including residential land). ABSD is payable in addition to the existing buyer's stamp duty. ABSD will apply to contracts or agreements (whichever is earlier), or documents of transfer (where contracts or agreements are not applicable), dated on or after December 8, 2011.

**The affected buyers are:**

- Foreigners (excluding nationals of the United States of America and nationals and permanent residents of Switzerland, Liechtenstein, Norway and Iceland, all of whom will be accorded the same treatment as a Singapore citizen) (FR) and non-individuals

- Singapore permanent residents (SPR)
- Singapore citizens (SC) who already own one residential property, whether owned wholly, partially or jointly with others

The ABSD rate is set out as follows:

| Profile of buyer | ABSD rates from January 12, 2013 |
|---|---|
| FR and non-individuals buying residential property | 15% |
| SPR buying first residential property | 5% |
| SPR buying second and subsequent residential properties | 10% |
| SC buying second residential property | 7% |
| SC buying third and subsequent residential properties | 10% |

If the property is bought jointly by buyers with different profiles, the higher ABSD rate will apply.

**Seller's stamp duty (SSD)**

Stamp duty is also payable by:

- A seller of a residential property who acquired the residential property on or after January 14, 2011 and sells or disposes of the property within four years from the date of acquisition

The SSD rate will be as follows:

| Holding period | SSD rates |
|---|---|
| Up to one year | 16% |
| More than one year and up to two years | 12% |
| More than two years and up to three years | 8% |
| More than three years and up to four years | 4% |

- A seller of an industrial property, who acquired the industrial property on or after January 12, 2013 and sells or disposes of the property within three years from the date of acquisition

The SSD rate will be as follows:

| Holding period | SSD rates |
|---|---|
| Up to one year | 15% |
| More than one year and up to two years | 10% |
| More than two years and up to three years | 5% |

The material date of acquisition or disposal is the date on which the contract is made, rather than the date of transfer or the date of delivery of possession of the property. Where there is an option to purchase, the material date shall be the date on which the option to purchase is exercised.

Where the SSD is payable, the buyer should ensure that the SSD is paid by the seller, as the agreement for the sale and purchase would not be considered duly stamped if the SSD was not paid.

**Mortgages**

The stamp duty payable on the mortgage instrument (other than for an equitable mortgage) is 0.4 percent of the amount of facilities granted on the mortgage, subject to a maximum of SGD 500 (USD 369).

The stamp duty payable on the mortgage instrument for an equitable mortgage is 0.2 percent of the amount of facilities granted on the mortgage, subject to a maximum of SGD 500 (USD 369).

**Leases**

Stamp duty is charged on a lease instrument. The ad valorem stamp duty payable varies with the average annual rent (AAR) during the lease period and the length of the lease period. The rates of stamp duty are as follows:

| Lease/tenancy | Rates |
|---|---|
| Where AAR does not exceed SGD 1,000 (USD 738) | Exempted |
| **Where AAR exceeds SGD 1,000 (USD 738), stamp duty is based on the contractual rent or market rent, whichever is higher. The following stamp duty rates apply:** | |
| Lease period of 4 years or less | 0.4% of total rent for the period of the lease |
| Lease period of more than 4 years or for any indefinite term | 0.4% of 4 times the AAR for the period of the lease |

- Leases involving premium:

Stamp duty payable on lease documents involving premium will be computed on the gross rent of the rented property and the premium paid for the tenancy term or market rent, whichever is higher.

- Leases involving variable/unknown rental:

Stamp duty payable on lease documents with variable/unknown rental will be computed on the total contractual and other consideration or market rent, whichever is higher.

## Income tax

No tax is imposed on capital gains from the sale of real property, which includes any land and building, as well as any interest, option or other right over such land or building. On the other hand, gains from property sales made by property traders and property developers are subject to income tax as their ordinary income.

Whether the gains from the sale of real property amount to non-taxable capital gains or taxable income is a matter of contention between the Comptroller of Income Tax and the taxpayers. The Comptroller considers a multitude of factors (e.g., the period of holding the property, the frequency and the number of transactions made by the taxpayer, the financial capacity of the taxpayer) in deciding whether a gain is a capital gain or taxable income.

Where the seller of the property is a non-resident property trader for income tax purposes, the buyer or the buyer's lawyer will be responsible for the withholding tax on the gains from the sale of the property, which is at 15 percent of the sale price.

### Goods and services tax

The goods and services tax ("GST") is essentially a tax on domestic consumption. It is charged on the supply of goods and services in Singapore made by a GST-registered person and on goods imported into Singapore. Persons whose annual business turnover from taxable supplies of goods and services in Singapore exceeds SGD 1 million are required to register for GST.

For the supply of goods and services made in Singapore, the tax ("output tax") is collected on the value of supply by the GST-registered person from his or her customers. The GST-registered person, after setting off the GST incurred on his or her inward supplies needed for the business ("input tax"), then reports the excess of the output tax over the input tax to the Comptroller of GST, normally in a quarterly cycle.

For imports of goods, GST is collected directly by the Singapore Customs at the point of importation into Singapore.

All taxable supplies of goods and services are subject to a standard rate of GST at 7 percent, unless they are zero-rated (GST rate of 0 percent). Currently, the export of supplies of goods and the provision of international services are zero-rated.

Not all real estate transactions are subject to GST. The sale and lease of the following types of property are exempt supplies and do not attract GST:

- Any vacant land zoned "residential" or "rural center and settlement" in the master plan under the Planning Act and used, or to be used, for residential purposes or for the purposes of condominium development
- Any vacant land approved exclusively for residential or condominium development
- Any land, or part thereof, with any building, flat or tenement thereon, being a building, flat or tenement that is used, or to be used, principally for residential purposes

Where the transacted property is approved for mixed use, i.e., both residential and non-residential use, the value of the non-residential proportion of the property is subject to GST. However, where vacant land is being transacted and is not zoned exclusively for residential use, GST is chargeable for the full selling price.

In addition, GST is still payable for the supply of movable furniture and fittings in a sale or lease of a residential property.

### Corporate taxation

Companies are taxed on profits derived from sources in Singapore and on income received in Singapore from sources outside the country, which are subject to certain exemptions stated below. Income tax is calculated on the basis of the company's chargeable income, i.e., taxable revenues less allowable expenses and other allowances (e.g., capital allowances).

The corporate income tax rate from year of assessment (YA) 2010 is 17 percent. However, companies are entitled to the following tax exemption schemes:

**1. Tax exemption for qualifying start-up companies**

With effect from YA 2008, tax exemption is given to qualifying start-up companies on normal chargeable income for each of the first three consecutive YAs of up to SGD 300,000, as follows:

**Exempt amount**

| | | |
|---|---|---|
| First SGD 100,000 (USD 73,840) | @ 100% | = SGD 100,000 (USD 73,840) |
| Next SGD 200,000 (USD 147,684) | @ 50% | = SGD 100,000 (USD 73,840) |
| Total SGD 300,000 (USD 221,528) | | = SGD 200,000 (USD 147,684) |

With effect from YA 2010, this scheme has been extended to include companies limited by guarantee. Please note that this scheme does not apply to companies, whose principal activity is that of investment holding, developing properties for sale, for investment, or for both investment and sale. A company that does not qualify for a tax exemption for new start-up companies will be given partial tax exemption.

**2. Partial tax exemption for companies**

With effect from YA 2008, a partial tax exemption is given to companies on normal chargeable income of up to SGD 300,000, as follows:

**Exempt amount**

| | | |
|---|---|---|
| First SGD 10,000 (USD 7,384) | @ 75% | = SGD 7,500 (USD 5,538) |
| Next SGD 290,000 (USD 214,136) | @ 50% | = SGD 145,000 (USD 107,068) |
| Total SGD 300,000 (USD 221,528) | | = SGD 152,500 (USD 112,606) |

### 3. Corporate income tax rebate

It was announced in Budget 2013 that for YA 2013, 2014 and 2015, all companies will be granted a 30 percent corporate income tax rebate that is subject to a cap of SGD 30,000 (USD 22,159) per YA. This includes registered business trusts, companies that are not tax-resident in Singapore and companies that receive income taxed at a concessionary tax rate. The rebate will not apply to the amount of income derived by a non-resident company that is subject to final withholding tax.

### 4. Foreign Tax Credit (FTC)

FTC is granted by allowing the Singapore tax resident company to claim a credit for the tax paid in the foreign country against the Singapore tax that is payable on the same income. FTC comes in the form of double tax relief or unilateral tax credit.

## Double Tax Relief (DTR)

- A DTR is the credit relief provided under the Avoidance of Double Taxation Agreements that Singapore has concluded with other countries. A company is a tax resident in Singapore if the control and management of its business is exercised in Singapore. The countries and territories with which Singapore has tax treaties are listed below:

Albania
Australia
Austria
Bahrain
Bangladesh
Barbados
Belgium
Belarus
Brazil (limited treaty)
Brunei
Bulgaria
Canada
Chile (limited treaties)
China
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Fiji
Finland
France
Georgia
Germany
Guernsey
Hong Kong (limited treaty)
Hungary
India
Indonesia
Ireland
Isle of Man
Israel
Italy
Japan
Jersey
Kazakhstan
South Korea
Kuwait
Latvia
Libya
Liechtenstein
Lithuania
Luxembourg
Malaysia
Malta
Mauritius
Mexico
Mongolia
Morocco
Myanmar
The Netherlands
New Zealand
Norway
Oman
Pakistan
Panama
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Saudi Arabia
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Taiwan
Thailand
Turkey
Ukraine
United Arab Emirates
United Kingdom
United States of America (limited treaty)
Uzbekistan
Vietnam

## Unilateral Tax Credit (UTC)

- For countries with which Singapore does not have a Double Taxation Agreement, UTC may be allowed for foreign tax paid by Singapore tax residents on certain types of income derived from the foreign country, if such income is repatriated to Singapore.

A Singapore tax resident company can enjoy tax exemption on its foreign-sourced dividends, foreign branch profits and foreign-sourced service income remitted into Singapore on or after June 1, 2003, if the highest corporate tax rate of the foreign country from which the income was received is at least 15 percent, and the foreign income had been subjected to tax in the foreign country from which they were received.

With effect from YA 2012, a Singapore tax resident company may elect the FTC pooling system when claiming FTC on income for which it has paid foreign tax. Under the FTC pooling system, a tax resident may elect to pool foreign taxes paid on any items of his or her foreign income, if the foreign income meets certain conditions. The amount of FTC to be granted is based on the lower of the total Singapore tax payable on the foreign income (net of expenses) and the pooled foreign taxes paid on this income.

Non-resident individuals and companies are subject to withholding tax. Some of the more common types of income and the rates at which withholding tax apply are shown as follows:

| Nature of income | Tax Rate |
|---|---|
| Interest, commission, fee or other payment in connection with any loan or indebtedness | 15%[1] |
| Royalty or other lump sum payments for the use of movable properties | 10%[1 2] |
| Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information | 10%[1 2] |
| Rent or other payments for the use of movable properties | 15%[1] |
| Technical assistance and service fees | Prevailing corporate tax rate[3] |
| Management fees | Prevailing corporate tax rate[3] |

*[1] These withholding tax rates apply when the income is not derived by the non-resident person through its operations carried out in Singapore. They are to be applied on the gross payment, and the resultant tax payable is a final tax. For operations carried out in Singapore, the tax rates applicable on the gross payment are as follows:*

- *Non-resident person (other than individuals): Prevailing corporate tax rate*
- *Non-resident individuals: 20 percent*

*[2] The reduced withholding tax rate of 10 percent applies to payments due and payable on or after January 1, 2005.*

*[3] If the year in which the services were rendered is different from the year of payment, the withholding tax is to be based on the prevailing corporate tax rate for the year where the services were rendered. For example, if the service was rendered in December 2008 and the payment was made in year 2009, the prevailing corporate tax is that for year 2008 (YA 2009), which is 18 percent. For payments made to non-resident individuals, tax is to be withheld at 20 percent on the gross payment.*

## Personal taxation

In general, the Comptroller of Income Tax treats individuals as tax residents if they are:

- Singaporeans
- Permanent Singaporean residents
- Foreigners who have stayed/worked in Singapore for at least 183 days in the previous year

Otherwise, they will be treated as non-residents for tax purposes, and their employment income is taxed at 15 percent or at the resident rate, whichever is higher. Any director's fees, consultation fees and all other income received by a non-resident will be taxed at 20 percent.

Tax residents are taxed on all income derived in Singapore, after provisions are made for certain tax deductions and personal reliefs.

From YA 2012 onward, income tax is levied on a graduated scale ranging from 0 percent to 20 percent, as follows:

| Chargeable income | Rate (%) | Gross tax payable in SGD |
|---|---|---|
| First SGD 20,000 (USD 14,768)<br>Next SGD 10,000 (USD 7,384) | 0<br>2 | 0<br>SGD 200 |
| First SGD 30,000 (USD 22,159)<br>Next SGD 10,000 (USD 7,384) | -<br>3.50 | 200<br>350 |
| First SGD 40,000 (USD 29,537)<br>Next SGD 40,000 (USD 29,537) | -<br>7 | 550<br>2,800 |
| First SGD 80,000 (USD 59,074)<br>Next SGD 40,000 (USD 29,537) | -<br>11.5 | 3,350<br>4,600 |
| First SGD 120,000 (USD 88,614)<br>Next SGD 40,000 (USD 29,537) | -<br>15 | 7,950<br>6,000 |
| First SGD 160,000 (USD 118,152)<br>Next SGD 40,000 (USD 29,537) | -<br>17 | 13,950<br>6,800 |
| First SGD 200,000 (USD 147,689)<br>Next SGD 120,000 (USD 88,614) | -<br>18 | 20,750<br>21,600 |
| First SGD 320,000 (USD 236,303)<br>Above SGD 320,000 (USD 236,303) | -<br>20 | 42,350 |

## Real Estate Investment Trusts

### Introduction

A real estate investment trust (REIT) is a vehicle dedicated to owning income-producing real estate. It allows individuals and institutions to make equity investment in real estate without incurring high transaction costs related to direct investment. REITs are regulated by the MAS guidelines contained in the Code on Collective Investment Schemes.

### Restrictions

**1. Investments and activities**

Unless it is stated clearly in the prospectus that it will not have a diversified portfolio of real estate, a REIT must be reasonably diversified in terms of the type of real estate (e.g., residential/commercial/industrial), location/country and/or the number of real estate investments, as appropriate, taking into account the type and size of the fund, its investment objectives and the prevailing market conditions.

