Asia Pacific Property Investment Guide

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This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information, please contact us at acm@ap.jll.com or email@ashurst.com.

The information in this guide is current as at January 2024.

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Australia

How can Property be Owned or Controlled?

In Australia, there are three main types of legal estate in property:

- Freehold land (also known as an "estate in fee simple") is the well-known 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 is land that is still owned by the government. The government may give another person the ability to manage or control that land, generally with a lease.
- Leasehold land is land that is leased to a person either by the government or by the freehold owner. All land in the ACT is leasehold from the government.

All rights to the minerals which may be found in land are reserved to the Crown. The terms of those reservations differ from State to State.

How is Property Ownership Managed?

The policy in Australia is for land to be registered under the Torrens Title System where possible. However, there are still two primary systems under which property ownership is managed in Australia:

- **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 is the most common form of title in Australia.
  - Strata or Community Title is a type of Torrens Title that allows for the subdivision of land or a building through the creation of a strata or community title scheme plan. The main difference is that an owner owns a particular parcel of land or part of a building in the strata or community title scheme together with a share in common property that is shared with the other owners in the strata or community title scheme.
  - Strata or Community Title is most commonly used in the case of multi-unit buildings, but retail and commercial developments may also be titled on this basis.
- 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.
  - This is less common.

Major Property Legislation

Property law in Australia is State and Territory based. There is no uniform property legislation in Australia although concepts are largely consistent across the States and Territories. Each State and Territory has individual pieces of legislation covering key areas such as:

- Local government, town planning and building
- Environment
- Real Estate Practices
- Land Titles And Conveyancing
- Property Taxation
- Leasing

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

Operational Requirements for Foreign Companies

All foreign companies that wish to "carry on business in Australia" must register with the Australian Securities and Investments Commission (ASIC). Some foreign companies choose instead to form a subsidiary company that is incorporated in Australia which carries on the business in Australia.

Foreign Company

A foreign company is taken to be carrying on business in Australia for this purpose 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 must appoint a local resident (either a natural person or a company) as its local agent for various purposes, including the process for the service of legal documents. The registered foreign company must, along with satisfying other regulatory requirements, lodge financial statements with ASIC each calendar year.

A registered foreign company must lodge notice of various administrative changes with ASIC. There are also additional requirements regarding documents published or signed in Australia.

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 private 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) and the Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth) and their associated rules and regulations. 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.

The FATA regime is administered by the Australian Treasurer through the Foreign Investment Review Board (FIRB) and supported by the Australian Taxation Office (ATO). The ATO administers foreign investment into residential real estate, non-sensitive commercial real estate and internal reorganisations.

Under FATA and the regulations:

- Notification to and prior approval by FIRB is compulsory for the proposed acquisition by a foreign person of (in broad terms):
  - a direct interest in an Australian entity or business that is an agribusiness,
  - a substantial interest in an Australian entity, or
  - an interest in Australian land where the acquisition meets the relevant threshold test which relates to the type of land and inherent value.
- The Treasurer has the power to impose conditions on the approval of the proposed acquisition by a foreign person (e.g. conditions relating to compliance with Australian tax laws: https://foreigninvestment.gov.au/sites/foreigninvestment.gov.au/files/2023-08/guidance-note-12-tax-conditions-august-2023.pdf).
- The Treasurer has powers to prohibit the whole or part of a foreign investment proposals, including a proposal that is not notifiable but is a "significant action" as defined in FATA, and to order divestiture or unwinding of foreign investment arrangements, if they are considered contrary to the national interest or if conditions on the approval of the acquisition are breached.
- Foreign persons who do not comply with the framework may be subject to civil and criminal penalties and infringement notices issued by the ATO.

Foreign persons are subject to the provisions of FATA. A foreign person is generally:

- an individual person not ordinarily resident in Australia; or
- a corporation, trustee of a trust or general partner of a limited partnership where an individual not ordinarily resident in Australia, foreign corporation or foreign government holds a substantial interest of at least 20%; or
- a corporation, trustee of a trust or general partner of a limited partnership in which two or more foreign persons hold an aggregate substantial interest of at least 40%; or
- a foreign government or foreign government investor.

A "foreign government investor" is:

- a foreign government or separate government entity:
- a corporation, trustee of a trust or general partner of a limited partnership in which:
  - a foreign government or separate government entity, alone or together with associates, holds a substantial interest of at least 20%; or
  - foreign governments or separate government entities of more than one foreign country or parts of more than one foreign country together with any one or more associates hold an aggregate substantial interest of at least 40%.

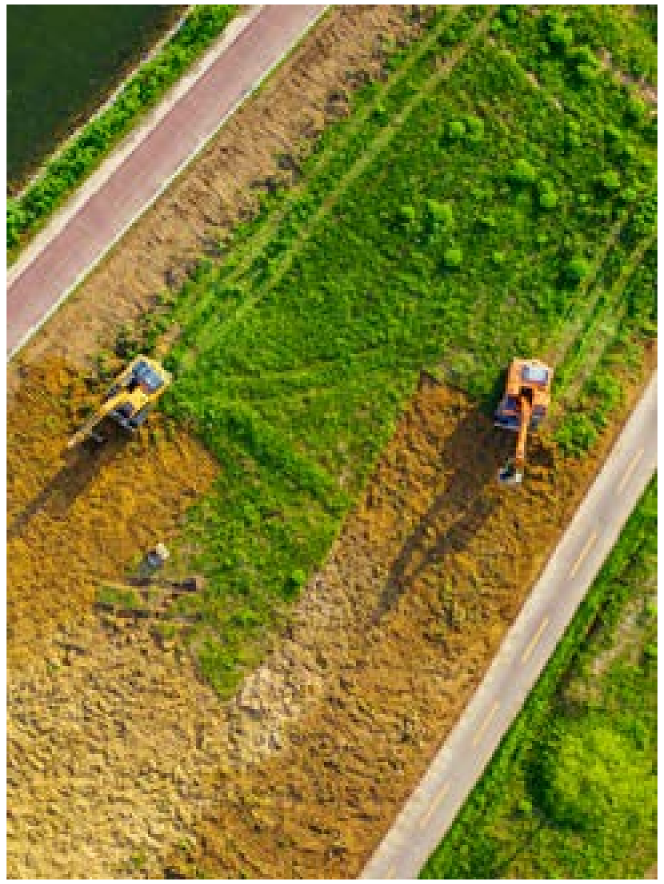
Notification requirements vary and are based on a number of factors including whether the investor is a foreign government or non-government investor, the type of acquisition, whether the acquisition is subject to monetary thresholds, whether the land to be acquired is sensitive land and Free Trade Agreement (FTA) commitments.

Australia's entry into international agreements with a number of countries has the effect of relaxing the notification and approval thresholds for eligible investors from those countries.

- On January 15, 2015, the Japan-Australia Economic Partnership Agreement between Australia and Japan entered into force and had the effect of making eligible.
- On December 30, 2018, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) came into force. The CPTPP has the effect of ensuring substantial market access is maintained among the CPTPP parties, being Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam.
- On January 17, 2020, the Australia-Hong Kong Free Trade and Investment Agreement came into force, making private Hong Kong investors investing in non-sensitive sectors subject to the same thresholds as other FTA partner nations.
- On February 11, 2020, the Peru-Australia Free Trade Agreement came into force, making private Peruvian investors investing in non-sensitive sectors subject to the same thresholds as other FTA partner nations.
- On December 13, 2020, the Pacific Agreement on Closer Economic Relation came into force. The Agreement draws on provisions in international investment agreement to include commitments to the national treatment, most favoured nation and minimum standard of treatment.
- On January 1, 2022, the Regional Comprehensive Economic Partnership Agreement came into force for the majority of signatories. The Agreement includes a mutual most-favoured nation commitment.

Under FIRB policy the general approval framework, including thresholds, is as follows:

- Business acquisitions: foreign persons must get approval before acquiring a substantial interest (20% or more) in an Australian entity or business that is valued above the general threshold - currently AUD 310 million but indexed annually.
  - Under the FTA commitments, that threshold is increased to AUD 1,339 million for investors from Chile, China, Hong Kong, Japan, South Korea, New Zealand, Peru, Singapore and the United States (FTA country investors). The ability to apply this higher threshold is subject to various qualifications. However, the AUD 310 million threshold applies to these investors if investing in sensitive businesses.
  - Sensitive businesses include media; telecommunications; transport; defence and military related industries; encryption and securities technologies and communications systems; and the extraction of uranium or plutonium or the operation of nuclear facilities.
  - All foreign persons, including FTA country investors, must get approval to make investments of 5% or more in an Australian media business, regardless of the value of the investment.
- Agribusiness: Foreign persons must get approval before acquiring a direct interest (generally at least 10%, or the ability to influence, participate in or control) in an agribusiness where the value of the investment is more than AUD 67 million, regardless of the value of the agribusiness. The AUD 1,339 million threshold applies to Chilean, New Zealand and United States investors acquiring a substantial interest in an agribusiness.
- Agricultural land: Foreign persons must get approval for a proposed acquisition of an interest in agricultural land where the cumulative value of agricultural land owned by the foreign person and any associates, including the proposed purchase, is more than AUD 15 million. An AUD 1,339 million threshold applies to Chilean, New Zealand and United States investors, and an AUD 50 million threshold applies to Thai investors who propose to acquire land to use it wholly and exclusively for a primary production business, although this higher threshold is subject to certain requirements. Guidelines state that generally, approval will not be granted for any acquisition of agricultural land that was not offered for sale publicly and "marketed widely" for a minimum of 30 days. There are exceptions (e.g. where the applicant has a substantial Australian ownership share (i.e. 50% or more) or is acquiring an interest in an ASX listed company or a leasehold interest for a wind or solar farm development).



- Commercial land: there are different rules for vacant and developed land:
  - All foreign persons must get approval for a proposed acquisition of vacant commercial land, regardless of the value of the land. Such acquisitions are normally approved subject to development conditions.
  - Generally foreign persons must get approval for a proposed acquisition of an interest in developed commercial land if the value of the interest is likely to exceed the AUD 310 million threshold, unless the land meets the conditions for the lower threshold of AUD 67 million. Low threshold developed commercial land includes mines (with exceptions), public infrastructure (e.g. an airport or a port) land fitted out specifically for business that stores bulk data, land that will be leased to the Commonwealth or a state or territory (with exceptions). FTA country investors only need to apply for approval for developed commercial land where the value of the interest is more than the AUD 1,339 million threshold (noting again certain qualifications apply to the application of this higher threshold). There were changes to the treatment of wind and solar farms from July 1, 2017. Developed wind and solar farms are generally treated as developed commercial land rather than possibly vacant commercial land and agricultural land.
  - Land on which the only dwellings are commercial residential premises (e.g. aged care facilities, retirement villages and certain forms of student accommodation) is considered developed commercial land.
  - Developed land that includes public infrastructure is subject to the lower threshold of AUD 67 million:
  - Foreign persons must get approval to acquire interests in land that includes public infrastructure.

Residential land:

- Foreign persons must get approval to acquire an interest in residential real estate regardless of value.
- Foreign persons can apply to purchase vacant land for residential development with few restrictions and purchase newly constructed dwellings, whereas approvals for established dwellings are generally limited and will normally be subject to conditions.
- Mining and production tenements: foreign persons must get approval to acquire an interest in a mining or production tenement, regardless of value.
- Indirect real estate interests: foreign persons must also get approval before acquiring certain indirect real estate interests including securities in land corporations and trusts that have a majority of their assets in land.

Foreign government investors:

- All foreign government investors must get approval before acquiring a direct interest in an Australian business (generally at least 10%, or the ability to influence, participate in or control), starting a new business or acquiring an interest in Australian land regardless of the value of the investment, and
- Foreign government investors also require approval to acquire a legal or equitable interest in a tenement or an interest of at least 10% in securities in a mining, production or exploration entity. From January 1, 2021, acquisitions of royalty interests in respect of mining tenements are exempt from foreign investment screening where they do not provide a right to occupy the land or have control or influence over the land.
- All acquisitions of any interest in land by foreign government investors requires approval.
- Security interests: generally taking a security interest will be an acquisition and may require foreign investment approval but there is an exemption for security interests taken by a lender in the ordinary course of its moneylending business.

Certain acquisitions from the Commonwealth, a State or Territory or local government body or an entity wholly owned by one of them do not require approval.

Applications for approval should be lodged in advance of a transaction, and transactions should be made conditional on receiving FIRB approval. Applicants must pay a substantial non-refundable fee before their application is considered (the amount of the fee varies for different transactions). If an application falls into a number of categories the highest fee applies. Approval will be granted where the investment is not contrary to the national interest and the grant of approval may be subject to conditions, such as the tax conditions described above. The Treasurer has a wide discretion in this regard. Intervention on national interest grounds has historically been infrequent.

Decisions are to be made within 30 days from payment of the fee. There are however provisions for extension of this period by a further 90 days, by interim order or voluntary extension by the applicant. Our usual experience is that this period is extended so as to provide sufficient time for FIRB to seek comments from its consult partners, including other government agencies and departments.

Threshold values are indexed annually on January 1, subject to certain exceptions, so the applicable thresholds and policy considerations should be checked each year.

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 and Leasing

As indicated above, foreign companies, individuals and governments may require consent from FIRB to purchase or lease land in Australia.

This requirement does not apply in respect of acquisitions by the following, who do not need approval before purchasing:

- 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, New Zealand citizen spouse, or Australian permanent resident spouse
- Foreign nationals holding permanent 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 of no more than four weeks per year
- New or near-new dwellings bought from a developer who has a FIRB new or near-new dwelling exemption certificate (interest in new dwellings up to a total of AUD 3 million in a specified development). Any applications for a New Dwelling Exemption Certificate received from May 10, 2017 and which are approved will be subject to a condition that a maximum of 50% of the total dwelling in the development can be sold to foreign persons.

The thresholds for investing in Australian land are set out above.

ATO Register of Foreign Ownership of Australian Assets

On July 1, 2023, the Register of Foreign Ownership of Water or Agricultural Land Act 2015 (Cth) was repealed and the Register of Foreign Ownership of Australian Assets (the Register) commenced under Part 7A of FATA. The Register replaces existing foreign investment registers relating to agricultural and residential land and water interests, and expands on the assets to be registered.

The introduction of the Register represents an expansion on the compliance obligations imposed on foreign persons investing in Australian assets. Certain actions which do not require FIRB approval nonetheless need to be notified to the ATO using the Register.

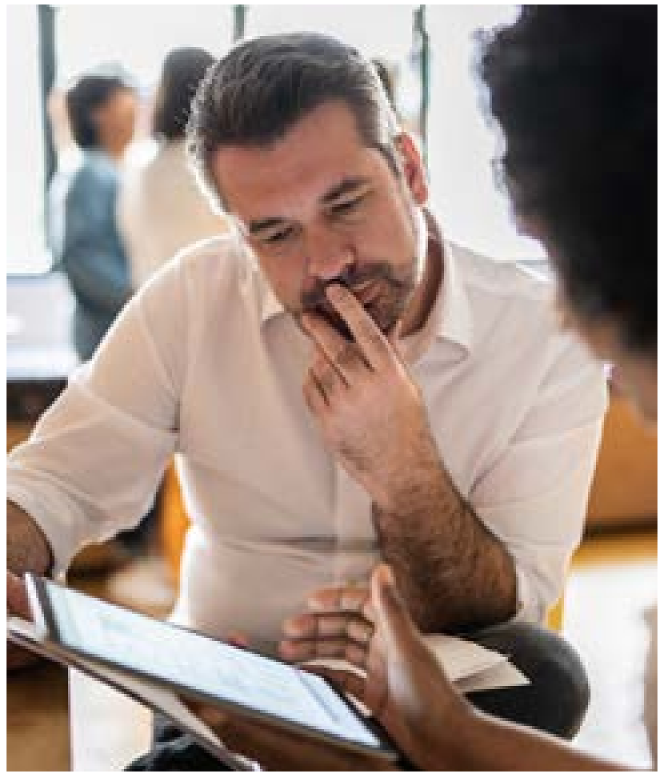
In general, foreign investors will need to notify the new Register within 30 days after they acquire any of the following types of interests after July 1, 2023:

- an interest in Australian land excluding equitable interests, unless the equitable interest is in a lease or licence exceeding 5 years in agricultural land;
- a legal interest in a share or unit of an Australian land corporation/trust or in the trustee of an Australian land trust;
- an interest in an exploration tenement;
- registrable water interests;
- an action that would constitute a notifiable action under the FATA relating to Australian businesses or entities (e.g. acquiring shares or units or assets);
- an action that would constitute a significant action under the FATA relating to Australian businesses or entities (e.g. acquiring shares or units or assets) where a No Objection Notification (NoN) was obtained or where the Treasurer exercised their call-in power; and
- an action that would constitute a national security action under the FATA relating to Australian businesses or entities.

Certain subsequent changes to registered interests must also be notified on the Register, including:

- the "registered circumstance" ceases (e.g. if the foreign investor sells the land or securities or the lease ends);
- the nature of the interest changes (e.g. commercial land becomes residential land); or
- the percentage interest in an entity differs by 5 percent from the percentage notified, including because of involuntary changes (e.g. dilution of a security holding).

Notifications to the Register are made via the online services for foreign investors portal (ATO Portal). In order for foreign investors to make Register notifications using the ATO Portal, the principal authority or authorised representative of a foreign entity must first set up a myGovID and link this myGovID to the business using the Relationship Authorisation Manager.



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; and
- 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 or more, or the foreign currency equivalent, they are carrying. Mailing or shipping currency of AUD 10,000 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) within 10 business days after the day the instruction was sent or received. 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 offense under Australian laws or of tax evasion.

Taxes on Ownership of Real Estate

In all States and in the Australian Capital Territory (ACT) (but not in the Northern Territory), land tax is payable on an annual basis and quarterly basis respectively 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 for certain entities. These thresholds and the land tax rates vary between jurisdictions.

In New South Wales, land tax is applied to most forms of vacant and developed land on a progressive scale of AUD 100 plus 1.6% of the amount by which the taxable value of the land exceeds the minimum threshold but is not more than the premium rate threshold, and an additional 2% thereafter of the amount by which the taxable value of the land exceeds the premium rate threshold. For the 2024 land tax year, the minimum threshold is AUD 1,075,000 and the premium threshold is AUD 6,571,000.

Foreign Owner Land Tax Surcharges

A surcharge land tax rate may apply where a "foreign person" owns land in New South Wales, Victoria, Queensland, Tasmania or the ACT. In New South Wales, Tasmania and the ACT, the surcharge is limited to residential land, whereas in Victoria and Queensland, it applies to any foreign owned land. The definition of foreign person in each of these States and the ACT is generally the same as for stamp duty purposes and is outlined in the "Stamp Duty on Land Transfers" section below. However, in Victoria, a trust will be foreign where at least one foreign person has a beneficial interest in the trust.

The surcharges payable in the relevant jurisdictions are as follows:

4%
New South Wales

4%
Victoria

2%
Queensland

2%
Tasmania

0.75%
ACT

There is no tax-free threshold for land tax surcharges in New South Wales, Tasmania or the ACT. In Victoria, there is a tax-free threshold of AUD 300,000 for land owned by foreign persons, including corporations, and a tax-free threshold of AUD 25,000 for land held by foreign trusts. In Queensland, a tax-free threshold of AUD 349,999 applies to foreign landholders. Exemptions from surcharge land tax may be available in particular circumstances (e.g. build-to-rent developments).

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. However, in Victoria, a land tax adjustment cannot be made where the sale price is less than AUD 10,000,000 (with this threshold to be adjusted on an annual basis) and the contract is entered into on or after January 1, 2024.

Vacant Residential Property Tax

In Victoria, in addition to land tax, an annual charge calculated based on a percentage of the capital improved value applies to vacant residential land in certain parts of Greater Melbourne. This charge is expected to expand to vacant residential land in the whole of Victoria (i.e. not just certain parts of Greater Melbourne) on and from January 1, 2025. The rate is 1% for the first year that the charge applies, 2% for the second year, and 3% for each year thereafter.

The Federal Government has also imposed an annual charge equivalent to the FIRB application fee for any residential property left vacant and not genuinely available for rent for at least six months in a year.

Rates

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 Direct and Indirect Land Transfers

All States and Territories impose stamp duty at varying rates on the acquisition of land and certain other property including goods and certain business assets. Goods are generally only subject to duty when transferred with an interest in land.