A REIT may only invest in:

- Real estate, whether freehold or leasehold, in or outside Singapore
- Real estate-related assets, wherever the issuers/assets/securities are incorporated/located/issued/traded
- Listed or unlisted debt securities and listed shares of, or issued by, local or foreign non-property corporations
- Government securities (issued on behalf of the Singapore government or the governments of other countries) and securities issued by a supranational agency or a Singapore statutory board
- Cash and cash-equivalent items

A REIT should comply with the following essential requirements:

- At least 75 percent of its deposited property should be invested in income-producing real estate
- It should not undertake property development activities, unless it intends to hold the developed property upon completion
- It should not invest in vacant land and mortgages (except for mortgage-backed securities)
- The total contract value of property development activities undertaken and the investments in uncompleted property developments should not exceed 10 percent of its deposited property
- For investments in listed or unlisted debt securities and listed shares of, or issued by, local or foreign non-property corporations, or government securities (issued on behalf of the Singapore government or the governments of other countries) and securities issued by a supranational agency or a Singapore statutory board, or cash or cash-equivalent items, not more than 5 percent of its deposited property can be invested in any one issuer's securities or any one manager's funds
- It should not derive more than 10 percent of its revenue from sources other than rental payments from the tenants of real estate held by it, or the interest, dividends and other similar payments from special purpose vehicles and other permissible investments of the REIT

**2. Borrowings**

A REIT may borrow for investment or redemption purposes, and it may mortgage its assets to secure such borrowings.

Under the revised Code on Collective Investment Schemes issued by the MAS, a REIT can borrow up to 35 percent of its deposited property. Borrowings exceeding 35 percent (up to a maximum of 60 percent) will be allowed if a credit rating from Fitch, Moody's or Standard and Poor's is obtained and disclosed to the public. The REIT should continue to maintain and disclose a credit rating, so long as its aggregate leverage exceeds 35 percent of its deposited property.

### Taxation

Income distributions from REITs to individuals are generally exempt from tax. The tax rate applicable to distributions made to foreign non-individual investors is 10 percent for the period from February 18, 2010 to March 31, 2015.

A foreign non-individual investor is one who is not a resident of Singapore for income tax purposes and:

- Who does not have a permanent establishment in Singapore
- Who carries on any operation in Singapore through a permanent establishment in Singapore, where the funds used to acquire units in the REIT are not obtained from that operation

In Budget 2012, it was announced that a REIT that makes distributions to unit holders in the form of units can continue to enjoy tax transparency, subject to certain conditions being met.

### Goods and Services Tax (GST)

There is a GST remission allowing REITs to claim input tax on their business expenses, regardless of whether they hold the underlying assets directly or indirectly through multi-tiered structures such as SPVs or sub trusts for the period from February 18, 2010 to March 31, 2015.

### Remission of stamp duty

The stamp duty chargeable on any instrument relating to:

- The sale of any immovable property situated in Singapore to a REIT
- The sale of 100 percent of the issued share capital or of the interest therein of a Singapore-incorporated company that holds, or was set up solely to hold, immovable properties situated outside Singapore to a REIT

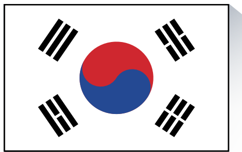
If the REIT was listed or will be listed on the Singapore Exchange within six months from executing the chargeable instrument, this remission is effective for:

- Instruments executed during the period from February 18, 2010 to January 11, 2013 (both dates inclusive)
- Save for all the SSD payable on such instruments, instruments executed during the period from January 12, 2013 to March 31, 2015 (both dates inclusive)

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square Feet |
| **Rental payments** | |
| Rents | SGD per sq ft or sqm per month |
| Typical lease term | 3 years. Longer terms in excess of 5 years are available for large-space users |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months rent) | 3 months gross rent |
| Security of tenure | For the duration of the tenancy. No guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal | No, unless an option to renew is agreed at the outset and specified in the lease |
| Basis of rent increases or rent review | Open market rental value |
| Frequency of rent increases or rent review | At least renewal or agreed rent review periods |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for service charge/management fee | Tenant responsible in addition to the rent - payable monthly |
| Responsibility for utilities | Payable by tenant. Electricity, telecommunication and water consumption which are separately metered |
| Car parking | Allocation is usually based on sq ft leased at seasonal charges |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord (charged back via service charge) |
| Responsibility for external/structural repairs | Landlord |
| Responsibility for building insurance | Landlord |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally prohibited to third parties. Unless to related companies under the Companies Act (subject to landlord approval), assignment typically not allowed. |
| Tenant early termination rights | Subject to negotiation on case-by-case basis, although not commonly granted in the market. |
| Tenant's building reinstatement responsibilities at lease end | Original condition |

Source: JLL



## Property tenure/ownership

Property tenure/ownership in South Korea is as follows:

- Fee simple or freehold title
- Strata title – Sub-division of air space to provide the equivalent of freehold ownership on a floor-by-floor basis.
- Leasehold – Short-term nature and land is rarely leased.
  - Land: Maximum is typically 30 years with possible extension for two further terms of 10 years each.
  - Commercial buildings: Typically five years.
  - Housing (government-built apartments): For long-term housing, the minimum lease term is five years. For permanent rent housing, the minimum term is 50 years.

## Major property legislation

- Real Estate Brokerage Act
- Act on Planning and Use of National Territory
- Urban Redevelopment Act
- Industrial Placement and Factory Construction Act
- Real Estate Investment Company Act
- Asset Liquidity Act (Temporary Act)
- Building Act
- Cadastral Act
- Property Registration Act
- Residential Tenant Protection Act
- Appraisal Act
- Alien Property Ownership Act
- Foreigner's Land Acquisition Act
- Foreign Investment Promotion Act
- Foreign Exchange Transactions Act
- Act on Business of Operating Indirect Investment and Assets

## Operational requirements for foreign corporations

### Office

**Modes of entry**

- Stock Company (JooSikhoesa)
- Limited Liability Company (YooHanChaekImhoesa)
- Partnership Company (HapMyunghoesa)
- Limited Partnership Company (HapJahoesa)
- Limited Company (YooHanhoesa)
- Branch
  - Regular branch conducting profit-generating activities in Korea
  - Liaison office, which does not carry on profit-generating activities, but merely undertakes non-profit making functions such as liaison of business affairs, market research and research and development (R&D)

Stock companies are typically the investment vehicles chosen by foreign investors. However, some foreign investors prefer investing in a limited liability company given that it is easier to set up than a stock company, and restrictions can be put on the transfer of shares.

**Registration/licencing requirements**

- Notification of branch establishment – A notification of branch establishment should be made to the Ministry of Strategy and Finance (MOSF) or foreign exchange banks
- Registration of branch establishment – A "liaison office" is not subject to the registration requirement, as it cannot engage in profit-making business activities. However, a regular "branch" needs to file the registration to operate profit-generating business activities in Korea
- Non-taxable tax number (liaison-type branch office) or business tax number (income-earning branch office)
- Registration of business – Commercial registry, local district court
- Work permit – Bureau of Immigration

### Industrial trade

Industrial complexes are classified into two types. One is a free site, in which enterprises may select the sites individually for the construction of factories. The other is a planned site, where the state or local government develops the site according to the national industry plan.

Industrial complexes in planned sites are leased out to corporations according to the type of industry, qualifications, procedures, etc. Corporations with completed contracts with property management to lease a factory site need not obtain separate approval from that city or district.

Laws such as the Agricultural Act, Factory Act and Cultural Properties Protection Act may govern the establishment of a factory on a free site. In addition to these acts, there are areas where factory establishment is prohibited.

Large-scale foreign investors tend to prefer planned sites because of the relatively straightforward and transparent factory establishment procedures. Conversely, small-scale foreign investors tend to prefer leasing individual sites with pre-constructed factories.

The relevant authority for factory establishment approval is the mayor, the provincial or the county magistrate in the location of the identified site.

The relevant authority to attain a factory construction permit is the mayor, the provincial or the county magistrate in the location of the identified site.

The relevant authority for the factory establishment declaration and registration is the mayor, the provincial or the county head in the locality of the site.

The above information has been obtained from the Korea Trade Investment Promotion Agency.

## Foreign investment incentives

### Tax incentives for foreign-invested companies

With respect to certain requirements for a foreign investment, the customs duties on corporate tax, income tax and capital goods imports of the business and dividend income, exchange technologies, earned income and so forth will be reduced or exempted in accordance with the Tax Incentive Limitation Law. In addition, with respect to the property possessed or acquired to operate a tax-exempted business, the acquisition tax, registration tax and property tax will all be reduced or exempted in accordance with the local government regulations mandated by the Tax Incentive Limitation Law.

## Tax exemption

By applying the ratio of foreign investment, the income derived from the business qualifying for a tax exemption shall be subject to corporate tax exemption for foreign-invested companies in accordance with the Tax Incentive Limitation Law. However, in the case that the 10 percent or more shares with voting rights of the foreign corporations or foreign companies investing in the business qualifying for a tax exemption are either directly or indirectly possessed by a Korean (including corporations), the ownership ratio of such shares invested will not qualify for tax exemption. In other words, the shares owned by local residents on the bypass overseas investment (round trip) is excluded from tax exemption.

The record date of the tax exemption will be either the first income tax year or the fifth year from the start date of the business operation, whichever is the earlier tax year.

## Calculating the start date of business operation

- For a manufacturing business, the first day of manufacturing goods from each base
- For a mining business, the first day of mining or extracting of minerals from each site
- For other businesses, the first day of supplying the goods or services

In the case of a capital increase, the registration will be deemed as the start date of the business operation, and such provision shall be applied accordingly. In addition, with respect to the shares acquired by foreigners through capitalisation including, but not limited to, revaluation and capital reserve, the exemption period and the exemption or reduction rate will be determined based on the precedent exemptions or reductions on such types of shares. In the case that the capital increase occurs and the tax exemption or reduction is filed within five years after the paid-in capital, the exemption or reduction will be determined on the foreign-invested portion of the surplus made from the capital decrease. In the case that capital reduction occurs after the capital increase, it will be deemed that the capital increase was first reduced. However, in the event that a purely domestic company receives investment from foreigners through a capital increase, and through such an investment the firm becomes the foreign-invested company, the company will be considered a new foreign-invested company rather than having an increased capital.

In the case of mergers, if a foreign-invested company merges with a domestic corporation (excluding a foreign-invested company in the exemption period) during the exemption period, and the ratio of the foreign investment of the merged entity is reduced, the foreign direct investment ("FDI") rate before the merger on the foreign-invested company will be applied.

In the event that the capitalization of the revaluation and capital reserve remains the same, the exemption ratio will not change from the year that the capital increase occurred to the next business year.

### Calculating the tax exemption

Tax exempted rate X foreign invested ratio → reflecting progressive rate X calculated tax

| Category | Calculation methods |
|---|---|
| Tax exemption | Tax exemption = (calculated tax X business subject to exemption tax rate standard/the total tax standard) X exemption ratio<br>- General case (in the case of primary investment)<br>(Capital of foreign investment subject to exemption/total capital) X exemption rate of fiscal year (100 percent or 50 percent)<br>- Calculation of exemption rate for cash or dividends increase<br>• Fiscal year<br>(Capital of foreign investment before the capital increase X exemption rate of fiscal year) + (foreign capital increased X number of business days from the registered capital increase date until end-fiscal year/number of business days in the fiscal year X exemption rate) |
| Exemption rate (Investment rate Progressive rate) | Total capital before the capital increase + capital increase X number of business days from the registered capital increase date until end-fiscal year/number of business days in the fiscal year<br>• Following business year after the capital increase<br>(Capital of foreign investment before the capital increase X exemption rate of fiscal year) + (foreign investment capital from the capital increase X exemption rate) |

### Total capital

In the event that a foreign-invested company that has a business not qualifying for a tax exemption increases the capital of a business qualifying for a tax exemption, and in the event that the assets, liabilities and income of such a newly established business place qualifying for a tax exemption are separately accounted based on such business place qualifying for a tax exemption, an FDI rate will be applied. In addition, the reduction of income, the reduction ratio and the tax reduction can be calculated separately.

### Local tax (acquisition tax, registration tax, property tax) exemption

With respect to a property acquired or possessed by the foreign-invested company to operate a business qualifying for tax exemption, the corporate tax exemption period as well as the acquisition, registration and property taxes will be exempted or reduced by 50 percent or 100 percent based on standard tax.

With respect to a property acquired after commencing a business, for three to five years from the date of commencing the business, the sum (qualifying for tax exemption) of the calculated tax on such property multiplied by the FDI rate as well as the acquisition, registration and property taxes will be 100 percent exempted. In addition, 50 percent reduction will be applied over the next two years. Even if the property qualifying for the tax exemption is acquired after the start of the business, if such property is acquired before receiving the decision for tax exemption, then the acquisition and registration taxes cannot both be reimbursed.

However, with respect to the acquisition and registration taxes on the property acquired before commencing a business, the property acquired after the decision of tax exemption will be 100 percent tax exempted. In addition, the property tax will be 100 percent exempted for three to five years from the date acquired, and 50 percent tax reduction will be applied for the following two years.

The local tax reduction period can be extended within the period of 15 years in accordance with the ordinances, and a reduction or exemption rate may be increased accordingly.

The above information has been obtained from the Korea Trade Investment Promotion Agency.

## Restrictions on foreign property ownership

In a bid to reactivate South Korea's real estate market after the financial crisis in 1997–1998, the government fully deregulated the market.

However, where foreign nationals acquire land in military installation reservations, cultural property protection zones and ecosystem reservation districts, as well as on islands deemed necessary for military purposes, they are required to obtain prior permission.

The main principles of the deregulation of the real estate market are:

- Business of constructing buildings for the purpose of leasing out: Fully permitted (April 1998)
- Business of developing land for supply: Fully permitted (May 1998)

- Business of real estate brokerage: Permitted to operate the business as a corporation formed by joint capital contribution with the local government, Korea Land Corp, Korea National Housing Corporation and the Central Government (September 1999)

The percentage of private sector investment (including local and foreign investment) must be less than 50 percent.

## Foreign exchange controls

Individuals and corporate residents can hold unlimited amounts of foreign currency in local foreign-currency bank accounts. South Korean firms can maintain foreign-currency accounts abroad through their overseas branches.

Non-residents can open Korean won (KRW) bank accounts for the following purposes:

- Withdrawal of KRW after depositing KRW acquired in South Korea
- Purchase of certificate of deposit, repurchase agreement and cover bill for investment returns
- Only for stock investment purposes, to invest in South Korean securities

Foreign-invested companies are able to attain a loan (maturity greater than one year) through foreign creditors via the Korea Exchange Bank. If the loan is more than KRW 31.85 billion (USD 28.66 million), approval from the MOSF is required. The permitted amount of overseas short-term borrowing is 50 percent of the foreign-invested amount for companies engaged in the manufacturing business, and 75 percent for firms engaged in high-technology business. Where a foreign-invested company invests more than 50 percent of its total assets and takes a long-term loan (maturity greater than five years) from its parent company located abroad, no restrictions on the amount are applied based on the Foreign Investment Facilitation Act.