Stamp duty is charged on an increasing sliding scale. As an example, the rates in New South Wales start at 1.25% and gradually increase to a general top rate of 5.5% for land with a dutiable value in excess of AUD 1,168,000. Residential property over AUD 3,505,000 is subject to duty at 7% on the excess over AUD 3,505,000. These thresholds are indexed as at July 1 each year. The rate may also vary depending on the characterisation of the land (e.g. the purchase of a lower value principal residence may be subject to concessional rates).

In South Australia, stamp duty for transfers of non-residential, non-primary production real property was abolished on July 1, 2018.

Foreign Owner Stamp Duty Surcharges

Surcharge duty may also apply in respect of residential land acquired by foreign persons. The current rates in the relevant jurisdictions are as follows:

8%
New South Wales

8%
Victoria

7%
Queensland

7%
South Australia

7%
Western Australia

8%
Tasmania

Tasmania also imposes surcharge duty at a rate of 1.5% in respect of primary production land acquired by foreign persons.

A foreign person includes a foreign individual, a foreign corporation or the trustee of a foreign trust. In New South Wales, a foreign owner also includes a foreign government. The tests to determine whether an individual, a corporation or a trust is "foreign" differ between each State. Generally, a corporation or a trust is foreign in Victoria and Queensland if a "controlling interest" of at least 50% is held by a foreign person or an aggregate controlling interest of 50% if there is more than one foreign person. A corporation or a trust is "foreign" in New South Wales if a "substantial interest" of at least 20% is held by a foreign person or an aggregated substantial interest of 40% if there are two or more foreign persons. A foreign individual in New South Wales is a person who does not fall within any of the following categories: an Australian citizen, a person ordinarily resident in Australia or a New Zealand citizen who holds a special category visa within the meaning of section 32 of the Migration Act 1958 (Cth).

The definition of "residential land" also differs between the States. Generally, residential land in New South Wales is land on which there is one or more dwellings and also includes vacant land which is zoned residential. However, this definition does not include any land used for primary production.

Where a foreign purchaser acquires property in Victoria that is not residential property on or after July 1, 2015, and at any time after the property is transferred the foreign purchaser forms the intention to use the land for residential purposes, the foreign purchaser is required to notify the Commissioner within 14 days of forming that intention and pay the additional surcharge duty within 30 days.

In Queensland and Tasmania, the Commissioner must make a reassessment for surcharge duty if the purchaser is a corporation or a trust which becomes foreign controlled within 3 years after the time the liability for transfer duty arose.

Certain transactions may be exempt from surcharge duty, including certain acquisitions by property developers with significant local presence, and certain acquisitions for the purposes of developing build-to-rent assets.

Landholder Stamp Duty

To prevent stamp duty on the transfer of land being avoided by interposing an entity, all jurisdictions apply landholder duty to acquisitions of shares or units in companies and unit trusts that directly or indirectly hold land with a value above a stated threshold (except Queensland in relation to private unit trust schemes, where the general transfer duty rules apply). The land value thresholds range from AUD 500,000 to AUD 2,000,000, with no threshold applying in the ACT or South Australia (noting that only residential and primary production land are relevant for stamp duty purposes in South Australia). Landholder duty is generally calculated by reference to the proportionate interest in the underlying land acquired, at the general transfer duty rates, including foreign purchaser surcharge duty rates in New South Wales, Victoria, Queensland, South Australia, Tasmania and Western Australia on the unencumbered market value of the relevant land. In New South Wales, Western Australia and Tasmania, landholder duty also applies to any dutiable goods of the landholder even if not used with land.

A concessional rate of 10% of the duty otherwise payable applies to acquisitions in listed entities in Queensland, South Australia, Tasmania and Victoria, and widely held trusts in South Australia, Tasmania and Victoria. The 10% concessional rate does not apply in Victoria if the entity has been listed for less than 12 months or, in the case of a widely held trust, it has satisfied the definition of that term for less than 12 months at the date of the relevant acquisition.

In general, the provisions apply to changes or increases in "significant" interests in relevant landholding companies and unit trusts (generally 50% for private companies and unit trusts and 90% for listed companies and unit trusts, although in some States these thresholds may be lower or, in Queensland, the threshold is nil unless the trust qualifies as a public unit trust) where the value of those landholdings exceed the stated thresholds. Acquisitions by related persons or as part of one arrangement or by acquirers acting in concert are generally aggregated.

Payment of Stamp Duty

Stamp duty is usually payable by the buyer, although in some States (e.g. Queensland and South Australia), both parties to the transaction are jointly and severally 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 depending on the State or Territory in which the asset is located or in the case of Victoria and Tasmania, after settlement. Penalties and interest can apply for late payment. In some States, there are extended times for payment of duty on certain off-the-plan purchases, but not in New South Wales where the purchaser is a foreign person. In Victoria, there is a duty concession for off-the-plan purchases available in certain circumstances in relation to premises which are the principal place of residence of the buyer. The land transfer cannot be registered until duty has been paid.

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. The rate of duty is the same as for a transfer of land and includes foreign purchaser surcharge duty in New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania. 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 certain commercial leases in the ACT.

Goods and Services Tax

A broad-based consumption tax called the Goods and Services Tax (GST) is levied at 10% on a wide range of supplies connected with Australia, including goods, services, real property and rights. GST is not payable on a supply to the extent that the supply is GST-free or input taxed.

The sale of "existing residential premises" or the supply of existing residential premises by way of long-term lease is generally input taxed. This means that no GST is payable on the supply of existing residential premises and the vendor cannot claim any input tax credits on associated acquisitions. However, the sale is not input taxed to the extent that the residential premises are "commercial residential premises" (e.g. hotels) or are "new" residential premises, in which case the supply is taxable and attracts GST at a rate of 10%. The supply of premises by way of lease, hire or licence, including an extension of the lease, hire or licence, is also potentially taxable or input taxed if residential premises.

Supplies of all things necessary to carry on a business or commercial enterprise including real property where the real property is sold as part of a going concern or is existing farmland supplied for farming can potentially be GST-free. No GST is payable on the supply and the supplier is able to claim credits for the GST payable on any business inputs that relate to that supply.

Some special rules apply to the calculation of GST on certain land transfers (i.e. the margin scheme, supplies of long-term accommodation in commercial residential premises and the GST-free going concern exemption).

Purchasers of new residential premises and potential residential land are required to withhold and remit GST on such sales to the ATO instead of paying the GST to the vendor.

Windfall Gains Tax (Victoria only)

In Victoria, from July 1, 2023, a windfall gains tax applies to all land rezoned by the same planning scheme amendment resulting in a value uplift to the land of more than AUD 100,000 with limited exemptions. In determining the value uplift, all land owned by the person or group and subject to that rezoning is taken into account.

The rate of windfall gains tax is, for a rezoning of land that results in a taxable value uplift of:

- More than AUD 100,000 but less than AUD 500,000: 62.5% on the uplift above AUD 100,000.
- AUD 500,000 or more: 50% to the total uplift.

The owner of the land at the time of the rezoning is liable for any windfall gains tax imposed. The owner has the ability to defer payment of the tax, in part or whole, until whichever of the following occurs first:

- a dutiable transaction occurs in respect of the land (e.g. a transfer of the land for valuable consideration);
- a relevant acquisition occurs in respect of the landholder who owns the land (e.g. the acquisition the entity which owns land); or
- 30 years after the rezoning event.

Where payment of the tax is deferred, interest will accrue on the unpaid tax.

A person who is liable to windfall gains tax is generally prohibited from recovering the cost of the windfall gains tax, in part or whole, from a purchaser of the land under a contract or agreement (e.g. an option agreement) where the liability to windfall gains tax exists at the time the contract is entered into. In some circumstances, they may recover the cost of the windfall gains tax where the liability to the tax arises between entering into the contract and completion of the contract.

Growth Area Infrastructure Contribution (Victoria only)

The growth area infrastructure contribution (GAIC) is a one off-contribution, payable on certain events, usually associated with urban property developments (e.g. buying, subdividing, and applying for a building permit) on large blocks of land.

GAIC only applies in the “contribution area”, which is growth area land zoned for urban use and development in the municipalities of: Cardinia, Casey, Hume, Melton, Mitchell, Whittlesea and Wyndham.

Not all GAIC events will result in a liability being triggered at the time of the event. There are certain no liability events, excluded events and exemptions.

Generally, the GAIC does not apply to events involving land under 0.41 hectares (4,100 square metres or one acre).

When affected land is sold or transferred, and that sale or transfer gives rise to the GAIC event, the new owner of affected land is liable. For a significant acquisition (e.g. a landholder duty acquisition), both the acquirer(s) and the landholder are jointly and severally liable.

Otherwise, the owner of the land when the statement of compliance (SOC) of subdivision is issued, or the building permit is made, is liable. Where a GAIC liability is triggered by the certification of a non-SOC plan of subdivision, the person whose land is being acquired by the acquiring authority will generally be liable.

The GAIC rates for the 2023-24 financial year are:

• AUD 110,590 per hectare for type A land

• AUD 131,360 per hectare for types B-1, B-2 and C land.

GAIC rates increase annually by CPI.

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 may be subject to tax at personal or company tax rates (e.g. where the gain is realised from a “profit-making undertaking or scheme”).

Capital gains are taxed under the capital gains tax regime (CGT). 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, reduced by any available capital losses from prior years, 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 which 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 leases and 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 of indirect Australian real property interests that consist of shares in a company or units in a unit trust, the sale of shares or units by a non-resident of Australia will generally not be subject to Australian CGT provisions unless the non-resident holds the shares through a permanent establishment in Australia, or:

a. the non-resident together with associates (if any) beneficially owns, or has owned for a 12-month period during the 2 years preceding the disposal, 10% or more of the shares or units; and

b. more than 50% of the gross market value of the entity’s assets is, directly or indirectly, attributable to Australian real property (i.e. the company or trust passes the “principal asset test”).

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. The discount for an individual or trust is 50% 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%. 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 will 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. CGT indexation, which unlike the CGT discount is also available to companies, may also be applicable as an alternative to the CGT discount. However, these rules only apply to assets acquired on or before September 21, 1999 and if applicable, indexation is only applied for the period up to September 30, 1999.

CGT Withholding Regime

Purchasers of Australian real property assets, including certain shares or units in land rich entities, are required to withhold tax on purchases unless the seller has a clearance certificate from the ATO (for real property) or a valid declaration from the seller (for shares or units in land rich entities). Some transactions are excluded from the withholding rules, including transactions on an approved stock exchange and transactions in Australian real property with a market value of less than AUD 750,000.

The withholding rate is 12.5% of the gross purchase price of the asset, but taxpayers are able to apply for variations to the amount to be withheld (e.g. if the seller in fact suffered a loss on the sale, the withholding rate may be varied to nil on application to the ATO). The withholding tax is not a final tax. The seller is still required to lodge an income tax return and is entitled to a credit against their final tax liability for the amount withheld. To the extent the final tax liability exceeds the amount withheld, the seller will be required to pay the difference to the ATO, and where the amount withheld exceeds the final tax liability, a refund of the excess is available.

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 generally be self-assessed or based on an effective life determined by the Commissioner of Taxation.

Depreciation at a rate of 2.5% is available on the following buildings and improvements, 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
- 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% 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. In addition, the Government has announced a 4% rate will also apply to certain build-to-rent assets from July 1, 2023, although at the time of writing the relevant qualification requirements have not been released and the measure is not legislated. The deduction on buildings and improvements can only be claimed following completion of the construction.

Following legislative changes in 2017, subject to certain exceptions, depreciation for plant and equipment items in relation to rental premises used as residential accommodation are only claimable by the investors that actually outlaid the cost of these items. As such, subsequent owners of the plant and equipment will not be able to claim depreciation. This applies to previously used plant and equipment acquired after 7:30pm on May 9, 2017, unless acquired under a contract entered into prior to this time, and plant and equipment that was acquired prior to July 1, 2017, but was not used to earn income in either the current or previous year.

Corporate Taxation

Although the predominant vehicle to invest in Australian real estate assets is the unit trust structure, some foreign investors may invest via corporations. 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.

Resident and non-resident corporations are both subject to the corporate tax on taxable income at a flat rate of 30%. However, if a corporation is a "base rate entity" (i.e. its aggregated turnover is less than AUD 50 million and no more than 80% of its assessable income is passive income) for the year of income commencing July 1, 2023, the corporate tax rate is reduced to 25%.

Thin Capitalisation

In Australia, thin capitalisation limits can be imposed on the amount of debt deductions that an entity is entitled to claim for income tax purposes unless a de minimis exemption applies (less than AUD 2 million of Australian debt deductions in total for the entity and its associates). Australia's thin capitalisation rules are currently in a state of flux. At the time of writing, the Government has introduced a Bill into Parliament that will materially alter the thin capitalisation rules that apply to "general class investors", which would generally include most entities that invest in real estate. Those measures are generally to apply to income years commencing on or after July 1, 2023. However, the Senate voted in favour of a motion to send the Bill, for a second time, to the Senate Economics Committee.

Accordingly, we have set out both the current rules (i.e. as enacted), as well as the key proposed changes (based on the Bill currently before Parliament).

Current Rules

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 that can be used to finance their Australian assets is the greater of:

- The "safe harbour debt amount", generally being 60% of the value of the entity's total adjusted Australian assets
- An "arm's length debt 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 to finance the entity's Australian assets, on the basis of certain statutory assumptions
- 100% of the gearing level of the entity's worldwide group, provided certain conditions are met.

Proposed Rules

The proposed rules will materially change the thin capitalisation rules. In particular, the "safe harbour debt amount" is being repealed, to be replaced with the "fixed ratio earnings limit". The fixed ratio earnings limit compares an entity's "debt deductions" (e.g. interest expense and other costs associated with borrowing, but also including costs incurred under interest rate swaps and other similar arrangements) to 30% of the entity's Tax EBITDA (i.e. its taxable income or tax loss, adding back most form of depreciation and debt deductions). Many investors in the real estate sector are finding that this will materially reduce the availability of debt deductions. Denied debt deductions under the fixed ratio earnings limit can be carried forward for a period of 15 years, subject to satisfaction of equivalent tests to carry forward tax losses.

The "arm's length debt amount" is being repealed, to be replaced by the "third party debt earnings limit". The third-party debt earnings limit is the debt deductions attributable to debt issued to and held by third parties, where the recourse for payment of the debt is generally limited to Australian assets, and where the funds are used in Australia. Complex tests apply where entities deploy borrowed funds within the group. In many instances, such as in the case of development assets, it can be difficult to meet the relevant requirements.

There is also the "group ratio earnings limit", although most investors in the real estate sector are presently seeing limited utility in using this measure, given its reliance on certain accounting income and most real estate assets are carried at fair value.

Personal Taxation

A resident individual is taxed on his or her worldwide income, subject to certain exemptions and credits, on a graduated scale. For the 2023-24 tax year, this scale ranges from 19% to 45%. The first AUD 18,200 is tax-exempt, with the top marginal rate of 45% applying to income over AUD 180,000.

In addition, a levy of 2% of personal income is imposed on all resident taxpayers to cover the cost of Medicare, subject to a reduction or exemption for certain low-income taxpayers.

For the 2023-24 income year, most non-resident individuals are taxed on Australian-sourced income at 32.5% up to AUD 120,000, at 37% for taxable incomes from AUD 120,001 up to AUD 180,000 and thereafter at 45% on amounts over AUD 180,000. No Medicare levy is imposed on non-residents.

Tax Treaties: Avoidance of Double Taxation

The Australian Federal Treasury maintains a list of Australia's double tax conventions. This list is available at https://treasury.gov.au/tax-treaties/income-tax-treaties.

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 Securities Exchange (ASX), 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 are 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 distribution reinvestment plans that allow unit holders to reinvest their distribution 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. A-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% and 40% of total assets.

Legal Form and Distribution

In the typical REIT structure, the real estate holding vehicle is a passive trust which distributes at least 100% 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 licensing and registration requirements, all designed to promote transparency and investor confidence.

Taxation

Investors in A-REITs (other than A-REITs that qualify as AMITs – see below) 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 generally 15%, further reduced to 10% if the MIT only holds energy-efficient commercial buildings (office, hotels, and shopping centres) which commenced construction on or after July 1, 2012 on distributions to investors resident in "exchange of information" (EOI) countries (a 30% withholding rate applies otherwise for MITs). A higher rate of withholding tax (30%) on distributions by withholding MITs to non-residents can apply to certain stapled structures (discussed below), trusts that invest in certain residential dwellings (noting an announced concession to reduce this to 15% for certain investments in build-to-rent assets from July 1, 2024, presently unlegislated), and in certain other situations.

Trusts that qualify as MITs and which meet certain other requirements, including a requirement that member's rights to capital and income of the trust are "clearly defined", can elect to be taxed under a separate "attribution MIT" (AMIT) regime.

Under the AMIT regime, unit holders are taxed on the MIT's net taxable income based on the trustee's fair and reasonable allocation of the MIT's net taxable income of different tax characters, such as capital gains and franked dividends, to them, worked out in accordance with the constituent documents of the MIT, irrespective of whether or not the MIT makes any distributions of income to the unit holder. The allocations will be set out in a statement which the MIT must send to members within 3 months after the end of the income year.

The AMIT regime also provides for a more symmetrical approach to cost base adjustments, with an increase made to the cost base of a unitholder's units where distributions are less than the taxable amounts allocated to the unitholder and a decrease made to the cost base of a unitholder's units where distributions exceed the taxable amounts allocated to the unitholder.

Where the MIT does not make an election for the AMIT regime to apply, the general tax rules for trusts described above will continue to apply.

Corporate Collective Investment Vehicle Regime

Australia has implemented a Corporate Collective Investment Vehicle (CCIV) regime. In general terms, the CCIV regime treats a CCIV as a unit trust for income tax purposes. This may mean, for example, that a CCIV may qualify as a MIT (and, if so, it is deemed to be an AMIT), or otherwise may be taxed as a flow through trust. It may also be taxed as a corporate (where it is classified as a public unit trust).

The CCIV regime is intended to broaden the suite of investment vehicles available to Australian fund managers and introduce internationally recognised corporate investment vehicles into the Australian legal system that can be marketed to foreign investors. To date, limited deployment of the regime in the context of real estate investment has occurred.

Stapled Structures

Stapled structures, which involve interests in an asset entity (i.e. a passive vehicle) and an operating entity (i.e. a trading vehicle) being held by the same group of investors (as to 80%), are often used as pooled investment vehicles for commercial property and infrastructure investments. A-REITs and infrastructure funds, by value and number, are largely stapled (e.g. approximately 90% of infrastructure funds operate through stapled structures). In recent years, they have been used by a wider range of asset classes and industries with listed staples now accounting for approximately 10% of the ASX market capitalisation as at December 2016.

Due to the use of these vehicles, the Government introduced a higher rate of withholding from withholding MITs that derived cross-staple arrangement income, being, in general, income derived by the asset entity from the operating entity, where that amount was not de minimis or referable to third party rent. These measures impact a number of real estate sectors where stapled structures are common, including hotels, student accommodation, and build-to-rent assets. The rules are complex, and detailed consideration should be given to their operation before establishing a stapled structure.

Common Terms of Lease for Tenancy Agreements	
Unit of measurement	
Unit of measurement	Square Metres (sqm)
Rental payments	
Rents	Quoted in AUD/sqm/year (net area) Can be charged net or gross of outgoings
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 (depends on the term of the lease usually)
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 per cent) or an increase linked to the consumer price index
Frequency of rent increase or rent review	Annual increases
Outgoings, repairs and insurance	
Recovery of outgoings	To be paid monthly in advance by the tenant Net basis – tenant will be responsible for their proportion of the operating cost, either of the total operating cost or the increase in operating costs over a Base Year amount. Gross basis – tenant is not responsible for operating costs and the rent payable is otherwise inclusive of any operating costs the landlord may incurv
Responsibility for utilities	Consumption is generally separately metered and payable by each tenant;
Car parking	Offices: separate monthly licence for an additional fee Industrial: included in the lease
Responsibility for internal repairs	Tenant (a “redecoration clause” is usually included)
Responsibility for payment of outgoings	Landlord (charged back via outgoings charge)
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord
Responsibility for building insurance	Landlord (charged back via outgoings 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

02

Brunei

PENGIRAN IZAD & LEE

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 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 approval of His Majesty the Sultan in Council. Title may be extended on expiry of the lease term with approval of His Majesty the Sultan in Council and 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 and residential 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 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

01 Stamp Act (Cap. 34)

02 Land Code (Cap. 40)

03 Land Acquisition Act (Cap. 41)

04 Licensed land Surveyors Act (Cap. 100)

05 Description of Land Act (Cap. 101)

06 Town and Country Planning (Development Control) Act (Cap. 143)

07 Land Code (Strata) Act (Cap. 189)

08 Valuers and Estate Agents Order 2009

09 The Housing Developers (Control and Licensing) Order 2012 was published in August 2012, but as of April 2023 had 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/Licensing 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.

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 the memorandum and 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 licensing requirements. There may be licensing 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
- factories and manufacturing
- security companies
- employment agencies
- property agents
- motor vehicle dealers
- travel agents
- construction and building activities

The Housing Developers (Control and Licensing) Order 2012 provides for the licensing and regulation of property developers. As of April 2023, this Order had 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. If there are two directors, at least one must be resident in Brunei. If there are 3 or more directors, at least two of the directors must be resident in Brunei. A Brunei citizen or 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 to have resident directors.

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, giving their names, nationality, contact details, passport numbers and occupations. Where the list includes directors 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 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 resident 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

Foreigners who wish to work in Brunei Darussalam must obtain a foreign work pass issued by the Department of Immigration in order to take up employment in Brunei.

To hire foreign employees, an employer must be registered or incorporated under the Companies Act or as a sole proprietorship or partnership registered under the Business Names Act. An employer is firstly required to advertise all job vacancies available within the firm and obtain clearance from the JOBCentre Brunei (JCB) to employ foreign employees.

The employer shall submit the necessary documents for application for Foreign Workers License and make the payment of security deposit. 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 which 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 which has been granted a pioneer certificate will be given the pioneer incentives provided 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 prospect 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 than BND 500,000.00 but is less than BND 2.5 million
- 8 years, where the fixed capital expenditure is not less than BND 2.5 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.

There is no restriction as to who may be registered as owners of strata units.

Locally incorporated or registered companies, and individuals, both local and foreign may be registered as a long-term lessee of up to 60 years over residential, 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 individual Brunei citizens or permanent residents.

Amendments to the Land Code were published in 2016 but as of April 2023 have not been gazetted as to coming into force. The amendments set out a clear prohibition on non-citizens from owning or having rights or interests in landed property. Until the announcement of the proposed changes, non-citizens had used a combination of powers of attorney and trust arrangements to obtain interests in landed property. The amendments do not restrict non-citizens from taking lease interests or interest's in strata titled properties.

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 1.50) / acre	**Agriculture** BND 5.00 (USD 3.74) / acre	**Rubber** BND 5.00 (USD 3.74) / acre	**Residential** BND 10.00 (USD 7.49) per 1/4 acre (Outside Development Control Competent Authority Area (DCCA)); BND 50.00 (USD 37.44) per 1/4 acre (Within DCCA)
Residential and minor commercial BND 12.50 (USD 9.36) per 1/4 acre (Outside DCCA); BND 62.50 (USD 46.80) per 1/4 acre (Within DCCA)	**Residential and commercial** BND 125.00 (USD 93.60) per 1/4 acre	**Flat** BND 100.00 (USD 74.88) per 1/4 acre	**Flat and commercial** BND 125.00 (USD 93.60) per 1/4 acre
Commercial BND 150.00 (USD 112.32) per 1/4 acre	**Commercial and industrial** BND 150.00 (USD 112.32) per 1/4 acre	**Industrial** BND 150.00 (USD 112.32) per 1/4 acre	**Institutional building** BND 62.50 (USD 46.80) per 1/4 acre
Institutional building, commercial and industrial BND 150.00 (USD 112.32) per 1/4 acre	**Hotel** BND 150.00 (USD 112.32) per 1/4 acre	**Filling/petrol station** BND 125.00 (USD 93.60) per 1/4 acree	**Diplomatic** BND 62.50 (USD 46.80) per 1/4 acre

Taxes on Acquisition and Transfer of Real Estate

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

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

- Agreements – BND 1.00 (USD 0.75)
- Powers of Attorney – BND 10.00 (USD 7.49)
- Trust deeds – BND 10.00 (USD 7.49)
- Leases – at an ad valorem rate.
  - If the lease is for less than one year, stamp duty is calculated at BND 3.50 (USD 2.62) for the first BND 500.00 (USD 374.00) of annual rent and BND 1.00 (USD 0.75) for every BND 250.00 (USD 187.15) of annual rent thereafter.
  - If the lease is for not less than one year but less than five years, stamp duty is calculated at BND 7.00 (USD 5.24) for the first BND 500.00 (USD 374.00) of annual rent and BND 2.00 (USD 1.50) for every BND 250.00 (USD 187.15) of annual rent thereafter.
  - If the lease is for not less than five years, stamp duty is calculated at BND 14.00 (USD10.48) for the first BND 500.00 (USD 374.00) of annual rent and BND 4.00 (USD 2.99) for every BND 250.00 (USD 187.15) of annual rent thereafter.
- Memorandum of charge – at an ad valorem rate.
  - For the first BND 500.00 (USD 374.41) of security created, the stamp duty is BND 1.85 (USD 1.39) and BND 1.00 (USD 0.75) for every BND 500.00 (USD 374.41) of security created thereafter.

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 3.74) for the first BND 500.00 (USD 374.41) of value and BND 1.50 (USD 1.12) for every BND 250.00 (USD 187.20) 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

Companies with annual gross sales or turnover of less than BND 1,000,000.00 are exempt from paying corporate income tax.

Corporate income tax is paid at a rate of 18.5%. From year-end 2012, the following tax thresholds apply:

- For the first BND 100,000.00 (USD 75,099) of chargeable income, tax is charged at 25% of the applicable tax rate
- For the next BND 150,000.00 (USD 112,648) of chargeable income, tax is charged at 50% of the applicable tax rate
- The remaining balance of chargeable income is paid at the applicable tax rate of 18.5%

For newly incorporated companies, a tax exemption will be granted for the first BND 100,000 (USD 75,099) 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 112,648) shall be charged with tax at the applicable rate.

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

- Interest, commission, fee or other payment in connection with any loan or indebtedness – 2.5%
- Royalties or other lump sum payments for the use of movable properties – 10%
- Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information – 10%
- Rendering technical assistance and service fees – 10%
- Management fees – 10%
- Rent or other payments for the use of movable property – 10%
- Non-resident directors' remuneration – 10%

Double Tax Relief

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

United Kingdom	Pakistan
Bahrain	Singapore
China	Vietnam
Hong Kong	Laos
Japan	United Arab Emirates
Kuwait	Tajikistan*
Indonesia	Qatar
Malaysia	South Korea
Oman	Luxembourg
Philipines*	Cambodia

*Indicates not yet in force as at April 2023.

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, exclusive of service charge
Typical lease term	2 years or longer
Frequency of rent payable (in advance)	Monthly (in advance)
Typical rent deposit (expressed as x months' rent)	2–3 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 increase or rent review	Every 2 years
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	Typically not provided
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 and assignment rights	Subleasing 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 at lease-end	Reinstated to original condition on expiry/termination

Source: JLL

03

Cambodia

Property Ownership

Cambodian land is commonly categorised into hard title land, which has been formally registered with the state land authorities at provincial/municipal or ministry level, and soft title land, which has not been formally registered with the state land authorities. As soft title land ownership cannot be proven prior to registration definitely, any interest or rights to land is possessory.

The title register definitively proves who is the owner of the parcel of land. Official certificates of title that evidence ownership of immovable property are currently available, with the number of landowners in Phnom Penh and other urban centres and provinces who have obtained such titles continually increasing. Landowners can obtain a certificate of title through either sporadic registration or systematic registration system conducted by the Municipal or Provincial Department of Land Management Urban Planning Construction and Cadastre (DLMUPC).

The Ministry of Land Management Urban Planning and Construction (MLMUPC) has also introduced a new format for certificates of title containing a QR code, which can be used to access the information on the certificate of title including the registered owner and encumbrances.

Before entering into any investment in land in Cambodia, an investor should confirm that the purported owner of the land is the true registered owner by conducting title due diligence at the relevant local village and commune offices, as well as at the Land Registry and review any available supporting documents that reflect ownership and possession of the land concerned.

It is essential that the title searches are undertaken with the local land registry to determine if the land has been duly registered with the relevant land office (i.e. to confirm whether the land has hard title and if there are any encumbrances over the land and whether the land is subject to any pending dispute or litigation).

Major Property Legislation

01 The Constitution, promulgated on September 21, 1993, as amended (Constitution).

02 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) (Land Law).

03 Sub-decree No. 114 on Registration of Trust, dated August 2, 2019 (Sub-decree No. 114).

04 Prakas No. 003 on Rules on the Management, Establishment and Functioning of Trust, dated January 26, 2022 (Prakas No. 003).

05 Law on Providing Foreigners with Ownership Rights in Private Units of Co-Owned Buildings, dated May 27, 2010 (Law on Foreign Ownership).

06 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 (Sub-decree No. 82).

07 Civil Code, effective on December 8, 2007, enforceable on December 21, 2011 (Civil Code).

08 Trust Law 2019 (Trust Law).

09 Law on Commercial Enterprises, dated May 30, 2005 (LCE).

10 Law on Investment, 2021 (Investment Law).

11 Sub-decree No. 139 on Implementation of Law on Investment of the Kingdom of Cambodia, dated June 26, 2023 (Sub-decree No. 139).

Restrictions on Foreign Ownership

Privately owned land in Cambodia may be owned legally outright by individuals or legal entities.

The Constitution and the Land Law expressly prohibits legal ownership of land by foreign citizens or foreign legal entities (being legal entities which do not qualify as Cambodian).

The one exception is that foreigners may own units in a co-owned buildings under the Law on Foreign Ownership and Sub-Decree No. 82. These laws officially recognise the rights of foreigners to be registered as legal owners of up to 70% of total surface-area of all private units in co-owned buildings or condominiums, excluding ground and underground floors.

It should be noted that specific formalities have to be adhered to in order for foreigners to successfully register co-ownership titles.

Recently, the Trust Law and related implementing legislation (including Sub-decree No. 114 and Prakas No. 003) allow foreigners and foreign companies to own a beneficial interest in land under a registered trust.

The key point is that once a trust has been duly established and registered, legal ownership of land can be owned legally by the trustee while the economic (beneficial) ownership interests are held by foreign investors. The use of trust structures has proved popular with foreign investors in Cambodian land because it allows investors to invest in land in a manner compliant with Cambodian law (including the prohibition against foreigners owning land).

The use of trusts as a vehicle for land ownership is relatively untested. There remain questions relating to the applicability of taxes upon transfer of assets to the trustee and upon re-transfer of assets to beneficiaries by the trust.

Property Investment – Legal Process

Under the Civil Code, a transfer of ownership pertaining to land shall come into effect only when the transfer of rights pursuant to a notarised agreement is registered in the land registry book at the MLMUPC. Upon registration, it is presumed that such rights belong to the person to whom it is registered and whose name appears on the title certificate.

The process of sale of land includes the execution of a sale agreement (Vente Definitive), submission of a land transfer application form (both are the land office's standard formats), and registration with the relevant land authorities. The transfer process also involves the tax authorities for payment of the stamp duty tax, which is at a rate of 4% based on the market value of the land. In order to determine the value of the land, the General Department of Taxation will apply the higher of

a. he value of the land in the contract of sale;

b. or prescribed value determined under the Ministry of Economy and Finance's schedule.

The tax must be paid before the land office approves the transfer of ownership of the land or the change of the owner of the property on the land title.

It is important to note that any construction erected on the land will be included in the basis used to calculate the tax payable for the transfer of ownership.

Leasing Land in Cambodia

Cambodia has encapsulated the principle of freedom of contract into Cambodian law (see Article 3, Civil Code). The parties to leases are free to negotiate the significant terms of the contract including the lease term, rent, termination and other key contractual arrangements with minimal mandatory laws applying. There are for example no laws relating to the use of deposits and market practice often involves a landlord taking deposits of one month's, three months', or six months' rent, depending on the lease duration and the balance of the negotiating weight.

There are advantages conferred on investors that structure leasehold interests in land pursuant to a perpetual lease, which is a lease for between 15-50 years. All other leases are treated as short-term leases.

A perpetual lease may be transferred, assigned or subject to sub-lease, although in practice these rights may be waived by agreement. In addition, a perpetual lease can also be used as security for financing.

A perpetual lease must be registered with the relevant DLMUPC for it to be enforceable against a third party, and a certificate of perpetual lease will be issued by the relevant DLMUPC to the lessee.

A lease contract may be terminated at any time by either party in the absence of a termination provision in the lease agreement.

Unlike a perpetual lease, assignment or sub-letting of a short-term lease is prohibited unless otherwise agreed.

A lease of state public land must be made pursuant to a written agreement with the Ministry of Economy and Finance. State public land may be leased for a maximum period of fifteen years. The procedures and practices which apply to the lease of state public land are not clearly stated in the law. In practice, companies which are interested in leasing state public land are advised to consult with the Ministry of Economy and Finance.

State public land cannot be used for private business. State private property may be leased for a maximum period of fifty years, which may be renewed. There is no limit on the number of renewals. The lease of state private land with a term of more than 15 years shall confer perpetual rights on the lessee. The perpetual lease right can be subject to assignment, pledge, or security or hypothec or sub-lease (see Article 39 and Article 40 of the State Property Law).

State land may also be the subject of an economic land concession (ELC) or a social land concession (SLC). An ELC is a mechanism for use of state private land which allows a concessionaire to clear the land for agricultural or agro-industrial business. A SLC is a mechanism of transfer of state private land through legal process for serving the social purpose to the poor who have no land for building residence and/or for family farming. The maximum term of an ELC is fifty years. There is no limit on the number of renewals but if a renewal is agreed then the duration shall not exceed 50 years.

Legal Structures

Foreign investors must choose a legal structure to operate their business in Cambodia. Under the LCE, the available structures include:

- Partnership;
- Limited Company;
- Branch Office;
- Representative Office.

Registration/Licensing Requirements

Many foreign investors in Cambodia choose to register their business as a limited company with the Ministry of Commerce (MOC), since it provides a shield which ordinarily will limit exposure of its owners to the amount of the owner's paid up share capital. Registration of a new limited company with the MOC takes in the region of 4 weeks. Tax registration is also required with the General Department of Taxation which takes in the region of 4 to 6 weeks after the approval is obtained from the MOC.

If the company has employees, registration is required with the Ministry of Labour and Vocational Training and the National Social Security Fund. Depending on the nature of business pursued by the investor, further licensing permits/registration may be required.

Foreign Employment Requirements

When hiring a foreign employee, in addition to registering the employee with the Ministry of Labour and Vocational Training and assisting the foreign employee to obtain a work permit, an employer must ensure that the foreign employee has a valid visa, and the employer satisfies the foreign employee quota. A work permit for foreign employees is valid for only one year. No matter when the work permit for foreign employees is issued by the Ministry of Labour and Vocational Training, it expires on December 31 of that year. If an enterprise continues to employ foreign nationals in Cambodia for the following year, the enterprise needs to apply for an extension of their foreign work permits by March 31 of the following year. Under the quota system, a maximum of 10% of an employer's total local workforce may be foreign nationals (based on a calculation of foreign employees/local employees), comprised of: office employees (3%); skilled labour employees (6%); and unskilled labour employees (1%). Exemptions (for over 10% of the workforce) are subject to approval from the Ministry of Labour and Vocational Training.

Foreign Investment Incentives

The CDC grants investment incentives to qualified investment projects (QIP) in the form of profit tax holidays (of up to three 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.

Sub-decree No. 139 provides a "Negative List" which restricts certain activities from eligibility for some or all investment incentives.

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

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.

Property Taxes

Tax on Immoveable Property (TIM) is imposed at the rate of 0.1% on the value of the immovable property that exceeds KHR 100 million (approx. USD 25,000). The definition of immovable property includes land, houses, buildings, and other construction. The tax base on which TIM is calculated is based on the immovable property's value as determined by the Immovable Property Assessment Committee. The owner, occupant or final beneficiary of the immovable property must register, declare and pay TIM by the due date of September 30 each year.

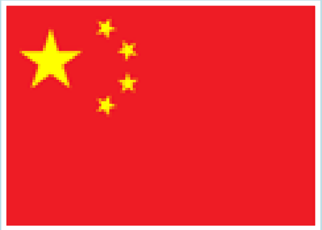
Exemptions for TIM include immovable property that is:

- Used as agricultural land,
- Owned by the Royal Government of Cambodia and ministries/institutions thereof,
- Owned by any organisation/person established exclusively for religious or charitable causes where there is no private interest.
- Owned by a foreign diplomatic or consular mission, international organisation, and agencies of technical cooperation of other governments,
- Infrastructure such as roads, bridges, fresh water/electricity, airports, ports, railway stations – inclusive of buildings/officesthat are directly involved with infrastructure activities.

Before implementing any investments in Cambodian land, a foreign investor should take tax structuring advice, including advice on withholding taxes and transfer pricing depending on the circumstances.

04

China



Property Tenure/Ownership

While all land in China is still owned by the state or collectives, 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).

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. Though 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 to 70 years and land transfer prices are payable in full. The national standard for maximum periods of Land Use Rights is:

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

01 PRC Civil Code (enacted on May 28, 2020 and effective on January 1, 2021)

02 PRC Law of Administration of Urban Real Estate (issued on July 5, 1994, revised on August 30, 2007, August 27, 2009 and August 26, 2019)

03 PRC Land Administration Law (enacted in 1986 and amended on December 29, 1988, August 29, 1998, August 28, 2004 and August 26, 2019)

04 Implementing Regulation for the Land Administration Law of the People's Republic of China (issued on December 27, 1998, effective on January 1, 1999, revised on January 8, 2011, July 29, 2014 and July 2, 2021)

05 Regulations on Administration of Development and Operations of Urban Real Estate (issued and effective on July 20, 1998, revised on January 8, 2011, March 19, 2018, March 24, 2019, March 27, 2020 and November 29, 2020)

06 Opinions for Regulating the Access by and Administration on Foreign Investment in the Real Estate Market (issued and effective on July 11, 2006 and amended by the Notice on Adjustment to Policies on Access by and Administration on Foreign Investment in the Real Estate Market)

07 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 (issued on May 19, 1990 and amended on November 29, 2020)

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, golf courses and racecourses. Such catalogs were amended and supplemented by the MLR and NDRC in 2009 and 2012, 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 4.0 times of plot area. Previous developments had been built at nearly double these ratios.

In 2004, the People's Bank of China issued the Notice on Further Strengthening the Administration of Real Estate Credit Business, prohibiting commercial banks from granting real property development loans in the form of property development circulating capital loans or other forms of loans, and requiring that proprietary funds of any enterprises may not be less than 30% of total development investments; for mortgage loans made available by land reservation institutions, the amount of such loans shall not exceed 70% of the valuation of the purchased land and the term of loan shall not exceed 2 years.

Individuals borrowing for residential property were also limited to a percentage of the property value for second-hand transactions.

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 regards 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 the Notice on Further Strengthening and Regulating the Approval and Supervision of Foreign Direct Investments in the Real Property Industry, requiring foreign investors to purchase land use rights or building ownership rights or enter into relevant agreements 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, signalling an easing on the requirements for foreign investment in the real estate industry.

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 the ratio of floor area to construction land area, providing that "for land plots in respect of which floor area ratios or other planning conditions are not determined, state-owned land use rights shall not be transferred. Where floor area ratios and other planning conditions are not included in relevant land use right transfer contracts, such land use right transfer contracts are null and void", imposing stricter control on development of real property.

In 2014 and 2015, MOFCOM simplified the filing process for foreign investment in the real estate sector by replacing the previous paper-based filing system with an online filing system.

On August 19, 2015, several relevant Chinese authorities jointly issued the Notice of the Ministry of Housing and Urban-Rural Development and Other Departments on Revision of Policies on Access and Management of Foreign Investment in the Real Estate Market. The notice simplifies the foreign exchange registration procedures for foreign-invested real estate enterprises (i.e. foreign-invested real estate enterprises can carry out foreign exchange registrations directly with commercial banks) and removes the requirement that foreign-invested real estate enterprises must fully pay its registered capital before it can apply for domestic or foreign loans.