There is no restriction on real estate purchases by foreign investors, but the remittance of any revenue/profit generated by the property offshore is not permitted. Only proceeds from the sale of the property can be remitted offshore. A foreign investor seeking to remit rental income offshore is required to set up a holding company, typically known as a special purpose company (SPC), and remit the rental income offshore in the form of dividends.

The above information has been obtained from the Economist Intelligence Unit.

## Taxes on possession and operation of real estate

Taxes to be paid for the holding of real estate are:

- Property tax
  - Building: 0.25–4 percent of the building price (taxation standard price determined by the government)
  - Land: 0.07–4 percent of the official land price (taxation standard price determined by the government)
- Aggregate real estate tax: 0.5–2.0 percent of the price of the competent property (determined by the government)
- Regional education tax: 20 percent of property tax/aggregate land tax
- Special tax for rural development: 20 percent of aggregate real estate tax

In the case of construction or expansion of factories in an over-concentration control region, property tax shall be imposed at a multiple of five times the standard rate for five years. Property tax shall be reduced for advanced technology-related businesses or businesses located in a Foreign Investment Zone (FIZ).

Those engaged in the leasing business shall pay a value added tax of 10 percent of the rent and a corporate tax (10 percent, 20 percent or 25 percent) or an individual income tax (6–38 percent) on income generated from the leasing transaction.

## Taxes on acquisition and transfer of real estate

### Stamp duty and legal costs

Stamp duty is levied on the preparation of documents and account books that certify the establishment, transfer, change or lapse of rights to property. It ranges from KRW 50 (USD 0.045) to KRW 350,000 (USD 315.19).

Legal costs vary between lawyers and cases.

### Acquisition of real estate

In general, the acquisition of real estate is subject to the following taxes:

- Acquisition tax: 2.3~4 percent of purchase price
- Special tax for rural development: 10 percent of acquisition tax
- Education tax: 20 percent of registration tax
- Value added tax: 10 percent of purchase price for building (corporations will be reimbursed)
- Purchase of National Housing Bonds (NHBs)
  - In the case of an FDI company, the NHB purchase requirement shall be reduced according to the FDI ratio of the company.

Where the acquisition of real estate is by an FDI company that is carrying an advanced technology and services business that support the domestic industry, or by an FDI company that is located in an FIZ, the acquisition, registration and property taxes shall be reduced according to the sum amount of the corresponding calculated tax, multiplied by FDI rate by 100 percent for the first five years and 50 percent for the following two years. The period and ratio of reduction may be extended 7–15 years in accordance with the ordinances of local governments.

In the case of construction permission and real estate registration for a building of an FDI company, the duty of purchasing NHBs shall be reduced.

### Disposition of real estate

Taxes to be paid for the disposition of real estate are:

- Value added tax: 10 percent of the building's sale price
- Individual
  - Transfer income tax: 6–70 percent of capital gains
  - Individual local income tax: 0.6-7 percent of capital gains
- Corporation
  - Corporation tax: 10 percent (40 percent for gains from the transfer of unregistered land, etc.) of capital gains (the gains generated from transfer are included in non-operating profits and are thus subject to corporation tax)
  - Corporation local income tax: 1 percent (4 percent in case of the transfer of unregistered land, etc.) of corporation tax

The surcharge on transfer income tax shall be increased by 70 percent when an individual transfers without filing a registration.

## Value added tax/goods and services tax

A standard 10 percent value added tax is levied on all goods and services except for specified exempt goods and services, including:

- Unprocessed foodstuff
- Certain professional services
- Banking services

The following goods are zero-rated:

- Goods and services for export
- Services rendered outside South Korea
- International transportation
- Other goods or services supplied for foreign exchange earnings

## Tax depreciation

In general, expenses are deductible if they are incurred for business purposes and are adequately documented.

The straight-line and declining balance methods are allowed under the Corporate Income Tax Act (CITA) for most depreciable assets. The unit-of-production method is also permitted for fixed assets used in mining. For buildings and intangible assets, only the straight-line method of depreciation is permitted.

Corporations must notify the tax authorities of the depreciation method adopted. Depreciation allowed under the CITA is deductible only if the amount is recorded in the appropriate accounting records and reflected in the official financial statements.

## Corporate taxation

Corporations are classified as "domestic," "resident foreign" and "non-resident foreign" for tax purposes:

- Domestic corporations – Corporations with their head office located in South Korea, regardless of the place of incorporation, are subject to corporate tax on their worldwide income
- Resident foreign corporations – Corporations whose parent company is not incorporated in South Korea are subject to corporate tax only on their Korean income
- Non-resident foreign corporations – Corporations without a permanent establishment in South Korea are subject to a withholding tax on their Korean income

Corporate income tax is levied on a sliding scale:

| Taxable income | Tax rate |
|---|---|
| Below KRW 200 million (USD 180,089) | 10% |
| KRW 200 million (USD 180,089) – 20 billion (USD18 billion) | KRW 20 million (USD 18,008) + 20% [on the amount exceeding KRW 200 million (USD 180,089)] |
| Above KRW 20 billion (USD 18 billion) | KRW 3.98 billion (USD 3.58 billion) + 22% [on the amount exceeding KRW 20 billion (USD 18 billion)] |

## Personal taxation

For income tax purposes, all individuals are classified as "citizens," "residents" or "non-residents." South Korean citizens or resident individuals are subject to an income tax on their worldwide income. Non-resident individuals are subject to an income tax only on income derived from sources within South Korea, unless a bilateral taxation treaty stipulates otherwise. A person is considered to be a resident if his or her occupation would normally require continuous residence in South Korea for one year or more.

Taxable income derived by individuals is grouped into four categories:

- Global income, which includes salaries and wages, termination payments, interest, dividends, rental income and income derived from business and other sources
- Severance payments
- Capital gains from the sale or transfer of property and shares in unlisted companies
- Individual income is subject to global and scheduler taxation

"Global income" denotes income that is subject to global taxation at the following tax rates:

| Taxable income | Tax rate |
|---|---|
| Up to KRW 12,000,000 (USD 10,804) | 6% |
| KRW 12,000,001–46,000,000 (USD 10,804– 41,418) | KRW 720,000 (USD 648) + 15% on the additional amount |
| KRW 46,000,001–88,000,000 (USD 41,418– 79,246) | KRW 5,820,000 (USD 5,241) + 24% on the additional amount |
| KRW 88,000,001–150,000,000 (USD 79,246– 135,052) | KRW 15,900,000 (USD 14,316) + 35% on the additional amount |
| Over KRW 150,000,001 (USD 135,052) | KRW 37,600,000 (USD 33,853) + 38% on the additional amount |

Under scheduler taxation, severance payments and capital gains are taxed separately at varying rates.

## Tax treaties: Avoidance of double taxation

Treaties in existence:

Albania
Algeria
Australia
Austria
Azerbaijan
Bahrain
Bangladesh
Belarus
Belgium
Brazil
Bulgaria
Canada
Chile
China
Colombia
Croatia
Czech Republic
Denmark
Ecuador
European Union
Egypt
Estonia
Fiji
Finland
France
Germany
Greece
Hungary
Iceland
India
Indonesia
Iran
Ireland
Israel
Italy
Japan
Jordan
Kazakhstan
Kuwait
Kyrgyz
Lao
Latvia
Lithuania
Luxembourg
Malaysia
Malta
Mexico
Mongolia
Morocco
Myanmar
Nepal
The Netherlands
New Zealand
Norway
Oman
Pakistan
Panama
Papua New Guinea
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russia
Singapore
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Tunisia
Turkey
Ukraine
United Arab Emirates
United Kingdom
United States of America
Uzbekistan
Vietnam

## Real Estate Investment Trusts

### Introduction

A real estate investment trust (REIT) is a corporation defined by the Commercial Act. Both the Real Estate Investment Company Act (REICA) and the Commercial Law are applicable to REITs. When REIT stocks are publicly traded on the stock market, the Securities Exchange Act is also applicable.

There are two types of REITs—CR-REITs and ordinary REITs. Both types of REITs are under the control of one incorporated REICA.

A CR-REIT is just like a mutual fund for stock investment, i.e., a paper company that distributes the majority of its profits to investors in the form of dividends. Being a paper company, a CR-REIT has no standing staff, and its management is entrusted to a specialised asset management company (AMC).

In contrast, an ordinary REIT is established and managed by a real company with standing staff. Although it also distributes the majority of its earnings to investors, an ordinary REIT is not entitled to the tax incentives available to CR-REITs. However, the government eased the restrictions to facilitate the ordinary REIT market. The revised REICA, passed by the National Assembly at end-2004 and implemented on April 2005, contains more benefits for an ordinary REIT.

### Restrictions

1. Establishment of REIT

- Under the revised REICA of December 18, 2012, the minimum capital requirement is KRW 500 million (USD 450,064).
- With a business licence, the minimum capital requirement for the self-managed real estate investment company is KRW 1 billion (USD 900,128), and the minimum capital requirement for a consignment of a management real estate investment company and a corporate restructuring of a real estate investment company is KRW 500 million (USD 450,064).
- Compared to a securities company, the role of a general shareholders' meeting and the board of directors for a CR-REIT is strengthened.

2. Distribution of stocks

- A shareholder as well as a particular party of a REIT company cannot hold more than 30 percent (in case of a self-managed REIT company) or 40 percent (in case of a consignment of a management REIT company) of issued and outstanding shares. From December 31, 2012, if the possession of shares exceeds 30 percent (or 40 percent) within six months from the mentioned date, the exceeding portion of the shares should be disposed. In addition, in the case of investment in kind, the deputy minister of transport and maritime may order the exceeding portion of the shares to be disposed according to the investment in kind during the specified period between more than one year from the issuing date of the shares, and less than one year and six months.
- More than 30 percent (or 40 percent) of shares should be publicly diversified to individual investors. (No limit for CR-REIT.)

3. Business scope

- Acquisition, management, amelioration and disposal of property
- Real estate development projects
- Lease and rent of real estate
- Sale and purchase of securities
- Deposit in financial institutions
- Acquisition, management and disposal of the rights to the use of real estate, such as superficies, right to lease
- Acquisition, management and disposal of right to benefit of real estate, the trusted property of which is wholly attributed to the beneficiary at the time the trust expires

4. Composition of assets

- More than 80 percent of a REIT company's total assets must be real estate, real estate securities (domestic and foreign) or cash on the last day of each quarter.
- In case of above mentioned, at least 70 percent of a REIT company's total assets must be real estate (including buildings under construction).
- In case of CR-REIT, more than 70 percent of total assets must be corporate restructuring-related properties.

5. Disposal of real estate

- A REIT company cannot sell its properties within five years of purchase. (No limit for CR-REIT.)
- A REIT company cannot sell vacant land void of development. (No limit for CR-REIT.)

6. Dividends

- A REIT company must return more than 90 percent of its profit to shareholders. (No limit for CR-REIT.)

### Taxation

1. Ordinary REIT (with revised REICA)

- Acquisition tax: 50 percent deducted
- Registration tax: 50 percent deducted
- Capital gains tax: 50 percent deducted

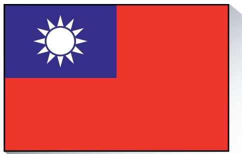
2. CR-REIT

- Corporate tax: Exempted on corporate tax when over 90 percent of profit is returned to shareholders.
- Acquisition tax: 50 percent deducted
- Registration tax: 50 percent deducted
- Capital gains tax: 50 percent deducted

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Pyung (1 pyung = 3.3 sqm = 35.58 sq ft) |
| **Rental payments** | |
| Rents | ₩/pyung/month on the gross area |
| Typical lease term | 3-5 years |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months rent) | 10 months or Chonsei lease |
| Security of tenure | Only for the duration of the tenancy, no guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal | No (unless an option to renew is agreed at the outset and specified in the lease) |
| Basis of rent increases or rent review | Based either on market rates or inflation rates (CPI rate); Landlords of Grade A buildings have accepted a cap of 3% in fixing rent reviews |
| Frequency of rent increases or rent review | Annual |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | Electricity, telecommunication and water consumption are separately metered and payable by each tenant |
| Car parking | Allocation is usually based on proportion to the area leased |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord |
| Responsibility for external/structural repairs | Landlord |
| Responsibility for building insurance | Landlord |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally prohibited unless to a subsidiary company of the tenant (subject to landlord approval) |
| Tenant early termination rights | Only by break clause |
| Tenant's building reinstatement responsibilities at lease end | Reinstated to original condition |

Source: JLL



## Property tenure/ownership

Property ownership in Taiwan, also known as the Republic of China, is mainly freehold. Long-term leaseholds are becoming more common, particularly in Taipei City and for government build-operate-transfer infrastructure projects, where superficies are granted to superficiaries.

Generally, leasehold titles cannot be longer than 20 years. However, superficies can have 35-year to 50-year terms, and some can have 70-year terms. Renewal options are dependent on specific contract terms.

Strata ownership in large urban properties is common. The Regulations on Management of Apartment Buildings were promulgated in June 1995 and are being used to standardise building management and maintenance. Property titles outline specific ownership of areas in the buildings, including ownership of the percentage of land and common areas.

The market for leasing commercial, retail and residential properties is active. Lease terms are generally for two to five years for commercial and retail properties, and one year or more for residential properties.

To make transaction prices of real estate more transparent and accessible to the public, effective on August 1, 2012, the Ministry of the Interior (MOI) established a registration system under which the purchaser, land administration agent (i.e., scrivener) or broker of a given real property transaction must register the actual transaction price of real estate within 30 days of the completion of the title transfer.

## Restrictions on foreign ownership

Foreign individuals and companies (except for nationals and companies of the People's Republic of China or PRC that are subject to certain restrictions) are allowed to buy real estate in Taiwan, subject to government approval. Approval is conditional on a reciprocal arrangement, whereby Taiwanese individuals and companies are allowed to buy real property in the home country of the foreign individual or the country where the foreign company maintains its head office.

Since 2002, PRC nationals and companies may also invest in real property in Taiwan if they meet certain conditions. To be eligible, PRC investors must apply to the Investment Commission of the Ministry of Economic Affairs (MOEA) and/or the MOI. On November 26, 2013, the MOI promulgated certain control measures aimed at controlling the total volume of PRC individuals' investments in real estate, which took effect from 2014. Subject to the relevant laws and regulations (such as the Regulations on Permission of the Acquisition, Creation or Transfer of Property Rights of Real Estate in Taiwan by PRC People), PRC individuals may purchase real estate in Taiwan, either individually or collectively, provided that the purchase(s) shall not exceed a total area of 13 hectares and a total of 400 buildings per year, and also provided that the overall purchases of real estate in Taiwan made by such PRC individuals shall not, at any given time, exceed a total land area of 1,300 hectares and a total of 20,000 buildings.

Companies established in Taiwan by foreign investors, also referred to as foreign investment approval (FIA) companies, may purchase or lease real property for their operations in Taiwan.