On November 6, 2015, MOFCOM and SAFE jointly issued the Notice on Further Improving the Filing of Real Estate Investment by Foreign Investors. According to this notice, foreign investment in the real estate industry was no longer required to be announced on the website of MOFCOM, and after completing relevant approval procedures with local commerce authorities, foreign-invested real estate enterprises may apply for foreign exchange registration in relation to foreign direct investment with banks in accordance with relevant foreign exchange regulations.

According to the PRC Foreign Investment Law (FIL) and its Implementing Regulations, commerce authorities no longer approve or register the establishment and corporate changes of foreign-invested enterprises. Foreign investors are required to perform the reporting obligations in accordance with the relevant provisions of the FIL and its Implementing Regulations and the Measures for Foreign Investment Reporting, and corresponding compliance reviews will be conducted. Information to be reported includes basic information about the enterprise, information about investors and their actual controllers, information about investment transactions, reports on changes in the registration (filing) of the enterprise, and information on changes in shares under specific circumstances.

Operational Requirements for Foreign Corporations

Office

Type

- Foreign Investment Enterprises
  - Wholly foreign-owned enterprises (referred to as WFOE)
  - Equity joint ventures
- Representative Offices
- Partnerships

Registration/Licensing Requirements

1. Foreign Investment Enterprises

- Corporate registration – State Administration for Market Regulation (SAMR, previously State Administration for Industry and Commerce) or its local counterparts
- Foreign investment reporting – MOFCOM (in consultation with SAMR)
- Project approval and filing (if applicable) – NDRC
- Industry authority approval (if applicable) – relevant industry authorities

The following documents should be presented:

- application form
- certificate of name registration
- contract and articles of association
- identification documents of the investor
- documents appointing 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 – SAMR

The following documents should be presented:

- application signed by the chairman or president of the enterprise
- certificate of incorporation for the foreign enterprise
- document evidencing more than 2 years of legal operations
- articles of association or constitutional agreement of foreign enterprises
- · authorisation document or certificate issued by a foreign enterprise to authorise its authorised signatory
- approval certificate
- 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 foreign enterprise, together with each of their resumes and copies of their identification cards
- office premises lease contract and copy of deeds to property.

3. Partnerships
- Initial approval certificate from MOFCOM
- Business registration – SAMR

The following documents should be presented:
- application signed by all partners
- partnership contract
- copies of identification documentation of all partners
- approval certificate (if applicable)
- 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 Organisation (WTO) in December 2001, China has undertaken major commitments to reduce restrictions on business. Except retail of tobacco products in which investments are prohibited, 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) for more than one year before commencing franchising activities in China. The previous requirement that the two stores be in China was removed in 2007 through the Administrative Regulations on Commercial Franchise Operations, 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 fertilisers, 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 mainly depending on the industry in which investors operate.

Foreign investment projects are divided into three types — encouraged, restricted or banned by the central government. Projects encouraged are typically production-oriented projects, especially xhigh-technology and export-oriented production, as well as infrastructure projects. The categorisation of foreign investment projects is regularly reviewed. The Catalog, updated on April 10, 2015 ("2015 Catalog"), had made significant changes to the former versions. Real estate industry had been removed from the restricted category.

The latest updated Catalog was issued on September 18, 2021 and became effective on January 1, 2022 ("2021 Catalog") and it continues the tendency of opening-up of the market in various industries, sets out specific requirements on the foreign shareholding restrictions in senior managements of foreign invested enterprises. Industries outside of the 2021 Catalog will be managed on the principle of equal treatment between domestic and foreign investors.

The 2021 Catalog further reduces the foreign investment restrictions, and the number of industries which are subject to restrictions have been reduced to 31.

A foreign investor can get a fair idea of whether its proposed investment is permitted or subject to approval by simply checking the 2021 Catalog to check if their proposed investments shall be subject to the case-by-case MOFCOM approval.

Foreign investment incentives are more readily available and more wide-ranging in Free Trade Zones, 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.

On December 21, 2017, the Ministry of Finance, the State Administration of Taxation (SAT), the National Development and Reform Commission and the Ministry of Commerce jointly issued tax circular Cai Shui [2017] No. 88, Circular on Policy Issues Concerning Provisionally Not Levying Withholding Income Tax on Direct Investments by Foreign Investors Made Using Distributed Profits, which provides a temporary waiver of enterprise income tax (EIT, usually at 10%, unless a preferential tax rate applies under a double tax treaty or arrangement) for non-tax-resident enterprises (i.e. overseas investors) that make direct investments in an encouraged industry with profits distributed by a tax-resident enterprise in the PRC ("Tax Deferral"), if certain conditions are met. This Circular was annulled in 2018 by Circular Cai Shui [2018] No. 102 and will extend to all projects and industries where foreign investment is not prohibited. Subsequently, on January 2, 2018, the SAT issued the SAT Announcement [2018] No.3, Announcement on Issues Relevant to the Implementation of the Policy of Provisionally Not Levying Withholding Income Tax on Direct Investments Made by Foreign Investors Using Distributed Profits in order to provide further guidance in this regard.

Both Circular 88 and Announcement 3 have a retrospective effect from January 1, 2017, which means that the Tax Deferral applies to dividends or profit distributions derived by overseas investors from their equity investments in the PRC on and after January 1, 2017.

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.

Where relevant conditions are met, foreign investors can purchase 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, Renminbi (RMB), is not freely convertible at present, though 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.

SAFE implements a registration mechanism for domestic investment by foreign investors, the Notice on Further Improvements and Adjustments to Foreign Exchange Control Policies for Direct Investments which came in effect on June 1, 2015 and was amended on December 30, 2019 (Document No. 13) cancels the requirement of administrative approval of foreign exchange registration of domestic direct investments and simplifies procedures for foreign exchange registration. According to Document No. 13, investors shall register their domestic direct investments with banks.

SAFE promulgated on October 23, 2019 the Notice of SAFE on Further Facilitating Cross-border Trade and Investment, which stipulates that all foreign-invested enterprises may use RMB converted from foreign currency capital to make equity investments in China, provided that the equity investment is genuine, does not violate applicable laws, and does not fall within the negative list of foreign investment.

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 non-business purposes.

As from January 1, 2009, real property owned by foreign invested enterprises, foreign enterprises and foreign individuals are subject to real estate tax.

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 in respect of which the exemption threshold is exceeded, real estate tax rate is from 0.4% to 0.6% of 70% of the original value of the property. In Chongqing, real estate tax rate is from 0.5% to 1.2%.

- For leased properties in Shanghai, real estate tax is levied at 4% against properties leased by individuals or leased by enterprises or institutions to individuals. Real estate tax is levied at 12% against properties leased among enterprises, institutions, social groups and other organisations.
- For leased properties without rental income, real estate tax is levied at 1.2% of the residual value of such properties.

On October 23, 2021, the Decision of the Standing Committee of the National People's Congress on Authorising the State Council to Implement Pilot Projects on Real Estate Tax Reform in Some Areas kicked off a new round of real estate tax reform. The real estate tax in the pilot areas is levied on all types of real estate such as residential and non-residential properties, excluding legally owned rural homestead and the dwellings on them. However, the specific pilot cities and implementation rules have not yet been announced.

Land Use Tax

Land use tax is levied on land and payable by entities or individuals who own the land use rights.

Land use tax is graded and the annual tax payable = land area (square metre) × applicable tax rate.

Land area

1. The land area actually occupied by taxpayers is as set out in the land use right certificates issued by real estate authorities;
2. Where no land use right certificate is issued, the relevant taxpayer shall truthfully report the land area and pay taxes accordingly, subject to adjustment once the land use right certificate is issued.

Applicable tax rate

1. RMB 1.5 to 30 in big cities;
2. RMB 1.2 to 24 in medium-sized cities;
3. RMB 0.9 to 18 in small cities;
4. RMB 0.6 to 12 in counties, towns and industrial areas.

Take Shanghai as an example, land use tax is levied on Land Use Right holders and is charged at rates ranging from RMB 1.5 (USD 0.22) per sqm to RMB 15 (USD 2.19) per sqm, depending on the location and use.

Taxes on Leasing Income

Taxes imposed on rental income in China typically include property tax, value-added tax, income tax and other taxes. The taxes are applied in Beijing, Shanghai and Guangzhou, as follows:

Residential Property

- **Beijing**
  - Leased by an individual landlord: real estate tax (4% of rental income) + value-added tax (1.5% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education surcharge (3% of value-added tax) + local education surcharge (2% of value-added tax) + individual income tax (10% of rental income).
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.5–30 per sqm) + value added tax (5/9% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education surcharge (3% of value-added tax) + local education surcharge (2% of value-added tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of rental income).
- **Shanghai**
  - Leased by an individual landlord: real estate tax (4% of rental income) + value-added tax (1.5% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education surcharge (3% of value-added tax) + local education surcharge (2% of value-added tax) + individual income tax (10% of rental income).
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.5–15 per sqm) + value-added tax (5/9% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education surcharge (3% of value-added tax) + local education surcharge (2% of value-added tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of rental income).
- **Guangzhou**
  - Tax rates are the same as those levied in Beijing and Shanghai in terms of individual and corporate landlords, except that the city maintenance and construction tax is RMB 2-15 per sqm in the case of corporate landlords.

Non-residential Property

- **Beijing**
  - Leased by an individual landlord: real estate tax (12% of rental income) + value added tax (5% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education surcharge (3% of value-added tax) + local education surcharge (2% of value-added tax) + individual income tax (20% of rental income) + urban and township land use tax (RMB 1.5–30 per sqm) + stamp tax (0.1% of rental income).
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.5–30 per sqm) + value added tax (5/9% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education surcharge (3% of value-added tax) + local education surcharge (2% of value-added tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of rental income).
- **Shanghai**
  - Leased by an individual landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.5–15 per sqm) + value-added tax (5% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education surcharge (3% of value-added tax) + local education surcharge (2% of value-added tax)+ stamp tax (0.1% of rental income) + individual income tax (20% of rental income).
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.5–15 per sqm) + value-added tax (5/9% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education surcharge (3% of value-added tax) + local education surcharge (2% of value-added tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of rental income).
- **Guangzhou**
  - Tax rates are the same as those levied in Beijing and Shanghai in terms of individual and corporate landlords, except that the city maintenance and construction tax is RMB 2-15 per sqm.

Taxes on Acquisition and Transfer of Real Estate

Stamp Duty and Legal Costs

Pursuant to the Stamp Duty Law which came into effect on July 1, 2022, the stamp duty in respect of property leases is 0.1% of rental, and the stamp duty in respect of title transfer instruments is 0.05% of the transfer price.

Notarisation fees are charged at rates ranging from 0.01% to 0.3% 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.

Real estate registrations are charged at RMB 80 (USD 12) per set for a residential property and RMB 550 (USD 80) per set for a non-residential property.

Deed Tax

Pursuant to the Deed Tax Law which came into effect on September 1, 2021, the deed tax rate is within the range of 3-5%. The applicable deed tax rates are proposed by governments at the provincial level in line with the range set out above, determined by the standing committees of the people's congresses at the same level, and filed with the Standing Committee of the National People's Congress and the State Council. According to the Circular on Adjusting Deed Tax and Business Tax Policies for Real Estate Transactions promulgated on February 17, 2016, in most cities, for those who purchase a sole property for family occupation, if the area of the property is under 90 sqm, the deed tax is reduced to 1%; if the area of the property is more than 90 sqm, the deed tax is reduced to 1.5%; and for those who purchase a second property for family occupation, if the area of the property is under 90 sqm, the deed tax is reduced to 1%; if the area of the property is more than 90 sqm, the deed tax is reduced to 2%. However, in Beijing, Shanghai, Guangzhou and Shenzhen, for the purchasers of a second property for family occupation, the deed tax remains at 3%.

Valued-added Tax

According to the Circular on Comprehensively Promoting the Pilot Program of the Collection of Value-added Tax in Lieu of Business Tax issued on March 23, 2016 by the State Administration of Taxation and Ministry of Finance, if an individual sells a residential property that has been owned by the seller for less than two years, the individual shall pay a value-added tax at the rate of 5% in respect of the full amount of the sales proceeds; if an individual sells a residential property that has been owned by the seller for more than two years (inclusive) in any regions other than Beijing, Shanghai, Guangzhou and Shenzhen, the value-added tax shall be exempted.

In Beijing, Shanghai, Guangzhou or Shenzhen, if an individual sells a non-ordinary residential property that has been owned by the seller for more than two years (inclusive), the value-added tax should then be paid at the rate of 5% of the sale proceeds after deduction of the original purchase price; for the sale of ordinary residential property that has been owned by the seller for more than two years (inclusive), the value-added tax shall be exempted.

City Maintenance and Construction Tax

City maintenance and construction tax is levied at three levels, namely 1%, 5% and 7%, of value-added tax, depending on the location of the taxpayer. The highest rate is applicable to urban areas. 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 entities and individuals who transfer state-owned land use rights, buildings erected on land and fixtures attached to land for value and is levied at rates between 30% and 60% on the appreciation obtained by the taxpayer as a result of real estate transfer.

Ratio of Added Value to Deductible Items	LAT Rate
For the portion of appreciation not exceeding 50% of deductible items	30%
For the portion of appreciation over 50% but not exceeding 100% of deductible items	40%
For the portion of appreciation over 100% but not exceeding 200% of deductible items	50%
For the portion of appreciation exceeding 200% of deductible items	60%

Costs deductible for the calculation of appreciation include the original cost of acquiring Land Use Rights, land development costs and expenses, construction costs and expenses for buildings and ancillary facilities, the assessed value of old houses or buildings, taxes relevant to property transfer and other deductible items specified by the Ministry of Finance. Real property developers may deduct additional 20% of the aggregate of the price of obtaining land use rights and property development costs.

Under any of the following circumstances, land appreciation tax is exempted:

i. a taxpayer constructs ordinary residential properties for sale and the appreciation does not exceed 20% of deductible items;

ii. real estate is requisitioned or repossessed in accordance with the law for the purpose of state construction, which means that property is requisitioned or land use rights are repossessed as approved by the government for the purpose of urban planning and state construction. Where a taxpayer is relocated due to the need for urban planning or state construction and the original real estate is transferred by the taxpayer, the land appreciation tax is exempted in accordance with this provision mutatis mutandis;

iii. for the exchange of real estate for their own residential use between individuals, they may be exempted from land appreciation tax upon verification by the local tax authorities;

iv. individuals are temporarily exempted from the land appreciation tax on the sale of residential property;

v. enterprises, institutions, social groups and other organisations are exempted from the land appreciation tax if they transfer old houses as housing sources for renovation and resettlement of shanty and the appreciation does not exceed 20% of the deducted items;

vi. enterprises, institutions, social groups and other organisations shall be exempted from the land appreciation tax if they transfer old houses as sources of affordable housing and the appreciation does not exceed 20% of the deducted items;

vii. enterprises, institutions, social groups and other organisations are exempted from land appreciation tax if they transfer old houses as sources of public rental housing units and the appreciation does not exceed 20% of the deducted items.

Real Property Depreciation

Depreciation of real property must be computed on a straight-line method over a 20-year period and the estimated net residual value shall be determined in a reasonable manner. Depreciation is normally at 4.5% of cost per year, leaving a 10% 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% 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 was enacted on August 31, 2018 and came into effect from January 1, 2019.

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

Wages and salaries for both PRC citizens and expatriates are taxed at progressive rates ranging from 3% to 45%:

Annual Taxable Income*	IIT Rate	Deduction (RMB)
Up to RMB 36,000	3%	0
Over RMB 36,000 - 144,000	10%	2,520
Over RMB 144,000- RMB 300,000	20%	16,920
Over RMB 300,000 -RMB 420,000	25%	31,920
Over RMB 420,000 – RMB 660,000	30%	52,920
Over RMB 660,000 – RMB 960,000	35%	85,920
Over RMB 960,000	45%	181,920

*PRC citizens and expatriates both have a standard tax-free allowance of RMB 5,000 (USD 730) per month. The monthly taxable income refers to the amount remaining after deducting the standard tax-free allowance.

Tax Treaties: Avoidance of Double Taxation

As of June 2023, the PRC Government had concluded 112 Double Taxation Avoidance Agreements with the following geographies/Special Administrative Regions:

Albania	Macedonia
Algeria	Malaysia
Angola	Malta
Argentina*	Mauritius
Armenia	Mexico
Australia	Moldova
Austria	Mongolia
Azerbaijan	Morocco
Bahrain	Nepal
Bangladesh	New Zealand
Barbados	Nigeria
Belarus	Norway
Belgium	Oman
Botswana	Pakistan
Brazil	Papua New Guinea
Brunei	Philippines
Bulgaria	Poland
Cambodia	Portugal
Canada	Qatar
Chile	Korea
Croatia	Romania
Cuba	Russia
Cyprus	Rwanda
Czech	Saudi Arabia
Czechoslovakia	Seychelles
(apply to Slovakia)	Singapore

Denmark	Slovenia
Ecuador	South Africa
Egypt	Spain
Ethiopia	Sri Lanka
Estonia	Sudan
Finland	Sweden
France	Switzerland
Gabon*	Syria
Georgia	Taiwan*
Germany	Tajikistan
Greece	Thailand
Hong Kong	The Netherlands
Hungary	The Republic of Congo
Iceland	Trinidad and Tobago
India	Tunisia
Indonesia	Turkey
Iran	Turkmenistan
Ireland	Uganda*
Israel	Ukraine
Italy*	United Arab Emirates
Jamaica	United Kingdom
Japan	United States
Kazakhstan	Uzbekistan
Kenya*	Venezuela
Kuwait	Vietnam
Kyrgyzstan	Yugoslavia (Bosnia and
Laos	Herzegovina)
Latvia	Yugoslavia (Serbia and
Lithuania	Montenegro)
Luxembourg	Zambia
Macau	Zambabwe

*Not yet effective

Real Estate Investment Trusts

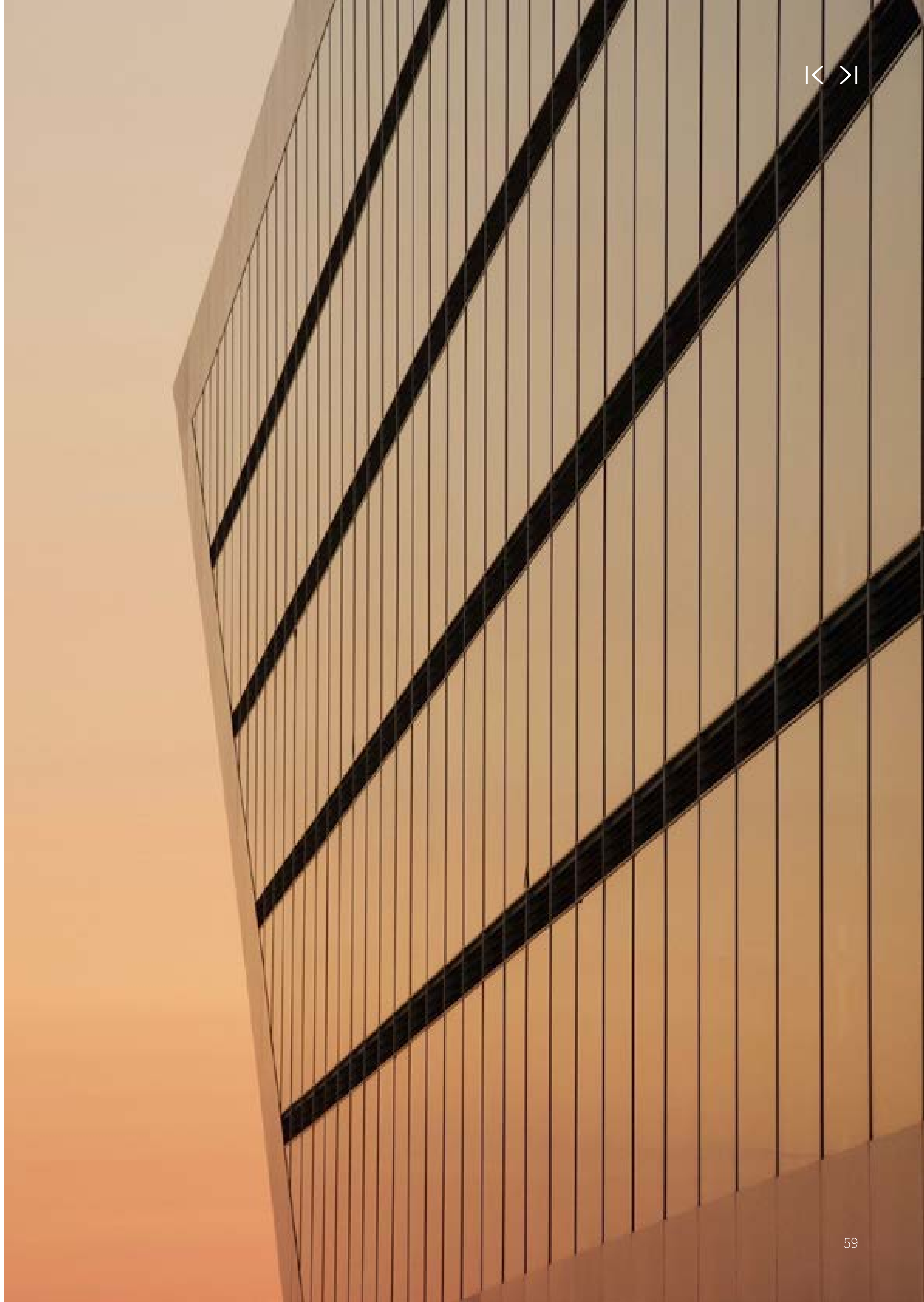
In June 2021, China's first batch of nine publicly-offered infrastructure REITs completed fundraising on the Shanghai Stock Exchange and Shenzhen Stock Exchange respectively and were successfully listed for trading. In order to better match investors' equity risk premium requirements, the underlying assets suitable for publicly-offered REITs should have a higher rate of return, have long-term and stable cash flows, be operated in a market-based manner, and be flawless, transferable and legally segregated.