## Major property legislation

- Land Act
- Land Tax Act
- Deeds Tax Act
- House Tax Act
- Urban Planning Act
- Regulations on Urban Renewal
- Building Act
- Regulations on Management of Apartment Buildings
- Management Rules for Hillside Buildings
- Management Rules for Interior Fixtures of Buildings
- Regulations on Permit for PRC Citizens to Acquire, Create or Transfer Real Property Rights in Taiwan
- Rules on Superficies on State-owned Non-public Land
- Statute for Investment by Foreign Nationals
- Statute for Investment by Overseas Chinese
- List of Negative Investments by Overseas Chinese and Foreign Nationals
- Act for Promotion of Private Participation in Infrastructure Projects
- Civil Code

## Forms of foreign corporations

A foreign company may establish a presence in Taiwan in any of the following forms:

- Subsidiary (a limited company or a company limited by shares)
- Branch office
- Representative office (for conducting non-profit generating activities only)

Different forms of companies have different tax and legal implications, particularly when remitting funds out of Taiwan.

## Registration/licencing requirements

Before commencing operations, foreign firms are required to register with the following agencies:

- Department of Commerce, MOEA
- Local city or county government where the business is to be located
- Bureau of Foreign Trade (if it is an importer/exporter)
- Local tax office

## Foreign employment limitations

Foreign nationals have to meet certain academic and/or work experience criteria to be eligible for a work permit to engage in office work in Taiwan. To obtain a work permit, a foreign national must:

- Have a master's degree in a related field
- Have a bachelor's degree and at least two years of experience in a related field
- Have passed one of the exams conducted by the Taiwan government in accordance with the Act for Conducting Examinations for Professional Occupations or Technicians
- Have worked for a multinational enterprise for at least one year and be assigned by such enterprise to Taiwan
- Have been trained or studied by himself/herself, and have at least five years of experience in a related field with proven track records

## Investment incentives

The Act for Promotion of Private Participation in Infrastructure Projects provides preferential tax treatment and financing treatment for investors of infrastructure projects. Also, under this legislation, the Taiwan government will assist investors in acquiring land necessary for infrastructure projects.

## Restrictions on foreign property ownership

Foreigners are prohibited from owning any of the following land:

- Forestry land
- Fisheries
- Hunting grounds
- Salt fields
- Land with mineral deposits
- Sources of water
- Land within fortified and military areas
- Land adjacent to national frontiers

## Foreign exchange controls

Each company in Taiwan may remit into and out of Taiwan USD 50 million per year. If the aggregate amount of remittances exceeds USD 50 million, approval must be obtained from the Central Bank of the Republic of China (Taiwan).

There are no foreign exchange limits for investment, trade or insurance premium payments by foreign companies in Taiwan, provided that their investments in Taiwan have been approved by the relevant authorities.

## Taxes on possession and operation of real estate

### House tax

House tax is an annual tax assessed on all buildings and houses. It ranges from 1.2 percent to 5 percent of the current assessed value of the house, depending on the type of use.

| Purposes | | Statutory rate (%) Min. rate | Statutory rate (%) Max. rate | Actual rates enforced (%)* Min. rate | Actual rates enforced (%)* Max. rate |
|---|---|---|---|---|---|
| For residential purposes | Used by the owner himself/herself, his/her spouse or relatives of a direct second lineage of the household or leased for public welfare purposes | 1.2 | | 1.2 | |
| | Not occupied by the owner, his/her spouse or relatives of a direct lineage of the household | 1.5 | 3.6 | 1.5 | 3.6 |
| For non-residential purposes | Used for business purposes | 3 | 5 | 3 | |
| | Used as a private hospital or clinic, or as a professional office | | | | |
| | Used as the premises for the operation of a non-profit civic organisation | 1.5 | 2.5 | 2 | |

* Actual rates enforced are fixed within the minimum and maximum rates above by the government of each special municipality (i.e., Taipei City, New Taipei City, Taichung City, Tainan City and Kaohsiung City, collectively referred to as "special municipality"), county or city, approved by the local people's assembly and submitted to the Ministry of Finance (MOI) for record purpose.

### Land value tax

Land value tax is payable on an annual basis to the local county or special municipality. The tax ranges roughly from 1 percent to 5.5 percent, based on a comparison of the starting cumulative value (SCV) and the current government-assessed land value (LV), as follows:

| Formula | Conditions | Applicable formula (land value tax) |
|---|---|---|
| 1 | LV ≤ SCV | LV x 1% |
| 2 | 5 x SCV ≥ LV > SCV | (LV x 1.5%) – (SCV x 0.5%) |
| 3 | 10 x SCV ≥ LV > 5 x SCV | (LV x 2.5%) – (SCV x 6.5%) |
| 4 | 15 x SCV ≥ LV > 10 x SCV | (LV x 3.5%) – (SCV x 17.5%) |
| 5 | 20 x SCV ≥ LV > 15 x SCV | (LV x 4.5%) – (SCV x 33.5%) |
| 6 | LV > 20 x SCV | (LV x 5.5%) – (SCV x 54.5%) |

The SCV is a constant figure set by the government for each county or special municipality. The LV is assessed by the government every three years.

## Taxes on acquisition and transfer of real estate

### Stamp tax and legal costs

Stamp tax is charged on sales and transfers of deeds or real estate. The stamp tax is 0.1 percent of the contract price or the real estate value and is usually paid by the purchaser. It is usual practice for each party to bear its own legal costs in a property transfer transaction.

### Deed tax

Deed tax is assessed on all immovable property located on land, including houses, buildings and other fixtures. Different rates apply for different forms of exchange:

| Conditions | Rate (% of value of the deed) |
|---|---|
| On a purchase | 6% |
| On a Dien | 4% |
| On an exchange | 2% |
| On a bestowal or a donation | 6% |
| On a partition | 2% |
| On a possession | 6% |

### Capital gains tax and land value increment tax

Capital gains from the sale of real property other than land are treated as regular income and taxed at a corresponding personal or corporate income tax rate. Gains from the sale of land are exempt from income tax, but are assessed under land value increment tax (LVIT).

LVIT is levied on the sale of land. LVIT is based on the increase in the government-assessed value (GAV) of the land component of the property during the ownership period, adjusted by the consumer price index. LVIT rates range from 20 percent to 40 percent, depending on the amount of appreciation in GAV. The exact tax liability is established via the application of a complex formula, which takes into account the holding period (for increases in GAV of 100 percent or more only). The holding period discounts are available where the subject property has been held for more than 20 years, more than 30 years or more than 40 years.

| Formula | Increase in GAV | LVIT rates |
|---|---|---|
| 1 | Less than 100% | 20% |
| 2 | 100% to less than 200% | 30% |
| 3 | 200% and above | 40% |

Under Taiwan's current tax regulations, capital gain from the sale of land is generally exempt from income tax, but is subject to the LVIT only. However, the LVIT has long been an underestimate, as the GAV used for calculating the LVIT is usually much lower than the actual transaction price. Hence, it is proposed under a new tax scheme that the capital gain from the sale of land, after deducting the increase in the land value (which would still be subject to the LVIT), will be subject to income tax unless any of the statutory exemptions applies. As a result, the tax to be borne by the seller under the new tax scheme would probably be substantially higher than that under the current tax scheme. The establishment of the new tax scheme remains pending, as currently, the new tax scheme is still under review by the government and will have to go through three readings of the Legislative Yuan.

### Selective commodities and services tax

The Statute for Selective Commodities and Services Tax ("Statute") took effect on June 1, 2011, last amended on January 7, 2015.

According to the Statute, any seller who sells real property, including:

- A building and the land on which the building is located
- A piece of urban land for which a building permit can be issued
- A piece of nonurban land located at industrial zone for which a building permit can be issued, within one or two years of acquiring the same, is subject to the Selective Commodities and Services Tax (the so-called "luxury tax") at 10 percent or 15 percent, respectively, of the sum of the sale price and the value added tax (VAT) payable for the sale

Luxury tax is a special tax payable by sellers in addition to the regular taxes payable on the sale of a property.

### Value added tax/goods and services tax

Taiwan has a 5 percent VAT on most goods and services.

## Tax depreciation

Depreciation of fixed assets is calculated based on the depreciation periods prescribed in the Revised Table of Service Life of Fixed Assets (固定資產耐用年數表), as follows:

| Description | | Service life |
|---|---|---|
| Buildings for use as office, stores, residences, public places and others not otherwise classified. | 1. Reinforced concrete construction, prefabricated concrete construction | 50 years |
| | 2. Reinforced brick construction | 35 years |
| | 3. Brick construction | 25 years |
| | 4. Metal construction (with cover treatment) | 20 years |
| | 5. Metal construction (without cover treatment) | 15 years |
| | 6. Wooden construction | 10 years |

Current tax regulations allow the straight-line method, fixed-percentage method, sum-of-years-digits method, production method, working-hour method, and other depreciation methods approved by the competent authorities. Businesses are required to report to the national tax administration before they adopt any method other than straight-line. If no report is submitted, the business will be assumed to have opted for the straight-line method.

## Corporate taxation

FIA companies are subject to tax at the same rates as Taiwan companies. FIA companies are subject to a withholding tax on their gross income.

Corporate tax is based on a progressive scale, as follows:

| Taxable income | Tax rate |
|---|---|
| Less than TWD 120,000 (USD 4,000[1]) | Exempt from tax |
| More than TWD 120,000 (USD 4,000) | 17% of total taxable income, but the tax payable shall not exceed 50% of the portion of taxable income above TWD 120,000 (USD 4,067) |

Net losses can be carried forward for a maximum of 10 years, and cannot be carried back.

## Personal taxation

Both residents and non-residents are taxed on Taiwan-sourced income only. Residency only determines how they will be taxed. After January 1, 2010, a Taiwan resident must include his/her non-Taiwan-sourced income in the calculation of his/her basic income, unless the sum of his/her non-Taiwan-sourced income received in a calendar year does not exceed TWD 1 million (USD 33.33 million).

Individuals who were in Taiwan for at least 183 days during a calendar year are treated as residents for income tax purposes and taxed at progressive marginal rates, as follows (for the taxable year of 2014):

| Taxable income | Tax rate |
|---|---|
| TWD 0–520,000 (USD 0–17,333) | 5% |
| TWD 520,001–1,170,000 (USD 17,333–39,000) | 12% |
| TWD 1,170,001–2,350,000 (USD 39,000– 78,333) | 20% |
| TWD 2,350,001–4,400,000 (USD 78,333–146,667) | 30% |
| TWD 4,400,001 (USD 146,667) and above | 40% |

The taxable income of residents includes salary, professional fees, royalties, rental income, gains from property transactions, dividends, company profits, interest, prizes and awards, and payments relating to retirement, severance and resignation. Some personal exemptions and deductions are allowed.

[1] The USD amounts in this Chapter are calculated at USD 1 to TWD 30 and for reference only.

Individuals who are in Taiwan for less than 183 days during a calendar year (i.e., non-residents for income tax purposes) are liable for a withholding tax on gross income at a flat rate of 20 percent, but if a non-resident who stays in Taiwan for 90 days or less in a taxable year receives remunerations for services provided from an offshore employer, such income will not be considered the non-resident's Taiwan-sourced income.

## Tax treaties: Avoidance of double taxation

Double taxation agreements as of January 5, 2015:

| | |
|---|---|
| Australia | Malaysia |
| Austria | Netherlands |
| Belgium | New Zealand |
| Denmark | Paraguay |
| France | Senegal |
| Gambia | Singapore |
| Germany | Slovakia |
| Hungary | South Africa |
| India | Swaziland |
| Indonesia | Sweden |
| Israel | Switzerland |
| Kiribati | Thailand |
| Luxembourg | United Kingdom |
| Macedonia | Vietnam |

International Transport Tax Treaties for Shipping or Air Transport* as of January 5, 2015:

For the purpose of this table, S=Shipping Transport and A= Air Transport

| | |
|---|---|
| Canada (A) | Macau (A) |
| EU (S) | Netherlands (S&A) |
| Germany (S) | Norway (S) |
| Israel (S) | Sweden (S) |
| Japan (S&A) | Thailand (A) |
| Korea (S&A) | United States (S&A) |
| Luxembourg (A) | |

**Generally, International Transport Tax exemptions allow countries to import and export cargos to another country and allow them to avoid taxes on these products. Such treaties enhance the location as a shipping/transportation centre.*

## Real Estate Investment Trusts

### Introduction

Taiwan passed the Real Estate Securitization Act (RESA) in 2003. The MOI has also issued administrative guidelines that support the legislation. The RESA provides for the creation of two categories of real estate securities—real estate asset trusts (REATs) and real estate investment trusts (REITs). The difference between a REAT and a REIT lies in how they are established.

A REIT is created by a trust enterprise that invites investors to participate in the trust, based on the trustees' REIT plan and prospectus. The trustee raises cash from the sale of certificates of beneficiary and then uses the funds raised to acquire real estate.

A REAT is created by the transfer of real estate from the owner (the sponsor/originator) to the trustee, who, in turn, launches a unit trust of certificates of beneficiary. These securities may then be traded, subject to certain rules and restrictions, in the same manner as REITs. Real estate contributed to a fund may be transferred back to the originator at the end of the REAT's term or sold in the open market, as stipulated by the trust agreement. To date, REATs have mainly been used in relation to commercial real estate deals.

The Fubon No. 1 REIT was the first REIT listed on the Taiwan Stock Exchange in March 2005. The Fubon No. 1 REIT raised TWD 5.83 billion (USD 194.3 million) to acquire two office buildings, an apartment building and a commercial building in Taipei City. As of January 23, 2015, there are seven REITs listed on the Taiwan Stock Exchange.

REITs will be closed-end funds, unless prior approval is obtained from the Financial Supervisory Commission.

The following rules apply to both REITs and REATs, unless otherwise stated.

### Restrictions

1. Originators/sponsors

- The owner of the property that will be acquired by a REIT may purchase the certificates of beneficiary. However, once the REIT is established, the originator/sponsor will be subject to a lock-in period of one year.

2. Establishment of the trustee

- To be eligible to act as a trustee of a REIT, an entity must have a paid-up capital of TWD 1 billion (USD 33.33 million).
- To be eligible to act as a trustee of a REAT, an entity must have a paid-up capital of TWD 300 million (USD 10 million).

3. Fund restrictions

- There are no specific restrictions on the minimum fund size, only practical limitations concerning where and how such securities can be traded.
- REITs with assets of TWD 3 billion (USD 100 million) or more are eligible to be listed on the Taiwan Stock Exchange. REITs with assets of TWD 2 billion (USD 66.67 million) or more are eligible to be listed on the over-the-counter (OTC) market.
- REATs with assets of TWD 500 million (USD 16.67 million) or more are eligible to be listed on the Taiwan Stock Exchange or the OTC market.
- Any five beneficiaries, except for the independent institutional investors under the RESA, must not own more than 50 percent of the beneficial securities in a REIT or more than 50 percent of the preferred stock in a REAT.

4. Asset restrictions

- Over 75 percent of a REIT's assets must be invested in real estate or other real estate-related rights under development or generating stable income, real estate securities, government bonds, or cash.
- Not more than 40 percent of a REIT's assets or TWD 600 million (USD 20 million can be held in securities other than real estate securities.
- REITs and REATs cannot buy vacant land without a development plan. The RESA requires trusts to invest for the purpose of earning stable income.
- Idle funds can be invested in bank deposits, government securities, bonds issued by financial institutions, treasury notes, negotiable certificates of time deposit, and commercial papers of companies with an acceptable credit rating or guaranteed by banks with an acceptable credit rating, or other financial products approved by the competent authorities only.
- The RESA does not prohibit a trust from investing outside Taiwan.
- A fund cannot own more than 10 percent of another fund.
- A fund cannot invest more than 10 percent of its assets in another fund.

5. Dividends

- The fund's net income should be distributed as dividends within six months of the end of the financial year.

6. Borrowing

- The RESA does not specify borrowing limits.

7. Private funds

- In addition to public offerings, the RESA provides for the creation of private funds.
- Private funds must have less than 35 members. Individual investors of private funds must (1) present proof of financial capacity, i.e., having at least TWD 30 million (USD 1 million), or a statement undertaking that his or her total assets exceed TWD 30 million (USD 1 million) if he/she invests in beneficiary securities worth more than TWD 3 million (USD 0.1 million), and his/her total assets at the trustee, including deposits and investments (including the said investment), is worth more than TWD 15 million (USD 500,000); and (2) have sufficient professional knowledge or experience in trading financial products. Corporations investing in private funds must have assets over TWD 50 million (USD 1.67 million).
- Restrictions on borrowing, liquidity ratios, appraisal regulations, investment plans, control reports and execution records and other such restrictions on public funds do not apply to private funds.

### Taxation

Taiwan residents and foreign companies with a business presence in Taiwan are subject to a withholding tax of 10 percent on their dividend income from the trust; this income is not consolidated in their annual taxable income. A 15 percent withholding tax rate is levied on distributions of dividends from the trust to non-Taiwan residents and foreign companies without a business presence in Taiwan, provided, however, that this rate may be reduced under the terms of a tax treaty.

The sale and purchase of REAT and REIT securities are exempt from the Securities Transaction Tax.

No capital gains tax is applied on the sale of the securities by investors or on the sale of real estate by the trusts.

The transfer of property from an originator to a REAT trustee will be exempt from LVIT, provided that the REAT is required to return the entrusted property to the originator upon termination of the trust.

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Ping (1 ping = 3.3 sqm = 35.58 sq ft) |
| **Rental payments** | |
| Rents | NTD/ping/month on the landlord's stated gross area |
| Typical lease term | 3-5 years; longer terms of up to 10 years are sometimes available for large-space users (but not typical) |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months rent) | 3-6 months |
| Security of tenure | Only for the duration of the tenancy, no guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal | Reinstated to original condition |
| Basis of rent increases or rent review | Reinstated to original condition |
| Frequency of rent increases or rent review | At lease renewal or every 2-3 years |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges |
| Car parking | Held under a separate monthly lease for an additional rent |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord reinstated to original condition |
| Responsibility for external/structural repairs | Landlord reinstated to original condition |
| Responsibility for building insurance | Landlord reinstated to original condition |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Reinstated to original condition |
| Tenant early termination rights | Reinstated to original condition |
| Tenant's building reinstatement responsibilities at lease end | Reinstated to original condition |

Source: JLL

### Property tenure/ownership

Land ownership, possession and use come under two types of tenure:

- Freehold
- Leasehold

Land is usually granted for either:

- Residential purposes – Maximum of 30 years, with additional 30 years renewable
- Commercial and industrial purposes – Maximum of 50 years, with additional 50 years renewable

Leasehold land interests are granted through leases, usufructs or superficies, each with its own conditions specified by the owner. These are normally granted by the Crown Property Bureau and the government or state organisations. Private landowners also offer leasehold title.

Strata-title ownership is common among residential, office and retail projects in Thailand.

The Commercial and Industrial Property Lease Act was enacted in May 1999. This Act allows foreigners doing business in Thailand to lease real property primarily for commercial or industrial purposes. Another provision in the Act allows foreigners to lease land for at least 30 years, but not exceeding 50 years, renewable for another 50 years. Prior approval is needed from the land department chief if a lease involves more than 100 rai (40 acres). The Act also allows leases to be transferred to third parties either by sale or inheritance.

### Major property legislation

- Bankruptcy Act
- Bankruptcy Court Act
- Civil and Commercial Code
- Commercial and Industrial Property Lease Act
- Condominium Act
- Exchange Control Act
- Foreign Business Act
- General Building Construction Code
- General Building Control Act
- House and Land Tax Act
- Investment Promotion Act
- Industrial Estate Authority of Thailand Act
- Land Code
- Local Development Tax Act
- Revenue Code
- Revision of State Enterprise Corporatisation Act

### Operational requirements for foreign corporations

#### Modes of entry

- Limited liability company (public or private)
- Partnership
- Representative office
- Branch office
- Regional office
- Joint venture
- Other common business relationships, i.e., distributorships, licences, agencies

#### Registration/licencing requirements

According to the Foreign Business Act, a foreigner refers to:

- An individual of non-Thai nationality
- An entity registered in another country
- An entity registered in Thailand with 50 percent or more of its shares held by non-Thai shareholders

The law prohibits foreigners from participating in specified business activities and requires foreigners to obtain licences before engaging in such activities. The investment must be at least 25 percent of the average estimated operating expenses for the first three years, but not less than THB 3 million (USD 91,776).

Under the Commercial Registration Act, individuals or juristic persons engaging in certain businesses have to register with the Ministry of Commerce within 30 days of commencing business.

The establishment and operation of factories is governed by the Factory Act. There are three types of factories, i.e., factories that do not require licences, factories that are required to notify officials in advance of start-up, and factories that are required to obtain licences before commencing operations. Licences are valid for five years and are renewable.

Intellectual property is protected through laws relating to patents, trademarks, copyrights, trade secrets, geographical indication, layout designs of integrated circuit and optical disk production.

**Foreign employment limitations**

The Alien Occupational Act requires all foreigners to obtain a work permit before working in Thailand. The Act also lists certain occupations that are reserved for Thai nationals. The following two applications must be processed simultaneously:

- An application to receive a work permit, which is submitted to the Ministry of Labour
- An application for a one-year non-immigrant visa extension, which is submitted to the Immigration Bureau

## Foreign investment incentives

**Revisions to Thailand's investment promotion policies**

The Board of Investment (BOI) has announced adjustments in Thailand's investment promotion policies and criteria for granting tax privileges. Moreover, as per the announcement of the BOI No. 5/2557 that came into force on December 18, 2014 granting priority investment promotion to small-sized and medium-sized enterprises (SMEs) that have a minimum level of investment capital of THB 500,000 (USD 15,295) (excluding cost of land and working capital). Each project that applies for investment promotion must have a value of imported machinery not exceeding THB 10 million (USD 305,915), and the total fixed assets or investment capital of the business (excluding cost of land and working capital) must not exceed THB 200 million (USD 6.12 million).

The BOI criteria and privileges under the announcement of the BOI No. 2/2557, which shall be effective for applications submitted from January 1, 2015 onward, prescribe as follows:

**1. Criteria for project approval**

- For a project with a minimum capital investment of THB 1 million (USD 30,587) (excluding cost of land and working capital), the following criteria is used:
  - The value added is not less than 20 percent of the sales revenue, except projects that manufacture electronic products and parts or process agricultural produce as well as projects granted special approval by the BOI.
  - The ratio of liabilities to registered capital should not exceed 3:1 for a newly established project. Expansion projects shall be considered on a case-by-case basis.
  - Modern production processes and new machinery are used. In cases where old machinery will be used, its efficiency must be certified by reliable institutions, and the BOI's approval must be obtained.
  - Adequate environmental protection systems are installed. For projects with a potential environmental threat, the BOI shall prescribe special conditions on both the location of the project and the manner of pollution treatment.
  - A project which has investment capital of THB 10 million (USD 305,915) or more (excluding cost of land and working capital) must obtain ISO 9000 or ISO 14000 certification or similar international standard certification within two years from the full operation start-up date.
- For a project with investment capital (excluding cost of land and working capital) exceeding THB 750 million (USD 22.94 million) shall be submitted a feasibility study of the project, as prescribed by the BOI
- For a concession project or the privatisation of a state enterprise project, the following criteria are used:
  - An investment project of state enterprises, according to the State Enterprise Corporatisation Act, will not be entitled to grant promotion for concession projects operated by the private sector and the transfer of ownership to the government ("build, transfer, operate" or "build, operate, transfer"). The government agency, which owns the project and intends the concessionaire to obtain promotion privileges, will submit the project to the BOI at the time of the project's commencement and before any invitation to the private sector to join the bid. In the bidding process, it must clearly state that the bidders will be informed of any incentives entitled to them. In principle, the BOI will not grant promotion in the event that the private sector has to pay compensation to the government for the concession, unless such payment is a reasonable amount on the investment consumed by the government.
  - For government projects under the "build, own, operate" method, including those leased or managed by the private sector by paying an amount in terms of a rental payment to the state, the BOI will apply the normal criteria.
  - For the privatisation of state enterprises, if it requires governmental support, the appropriate budget should be determined after the privatisation of the state enterprise as per the State Enterprise Corporatisation Act. In the event of expansion after the privatisation, the appropriate budget will apply for promotion for only the expanding investment by granting incentives according to the normal criteria.

**2. Criteria for foreign shareholding**

- Thai nationals must hold shares totalling not less than 51 percent of the registered capital in projects relating to agriculture, animal husbandry, fisheries, mineral exploration and mining and service businesses under list one of the Foreign Business Act B.E. 2542 (A.D. 1999)
- No equity restrictions for foreign investors in manufacturing projects
- The BOI may set the amount of shares eligible to be held by foreign investors on promoted projects when deemed appropriate

### 3. Investment zones

The BOI specifies investment promotion zones as follows:

- 20 provinces with low per capita income: Kalasin, Chaiyaphum, Nakhon Phanom, Nan, Bueng Kan, Buri Ram, Phrae, Maha Sarakham, Mukdahan, Mae Hong Son, Yasothon, Roi Et, Si Sa Ket, Sakhon Nakhon, Sa Kaew, Sukhothai, Surin, Nong Bua Lamphu, Ubon Ratchathani and Amnat Charoen
- Special economic development zones
- Science and technology parks that are promoted or approved by the Board

### 4. Criteria for granting tax and duty privileges

The BOI stipulates the following two types of incentives:

- Activity-based incentives, which are further classified into two groups of incentives based on the importance of activities as follows:
  - Group A consists of activities that shall receive corporate income tax incentives, machinery and raw materials import duty incentives and other nontax incentives.
  - Group B consists of activities that shall receive only machinery and raw materials import duty incentives and other nontax incentives.
- Merit-based incentives to attract and stimulate investment or spending on activities that benefit the country or industry at large will be granted to projects according to the following:
  - Merit to be placed on competitiveness enhancement, in case the project has investments or expenditures on (1) research and development (R&D) in technology and innovation, (2) donations to technology and human resources development funds, educational institutes, (3) IP acquisition/licencing fees for commercialising technology developed in Thailand, (4) advanced technology training (5) development of local suppliers with at least 51 percent Thai shareholding in advanced technology training and technical assistance or (6) product and packaging design
  - Merit to be placed on decentralisation for a project located in the 20 provinces with low per capita income, which shall receive additional incentives
  - Merit to be placed on industrial area development in case a project located within industrial estates or promoted industrial zones shall be granted one additional year of corporate income tax exemption. However, the total period of corporate income tax exemption shall not exceed eight years
  - Projects eligible for merit-based incentives may apply under Group A or B, according to the conditions set out by the BOI

For details on the BOI's announcement regarding the policies and criteria for investment promotion, please refer to http://www.boi.go.th/upload/content/newpolicy-announcement%20as%20of%2012_12_57%20%283%29_47674.pdf

## Regional operating headquarters (ROH) schemes

The Revenue Code stipulates the criteria and tax privileges for two separate ROH schemes as follows:

1. Original scheme

In 2002, the cabinet endorsed a package of tax incentives aimed at encouraging foreign companies to set up regional offices in Thailand. To be eligible for the original ROH scheme, a foreign company must:

- Be registered in Thailand with:
- Have at least THB 10 million (USD 305,915) of paid-up registered capital
- Have at least three offshore affiliates in other countries
- Receive income from offshore affiliates accounted for at least half of the total income (the minimum is 1/3 of the income during the first three years if granted permission by the Revenue Department)

The tax incentives came into force with the issuance of a Royal Decree (No.405) in 2002, which is still fully effective. The incentives include:

- 10 percent on corporate income derived from performing administrative, technical, R&D, and other qualifying services for ROH offshore branches or associated enterprises
- 10 percent on royalties derived from ROH foreign branches or associate enterprises for the use of R&D performed in Thailand by the ROH
- 10 percent on interest received from ROH foreign branches or associated enterprises for loans granted, but the loans must be made from other sources (not ROH) and extended to ROH branches or associated enterprise
- Withholding tax exemptions on dividends paid out to offshore shareholders not carrying on business in Thailand, but only with regard to the percentage of the dividend that corresponds to the amount of the ROH income derived from ROH offshore branches and associated enterprises
- An adjustment of personal income tax collected from foreign experts from the current progressive rate to a 15 percent flat rate for no more than four years from the first to the last day of employment

- Tax exemptions on dividends transferred from subsidiaries to the ROH and on those offered by the ROH to overseas branches
- An immediate 25 percent depreciation of the value of fixed assets at the time of purchase or transfer, and the residual value can be depreciated at a rate not exceeding 5 percent, with the remaining depreciation to be incurred gradually over 20 years

A prospective investor who wishes to qualify to obtain ROH privileges may either seek the BOI's promotion or register with the Revenue Department.

2. Alternative scheme

The new ROH package has been issued by the Royal Decree (No. 508) on November 6, 2010 and is now also effective.

The criteria required for ROH for tax privileges are that the paid-up capital of the company operating the ROH must be more than THB 10 million (USD 305,915) at the end of each accounting period, and must provide services to associated enterprises in foreign countries. The company also must have a total business spending of at least THB 15 million (USD 458,789) per year (the business spending refers to the total operating costs that are paid to individuals or companies in Thailand, but excluding operating expenses paid overseas, royalties and know-how fees, raw materials, components and packaging), or have an investment spending (actual payment) of at least THB 30 million (USD 917,693) paid in Thailand per year, which is directly related to ROH. Moreover, foreign associated enterprises must have managements and employees working, as well as actual business operations, including maintaining skilled staff of at least 75 percent of the total employees by the end of the third accounting period, with average remuneration per worker of at least THB 2.5 million (USD 76,463) per annum for at least five employees by the end of the third accounting period. The investors must notify the Revenue Department about the ROH's incorporation within five years from the date the law became effective.