Relevant Laws and Regulations

- Notice of the China Securities Regulatory Commission and the National Development and Reform Commission on Promoting the Pilot Program for Infrastructure Real Estate Investment Trusts (REITs)
- Notice of the General Office of the National Development and Reform Commission on Filing Pilot Projects of Infrastructure Real Estate Investment Trusts (REITs)
- Guidelines of the China Securities Regulatory Commission for Publicly Offered Infrastructure Securities Investment Funds (for Trial Implementation) (Announcement of the China Securities Regulatory Commission [2020] No. 54)
- Notice of the National Development and Reform Commission on Further Driving the Pilot Program for Infrastructure Real Estate Investment Trusts (REITs) (NDRC Investment [2021] No. 958)
- Notice of the General Office of the National Development and Reform Commission on Filing and Recommendation of Newly Acquired Projects of Infrastructure Real Estate Investment Trusts (REITs).
- Announcement on the Taxation Policy for the Pilot Program for Infrastructure Real Estate Investment Trusts (REITs) (Announcement of the State Taxation Administration of the Ministry of Finance No. 3 of 2022)
- Notice of the National Development and Reform Commission on Standardising the Filing and Recommendation of Infrastructure Real Estate Investment Trusts (REITs) Programs (NDRC Investment [2023] No. 236)
- Notice of the China Securities Regulatory Commission on Further Promoting the Regular Issuance of Infrastructure Real Estate Investment Trusts (REITs)

The assets in respect of which publicly offered infrastructure REITs can be issued include:

Transportation infrastructure such as toll roads, railways, airports and port projects; energy infrastructure including clean energy projects such as wind power, photovoltaic power generation, hydropower generation, natural gas power generation, biomass power generation, and nuclear power; municipal infrastructure including urban water supply, power supply, gas supply, heat supply projects and parking lot projects; urban sewage and garbage treatment ecological and environmental protection infrastructure; storage and logistics infrastructure such as warehouses that provide paid storage services; park infrastructure; data centres, artificial intelligence projects, new infrastructure such as 5G and communication towers; affordable rental housing. The scope of the above-mentioned assets is constantly expanding.

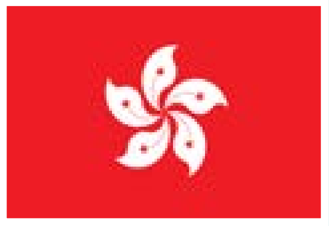


Common Terms of Lease for Tenancy Agreements	
Unit of measurement	
Unit of measurement	Square Feet
Rental payments	
Rents	Shanghai: RMB/gross sqm/day
Typical lease term	Generally minimum 2 years (usually with an option for the tenant to renew for an additional 2 or 3-year term at market rates); standard 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 increase or rent review	Generally at lease renewal, but if an agreed lease is over 5 years, rent is normally negotiated 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 and 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

05

Hong Kong



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 granted by government by way of leases. A government lease conveys certain rights to occupy, develop and use parcels of land in the territory. The terms of government leases vary, such as 50, 75, 99 or 999 years, with or without the right of renewal. In consideration of granting the right to use and occupy land, certain restrictions are imposed on the owners to use the land. In recent years, there are more cases where the Court is required to adjudicate the scope and extent of different types of restrictions under government leases.

It is common in Hong Kong to sell strata-title interest in a multi-unit building (effectively long leasehold interest). Unless otherwise specified, in law, a multi-story building is owned by all the co-owners and none of them has exclusive possession. It is by a Deed of Mutual Covenant (DMC) which notionally divides the building and the land granted under government lease into a number of equal undivided shares, and each individual unit 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. Lease terms generally range from one to three years.

Major Property Legislation

01 Building Management Ordinance

02 Buildings Ordinance

03 Conveyancing and Property Ordinance

04 Government Leases Ordinance

05 Land (Compulsory Sale for Redevelopment) Ordinance

06 Land Registration Ordinance

07 Land Resumption Ordinance

08 Landlord and Tenant (Consolidation) Ordinance

09 Residential Properties (First-hand Sales) Ordinance

10 Stamp Duty Ordinance

11 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

Partnerships are governed by the Partnership Ordinance and any partnership agreement, and may be established between two or more persons carrying on business in common with a view of profit. If the partnership is registered with the Registrar of Companies, it takes the form of a limited partnership. If it is not registered, it becomes a general partnership.

Registration/Licensing Requirements

All businesses (local or otherwise) are required to apply for a Business Registration Certificate within one month from the date of commencement of business in Hong Kong 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[1].

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% of the rateable value of the property and is 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.
- properties with land leases granted on or after May 27, 1985.
- properties with their non-renewable land leases extended on or after May 27, 1985.

[1]https://www.immd.gov.hk/eng/services/visas/capital_investment_entrant_scheme.html

Rates

Rates are payable at a percentage of the rateable value of the property. For financial year 2023-2024, the percentage is 5%. 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. For financial year 2023-2024, the designated valuation reference date is October 1, 2022 and the rateable values take effect from April 1, 2023.

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. The property tax rate is 15%. For property tax purposes, a flat rate of 20% 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 on 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 ad valorem stamp duty, special stamp duty and buyer's stamp duty.

Ad Valorem Stamp Duty on Any Properties[2]

The acquisition of all properties in Hong Kong are subject to ad valorem stamp duty (AVD), but the AVD rates are different depending on the user (residential vs non-residential) of the property and the identity of the purchaser/transferee.

All properties are generally subject to Scale 1 AVD rates. But if 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[3] , then a lower Scale 2 rate is applicable when certain conditions are met.

With effect from November 5, 2016, Scale 1 AVD rates are divided into Part 1 (applicable to residential property) and Part 2 (applicable to non-residential property). For Scale 1 Part 1, residential property acquisitions between November 5, 2016 and October 24, 2023 or on or after October 25, 2023 are respectively subject to a flat AVD rate of 15% or 7.5% of the consideration or value of the property, whichever is the higher. For Scale 1 Part 2, the AVD rates for non-residential property acquisitions on or after February 23, 2013 but before November 26, 2020 are as follows:

[2]Government Rent: https://www.rvd.gov.hk/en/our_services/government_rent.html
Rates: https://www.rvd.gov.hk/en/our_services/rates.html
Property tax: https://www.gov.hk/en/residents/taxes/taxfiling/taxrates/propertyrates.htm
Stamp duty: https://www.gov.hk/en/residents/taxes/stamp/stamp_duty_rates.htm
[3]As at the date of signing the legally binding agreement for sale and purchase.

Amount of value of the consideration (whichever is higher)		
Exceeds	Does not exceed	Rate
-	HKD 2,000,000	1.5%
HKD 2,000,000	HKD 2,176,470	HKD 30,000 + 20% of excess over HKD 2,000,000
HKD 2,176,470	HKD 3,000,000	3%
HKD 3,000,000	HKD 3,290,330	HKD 90,000 + 20% of excess over HKD 3,000,000
HKD 3,290,330	HKD 4,000,000	4.5%
HKD 4,000,000	HKD 4,428,580	HKD 180,000 + 20% of excess over HKD 4,000,000
HKD 4,428,580	HKD 6,000,000	6%
HKD 6,000,000	HKD 6,720,000	HKD 360,000 + 20% of excess over HKD 6,000,000
HKD 6,720,000	HKD 20,000,000	7.5%
HKD 6,000,000	HKD 21,739,130	HKD 1,500,000 + 20% of excess over HKD 20,000,000
HKD 6,720,000	-	8.5%

The Scale 2 AVD rates are applicable to non-residential property acquisitions executed on or after November 26, 2020 and residential property acquisitions where the purchaser/transferee is an HKPR acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition. With effect from 11 am on February 22, 2023, the Scale 2 AVD rates are as follows:

Amount of value of the consideration (whichever is higher)		
Exceeds	Does not exceed	Rate
-	HKD 3,000,000	HKD 100
HKD 3,000,000	HKD 3,528,240	HKD 100 + 10% of excess over HKD 3,000,000
HKD 3,528,240	HKD 4,500,000	1.5%
HKD 4,500,000	HKD 4,935,480	HKD 67,500 + 10% of excess over HKD 4,500,000
HKD 4,935,480	HKD 6,000,000	2.25%
HKD 6,000,000	HKD 6,642,860	HKD 135,000 + 10% of excess over HKD 6,000,000
HKD 6,642,860	HKD 9,000,000	3%
HKD 9,000,000	HKD 10,080,000	HKD 270,000 + 10% of excess over HKD 9,000,000
HKD 10,080,000	HKD 20,000,000	3.75%
HKD 20,000,000	HKD 21,739,120	HKD 750,000 + 10% of excess over HKD 20,000,000
HKD 21,739,120	-	4.25%

Stamp duty is also payable on leasing transactions, with the rate dependent on the rent payable and lease term as follows:

Term		**Rate**
Not defined or is uncertain		0.25% of the yearly or average yearly rent
Exceeds	Does not exceed	
-	1 year	0.25% of the total rent payable over the term of the lease
1 year	3 years	0.5% of the yearly or average yearly rent
3 years	-	1% of the yearly or average yearly rent
Key money, construction fee etc. mentioned in the lease		4.25% of the consideration if rent is also payable under the lease. Otherwise, same duty as for a sale of immovable property
Duplicate or counterpart		HKD 5 each

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 on Residential Properties

In addition to AVD and BSD, unless the transaction is exempted from "special stamp duty" (SSD) or SSD is not applicable, any residential property resold by the original purchasers within 24 months (the property was disposed of on or after October 25, 2023) or 36 months (the property was disposed of before October 25, 2023) after acquisitions will be subject to SSD.

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:

- 20% if the vendor has held the property for six months or less.
- 15% if the vendor has held the property for more than six months but for 12 months or less.
- 10% if the vendor has held the property for more than 12 months but for 24 months or less.
- 10% if the vendor has held the property for more than 24 months but for 36 months or less (only applicable to the property disposed of before October 25, 2023).

Buyer's Stamp Duty on Residential Properties

Buyer's stamp duty of 15% (applicable to residential property acquisitions executed on or after October 27, 2012 but before October 25, 2023) or 7.5% (applicable to residential property acquisitions executed on or after October 25, 2023) of the market value or stated consideration of the property (whichever is higher) is imposed on top of the AVD and SSD (where applicable), unless the buyer is an HKPR acquiring the property for himself/herself or the transaction is subject to an exemption permitted under the Stamp Duty Ordinance.

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[4]

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

[4]https://www.ird.gov.hk/eng/tax/bus_pft.htm

Corporate Taxation[5]

The rate of corporate taxation for:

- incorporated entities is 16.5%
- unincorporated entities is 15%

Net losses may be carried forward indefinitely.

Personal Taxation[6]

Individuals are subject to tax on income from properties, salaries and profits of sole proprietor businesses. Persons staying in Hong Kong for periods of not exceeding 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 20 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%). Usually landlord responsible, but costs charged back to tenant via Tax Treaties.

[5]https://www.ird.gov.hk/eng/tax/bus_pft.htm
[6]https://www.gov.hk/en/residents/taxes/salaries/allowances/deductions/homeloan.htm
[7]https://www.ird.gov.hk/eng/tax/dta_inc.htm

Tax Treaties[7]

Treaties in relation to avoidance of double taxation in existence:

Austria	Luxembourg
Belarus	Mainland of China
Belgium	Macao SAR
Brunei	Malaysia
Cambodia	Malta
Canada	Mauritius*
Czech Republic	Mexico
Estonia	Netherlands
Finland	New Zealand
France	Pakistan
Georgia	Portugal
Guernsey	Qatar
Hungary	Romania
India	Russia
Indonesia	Saudi Arabia
Ireland	Serbia
Italy	South Africa
Japan	Spain
Jersey	Switzerland
Korea	Thailand
Kuwait	United Arab Emirates
Latvia	United Kingdom
Liechtenstein	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.

REITs are allowed to invest in overseas properties in accordance with the provisions of the Code and Practice Note issued by the Securities and Futures Commission (SFC).

Examples of Restrictions on REITs[8]

- A REIT may acquire uncompleted units in a building, but the aggregate contract value of such real estate, together with property development costs, shall not exceed 25% of the REIT's gross asset value at the time of acquisition. [Note: See 7.1 of the code]
- No investment in vacant land is allowed. [Note: See 7.2 of the code]
- The REIT shall hold each property for a period of at least two years. [Note: See 7.8 of the code]
- If the name of the REIT indicates a particular type of real estate, at least 70% of the REIT's non-cash assets shall be invested in such type of real estate. [Note: See 7.11 of the code]
- A REIT may borrow for the purpose of financing investments or operations, but the aggregate borrowings shall not exceed 50% of its total gross asset value. [Note: See 7.9 of the code]
- A REIT shall distribute to unit holders as dividends each year an amount not less than 90% of its audited annual net income after tax. [Note: See 7.12 of the code]

Taxation for REITs

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

[8]https://www.sfc.hk/-/media/EN/files/COM/Reports-and-surveys/REIT-Code_Aug2022_en.pdf

Common Terms of Lease for Commercial Lease Agreements of Premises in a Building	
Unit of measurement	
Open market rental value	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 to 6 months, depending on the nature of properties and identity of tenants
Security of tenure	Not guaranteed beyond the original lease term
Does tenant have statutory rights to renewal	No, unless an option to renew is agreed in the lease
Basis of rent increases or rent review	Open market rental value (sometimes with a cap and collar for large-scale tenancies with reasonably long term of tenancy)
Frequency of rent increase or rent review	Usually at lease renewal (for longer leases, may have rent review periodically, say, for a 9-year lease, may have rent review in every 3 years)

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	Landlord (charged back via service charge)
Tenant subleasing & assignment rights	Subletting up to 25% of acquired space is generally possible for larger anchor occupiers
Tenant early termination rights	Only by original condition break clause
Tenant's building reinstatement responsibilities at lease-end	Original condition (subject to normal wear and tear)

06
India

Property Tenure/ Ownership

There are mainly two types of real estate:

- Freehold title
- Leasehold title

Property-related Major Central Legislations

01 Transfer of Property Act, 1882

02 Indian Easements Act, 1882

03 Registration Act, 1908

04 Indian Contract Act, 1872

05 Environment (Protection) Act, 1986

06 Forest (Conservation) Act, 1980

07 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

08 Real Estate (Regulation and Development) Act, 2016

09 Slum Areas (Improvement and Clearance) Act, 1956

10 Prohibition of Benami Property Transactions Act, 1988

11 Indian Stamp Act, 1899

12 Special Economic Zones Act, 2005

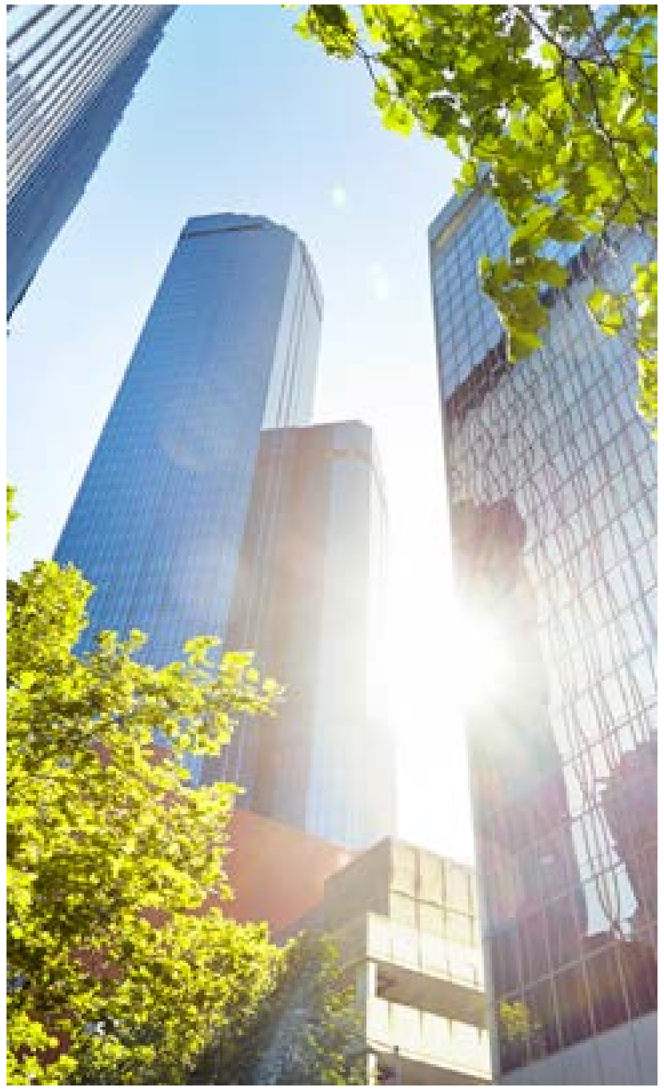
13 Enemy Property Act, 1968

14 Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations)

- Development Control Regulations/Building Bye-laws – These regulations apply to building activities and development works and are issued by the local municipal authorities of each city, such as Mumbai, Delhi and so forth.

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, flat/apartment ownership laws and labour laws.

Further, the Real Estate (Regulation and Development) Act, 2016 was brought into force to ensure a uniform regulatory environment to protect consumer interests and ensure orderly growth of the real estate sector. The aforesaid Act seeks to reduce frauds and delays.



Operational Requirements for Foreign Corporations

Modes of Entry

A foreign entity planning to establish business operations in India, typically does 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.
- In accordance with the provisions of the (Indian) Limited Liability Partnership Act, 2008 (LLP Act) by incorporating a limited liability partnership.
- In accordance with the provisions of the Foreign Direct Investment Policy (FDI Policy), as may be applicable from time to time, read with the Foreign Exchange Management Act, 1999 and the rules, regulations and other directions issued thereunder (collectively, FEMA), by investing in an existing company or limited liability partnership (LLP).

Some general conditions applicable in this regard are:

- Subject to the FDI Policy read with the corresponding FEMA provisions, foreign direct investment (FDI) in equity of Indian companies can be up to 100% and various sector/activity specific investment caps, approval requirements and other conditions (such as pricing guidelines, minimum capitalisation and lock-in period) have been prescribed in this regard, which are in addition to the sectoral/state laws, rules, regulations and applicable tax laws in India.
- Foreign investment is permitted under the automatic route in an LLP operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.

- FDI is prohibited in real estate business or construction of farmhouses. “Real estate business” means dealing in land and immovable property with a view to earning profit from there and does not include development of townships, construction of residential or commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships, real estate broking services, real estate investment trusts (REITs) registered and regulated under the REIT Regulations and earning of rent or income on lease of the property, not amounting to transfer.
- In accordance with the provisions of the Foreign Exchange Management (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any Other Place of Business) Regulations, 2016 read with the corresponding Master Directions issued by the Reserve Bank of India (RBI – India’s central bank and banking sector/foreign-exchange regulator), through a place of business in India, being one of the following:
  - liaison/representative office;
  - project office; or
  - branch office.

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

- A liaison/branch/project office can be established in India for permitted activities by obtaining prior permission from the RBI or the concerned Authorised Dealer Category – 1 bank (AD Bank), as the case may be. For certain prescribed categories of applications/applicants, the Government of India would be consulted – for instance, when the principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting.
- The non-resident entity applying for a branch/ liaison office in India should have a financially sound track record:
  - For Branch Office: A profit-making track record during the immediately preceding five financial years in the home country and net worth of not less than USD 100,000 or its equivalent.
  - For Liaison Office: A profit-making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 or its equivalent.
- There is general permission granted to non-resident companies to establish project offices in India, provided they have secured a contract from an Indian company to execute a project in India, in compliance with other prescribed conditions.
- A branch office in India established by a person resident outside India, may acquire any immovable property in India which is necessary for or incidental to the activity carried on in India by such branch office and may transfer the same by way of a mortgage to an authorised dealer as a security for any borrowing. However, acquisition/transfer of immovable property in India by a branch office of an entity having origin/nationality/ownership belonging from Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Hong Kong, Macau, Nepal, Bhutan or Democratic People’s Republic of Korea would require RBI’s prior approval, other than on a lease, not exceeding five years.

Registration/Filing Requirements

Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the automatic route or the Government route.

However, an entity of a country, which shares land border with India (viz. China, Bangladesh, Pakistan, Bhutan, Nepal, Myanmar and Afghanistan) or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, is permitted to invest only with the Government approval. Further, a citizen of Pakistan or an entity incorporated in Pakistan is permitted to invest only under the Government route, in sectors or activities other than defence, space, atomic energy and such other sectors/activities which are prohibited for foreign investment.

Where the parameters prescribed for automatic approval are fulfilled, the foreign investment would fall under the automatic route and the non-resident investor or the Indian company would not require any approval from the Government of India (GoI) for the investment.

An Indian company that issues equity instruments to a person resident outside India pursuant to FDI, is required to report such issue to the RBI within 30 days from the date of issue of the equity instruments. Similarly, in case of transfer of FDI-related equity instruments, the resident transferor/transferee or the person resident outside India holding the equity instruments on a non-repatriable basis, as the case may be, is required to report such transfer to RBI within 60 days of transfer of equity instruments or receipt/ remittance of funds whichever is earlier. The aforesaid reportings are to be made by filing the Single Master Form (SMF) through an online portal maintained by the RBI and known as the Foreign Investment Reporting and Management System (FIRMS).

However, where the parameters prescribed for automatic approval cannot be fulfilled (i.e., 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), the foreign investment would fall under the Government route and prior approval from the GoI would be required and the foreign investment received under this route would need to comply with the conditions stipulated by the GoI in its approval.

The proposals for foreign investment under the Government route are considered/examined by the respective administrative ministry/department of the GoI as per the standard operating procedure laid down by the GoI’s Department for Promotion of Industry and Internal Trade (DPIIT).

In case of proposals involving total foreign equity inflow of more than INR 50 billion (approx. USD 612 million), they would be placed for consideration of the GoI’s Cabinet Committee on Economic Affairs (CCEA). The CCEA would also consider the proposals which may be referred to it by the concerned administrative ministry/ department of the GoI.

In this regard, the GoI has set-up the Foreign Investment Facilitation Portal (FIFP) and the National Single Window System (NSWS) for e-filing of the proposals.

Further, irrespective of the route under which the foreign investment has been made, certain post-investment filings have to be made with the RBI, on a case-to-case basis, in compliance with FEMA.

Apart from the above-mentioned approvals and filings, additional approvals may have to be obtained from authorities such as the Competition Commission of India (CCI) and filings may have to be made with other authorities, such as the jurisdictional Registrar of Companies (RoC), depending on the manner in which the investment has been made. Also, various approvals/ licences may be required from the State governmental bodies under relevant local regulations for the acquisition of assets and the carrying out of the business activities.

Permitted FDI Sectors/Activities

FDI is permitted in the following sectors/activities, amongst others, at the prescribed percentage and through the prescribed route:

- Agriculture and animal husbandry – 100% automatic route;
- Plantation (such as tea/coffee plantation) – 100% automatic route;
- Mining – 100% automatic route; except mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities – 100% Government route;
- Petroleum and natural gas – 100% automatic route; except petroleum refining by the Public Sector Undertakings (PSUs), without any disinvestment or dilution of domestic equity in the existing PSUs – 49% automatic route;
- Manufacturing – 100% automatic route;
- Defence – automatic route up to 74%; Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded;
- Broadcasting carriage services – 100% automatic route;
- Print media – 74% Government route;
- Civil aviation (airports) – 100% automatic route;
- Construction development (townships, housing, built-up infrastructure) – 100% automatic route;
- Industrial parks – 100% automatic route;
- Satellites (establishment and operation) – 100% Government route;
- Private security agencies – 49% Government route;
- Telecom services – 100% automatic route;
- Trading (cash and carry wholesale trading/ wholesale trading), e-commerce activities – 100% automatic route;
- Multi-brand retail trading – 51% Government route; Single-brand product retail trading – Government route beyond 49%;
- Duty Free shops – 100% automatic route;
- Pharmaceuticals: Greenfield – 100% automatic route; Brownfield – Government route beyond 74%;
- Railway infrastructure – 100% automatic route;
- Asset reconstruction companies – 100% automatic route;
- Private sector banking – Government route beyond 49% and up to 74%;
- Infrastructure companies in the securities market – 49% automatic route;
- Power exchanges – 49% automatic route;
- Credit information companies – 100% automatic route;
- Pension sector – 49% automatic route.

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.

Prohibited FDI Sectors/Activities

The sectors/activities prohibited for FDI are:

- Lottery business, including Government or private lottery, online lotteries, etc.;
- Gambling and betting, including casinos, etc.;
- Chit funds;
- Nidhi company;
- Trading in Transferable Development Rights (TDRs);
- Real estate business or construction of farmhouses;
- 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 certain permitted activities);
- Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business, gambling and betting activities.

Continued Liberalisation – Real Estate

The GoI has liberalised the sectoral conditions for FDI in the construction sector. While the permissible limit for FDI in construction-development projects (which include townships, residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, and city-level and regional-level infrastructure) is 100% under the automatic route, several onerous conditions (such as minimum area and capitalisation conditions) which were previously imposed have been dispensed with.

Furthermore, the GoI has given infrastructure status to “affordable housing”. This is followed by Government incentives and tax benefits for developers of affordable housing. Instead of built-up area, a carpet area of 30 and 60 metres will now be applicable for affordable housing. The government has also eased the exit norms for foreign investors and has prescribed that each phase of the construction development project would be considered as a separate project for the purposes of the FDI Policy. Some of the key conditions to be satisfied prior to any foreign investment are as follows:

- 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.
- A foreign investor will be permitted to exit and repatriate foreign investment before the completion of the project under the automatic route, provided that a lock-in period of 3 years calculated with reference to each tranche of foreign investment has been completed.
- However, the lock-in condition will not apply to hotels and tourist resorts, hospitals, special economic zones (SEZ), educational institutions, old age homes and investments by Non-Resident Indians.
- Transfer of stake by one non-resident investor to another non-resident investor, without repatriation of investment will neither be subject to any lock-in period nor any Government approval.
- The Indian investee company will be permitted to sell only “developed plots” (i.e. plots where trunk infrastructure 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 concerned State government or the municipal/local body concerned. Further, the Indian investee company is responsible for obtaining all necessary approvals and Indian consents, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements, as may be applicable under the regulations, rules or bye-laws of the concerned State Government/municipal/local body concerned.
- 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/shopping complexes and business centres. Consequent to foreign investment, transfer of ownership and/or control of the investee company from residents to non-residents is permitted, subject to a minimum lock-in period of 3 years calculated with reference to each tranche of FDI and transfer of immovable property or part thereof is not permitted during this period.
- The concerned State Government/municipal/local body, which approves the building/development plans, will monitor compliance of the above conditions by the developer.
- Completion of the project will be determined as per the local bye-laws/rules and other regulations of State Governments.

- It is pertinent to note that the term "transfer" in relation to the construction sector under the FDI Policy, includes (a) the sale, exchange or relinquishment of the asset; (b) the extinguishment of any rights therein; (c) the compulsory acquisition thereof under any law; (d) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882; or (e) any transaction by acquiring shares in a company or by way of an agreement or arrangement or in any other manner whatsoever which has the effect of transferring or enabling the enjoyment of any immovable property.
- 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 acquisition/transfer of immovable property by foreign corporate bodies or individuals are set out in the FEMA read with the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and with corresponding Master Directions issued by the RBI. Except as otherwise permitted under the aforesaid law, no person resident outside India is permitted to transfer any immovable property in India, unless with the approval of the RBI.

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 the principal sum or profit from capital appreciation if the property is subsequently sold.

A non-resident Indian may, amongst others, acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property in accordance with the provisions of applicable foreign exchange law or from a person resident in India.

A person resident outside India who had acquired any immovable property in India in accordance with the provisions of applicable foreign exchange law or with the general or specific permission of the RBI may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided further that the resident is not otherwise prohibited from such acquisition.

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

Additionally, various Indian States have laws restricting sale/purchase of agricultural land or land belonging to certain specified categories of classes and may also prescribe certain land ceiling limits.

Foreign Employment Limitations

Typically, the Indian companies are permitted to engage the services of foreign nationals without any specific approval, subject to the relevant Indian visa/immigration policy guidelines as may be applicable from time to time. An Indian employment visa must be obtained by such foreign national from the jurisdictional Indian Mission/Post before departure for India.

Generally, an employment visa is granted to a foreigner who is a highly skilled and/or qualified professional and an employment visa is not granted for jobs for which qualified Indians are available, for routine, ordinary or secretarial/clerical jobs and an employment visa is not granted to a citizen of Pakistan. Where the employment visa is valid for a period of more than 180 days, the concerned foreign national is required to register with the jurisdictional Foreigners Regional Registration Officer (FRRO)/Foreigners Registration Officer (FRO) within 14 days of arrival. Also, a "Residential Permit" may be issued for the validity of the visa period.

Foreign nationals who 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, in compliance with the RBI guidelines/directives as may be applicable from time to time and on a case-to-case basis.

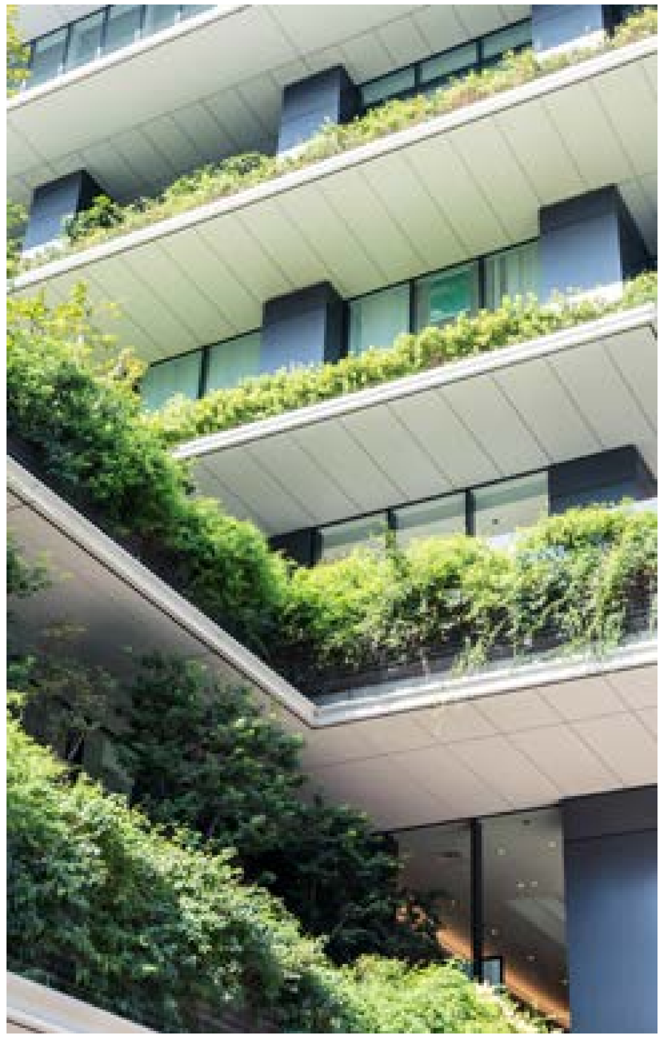
Foreign nationals who are employed by an Indian company are required to obtain tax registration ("Permanent Account Numbers") with the GoI's Income Tax Department.

Also, where a foreign national from a country which shares land border with India (viz. China, Bangladesh, Pakistan, Bhutan, Nepal, Myanmar and Afghanistan), seeks appointment as a director of an Indian company or seeks allotment of a Director Identification Number (DIN), then a prior security clearance from the Ministry of Home Affairs (MHA), GoI would be required.

Taxes on Possession and Operation of Real Estate

Typically, 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 Bengaluru, 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 of the property.



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. The approximate stamp duty and registration charges on conveyance, applicable in important cities, in India are as follows:

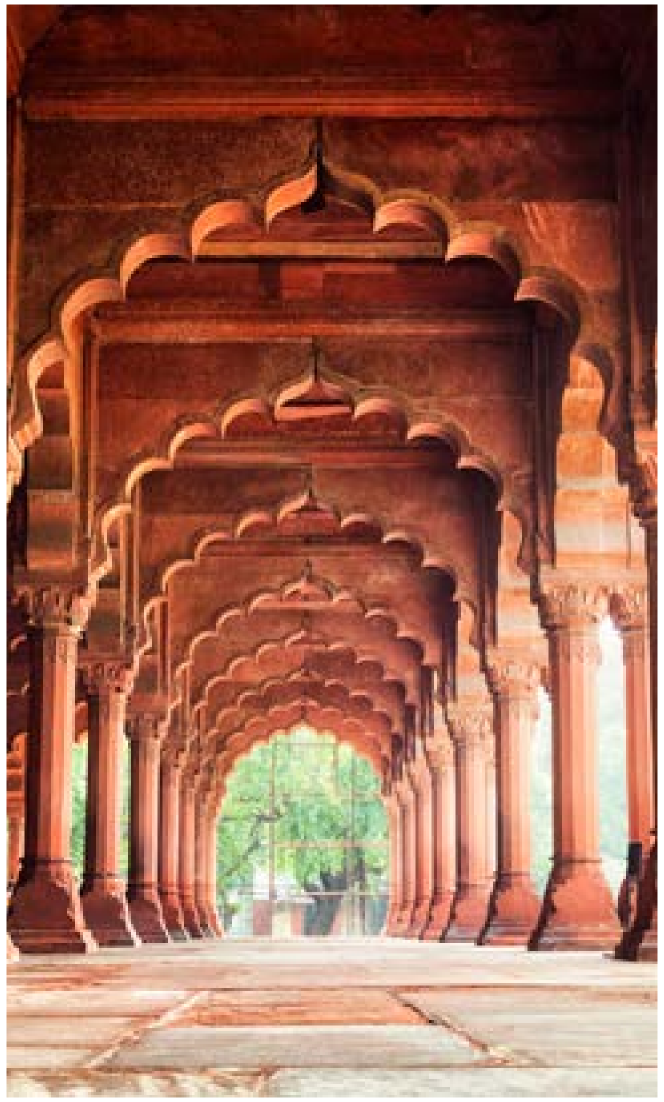
City	Stamp Duty	Registration Charge
Delhi	6% (with municipal levies) (men) 4% (with municipal levies) (women)	1% of the total value
Mumbai	5% of the market value of the property (urban)	1% of the total value [subject to a maximum of INR 30,000 (approx. USD 367)]
Bangalore	3% to 5% of the market value (including local surcharge)	1% of the total value
Chennai	7% to 8% of the market value (including local surcharge)	1% to 2% of the total value

The legal costs are borne by each party involved and the legal fees in India range between INR 8,000–25,000 (approx. USD 100–300) per hour.

Capital Gains Tax

Gains on the sale of capital assets held for 3 years or more (or 1 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 3 years (or 1 year for equity and preference shares, other listed securities, zero-coupon bonds or mutual fund units). The period of holding in the case of an immovable property being land or building or both is 2 years for the purposes of computing capital gains.

Furthermore, the base year for indexation of all long-term assets (including land/ building) is 2001.



Indirect Taxes

With effect from July 1, 2017 a unified tax regime of indirect tax has been introduced in India called the Goods and Services Tax (GST).

GST is a dual structure tax model, levied and collected by the Union and State (Union Territory) governments, viz. Central GST and State GST for ease of reference "CGST" and "SGST" respectively.

Typically, CGST and SGST are applicable to all transactions involving supply of goods and services and the GST is structured on the destination principle so that the tax base shifts from production to consumption whereby imports into a State are liable to tax and exports from a State are relieved of the burden of GST. Consequently, revenues accrue to the State in which the consumption takes place or is deemed to take place.

Generally, there are five GST rates/slabs for all goods and services ranging from 0% (nil-rated), 5%, 12%, 18% and 28%.

At the Central level, the following taxes have been subsumed into GST:

Central Excise Duty, Additional Excise Duty, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, and Special Additional Duty of Customs.

At the State level, the following taxes have been subsumed into GST:

State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, etc.

Customs duty is levied on imports at rates specified in the annual budget. Different rates are specified for different commodities. Customs duty in India falls under the Customs Act, 1962 and Customs Tariff Act, 1975.

Corporate Taxation

The rates/slabs of corporate taxation for the financial year 2023–2024 are as follows:

Category	Tax Rate (excluding cess)
Domestic company	30% of the total income or 25% where total turnover or the gross receipt in the previous year does not exceed INR 4 billion (approx. USD 49 million) + surcharge at the rate of 7%, 10% or 12% may be applicable on a case-to-case basis. Also, special tax rates of 15%, 22% or 25% may be applicable in certain prescribed situations.
Foreign company	50%, in case of income from royalties or payments collected from the Government or an Indian firm for any technical services provided prior to April 1, 1976, under agreements approved by the central Government or 40% for any other income + surcharge at the rate of 2% or 5% may be applicable on a case-to-case basis.

Various deductions are allowed such as a company engaged in business of bio-technology or in any business of manufacturing or production of eligible articles or things is eligible for deduction of 100% of any expenditure incurred on scientific research (including capital expenditure other than on land and building) on in-house scientific research and development facilities as approved by the prescribed authorities, in accordance with provisions of the Income-Tax Act, 1961.

Tax Depreciation

Depreciation allowances vary according to the types of asset, for instance, for:

- Plant and machinery: 15% to 45%;
- Furniture and fittings: 10%;
- Vehicles: 40%;
- Ships: 20%;
- Computer hardware: 40%;
- Residential building: 5%;
- Hotels: 10%;
- Wooden structures: 40%.

Personal Taxation

Income tax rates/slabs for Indian nationals and expatriate residents for the financial year 2023-2024 are as follows:

Individuals can opt for the Old Tax Regime or the New Tax Regime with lower rate of taxation. The taxpayer opting for concessional rates in the New Tax Regime will not be allowed certain exemptions and deductions available in the Old Tax Regime such as in relation to payment of life insurance premium, provident fund, housing loan principal, pension scheme, health insurance premium and preventive health check-up and so on.

Further, surcharge at the rate of 10%, 15%, 25% or 37% and health and education cess at 4% may also be applicable on a case-to-case basis.

- **New Tax Regime:**

Income Slab	Tax Rate
Up to INR 300,000 (approx. USD 3,670)	NIL
INR 300,001 to INR 600,000 (approx. USD 3,670 to approx. USD 7,340))	5%
INR 600,001 to INR 900,000 (approx. USD 7,340 to approx. USD 11,010)	10%
INR 900,001 to INR 1,200,000 (approx. USD 11,010 to approx. USD 14,680)	15%
INR 1,200,001 to INR 1,500,000 (approx. USD 14,680 to approx. USD 18,350)	20%
More than INR 1,500,000 (approx. USD 18,350)	30%

The tax rates in this New Tax Regime remain the same for individuals up to 60 years of age, senior citizens above 60 years to 80 years of age, and super senior citizens above 80 years of age.