The new benefits available are as follow:

- For a portion of income from overseas corporations
  - An exemption on corporate income tax for 10 years
- For a portion of income from local operations
  - A 10 percent corporate income tax on net profits for income derived from services provided to ROH's domestic branches or associated enterprises for 10 years
  - A 10 percent corporate income tax on net profits for qualified royalties for 10 years
  - A 10 percent corporate income tax on interest received from the ROH's foreign branches or associated enterprises for loan granted, provided that such loans are made from other sources and extended to the ROH's branches or associated enterprises for 10 years
  - A corporate income tax exemption for dividends received by the ROH from associated enterprises for 10 years
  - A corporate income tax exemption for 10 years for dividends paid out of the ROH's concessionary profits to its juristic shareholders who are incorporated abroad and not carrying on business in Thailand
- For income of expatriate employees
  - Expatriates employed by an ROH are subject to tax at the rate of 15 percent on remuneration, derived from the ROH, for four consecutive years (eight consecutive years for high level management expatriate employees working in Thailand).

## Restrictions on foreign property ownership

### Land

Generally, foreign individuals or corporations are not permitted to hold title to land, but they are allowed to obtain leasehold interests.

However, under existing regulations, foreigners may purchase a freehold interest in land if they are:

- Joint ventures where foreign parties control not more than 49 percent of the company
- Foreign manufacturers promoted by the BOI
- Oil concessionaires under the Petroleum Act
- Businesses located in certain industrial estates

Foreigners may own up to 1 rai of land (0.4 acre) for residential purposes if granted permission by the Minister of the Ministry of Interior, and must remit a total of at least THB 40 million (USD 1.22 million) into Thailand over a minimum period of five years in specific businesses or activities. Moreover, the land to be acquired shall be located in Bangkok Metropolis, Pattaya City, or Tessaban (municipality), or in an area specified as residential zone, according to the law on town and country planning, and shall not be located in a military safety zone, according to the law on military safety zone. However, the land may be disposed if it is not utilised for residence within two years - from the day of the land acquisition registration, or if the foreigner who is granted permission to acquire such land does not comply with the rules and conditions specified.

### Condominiums

Foreigners can purchase, in any condominium project, up to 49% of the total space of all units in that condominium at the time of the application for registration without the need for permanent residence. Eligible foreigners include:

- Those with residence permits
- Those that were granted permission to enter Thailand under the Investment Promotion Act
- Limited companies with more than 49 percent of its capital owned by aliens who have been registered as a foreign "juristic person" under Thai law
- Foreign juristic persons with investment promotion certificates
- Foreign individuals or juristic persons remitting foreign currency into Thailand for payment for the condominium units

A foreign individual who does not hold a permanent resident certificate, or a foreign company purchasing a condominium unit, is required to bring 100 percent of the amount of the purchase price from an overseas source into Thailand.

Prior to April 2004, foreigners could purchase up to 100 percent of a condominium project, provided it was located in Bangkok Metropolis, municipality area or other administrative area, and the site area was less than 5 rai (2 acres), as stipulated in the Condominium Act (No. 3), B.E. 2542 (A.D. 1999). This law was in effect from 1999–2004 and is still valid for condominiums purchased during that period.

### Foreign exchange controls

Flows of foreign exchange are subject to declaration to or permission from the Bank of Thailand (BOT). The Exchange Control Act B.E. 2485 (A.D. 1942) and the Ministerial Regulation No. 13 (B.E. 2497 (A.D. 1954)) issued under the Exchange Control Act B.E. 2485 (A.D. 1942) set out the principles of controls under which Notifications of the Ministry of Finance and Notices of the Competent Officer were issued. The objectives of this foreign exchange control are to centralise foreign exchange of the country, to channel foreign exchange for public benefit, to monitor capital outflows, and to stabilise the value of the baht.

### Importation and repatriation of personal funds

There is no limit on the amount of foreign currency a foreigner in transit may bring into or take out of Thailand. However, the law requires that any person receiving foreign currencies from abroad is required to sell such foreign currencies to an authorised financial institution or to deposit them in a foreign currency account with an authorised financial institution within 360 days of receipt, except for foreigners temporarily staying in Thailand for not more than three months, foreign embassies, and international organisations, including people with diplomatic privileges and immunities. Additionally, any person bringing into or taking out of Thailand an aggregate amount of foreign currency exceeding THB 651,800 (USD 19,923) or its equivalent must declare as such to a customs officer. Regarding Thai currency (THB), tourists may carry up to THB 500,000 (USD 15,295) to neighbouring countries and up to THB 50,000 (USD 1,529) to other countries without prior BOT permission.

### Import and export of investment funds

#### Import

Remittance of foreign currency for direct and portfolio investments into Thailand is freely permitted. However, foreign inflows must be surrendered to an authorised financial institution or deposited in a foreign currency account with an authorised financial institution in Thailand within 360 days.

#### Export

Repatriation of investment funds, dividends, profits, loan repayments and interest payments by foreign investors may be made freely by submitting a form with the relevant documentation to a commercial bank. In case of a loan repayment, evidence of inward remittance of such loan and the loan agreement must be submitted.

Export investment fund of Thai residents applies as follows:

- Thai residents and companies, including companies registered with the Stock Exchange of Thailand, are allowed to invest in or lend to affiliated business entities abroad an aggregate amount not exceeding THB 3,27 billion (USD 100 million) per year.
- Thai individuals or corporate investors can invest in securities abroad, other than those under employee benefit plans, through private funds or securities companies, subject to the Securities and Exchange Commission's (SEC) guidelines and approval from the Bank of Thailand.
- Outward remittances to Thai emigrants who are permanent residents abroad are allowed up to THB 32.72 million (USD 1 million) per recipient per year for each purpose.
- Fund transfers to public for donation are allowed up to THB 32.72 million (USD 1 million) per person per year for each purpose
- Purchase of immovable properties abroad is allowed up to THB 327.20 million (USD 10 million) per person per year.

Remittances overseas are subject to withholding tax at the following rates:

| | Withholding tax rate* |
|---|---|
| Dividends to offshore shareholders | 10% |
| Fees and royalties | 15% |
| Interest on loans to foreign banks | 15% |
| Lease and rental payments | 15% |
| Management fees | 15% |
| Payments to employees | 15% |

* The withholding tax rates may be lower where a double taxation agreement exists.

A 10 percent tax is levied on remittances of corporate profit.

**Foreign currency account of non-residents**

Non-residents may maintain foreign currency accounts with authorised banks in Thailand without limit. The accounts can be freely credited with funds originating from abroad. Other repayments from Thai residents or borrowings from authorised banks can be deposited, subject to supporting evidences. Balances on such accounts may be freely withdrawn. Regarding a non-resident baht account, non-residents may open Thai baht accounts with authorised banks in Thailand for:

- Non-resident baht account for securities (NRBS) – An NRBS account may be debited or credited for the purpose of investment in securities and other financial instruments such as equity instruments, debt instruments, unit trusts and financial derivatives transactions traded on the Thailand Futures Exchange and Agricultural Futures Exchange of Thailand.
- Non-resident baht account (NRBA) – An NRBA may be debited or credited for general purposes, except funds related to an investment in securities such as trade, services, foreign direct investment, investment in immovable assets and loans.

The total daily outstanding balances for each type of account shall not exceed THB 300 million (USD 9.82 million) per non-resident, and this applies to all transfers between different types of accounts.

## Taxes on possession and operation of real estate

### Local Development Tax

This tax only applies to the land owner. The tax rate varies greatly, depending on the location and assessed value of the land. Typically, it ranges from THB 0.5 (USD 0.01) to THB 80 (USD 2.44) per rai.

### House and Land Tax

This is a tax on assessed rental income and only applies to properties that are rented out.

Rental contracts are typically split into three components, which are taxed separately as follows:

- Rental: Subject to a house and land tax of 12.5 percent of annual rental receipts
- Lease of furniture: Subject to a 7 percent VAT
- Service charge: Subject to a 7 percent VAT

## Taxes on acquisition and transfer of real estate

### Sale of freehold real estate

| Fees payable | Rates |
|---|---|
| Ownership transfer fee | 2% of assessed value |
| Additional stamp duty | THB 1 (USD 0.03) per THB 200 (USD 6.11) of declared amount, or an assessed value of 0.5% of the declared value or assessed value, whichever is higher |
| Specific business tax | 3.3% of the declared amount or assessed value, whichever is higher |
| Municipal tax | 10% of specific business tax |
| Withholding tax | For juristic person – 1% of the declared amount or assessed value, whichever is higher<br>For individual – 5–35% of assessed value |

Stamp duty is waived in transactions that are subject to specific business tax.

The ownership transfer fee for transactions under debt restructuring agreements has been reduced to 0.01 percent from 2 percent.

### Disposition of leasehold real estate

| Fees payable | Rates |
|---|---|
| Lease registration fee | 1% of the total lease consideration or the assessed rental value, whichever is higher |
| Stamp duty | 0.1% of the total rental throughout the lease term |

Mortgage of real estate

| Fees payable | Rates |
|---|---|
| Mortgage Registration Fee | 1% of the amount declared in the mortgage agreement, subject to a maximum of THB 200,000 (USD 6,112) |
| Loan Agreement Stamp Duty | 0.05% of the Mortgage Registration Fee |

For transactions under debt restructuring agreements, a mortgage registration fee of 1 percent will be applied from January 1, 2005 onward.

In addition, mortgage interest payments are tax-deductible for personal income tax purposes, subject to a cap of THB 100,000 (USD 3,056). The tax allowance is part of a package of tax measures aimed at boosting demand for property.

### Capital gains tax

Capital gains from the disposal of assets by corporations are treated as ordinary business income and are taxed at the corporate tax rate of 20 percent.

Capital gains from the disposal of assets by individuals are treated as personal income and are taxed at the individual's tax rate.

Capital gains made on the stock exchange by a foreign individual are currently not taxed. Foreign companies or other juristic persons doing business in Thailand are subject to pay a corporate income tax for capital gains, but with no withholding tax. However, foreign companies or other juristic persons that do not operate business in Thailand are subject to pay 15 percent withholding tax.

## Value added tax/goods and services tax

Value Added Tax (VAT) is a consumption tax based on the value of goods and services offered by traders, businesses or persons in Thailand. It is calculated from the price of the goods and services. VAT is itemised separately from the price of the goods or services so that consumers know the actual amount of the goods and services.

Those liable to pay VAT include:

- Manufacturers, importers, wholesalers, retailers and any other persons selling goods in the course of their business or professional activities
- Persons rendering services
- Agents for foreign businesses conducted in Thailand

Those exempt to pay VAT include:

- small enterprises with annual sales of not exceeding THB 1.8 million (USD 58,662); and
- leasing of immovable property

There are two VAT rates:

- 0 percent – Persons or businesses who do not have to pay VAT are refunded the amount of VAT they had previously paid. Those eligible for the zero rate include:
  - Exported goods
  - Services provided in Thailand for persons in foreign countries
  - International transportation by air and sea by Thai juristic persons
  - Sale of goods or services between bonded warehouses and export processing zones
- 7 percent – This general rate applies to all other persons or companies that conduct business in Thailand. The normal rate is 10 percent; however, it has been reduced to 7 percent from October 1, 2014 to be applied until September 30, 2015

## Tax depreciation

Applicable depreciation rates are as follows:

- Building
  - Permanent: 5 percent
  - Temporary: 100 percent
- Cost of acquiring depletable natural resources: 5 percent
- Cost of acquiring lease rights
  - Indefinite: 10 percent
  - Definite: 100 percent (divided by the lease period plus the renewal option period)
- Cost of acquisition of the right in a process, formula, goodwill, trademark, business licence, patent, copyright or any other rights
  - Indefinite: 10 percent
  - Definite: 100 percent (divided by number of years used)
- Others, excluding land and stock-in-trade: 20 percent

A company adopting generally accepted accounting principles (GAAP) methods in which the depreciation rates vary from year to year is allowed to do so, provided that the number of years over which an asset depreciated shall not be less than 100, divided by the percentage above.

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## Corporate taxation

Companies incorporated under Thai law, or foreign companies carrying on business in Thailand, including companies listed on the Stock Exchange of Thailand, are subject to 20 percent corporate income tax on net profits, with effect from 2013. However, companies incorporated under foreign laws are only taxed on income derived within Thailand. Corporate income tax is calculated from the company's net profit on the accrual basis by taking into account all revenues arising from or in consequence of the business carried on an accounting period and deducting the expenses, as prescribed by the Revenue Code.

Small-to-medium enterprises [defined as those having a registered capital not exceeding THB 5 million (USD 152,788) and having revenue generated from sale of goods and services not exceeding THB 30 million (USD 916,757)] shall pay the tax rate of 20 percent in year 2015, based on the level of net profits as shown below:

| Net profit | Tax rate |
|---|---|
| Not exceeding THB 300,000 (USD 9,169) | 0% |
| THB 300,001 – 1,000,000 (USD 9,169–30,564) | 15% |
| Over THB 1,000,000 (USD 30,564) | 20% |

Companies engaged in the business of international transportation of passengers or goods pay a 3 percent corporate income tax on gross receipts collected for services carried out in Thailand.

Foundations and associations pay a corporate income tax of 2 percent and 10 percent of the gross income, depending on the type of business activity.

Net losses may be carried forward for not more than five consecutive years. No carry back of losses is allowed.

## Personal taxation

Every person, resident or non-resident, who derives assessable income from employment or business in Thailand or has assets in Thailand is subject to personal income tax, whether such income is paid inside or outside the country. The tax is applied on a graduated scale ranging from 0 percent to 35 percent, based on the assessable income and subject to deductibles and allowances.

Exemptions are granted to certain persons, including United Nations officers, diplomats and certain visiting experts, under the terms of international and bilateral agreements.