- **Old Tax Regime:**
  - for individuals below 60 years of age:

Income Slab	Tax Rate
Up to INR 250,000 (approx. USD 3,060)	NIL
INR 250,001 to INR 500,000 (approx. USD 3,060 to approx. USD 6,120)	5%
INR 500,001 to INR 1,000,000 (approx. USD 6,120 to approx. USD 12,240)	20%
More than INR 1,000,000 (approx. USD 12,240)	30%

  - for individuals above 60 years to 80 years of age:

Income Slab	Tax Rate
Up to INR 300,000 (approx. USD 3,670)	NIL
INR 300,001 to INR 500,000 (approx. USD 3,670 to approx. USD 6,120)	5%
INR 500,001 to INR 1,000,000 (approx. USD 6,120 to approx. USD 12,240)	20%
More than INR 1,000,000 (approx. USD 12,240)	30%

- for individuals above 80 years of age:

Income Slab	Tax Rate
Up to INR 500,000 (approx. USD 6,120)	NIL
INR 500,001 to INR 1,000,000 (approx. USD 6,120 to approx. USD 12,240)	20%
More than INR 1,000,000 (approx. USD 12,240)	30%

Tax Treaties

For avoidance of double taxation, comprehensive tax treaties are in existence with the following countries and territories, amongst others:

Albania	Botswana	Cyprus
Armenia	Brazil	Czech Republic
Australia	Bulgaria	Denmark
Austria	Canada	Estonia
Bangladesh	Egypt	Ethiopia
Belarus	China	Fiji
Belgium	Columbia	Finland
Bhutan	Croatia	France
Georgia	Ireland	Kyrgyzstan
Germany	Israel	Latvia
Greece	Italy	Libya
Hong Kong	Japan	Lithuania
Ukraine	Kazakhstan	Luxembourg
Hungary	Kenya	North Macedonia
Iceland	South Korea	Malaysia
Indonesia	Kuwait	Malta
Mauritius	Nepal	Philippines
Mexico	Netherlands	Poland
Mongolia	New Zealand	Portugal
Montenegro	Norway	Qatar
Morocco	United Arab Emirates	Romania
Mozambique	Oman	Russia
Myanmar	Syria	Saudi Arabia
Namibia	Uruguay	Serbia
Slovakia	United Kingdom	Zambia
Singapore	Tajikistan	United States of America
Slovenia	Tanzania	Switzerland
South Africa	Thailand	Uzbekistan
Spain	Trinidad and Tobago	Vietnam
Sri Lanka	Turkey	Uganda
Sudan	Turkmenistan	Sweden

In addition, India has also entered into certain limited tax treaties and tax information exchange agreements.

Real Estate Mutual Funds

A "real estate mutual fund scheme" (REMFs) means a mutual fund scheme that invests directly or indirectly in real estate assets or other permissible assets in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 (Mutual Funds Regulations) – the Securities and Exchange Board of India (SEBI) is the regulatory body in India for the securities/capital markets and its participants.

The Chapter VI-A of the Mutual Funds Regulations prescribe various regulatory provisions regarding REMFs and a few key provisions are as follows:

- Every REMFs must be close-ended and its units must be listed on a recognised stock exchange, provided that, the redemption of a REMFs may be done in a staggered manner.
- The units issued by a REMFs would not confer any right on the unitholders to use the real estate assets held by the scheme and any provision to the contrary in the trust deed or in the terms of issue would be void.
- A REMFs is not permitted to undertake lending or housing finance activities.
- Every REMFs is required to invest at least 35% of the net assets of the scheme directly in real estate assets. However, a mutual fund is not permitted to, under all its real estate mutual fund schemes, invest more than 15% of its net assets in the real estate assets of any single real estate project.
- A mutual fund is not permitted to invest in any real estate asset which was owned by the sponsor or the asset management company or any of its associates during the period of last five years or in which the sponsor or the asset management company or any of its associates hold tenancy or lease rights. Also, a mutual fund is not permitted to transfer real estate assets amongst its schemes.
- The asset management company may let out or lease out the real estate assets held by the REMFs if the term of such lease or letting does not extend beyond the period of maturity of the scheme.
- The REMFs trustees are required to ensure that all financial transactions of the REMFs are made only through banking channels and that systems exist to exclude transactions in cash and unaccounted transactions.
- The REMFs offer documents must contain disclosures which are adequate for investors to make informed investment decisions and such further disclosures as may be specified by SEBI.

Real Estate Investment Trusts

REITs are regulated through the REIT Regulations issued by the SEBI and a few key provisions thereof are as follows:

- Typically, “real estate” or “property” means land and any permanently attached improvements to it, whether leasehold or freehold and includes buildings, sheds, garages, fences, fittings, fixtures, warehouses, car parks, etc. and any other assets incidental to the ownership of real estate but does not include mortgage and ”real estate assets” means properties held by a REIT, on a freehold or leasehold basis, whether directly or through a holding company (holdco) and/or a special purpose vehicle (SPV).
- REITs are required to be set up as a trust and registered with SEBI and include designated persons such as the 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.
- The investment by a REIT must only be in holdco and/or SPVs or properties or securities or TDR in India in accordance with REIT Regulations and in accordance with the investment strategy as detailed in the offer document (as may be amended subsequently). Also, a REIT is not permitted to invest in vacant land or agricultural land or mortgages other than mortgage-backed securities.
- In such holdco/SPVs, a REIT should hold or propose to hold not less than 50% of the equity share capital or interest. Also, such SPVs should hold not less than 80% of its assets directly in properties and should not invest in other SPVs.
- Upon registration, the REIT should raise funds through an initial offer of its units by way of public issue only, provided the value of all assets owned by such REIT is not less than INR 5 billion (approx. USD 61.16 million) and the offer size is not less than INR 2.5 billion (approx. USD 30.58 million). Subsequently, funds may be raised through a follow-on offer, preferential allotment, qualified institutional placement, rights issue, bonus issue, offer for sale or any other mechanism and in the manner as may be specified by SEBI.
- After the initial offer it is mandatory for all units of REITs to be listed on a recognised stock exchange having nationwide trading terminals within a period of 12 working days from the date of closure of the offer and REITs are required to make continuous disclosures in terms of the REIT Regulations.
- A REIT must redeem its units only by way of a buy-back or at the time of delisting of units.
- A mutual fund scheme is not permitted to invest more than 10% of its net asset value (NAV) in the units of REIT and infrastructure investment trust (InvIT) and not more than 5% of its NAV in the units of REIT and InvIT issued by a single issuer.
- The manager of a REIT must ensure that at least half of its directors, in the case of a company or of members of the governing body, in case of an LLP, are independent and are not directors or members of the governing body of the manager of another REIT. Also, independent directors are required to satisfy independence tests, which are tested based on various parameters. Further, Schedule VIII of the REIT Regulations prescribe various governance norms to be followed.

Common Terms of Lease for Tenancy Agreements	
Unit of measurement	
Unit of measurement	Square Feet
Rental payments	
Rents	INR/sq ft/month; tier 1 cities: rent quoted is exclusive of any applicable GST at 18% plus any applicable cess; tier 2 cities: rent quoted is inclusive of taxes in the commercial business district (CBD), while it is quoted without taxes in peripherals
Typical lease term	Commercial: 3+3+3 years
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	Tier 1 cities: 3 to 6 months' rent; tier 2 cities: 6 to 12 months' rent
Security of tenure	For the duration of the tenancy, the landlord generally has no termination rights and any lock-in depends on the condition of the premises (furnished/ unfurnished)
Does tenant have statutory rights to renewal	Termination right is generally available after expiration of the lock-in period
Basis of rent increases or rent review	Fixed increment is negotiated and agreed at the outset of the lease, typically between 15% to 20% every 3 years or 5% to 6% every year
Frequency of rent increase or rent review	While rent increase may happen annually, the lease review is typically every 3 years
Service charges, operating costs, repairs and insurance	
Responsibility for service charge/management fee/ Responsibility for utilities	Typically, tenant's responsibility to pay monthly in advance simultaneously with the rent payment Tier 1 cities: electricity and water are separately metered and payable by each tenant at actuals; Tier 2 cities: only electricity is separately metered and payable by each tenant at actuals
Car parking	Tier 1 cities: allocated parking is on a per sq ft ratio (e.g. one parking bay per 1,000 sq ft), which may be held under a separate monthly lease for an additional rent; tier 2 cities: allocated parking is on a per sq ft ratio and varies as per location (e.g., one parking bay per 2,000 sq ft in the CBD and one parking bay per 1,000/1,250 sq ft in peripherals), which may be 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 (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 and assignment rights	Generally prohibited (subject to landlord approval)
Tenant early termination rights	Termination rights are generally available after expiration of the lock-in period
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition (subject to normal wear and tear)

Source: JLL

It is pertinent to note that in certain states in India, including in the State of Maharashtra, the concept of leave and licence is prevalent which gives the licensee a right to only use and occupy the property without creating any leasehold interest therein. Also, in the wake of the Covid-19 pandemic, co-sharing spaces (based on a services agreement) have become popular in tier 1 cities in India.

07

Indonesia

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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 Law No. 5 of 1960 on the Basic Agrarian Law (Agrarian Law) and is registered at the local land office.
  - There are basically five types of certified 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 of renewal for a maximum subsequent period of 35 years. Therefore, the maximum validity period is a total of 95 years, assuming successful renewal processes.
   - Can be held by Indonesian individuals and 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 of a subsequent renewal for a maximum period of 30 years. Therefore, the maximum validity period is a total of 80 years, assuming successful renewal processes.
   - Can be held directly by Indonesian individuals and legal entities, as well as Indonesian incorporated foreign joint-venture companies (i.e. a foreign investment limited liability company or a 'PT PMA').
   - 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, based on the decision of the relevant authority or as agreed by both parties. Examples of such specific purpose may include social activities, religious worship, or other pre-determined purposes.
   - Right of Use granted over state-owned land or an underlying Right to Operate/Manage title is valid for a maximum of 30 years, but extendable for another period of 20 years and can be renewed for a maximum subsequent period of 30 years (totalling 80 years assuming successful renewal processes) or occasionally for an indefinite period, as stated in its grant or agreement (if it is granted to embassies, non-department 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 30 years and can be extended subject to mutual agreement between the landowner and the Right of Use holder.
   - Right of Use granted for a specific period can be held by Indonesian citizens and entities, foreign-invested entities, individual foreigners, religious and social institutions or representative offices of foreign entities.
   - Right of Use granted for indefinite period, as long as the land is used, can only be held by central government institution, regional government, village government and the representative of a foreign nation or international body.
   - This land right can be sold, exchanged or transferred, and mortgaged subject to the stipulation of the laws.
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.
   - Right to Build, Right of Use, and Right of Cultivation land title can be granted over Right to Operate/Manage land to the Right to Operate/Manage holder or to other party subject to a written cooperation agreement with the Right to Operate/Manage holder.
   - Right to Operate/Manage cannot be transferred to a third party.
   - Creation of any mortgage of any land titles (including Right to Build, Right of Use or Right of Cultivation) granted over a Right to Operate/Manage requires recommendation of the Right to Operate/Manage holder and documented in a land utilisation agreement.

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

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 multi-storey buildings (Hak Milik atas Satuan Rumah Susun) (Law No. 16 of 1985, as revoked and substituted by Law No. 20 of 2011 which was further amended by the Government Regulation in lieu of Law No. 2 of 2022 on Job Creation), issued to owners of residential/commercial/retail units in multi-storey 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.

Strata-title Office Buildings, Malls and Trade Centres

Under the Law No. 20 of 2011, the ownership over units in multi-storey buildings is evidenced by a strata-title certificate (Sertifikat Hak Milik Satuan Rumah Susun or strata title) issued by the local land office.

A strata title is an evidence of ownership for a unit in a multi-storey building (such as an apartment or condominium building, or rumah susun) that is built over a land with Right of Ownership, Right to Build or Right to Use on a Right to Operate/Manage.

In practice, some developers build office towers, malls and trade centres and sold the units to the owner on the basis that the owner will have the ownership over the office units based on strata-title rights.

Major Property-related Legislation

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

Regional Autonomy

Law No. 23 of 2014 on Regional Autonomy (as amended by the Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation) and Law No. 1 of 2022 on the Financial Relationship Between Central and Local Government, were issued to implement the decentralisation of autonomy for all Indonesian provinces and regencies.

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% foreign ownership). However, not all business sectors are opened for 100% foreign ownership and in this case the foreign investor must form a joint venture with an Indonesian party. The list of foreign ownership limitations in foreign joint-venture company is set out in the positive list of investment pursuant to the Presidential Regulation No. 49 of 2021.
- Registered permanent establishment (mainly for oil and gas participants under a Production Sharing Contract).
- Representative office.

Registration/Licensing Requirements

- Risk-based approach online single submission ("OSS") licenses

Since 2018, the government of Indonesia applied integrated licensing services and application through the OSS. Business actors, including foreign joint-venture companies, are now required to create an account in the OSS and obtain its general licenses such as its business identification number and OSS-integrated business licenses through the OSS.

- Foreign joint-venture company
  - OSS licenses, which include business identification number and business licenses issued by OSS on behalf of certain ministries including 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;
  - Non-OSS licenses, such as financial institution, oil and gas and mining business licences are to be issued by the relevant ministries (as opposed to OSS) in accordance with applicable law and regulations of the related ministry or institution (e.g. Bank Indonesia, Indonesian Financial Services Authority (Otoritas Jasa Keuangan – OJK) and Ministry of Energy and Mineral Resources);
  - Approval of Spatial Utilisation Activities (Persetujuan Kesesuaian Kegiatan Pemanfaatan Ruang) or Confirmation of Spatial Utilisation Activities (Konfirmasi Kesesuaian Kegiatan Pemanfaatan Ruang) (as the case may be) from the OSS. These permits are required in case the company intends to undertake a land acquisition;
  - Building Approval (Persetujuan Bangunan Gedung) is required for building owner to build a new building, renovate, expand, maintain or diminish a building. This approval replaces the previous building permit (Izin Mendirikan Bangunan).

- articles of association ratification with respect to the change of company status to become a foreign investment company from the Ministry of Law and Human Rights.
- Representative Office
  - general representative offices must obtain a licence from the OSS;
  - trading representative offices should obtain licences from the OSS for marketing and market research purposes; and
  - 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.

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 localisation of these positions. A foreigner is not allowed to hold a position with human resources function (e.g. director that is responsible for human resources, human resources manager, etc.). Minister of Manpower Decree No. 228 of 2019 on Certain Positions which may be Occupied by Foreign Workers further regulates the list of the position for foreign employment. Also, some of the business sectors (e.g. bank) require that all members of the board of directors must reside in Indonesia.

Further, the number of expatriates shall be determined by the Directorate of Foreign Manpower Utilisation from the Ministry of Manpower upon application for approval of a company's or trading representative office's foreign manpower utilisation plan, taking into consideration the accomplishment to the employee ratio requirement (obligation to have an Indonesian assistant per foreign employee), amount of equity and the number of intended employees.

Foreign employees must obtain a working permit to work in Indonesia, an entry/exit permit for entering/leaving the country and insurance policy certificate card from any Indonesian insurance company.

All expatriates residing in Indonesia are required to register with the Indonesian Tax Office and file personal income tax returns on a worldwide basis. Expatriates who have worked in Indonesia for more than 6 months is required to obtain the Taxpayer Registration Number issued by the relevant Tax Office.

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 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% over six years, prorated at 5% per year, accelerated depreciation, extended loss carried forward in excess of five years (but not more than ten years), and 10% dividend withholding tax for non-resident shareholders, if required; and
- Government Regulation No. 40 of 2021 on the Implementation of Special Economic Region sets out the facilities which may be given to an investor who is investing in a special economic region. One of the facilities, is, among others, an "income tax holiday" for a minimum of 10 years or a maximum of 20 years from the start of commercial production depending on the investment value. After the period for which the tax holiday is granted, the taxpayer will be provided with corporate income tax reduction of 50% of corporate income tax payable for the following two fiscal years.

Thus far the government has established several regions across Indonesia as special economic regions, including, among others, Tanjung Lesung, Palu, Bitung, Morotai and Mandalika.

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. 18/2021 issued in February 2021, qualified (and licensed) foreign individuals or offshore companies having representation offices in Indonesia are permitted to own strata-title properties on either HGB title land or HP title land own.

Pursuant to the 2021 Government Regulation, foreign individuals may hold a Right of Use (Hak Pakai) title for a 30-year period and extendable up to another 20-year period and can be renewed for a maximum subsequent period of 30 years.

Security Interests Relating to Land and Property

Land Mortgage (Hak Tanggungan)

Under Indonesian law, security interests are considered accessory to an underlying agreement (e.g., loan agreement). Consequently, if the underlying agreement is terminated, then the security interest will be automatically terminated.

In relation to land and property, the applicable security interest is Hak Tanggungan (HT). Pursuant to Law No. 4 of 1996 on Hak Tanggungan (HT Law), HT provides a security right over land, buildings and fixtures thereon, which is the nearest equivalent to a "mortgage" as understood in other jurisdictions.

Under the HT Law and its implementing regulations, HT may be established over the following land rights:

i. Right of Ownership (Hak Milik),

ii. Right to Cultivate (Hak Guna Usaha),

iii. Right to Build (Hak Guna Bangunan),

iv. Right of Ownership over Stacked Unit (Hak Milik atas Satuan Rumah Susun) and

v. certain type of Right of Use (Hak Pakai).

The granting of HT must be documented in the form of an authentic deed in Bahasa Indonesia, made before the Land Deed Official (Pejabat Pembuat Akta Tanah "PPAT"). The executed HT deed must be registered with the relevant Land Office (Badan Pertanahan Nasional "BPN") no later than 7 days after the execution of such HT deed.

Pursuant to HT Law, HT is deemed to be established and will create a valid perfected security interest once registered in the appropriate BPN's land registry, which will be evidenced with the issuance of HT certificate by the relevant BPN.

On April 6, 2020, the Minister of Agrarian and Spatial Planning/Head of BPN issued the Regulation of the Minister of Agrarian No. 5 of 2020 on the Electronically Integrated of the Security Rights over the Land Services, pursuant to which that the registration of HT should be carried out through HT Electronic System managed by BPN.

Under the Mortgage Law, the HT holder may enforce its priority right over the HT object by way of:

a. sale of the HT object by way of public auction; or

b. private sale upon the agreement of both parties if the highest possible price favourable for the parties can be reached by private sale.

The executorial power within the HT certificate grants the HT holder the right to request that the court having authority over the HT object to issue a writ of execution which would permit the HT holder to sell the HT object at public auction or private sale for the proceeds to be later on applied for the repayment of its claims against the debtor.

Fiducia Security

In addition, immovable assets attached to or built over the land that cannot be encumbered by HT can be secured by way of Fiducia security. Law No. 42 of 1999 on Fiducia Security (Law No. 42/1999) defines fiducia as the transfer of ownership rights over an object on the basis of trust with the stipulation that the object whose ownership rights are transferred remains in the control of the owner of the object.

Fiducia security must be drawn up in a notarial deed in Bahasa Indonesia, made before a public notary in Indonesia and governed by Indonesian law.

The fiducia security is effective once registered in the registration book maintained by the Fiducia Registration Office (Kantor Pendaftaran Fidusia "KPF"), which will be evidenced with the issuance of fiducia registration certificate. The application to register the fiducia must be submitted to the KPF no later than 30 days after the execution of the fiducia deed.

Pursuant to Law No. 42/1999, a fiducia security provides the fiducia grantee a preferred position over the proceeds of the sale of the fiducia object (object of the fiducia security) for settlement of a debt vis-à-vis other creditors.

Article 29 paragraph (1) of Law No. 42/1999 stipulates that in the case of default, the fiducia grantee may exercise its right over the fiducia object by way of: (a) the executory title in the fiducia object; (b) sale of the fiducia object through a public auction; or (c) a private sale if there is an agreement or promise to that effect contained in the deed of fiducia security:

a. Enforcement of executorial title under the fiducia certificate (as regulated under Article 15 (2) of Law No. 42/1999) (by court order, if applicable). Please see below further explanation on the Indonesian Constitutional Court's decision regarding the executorial title under the fiducia security certificate;

Proceedings are commenced by submitting an application for enforcement (permohonan eksekusi) of the fiducia security to the district court having jurisdiction over the fiducia grantor or where the fiducia is registered.

b. Sale of the fiducia object by way of public auction and taking the payment for the debt from the sale proceeds; or

The state auction house or a private auction house is permitted to enforce the fiducia security through a public auction without a court's prior writ of execution.

c. Private sale upon the agreement of the parties and if the highest possible price favourable for the parties can be reached by private sale.