To alleviate the tax burden of low-income individuals, the government raised the level of personal income that is exempt from tax to THB 150,000 (USD 4,603). This means that individuals will only pay tax on income at or above THB 150,001 (USD 4,603). Please find the personal net income tax rates as shown below.

| Net profit | Tax rate |
|---|---|
| THB 1–150,000 (USD 0.03–4,584) | 0% |
| THB 150,001–300,000 (USD 4,584–9,169) | 5% |
| THB 300,001–500,000 (USD 9,169–15,295) | 10% |
| THB 500,001–750,000 (USD 15,295–22,922) | 15% |
| THB 750,001–1,000,000 (USD 22,922–30,587) | 20% |
| THB 1,000,001–2,000,000 (USD 30,587–61,125) | 25% |
| THB 2,000,001–4,000,000 (USD 61,125–122,251) | 30% |
| Over THB 4,000,000 (USD 122,251) | 35% |

## Tax treaties: Avoidance of double taxation

Treaties in existence:

Armenia
Australia
Austria
Bahrain
Bangladesh
Beralus
Belgium
Bulgaria
Chile
Canada
China
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Great Britain and Northern Ireland
Hong Kong
Hungary
India
Indonesia
Israel
Italy
Japan
Kuwait
Laos
Luxembourg
Malaysia
Mauritius
Myanmar
Nepal
The Netherlands
New Zealand
Norway
Oman
Pakistan
Philippines
Poland
Romania
Russia
Singapore
Slovenia
South Africa

South Korea
Spain
Sri Lanka
Sweden
Switzerland
Seychelles
Turkey
Chinese Taipei
Ukraine
United Arab Emirates
United States of America
Uzbekistan
Vietnam

### Real Estate Investment Trusts

The Trusts for Transactions in the Capital Market Act B.E. 2550 (A.D. 2007) prescribes that trusts may be established in the capital market through real estate investment trusts (REITs) to build up market interest and appetite for investment in real estate through the capital market as well as to permit the use of trusts as investment vehicles for capital market transactions.

The Securities Exchange Commission (SEC) has announced a real estate investment scheme as of January 1, 2013, at which time the Stock Exchange of Thailand issued rules to certify the listing of REITs as from March 18, 2013. The REITs shall fully comply with the Trust for Transactions in Capital Market Act B.E. 2550 (A.D. 2007) and any other regulations as set by the SEC.

The criteria for a REIT to invest in any assets are as follow:

Types of assets to be invested in

- Any type of real property that can generate rental revenue
- Real property located outside Thailand
- Real property that can raise capital at and over 75 percent of its value, including debt (if any). Any reserve capital can be invested, e.g., government bonds, savings account, etc.
- Investment in greenfield projects is permissible as long as SEC conditions are complied with and the investment is for no more than 10 percent of the total asset

Options on receiving profits

- Contractual lease of property without engaging in other businesses, e.g., hotels, hospitals, etc.
- Tenant is forbidden to generate property income from immoral or illegal businesses
- In the event of contractual lease of property, the rental fee shall be relative to the profits of the tenant, but will be at or less than 50 percent of all fixed rental charge

Leverage limit

- 35 percent of the total asset can be leveraged up to a maximum of 60 percent if the REIT obtains an investment grade credit rating
- Must comply with trust establishment contract
- Assets may be placed as collateral
- In other commitments or agreements, customary commercial transactions shall take place

For details on the criteria for REIT, please refer to http://www.set.or.th/en/products/listing/files/Brochure_REIT_Eng.pdf

*Please note that the above USD foreign currency exchange calculations are based on the conversation rate issued by the Bank of Thailand on 22 January 2015 which was THB 32.59 per USD 1.

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## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square Meters |
| **Rental payments** | |
| Rents | THB/sqm/month (gross area) |
| Typical lease term | 3 years. Longer terms of 6 years or more are available in some buildings for large-space users |
| Frequency of rent payable (in advance) | Monthly |
| Typical rent deposit (expressed as x months rent) | 3 months |
| Security of tenure | Only for the duration of the tenancy, no guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal | No |
| Basis of rent increases or rent review | Open market rental value OR with cap rate of 15 - 25% |
| Frequency of rent increases or rent review | At lease renewal normally every 3 years or other period as per agreed. |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for service charge/ management fee | Usually quoted with rental charge and payable monthly in advance |
| Responsibility for utilities | Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges, unless tenants extend the water pipeline into leased premises |
| Car parking | Allocation is usually based on one parking lot per 100 sqm leased free of charge. Additional spaces are provided subject to availability and monthly rental charges |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord |
| Responsibility for external/structural repairs | Landlord |
| Responsibility for building insurance | Landlord (charged back via service charge) |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally prohibited, subject to landlord approval |
| Tenant early termination rights | Only by break clause |
| Tenant's building reinstatement responsibilities at lease end | Reinstated to original condition |

Source: JLL

## Property tenure/ownership

### Major property legislation

Property law in Vietnam is governed by the:

- Constitution
- Law on Land[1]
- Law on Residential Housing[2]
- Law on Planning
- Law on Construction[3]
- Law on Investment[4]
- Law on Real Estate Business[5]

As well as numerous other implementing decrees, circulars and other legislative instruments issued under those laws. Such laws cover:

- Investment, zoning, planning, building
- Real estate business
- Land use right and property titles
- Leasing
- Taxation

[1] Law No. 45/2013/QH13, entitled the Law on Land, dated November 29, 2014 of the National Assembly, took effect as from July 1, 2014 (“Law on Land 2014”).

[2] Law No. 65/2014/QH13, entitled the Law on Residential Housing, dated November 25, 2014 of the National Assembly, replacing Law No. 56/2005/QH11, dated November 29, 2005 of the National Assembly on Residential Housing, will take effect as from July 1, 2015 (“Law on Residential Housing 2014”).

[3] Law No. 50/2014/QH13, entitled the Law on Construction, dated June 18, 2014 of the National Assembly, replacing Law No. 16/2003/QH11, dated November 26, 2003 of the National Assembly on Construction, took effect as from January 1, 2015 (“Law on Construction 2014”).

[4] Law No. 67/2014/QH13, entitled the Law on Investment, dated November 26, 2014 of the National Assembly, replacing Law No. 59/2005/QH11, dated November 29, 2005 of the National Assembly on Investment, will take effect as from July 1, 2015 (“Law on Investment 2014”).

[5] Law No. 66/2014/QH13, entitled the Law on Real Estate Business, dated November 25, 2014 of the National Assembly, replacing Law No. 63/2006/QH11, dated June 29, 2006 of the National Assembly on Real Estate Business, will take effect as from July 1, 2015 (“Law on Real Estate Business”).

Under this legislation, the state agencies responsible for managing and monitoring land use, real estate business and construction in Vietnam include:

- The Ministry of Natural Resources and Environment (MONRE)
- The Ministry of Construction (MOC)
- Provincial/City People’s Committees (Local PC)

## Operational requirements for foreign corporations

Under the Law on Investment 2014, all foreign investors conducting business activities in Vietnam must undertake their investment in accordance with the Law on Investment. A foreign investor investing in Vietnam for the first time in the form of establishment of economic organisation must have an investment project specifying, inter alia, the location of the project and the need for land use proposal. The licensing authority evaluates the feasibility of the investment project for the issuance of an Investment Registration Certificate (IRC) to the foreign investor itself, rather than an Investment Certificate to the foreign invested enterprise (FIE), as provided under the Law on Investment 2005. If a project falls into the criteria of important projects, then it needs to seek in-principle approval before issuance of an IRC. The Law on Investment 2014 classifies three types of projects subject to in-principle approval, comprising projects of the National Assembly (NA); projects of the Prime Minister (PM); and projects of the Local PC.

After the foreign investor has been issued with an IRC, a newly established FIE must register for issuance of its Enterprise Registration Certificate (ERC), a tax code and seal with the relevant departments of the Local PC for its full and lawful operations. The FIE can then enter into the land lease agreement with the provincial people’s committees or infrastructure developers.

There are three methods in which a foreign corporation can participate in real estate business activities and/or acquire land use rights in Vietnam:

(i) Establishing a wholly foreign-owned entity in Vietnam, whereby the project entity may:

  - Enter into a lease agreement directly with the state authority for the duration of the investment project, with rent being paid annually or on a lump sum basis
  - Enter into a land allocation agreement directly with the state authority in the case of implementation of investment projects for the construction of houses for sale or for a combination of sale and lease

(ii) Establishing a joint venture with a Vietnamese entity that leases land from the state and subsequently contributes the value of the land use right to the joint venture

(iii) Acquiring shares or capital contribution in a Vietnam-domiciled company that has been engaging in real estate business activities and leased/allocated land from the state authorities

Real estate business is a conditional business in Vietnam. An enterprise undertaking real estate business activities must have chartered capital (akin to equity) of at least VND 20 billion (approximately USD 1 million). In addition, the investors' ownership capital must account for at least:

- 15 percent of their total invested capital for urban development projects of under 20 hectares
- 20 percent of their total invested capital for urban development projects of at least 20 hectares
- 20 percent of their total invested capital for other projects

The new law on real estate business requires that those organisations and individuals permitted to provide real estate brokerage business services and real estate trading floors must establish an enterprise and must have at least two persons who possess a real estate broker's practicing certificate. Besides, any individual permitted to conduct the business of real estate brokerage services independently must have a real estate broker's practicing certificate and must register for the payment of taxes. Individuals who wish to register a real estate brokerage and obtain the relevant practicing certificate must satisfy certain conditions and pass a real estate brokerage test.

Existing investors may now assign or transfer projects to other investors, subject to certain conditions as follows:

- The project has been approved by a state authority and has a detailed master plan on a scale of 1/500 or a master plan of the whole site already approved.
- Compensation or site clearance work of the project or part of the project to be assigned has been completed. In the case of assignment of an entire investment project for construction of infrastructure, the construction of corresponding technical infrastructure facilities must be completed in accordance with the schedule stated in the project already approved.
- The project is not the subject of any dispute of land use rights and/or is not seized to ensure the enforcement of a judgment or to comply with an administrative decision of a state authority.
- There is no decision from a state authority on resumption of the project or resumption of land; in the case of a breach during implementation of the project, the investor must implement the penalty decision.

## Foreign investment incentives

- With respect to tax rate incentives:
  - A tax rate of 10 percent for 15 years is applied to:
    - New investment projects in areas with extremely difficult socioeconomic conditions, economic zones and hi-tech zones
    - New investment projects, provided that such projects satisfy specific conditions
    - Hi-tech enterprises and hi-tech agricultural enterprises
    - New investment projects in production sectors, provided that such projects satisfy specific conditions
    - New investment projects producing products in the list of prioritised supporting industry, which satisfy specific conditions
    - Investment projects in the production sectors with a minimum investment capital of VND 12,000 billion (USD 567.10 million), using technology that must be evaluated and drawing down total registered investment capital no later than five years after the date of investment licensing, except for the sectors subject to special sales tax and mineral exploitation
  - A tax rate of 10 percent is applied to:
    - Education, vocational training, health, cultural, sports and environmental activities implemented under the socialisation policy
    - Projects on investment in social housing for sale, lease or lease-purchase for the entities specified under the Law on Housing
    - Printed newspapers, provided that such projects satisfy specific conditions
    - Forest planting, tending and protection; agriculture and aquaculture in areas with difficult socioeconomic conditions; forestry in areas with difficult socioeconomic conditions; production, breeding and crossbreeding of plants and animals; production and refining of salt; investment in the preservation of post-harvest agricultural products, aquatic products and food
    - Cooperatives involved in agricultural, forestry, fishery and salt making activities outside areas with difficult or extremely difficult socioeconomic conditions'

- A tax rate of 20 percent (as from January 1, 2016, a tax rate of 17 percent will be applied) for 10 years is applied to:
  - New investment projects in areas with difficult socioeconomic conditions
  - New investment projects, including the manufacturing of high-grade steel; energy-saving products; machines and equipment for agricultural, forestry and fishery production and salt production; irrigation equipment; production and manufacturing of livestock, poultry and aquatic feeds; and development of traditional trades and occupations
- A tax rate of 15 percent is applied to cultivation, husbandry and processing in the agricultural and fishery sectors outside areas with difficult or extremely difficult socioeconomic conditions
- A tax rate of 20 percent (as from January 1, 2016, a tax rate of 17 percent will be applied) is applied to people's credit funds and micro financial institutions

• With respect to tax exemption and tax deduction:
  - Tax exemption for not more than four years and a 50 percent reduction of payable tax for not more than nine subsequent years is applied to:
    - New investment projects in areas with extremely difficult socioeconomic conditions, economic zones and hi-tech zones
    - New projects in education, vocational training, health, cultural, sports and environmental activities implemented under the socialisation policy
    - New investment projects, provided that such projects satisfy specific conditions
    - New investment projects of hi-tech enterprises and hi-tech agricultural enterprises
    - New investment projects in production sectors, provided that such projects satisfy specific conditions
    - New investment projects producing products in the list of prioritised supporting industries, which satisfy specific conditions
    - Investment projects in the production sectors with a minimum investment capital of VND 12,000 billion (USD 567.10 million), using technology that must be evaluated and drawing down total registered investment capital no later than five years after the date of investment licensing, except for the sectors subject to special sales tax and mineral exploitation
  - Tax exemption for not more than two years and a 50 percent reduction of payable tax amounts for not more than four subsequent years is applied to:
    - New investment projects in areas with difficult socioeconomic conditions
    - New investment projects, including the manufacturing of high-grade steel; energy-saving products; machines and equipment for agricultural, forestry and fishery production and salt production; irrigation equipment; production and manufacturing of livestock, poultry and aquatic feeds; and development of traditional trades and occupations
    - New investment projects in the industrial zones, except for the industrial zones with favourable socioeconomic conditions

• An import duty exemption exists on equipment, machinery and specialised vehicles (including spare parts, accessories, etc.) imported for creating the assets of and implementing the projects in the sectors eligible for import duty incentives or in areas eligible for import duty incentives, and projects funded with official development assistance (ODA)

### Restrictions on foreign property ownership

The state grants various types of ownership and quasi-ownership interests in respect of land in Vietnam to various persons and entities, including:

• Vietnamese organisations
• Vietnamese households and individuals
• Vietnamese communities
• Vietnamese religious establishments
• Foreign organisations with diplomatic functions
• Overseas Vietnamese
• Foreign-invested enterprises

It should be noted that foreign individuals are no longer recognised as land users under the Law on Land 2013.

In Vietnam, there are two broad categories of ownership, or quasi-ownership, interests that can be held in respect of real property, namely:

• "Land use rights" (LURs), which relate to land and entitle the holder exclusively to use and deal with the land in a specified manner
• "Ownership of houses and assets attached to land" ("building ownership"), which relates not to the land itself, but to the buildings and other structures attached to land

There are two main categories of LURs that may be held in Vietnam, being:

• Land allocated by the state ("allocated land")
• Land leased by the state ("state leased land")

A subset of allocated land is land recognised by the state as having been stably used by persons or entities over a lengthy period ("stable use land").

Until recently, different types of ownership or quasi-ownership interests in land as well as buildings and structures attached to land were evidenced by different kinds of certificates. A unified certificate ("unified certificate") may evidence that its holder enjoys:

- LURs in respect of the land specified in the unified certificate
- Ownership of the house/s or apartment/s specified in the unified certificate
- Ownership of the construction works specified in the unified certificate
- Ownership of the "artificial forest" ("plantation") specified in the unified certificate (for production purposes)

The holding of LURs in the form of allocated land is to be regarded as being the closest approximation to freehold interests available in Vietnam. LURs in the form of allocated land can be allotted for a fixed term or an indefinite term. It must, however, be remembered that holding LURs in the form of allocated land is technically not tantamount to freehold ownership, as the Constitution of Vietnam specifies that all land in Vietnam is owned by all of the people of Vietnam and is administered by the state on behalf of the people.

The holding of LURs in the form of state leased land is to be regarded as a type of quasi-ownership interest, notwithstanding that such rights are technically leasehold rights. State leased land is generally leased to the Vietnamese LUR holder for a term of between 50 and 70 years, with such lease terms renewable only at the discretion of the Department of Natural Resources and Environment or other relevant government authority. As a general rule, fully or partially foreign-owned companies are not granted LURs in the form of allocated land, but are granted LURs in the form of state leased land or land subleased from the licensed infrastructure developers, except in the case of implementation of investment projects for the construction of houses for sale or for a combination of sale and lease.

An FIE is issued with the unified certificate for a term of the land lease not exceeding the investment term provided in the FIE's IRC, which is usually not longer than 50 years, with an extension of no longer than 70 years. In the case of implementation of investment projects for the construction of houses for sale or for a combination of sale and lease, the term of land allocation is subject to the investment term. The FIE can either directly lease the land from the provincial or municipal people's committees, or sublease the land with the constructed infrastructures from the licensed infrastructure developers in the industrial, export processing zones.

While the land price framework shall be determined by the government every five years, the provincial people's committees shall have the authority to annually set out the land price list applicable to their province or city every five years and determine the specific land price.

It should also be noted that the LUR of a foreign investor varies depending on the form of land use and the payment arrangements of the land rental. The Law on Land contemplates two payment arrangements of land rentals:

- Annual rentals payments ("annual payment")
- One-off payment of rental for the entire lease term ("one-off payment")

Under a land lease for annual payment, an FIE has the following rights:

- The general rights and obligations of land users as provided in the Law on Land 2013
- To mortgage their assets attached to the leased land at credit institutions that are licensed to operate in Vietnam and to contribute as capital their assets attached to the leased land. The recipient of the capital contribution may lease land from the state for a determined purpose for the remainder of the lease term
- To sell their assets attached to the leased land upon fulfilment of specific requirements
- To lease houses if they are permitted to invest in the construction of and trading in houses

While an FIE only has limited rights over the assets on the land under the annual payment regime, an FIE adopting the one-off payment regime and an FIE being allocated with LURs (in the case of implementation of investment projects for the construction of houses for sale or for a combination of sale and lease) can enjoy a broader scope of rights in relation to LUR and assets on the land, as follows:

- The general rights and obligations of land users as provided in the Law on Land 2013
- To transfer LURs and land-attached assets under their ownership during the land use term
- To lease and sublease LURs and land-attached assets under their ownership during the land use term
- To mortgage LURs and land-attached assets under their ownership at credit institutions that are licensed to operate in Vietnam during the land use term
- To contribute LURs and land-attached assets under their ownership as capital for cooperation in production and business during the land use term.

An FIE that has been granted an investment certificate in relation to a specific residential urban development project is allowed to assign the LUR, with respect to independent houses and/or villas, to eligible house owners, provided that such FIE has completed the construction of the infrastructure and satisfied all of the criteria to assign the LUR in accordance with the approved real estate development project. In such case, the LUR assignees will be granted the certificate over the LUR and the assets on land (if any), i.e., the unified certificate. In addition, a master real estate developer in a residential urban development project with completed infrastructure may transfer the LURs in relation to sub construction works in the approved project to another corporate entity for the later entity to continue the subproject developments.

An FIE can sublease land from the licensed infrastructure developers in the industrial parks, industrial clusters, export processing zones, high-tech zones and economic zones under either the annual payment or the one-off payment method for the entire term of the land lease, subject to the approval of the relevant state management authorities. An FIE can sublease land to eligible entities. The rights and obligations of an FIE in relation to subleased land under the annual payment method are as same as those associated with annual rental payments for land. Meanwhile, an FIE in relation to subleased land adopting the one-off payment method has the same rights and obligations associated with one-off rental payment for land.

In a build-transfer (BT) project in the infrastructure sector, the state allocates to the investor an area of land to implement such project. In this case, the investor is not required to pay land use fees or land rent during the construction of the work in accordance with the approved project and is responsible to preserve the area of land allocated for management and to use it in strict accordance with the purpose stated in the project. The transfer of the work and land fund of the project must be carried out in strict accordance with the schedule stated in the investment project approved by the state authority or the term, which has been permitted by the state authority for extension. In the case where the investor has not transferred after the time limit for transfer, the investor must lease land from the state, with the time of land lease calculated from the time of completion of the work construction duration in accordance with the approved project.

In a build-operate-transfer (BOT) project, the state allocates or leases land to the investor to implement such project. In this case, the investor is entitled to exemption or reduction of land use fees or land rent.

It is important to note that there are seven entities that are not eligible to receive a certificate of LURs and certificate of ownership of houses and other assets attached to land:

- Organisations and communities that are allocated land by the state for management
- Persons who are managing and using agricultural land belonging to public-utility land funds of communes, wards or townships
- Persons who lease or sublease land from land users, except cases of leasing or subleasing land from investors building and dealing in infrastructure facilities in industrial parks, industrial clusters, export processing zones, hi-tech parks or economic zones
- Persons who receive land for use on a contractual basis in agricultural or forestry farms, agricultural or forestry enterprises, protection forest management boards or special-use forest management boards
- Current land users that fail to fully meet the conditions for the granting of certificates of LURs and ownership of houses and other land-attached assets
- Land users that fully meet the conditions for the granting of certificates of LURs and ownership of houses and other land-attached assets but have received land recovery notices or decisions from state authorities
- Organisations and commune-level people's committees that are allocated land by the state without land use levy for the purpose of construction of public facilities, including roads; water, petrol, oil and gas pipelines; power transmission and information communication lines; outdoor entertainment and recreation centres; and cemeteries and graveyards for non-commercial purposes.

The Law on Housing 2014 permits foreign organisations and individuals within certain categories to purchase and own residential houses in Vietnam as follows:

- In the case of a commercial apartment, the number of apartments to be purchased and owned by one foreign organisation and one individual shall not exceed 30 percent of the total number of apartments in one building
- In the case of a separate residential house, the number of houses to be purchased and owned by one foreign organisation and one individual shall not exceed 250 houses in an area equivalent to a ward level.

However, a foreign individual will only be permitted to own such residential housing units for a period of up to 50 years; the actual duration is set out in the sale and purchase contract and may be extended in accordance with government regulations. If the foreign individual marries a Vietnamese national or a Vietnamese residing overseas, he/she will be entitled to own housing on a stable and long-term basis. A foreign organisation may own housing for a period not exceeding the term provided in its IRC. It is important to note that foreign organisations are only entitled to use their houses for their employees' residential purposes and are not allowed to lease out nor use them for office use or any other purposes, except in the case of foreign organisations investing in the construction of residential housing in accordance with the relevant property project in Vietnam.

## Foreign exchange controls

Vietnam has historically imposed exchange control mechanisms designed to limit foreign currency outflows, generally requiring the use of the Vietnamese dong (VND) for domestic transactions and for channelling the flow of foreign currencies into the banking system. The use of gold is also regulated. Vietnam's foreign exchange control policy is administered primarily by the State Bank of Vietnam.

The buying and selling of foreign currency must be conducted through a licensed commercial bank permitted to undertake foreign exchange business activities. The State Bank of Vietnam does not guarantee the exchange of VND to foreign currency. Most projects have to self-balance their foreign exchange requirements.

FIEs are generally allowed to repatriate profits from business operations and are allowed to make outward remittances of foreign currency for the purchase of raw materials and supplies, as well as the provision of services, licensed technology transfers, payments of principal and interest on offshore loans registered with the State Bank of Vietnam, salaries and payments of other legally owed sums of money and assets. Upon termination or dissolution of a business enterprise, foreign investors may repatriate their capital. Remittances must be made through certain registered accounts opened at authorised banks licensed to operate in Vietnam.

Vietnam maintains a managed floating exchange rate regime, under which the rate of exchange of US dollars to Vietnamese dong is adjusted according to market forces, subject to parameters set by the State Bank of Vietnam.

Under the current managed floating exchange rate regime, the State Bank of Vietnam sets the official US dollar to Vietnamese dong exchange rate daily by averaging rates from the previous day's interbank foreign exchange transactions.

## Taxes on possession and operation of real estate

Land users, including FIEs, have to pay annual non-agriculture land use tax at a rate of 0.03 percent of the land price decided by the state every five years. In Vietnam, there is no tax levied on the ownership of a house.

## Taxes on acquisition and transfer of real estate

Income from real property transfers shall comprise income from the transfer of a right to use or lease land; income from subleasing land by enterprises that conduct real property business, as stipulated in the Land Law, regardless of whether the land has infrastructure, buildings or engineering works located on it; income from the transfer of housing and buildings located on land, including the assets attached to the housing and buildings; income from the transfer of assets attached to land and income from the transfer of the rights to own or use housing.

The amount of CIT payable in any tax assessment period for activities relating to the assignment of real property shall be equal to assessable income from such activities multiplied by the tax rate of 22 percent (as from January 1, 2016, this rate will be reduced to 20 percent).

Income from an assignment of real property must be calculated separately to declare and pay tax, and the incentive tax rates and incentives on the exemption and reduction of tax shall not apply. Losses from activities of real property assignments shall not be deductible against other income relating to production and business activities, but these losses may be carried forward to taxable income from real property assignment activities in subsequent years. Losses may be carried forward for a maximum period of five consecutive years as from the year following the year in which the loss arose.

## Stamp duty

Most property documents and transactions are required to be notarised by a licensed public notary officer. The notarisation fee is determined in accordance with the value of the transaction, but the maximum fee is VND 10 million (approximately USD 470) per transaction.

In addition, stamp duties are imposed on the transfer of land and/or property. Conveyance stamp duty is levied on the value of actual sales that are not lower than the standard price provided by the local authorities. The stamp duty on the transfer of an LUR and property is 0.5 percent of the value of the sales.

## Capital gains tax

Capital gains are treated as "other income" and are subject to personal income tax or corporate income tax. The income of an enterprise from a capital assignment refers to the income receivable from the assignment of a part of or the whole of an enterprise's capital already invested in it to one or more other organisations or individuals (including the sale of the entire enterprise). The personal income tax rate applicable to income from a capital assignment is 20 percent of the profit, and the corporate income tax rate applicable to income from a capital assignment is 22 percent of the profit.

## Value added tax/goods and services tax

A broad based consumption tax called the value added tax is levied at 10 percent on a wide range of goods and services.

## Tax depreciation

The government of Vietnam considers depreciation to be a cost and expense that is deductible for the purpose of determining taxable income.

Enterprises must register with the tax office directly confirming the method of depreciation for fixed assets that they are choosing to apply before applying that method. Each year, enterprises shall make their own decision on the level of such depreciation in accordance with the current regulations of the Ministry of Finance on the depreciation of fixed assets, including where they adopt the accelerated method to depreciate the fixed assets. In the course of their operations, enterprises may change the level of depreciation so long as it remains within the stipulated levels, but enterprises may not make any such change after lodging their declaration on finalisation of CIT for that year.

### Corporate taxation

A resident corporation is subject to corporate income tax on taxable income at a tax rate of 22 percent (as from January 1, 2016, this rate will be reduced to 20 percent).

### Personal taxation

Under the tax system, personal income tax is levied as follows:

- With respect to resident individuals:
  - On regular income on an annual basis
  - On irregular income on each occasion when such income arises
  - On income from the transfer of securities on each occasion or on an annual basis
- With respect to income-paying entities: such entities shall deduct and pay tax into the state budget each time it arises on taxable items paid to taxpayers
- With respect to non-resident individuals: such individuals shall declare and pay tax each time it arises on taxable income

### Tax treaties: Avoidance of double taxation

The following 69 jurisdictions have entered into double taxation treaties with Vietnam:

Australia
Algeria
Austria
Azerbaijan
Bangladesh
Belarus
Belgium
Brunei
Bulgaria
Canada
China
Cuba
Czech Republic
Democratic People's Republic of Korea
Denmark
Eastern Republic of Uruguay
Egypt
Finland
France
Germany
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Japan
Kazakhstan
Kingdom of Saudi Arabia
Lao People's Democratic Republic
Luxemburg
Malaysia
Mongolia
Morocco
Mozambique
Myanmar
The Netherlands
New Zealand
Norway
Pakistan
Philippines
Poland
Republic of Korea
Republic of San Marino
Republic of Serbia
Republic of Seychelles
Republic of Singapore
Romania
Russian Federation
Slovakia
Spain
Sri Lanka
State of Kuwait
State of Palestine
State of Qatar
Sultanate of Oman
Sweden
Switzerland
Taiwan
Thailand
Tunisia
Turkey
Ukraine
United Arab Emirates
United Kingdom
Uzbekistan
Venezuela

### Real Estate Investment Funds

Real estate investment funds (REIFs) have been officially permitted in Vietnam since September 15, 2012, when Decree No. 58/2012/ND-CP of the government providing for the implementation of the Amended Law on Securities came into force. A REIF must maintain 65 percent or more of its total asset value in real estate. The remaining portion of the asset value can be invested into valuable papers, securities and government bonds. In addition, REIFs are not allowed to directly develop any real estate development projects, provide any financing or guarantee for any loan.

## Common Terms of Lease for Tenancy Agreements

| | |
|---|---|
| **Unit of measurement** | |
| Unit of measurement | Square Meters |
| **Rental payments** | |
| Rents | USD/sqm/month on gross or net area |
| Typical lease term | 2–3 years |
| Frequency of rent payable (in advance) | Quarterly |
| Typical rent deposit (expressed as x months rent) | 3 months gross rent |
| Security of tenure | Only for the duration of the tenancy, no guarantee beyond the original lease term |
| Does tenant have statutory rights to renewal | No |
| Basis of rent increases or rent review | Open market rental value OR fixed increment agreed at the outset of the lease |
| Frequency of rent increases or rent review | At lease renewal or every 2–3 years |
| **Service charges, operating costs, repairs and insurance** | |
| Responsibility for utilities | Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges |
| Car parking | Allocation is based on one parking lot per 300sqm, It is held under a separate monthly lease for an additional rent |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord responsible but costs charged back to tenant via service charge |
| Responsibility for external/structural repairs | Landlord responsible but costs charged back to tenant via service charge |
| Responsibility for building insurance | Landlord |
| **Disposal of leases** | |
| Tenant subleasing & assignment rights | Generally prohibited unless to a subsidiary company of the tenant (subject to landlord approval) |
| Tenant early termination rights | Only by break clause usually subject to penalty |
| Tenant's building reinstatement responsibilities at lease end | Reinstated to original condition |

Source: JLL

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