On January 6, 2020, the Indonesian Constitutional Court issued a Decision No. 18/PUU-XVII/2019, declaring that Article 15 paragraphs (2) and (3) of Law No. 42/1999 are partially unconstitutional. The court was ruling on a lawsuit arguing that it was a violation of constitutional rights for a fiducia security certificate to have the same power as executorial court decision.

Article 15 paragraph (2) of Law No. 42/1999 provided that a fiducia security certificate had the same executorial powers as a final and binding court decision. Article 15 paragraph (3) stated that when a debitor defaults, the fiducia grantee has the right to sell the object under fiducia.

Judge Suhartoyo, in explaining the Constitutional Court ruling, said Article 15 paragraphs (2) and (3) of Law No. 42/1999 were prone to abuse and that human rights could be contravened in the execution of a fiducia security in violation of the rights of the debtors.

As such, the Constitutional Court partially granted the plaintiffs' request and rendered the phrases "executorial powers" and "equal to a court decision" in Article 15 paragraph (2) of Law No. 42/1999 as partially unconstitutional. In addition, the term "default" in Article 15 paragraph (3) of Law No. 42/1999 was declared unconstitutional by the Constitutional Court and subsequently reinterpreted to mean that defaults cannot be unilaterally determined by the creditor without the consent of the debtor but must be jointly agreed by the debtor and creditor/grantee of fiducia security.

Given this:

a. The creditor/grantee of fiducia security must now obtain an executionary order from a court through summary proceedings if the debtor does not voluntarily surrender the fiducia object; and

b. If the creditor/grantee of fiducia security and debtor have no agreement as to what constitutes an event of default, the creditor can no longer immediately execute the fiducia object; it is up to the court to decide whether an event of default has occurred or not.

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 to prevent the utilisation of the rupiah for speculative purposes by non-residents, Bank Indonesia has introduced regulations to restrict the movement of rupiah from banks within Indonesia to offshore banks, an offshore branch of an Indonesian bank, or any investment 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. 16/22/PBI/2014 on Foreign Exchange Reporting and Reporting of Implementation of Prudential Principles in the Management of Non-Bank Offshore Loans as partially revoked by Bank Indonesia regulation No. 21/2/PBI/2019 on Reporting of Foreign Exchange Traffic Activities ("PBI 16/22"), requires bank institutions, non-bank financial institutions, non-financial 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 non-residents 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 16/22, 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 June 15 of the year of such change.

Further, an Indonesian company which obtains an offshore loan is also required to file an activity report with respect to the prudential principle on the offshore loan management which consists of:

- Implementation of Prudential Activity Report (Prudential Report) incorporating foreign financial assets and foreign financial liabilities.
- Audited Prudential Report by the independent public accountant based on attestation procedure;
- Information regarding the accomplishment of Credit Rating; and
- Quarterly unaudited financial statement and annual audited financial statement.

Failure to submit the foreign exchange report could result in the imposition of an administrative sanction in the form of written reprimand from Bank Indonesia and Bank Indonesia may notify the relevant authority, creditor and/or parent company of such Indonesian borrower. While the failure to submit the Prudential Report could result in the imposition of an administrative sanction in the amount of IDR 500,000 (USD 33.82). Bank Indonesia will issue a warning letter and/or report to the licensing authority, should the non-banking institution fail to submit a report.

Bank Indonesia Regulation 16/10/PBI/2014 Receipt of Export Proceeds and Withdrawal of Offshore Loans as amended by Bank Indonesia Regulation No. 17/23/PBI/2015 and partially revoked by Bank Indonesia Regulation No. 21/14/PBI/2019 (PBI 16/10) provides that Indonesian recipients of export proceeds (with the exception of (i) government export proceeds which are received through Bank Indonesia, and (ii) export proceeds which 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 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 3,382.37) (lesser than the commitment amount), the Indonesian debtor must provide a written explanation and supporting documents to Bank Indonesia. Any violation of PBI 16/10 means Indonesian exporters may be subject to a fine of up to IDR 100 million (USD 6,764.73) (within one month export goods notification period) and will subject Indonesian borrowers to a fine in the maximum amount of IDR 50 million (USD 3,382.37) for each non-complying withdrawal.

Taxes on Possession and Operation of Real Estate

Property Tax

The property tax (PBB) rate on land and buildings is a maximum of 0.5% of the sale value of the property (NJOP) (which is determined by the Local Government on average every one to three years) less non-taxable NJOP minimum IDR 10 million (USD 676.47).

For example, in DKI Jakarta for year 2022, property with NJOP of less than IDR 2 billion is exempted from PBB.

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

PBB for rural and city areas is classified as Regional Tax (Pajak Daerah) for all regions and is not a National Tax as previously 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% 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% 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. Documents with a nominal value of more than IDR 5 million (roughly equivalent to USD 340) are subject to stamp duty at a fix rate of IDR 10,000 (roughly equivalent to USD 0.7).

Notary fees for the processing of legal documents are usually charged at about 0.25% to 1% 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%. The 5% duty is computed based on the transaction value or the assessed value, whichever is higher.

The non-taxable threshold amount for BPHTB varies by region, and the minimum threshold currently is IDR 80 million (roughly equivalent to USD 5,500). For acquisitions by inheritance, the non-taxable property value is stipulated by the regional authorities, but the minimum is set at IDR 300 million (roughly equivalent to USD 20,300).

Capital Gains Tax

1. Land and Building Transfers

- A 2.5% 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%.
- The 2.5% 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% final tax. An additional final income tax of 10% 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 10 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% withholding tax on dividends from property companies (subject to tax treaty provisions, where relevant).
- A final tax of 0.1% applies to income from the sale of shares at the Indonesian Stock Exchange (collected “automatically” by the Stock Exchange). The rate is 0.6% if the seller is a founding shareholder.
- A 5% 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

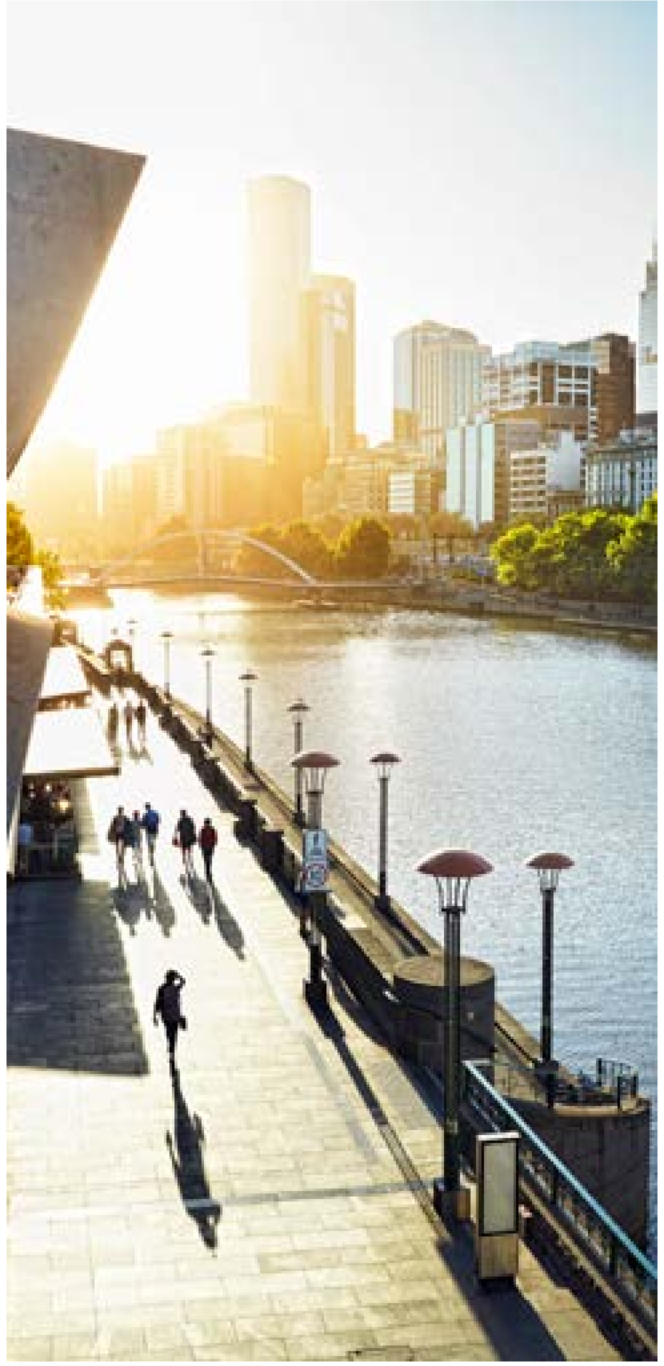
A value added tax (VAT) of 11% applies to the delivery of most goods and services at import, manufacturing, wholesale and retail levels.

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 11%. VAT on rental payments and service charges is 11%. Notwithstanding the foregoing, in 2019, the Minister of Finance issued Minister of Finance Regulation No. 32/PMK.010/2019. Under this regulation, there are certain export of services/goods that can be granted with 0% VAT. However, these goods/services are subject to certain parameters and requirements, among others, the goods/services shall be (i) based on a written agreement which includes, among others the detail of the activities in Indonesia that will be utilised abroad; and (ii) there is a payment that is made with a valid receipt.

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% to 75% (but potentially up to 200%). A 20% 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% on a straight-line basis. Assets in the non-permanent building category with a useful life of ten years are depreciated at around 10% on a straight-line basis.

Fixtures/equipment forming a part of buildings are depreciated at around 25% on the basis of reducing balance, or around 12.5% 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 non-resident corporate entities is taxed at a flat rate of 22%. Small enterprises with a turnover no more than IDR 50 billion (USD 3,382,366.35) are entitled to a 50% discount off the standard rate, imposed proportionally on the taxable income of the part of gross turnover up to IDR 4.8 billion (USD 343,962.74). For certain small companies with turnover not more than IDR 4.8 billion (USD324,707.17) the corporate tax is 0.5% of turnover and it is a final tax. Public companies that have at least 40% of their shares listed are entitled to a tax discount of 3%, essentially giving them an effective tax rate of 19%.

Resident corporations are taxed on their worldwide income, with an allowable credit for taxes paid to foreign countries. Non-resident 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 non-resident corporation not covered by tax treaty protection are subject to a 20% 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 with one or two additional years subject to certain conditions as provided in the applicable regulations.

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% to 35%.

Annual Income	Rate
Up to IDR 60,000,000 (USD 4,084)	5%
IDR 60,000,001–250,000,000 (USD 4,084–17,017)	15%
IDR 250,000,001–500,000,000 (USD 17,017–34,034)	25%
IDR 500,000,001–5,000,000,000 (USD 34,034–340,343)	30%
Over IDR 5,000,000,000 (USD 340,343)	35%

Non-residents are taxed at 20% 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 non-deductible 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	Pakistan	Hong Kong	Suriname
Armenia	Papua New Guinea	Hungary	Sweden
Australia	Philippines	India	Switzerland
Austria	Poland	Iran	Syria
Bangladesh	Portugal	Italy	Taiwan
Belarus	Qatar	Japan	Tajikistan
Belgium	Romania	Jordan	Thailand
Brunei Darussalam	Russia	Kuwait	Tunisia
Bulgaria	Saudi Arabia (limited treaty)	Laos	Turkey
Canada	Serbia	Luxembourg	Ukraine
China	Seychelles	Malaysia	United Arab Emirates
Croatia	Singapore	Mexico	United Kingdom
Czech Republic	Slovakia	Mongolia	United States of America
Denmark	South Africa	Morocco	Uzbekistan
Egypt	South Korea	Netherlands	Venezuela
Finland	Spain	New Zealand	Vietnam
France	Sri Lanka	North Korea	Zimbabwe
Germany	Sudan	Norway	

Real Estate Investment Trusts

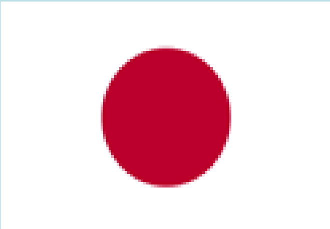
Real estate investment trusts (REITs) have not been established in Indonesia, and there are no REIT specific regulations in the country. Currently, individuals in Indonesia who wish to invest in income-producing properties can do so through listed property companies or through real estate investment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

Common Terms of Lease for Tenancy Agreements	
Unit of measurement	
Unit of measurement	Square Feet
Rental payments	
Rents	IDR/sqm/month, except for grade A buildings, where rents are quoted in USD; however, based on Bank Indonesia Regulation No. 17/3/PBI/2015 on Mandatory Use of Rupiah in the Republic of Indonesia Territory requires that since July 1, 2015 the price quoted in the tenancy agreements shall be in Rupiah; the dual price quotation (in Rupiah and USD/other currency) is prohibited based on this regulation; usually, the parties will agree on the exchange rate used before quoting the Rupiah price in the tenancy agreement; 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 or any agreed lease term
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 increase or rent review	At lease renewal or 3 yearly in longer leases
Service charges, operating costs, repairs and insurance	
Responsibility for service charge/management fee/ 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 quarterly in advance and invoiced together with the rental charge
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 and 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

08

Japan



Nagashima Ohno & Tsunematsu
長島・大野・常松 法律事務所

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. Furthermore, in the case of a leasehold of a building, at the time the building is constructed, the building lease subsequently becomes effective in respect to the person who has acquired real rights to such building 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.

Amendments to the Civil Code, effective as of April 1, 2020, stipulate the following points in relation to leaseholds:

- The duration of leases to which the Act on Land and Building Leases does not apply was amended from 20 to 50 years.
- It was clarified that the landlord is not obligated to make repairs when repairs become necessary due to the lessee's own negligence.
- The lessee's right to repair was newly established.

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

01 Civil Code

02 Act on Land and Building Leases

03 Act on Building Unit Ownership, etc

04 Real Property Registration Act

05 Building Standards Act

06 City Planning Act

07 Fire Service Act

Laws relating to real estate investments:

08 Landlord and Tenant (Consolidation) Ordinance

09 Residential Properties (First-hand Sales) Ordinance

10 Stamp Duty Ordinance

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 0.006) 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.

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 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 estate 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. In addition, the Act on the Review and Regulation of the Use of Real Estate Surrounding Important Facilities and on Remote Territorial Islands took effect on September 20, 2022, due to security concerns over the ownership and use of land in the vicinity of defense-related facilities. This act does not apply only to foreigners, however, before concluding a contract for the transfer or establishment of an ownership right on the real estate in areas around critical facilities such as defense-related facilities designated as special monitored areas, in principle, it is required to notify the Prime Minister in advance under this act.

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%) 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% 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 sqm in floor space and/or having more than 100 employees are subject to business office taxes. Tax rates are JPY 600 (USD 4) per sqm of floor space and 0.25% 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 1.34) to JPY 600,000 (USD 4,000).

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% (for land and residential buildings) or 4% (for non-residential buildings), although the reduced rates may apply in certain cases.

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% Residential tax: 9%
Over five years	Income tax: 15% Residential tax: 5%

For corporations, capital gains from the transfer of land and buildings are subject to a capital gains tax rate of 10% for properties held for five years or less and 5% for properties held for over five years. A special law provides that until March 31, 2026, 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 10% (a national consumption tax rate of 7.8% and a local consumption tax rate of 2.2%).

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.

In principle the corporate tax rate is currently 23.2%.

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 categories for Japanese tax purposes:

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 five years or less in the last ten 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.

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 or areas as of January 1, 2023:

Armenia	Lithuania
Australia	Luxembourg
Austria	Malaysia
Azerbaijan	Mexico
Bahamas	Moldova
Bangladesh	Morocco
Belarus	New Zealand
Belgium	Norway
Bermuda	Oman
Brazil	Pakistan
Brunei Darussalam	Peru
Bulgaria	Philippines
Canada	Poland
Cayman Islands	Portugal
Chile	Qatar
China	Romania
Colombia	Russia
Croatia	Saudi Arabia
Czech Republic	Serbia
Denmark	Singapore
Ecuador	Slovakia
Egypt	Slovenia
Estonia	South Africa
Fiji	South Korea
Finland	Spain
France	Sri Lanka
Georgia	Sweden
Germany	Switzerland
Guernsey	Taiwan
Hong Kong	Tajikistan
Hungary	Thailand
Iceland	The Netherlands
India	Turkey
Indonesia	Turkmenistan
Ireland	UAE
Israel	Ukraine
Italy	United Kingdom
Jamaica	United States of America
Jersey	Uruguay
Kazakhstan	Uzbekistan
Kuwait	Vietnam
Kyrgyzstan	Zambia
Latvia	

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

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 666,667), while the minimum amount of net assets regularly held by an investment corporation shall be JPY 50 million (USD 333,333).
- 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 6.67 million) or more; and
  - The total assets shall be JPY 5 billion (USD 33.33 million) or more.
- 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.

Asset Restrictions

- At least 50% 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% of the total assets under management; and
  - 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% of the total assets under management.

Distribution and Unitholders' 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 unitholders may hold no more than 75% of listed units.
- There shall be at least 1,000 unitholders.
- No redemption of investment securities may be made at the request of investors under a certificate of incorporation of an 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% of its profits to unitholders as dividends for each fiscal period.
- Over 50% 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 Securitisation 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% of its profits to equity holders as dividends for each fiscal period.
- Over 50% 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 Commercial Lease Agreements of Premises in a Building	
Unit of measurement	
Unit of measurement	Tsubo (1 tsubo = 3.3 sqm = 35.58 sq ft)
Rental payments	
Rents	JPY/sqm/month (JPY/tsubo/month may also be stated in the lease)
Typical lease term	Standard leases: 2–3 years with renewal rights; 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; fixed lease term: no
Basis of rent increases or rent review	Open market rental value
Frequency of rent increase 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 months' 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

Regulations on Master Lessee

The Act on Optimisation of Rental Housing Management Business, etc., took effect on December 15, 2020. This act imposes certain regulations on a master lessee for rental housing such as:

- When advertising the terms and conditions of the master lease agreement, the master lessee shall not make any material false representations with respect to the rent, etc.
- The master lessee shall not intentionally omit any facts or make any misrepresentation to property owners, etc., in soliciting them to enter into a master lease agreement, with respect to any material matters that may affect their judgment.
- The master lessee shall, when intending to enter into a master lease agreement, explain to the master lessor, in writing, the contents of the master lease agreement and matters concerning its performance prior to the execution of the master lease agreement. However, if the master lessor is a person who is recognised as having expertise and experience in master lease contracts, the master lessee is not required to provide prior explanation and delivery of such explanatory document.
- When the master lessee executes the master lease agreement, the master lessee shall deliver a separate document stating the statutory matters to the master lessor without delay.

09

Laos

Property Tenure/Ownership

All land in the Lao PDR is owned by the "national community", with the Government (GOL) acting as the custodian of the land. Individuals and legal entities can be granted various land-use rights, however, only the GOL, State organisations, Lao citizens, Lao legal entities and Lao organisations can have permanent land-use rights[1].

Major Legislation

01 Law on Land (№ 70/NA, June 21, 2019) (Land Law)

02 Law on Enterprise (№ 33/NA, December 29, 2022) (Enterprise Law)

03 Civil Code (№ 55/NA, December 6, 2018) (Civil Code)

04 Law on Investment Promotion (№ 14/NA, November 17, 2016) (Investment Promotion Law)

05 Law on Income Tax (№ 67/NA, June 18, 2019) (Income Tax Law)

06 Law on Value Added Tax (№ 48/NA, June 20, 2018) (VAT Law)

07 Law on Tax Administration (№ 66/NA, June 17, 2019) (Tax Administration Law)

08 Instruction on the Implementation of the VAT Law (№ 1939/MOF, April 12, 2021) (VAT Instruction)

09 Executive Decree on Fees and Service Charges (№ 002/PO, June 17, 2021) (Fees and Service Charges Decree).

[1]Article 3, Land Law

Operation Requirements for Foreign Corporations

A foreign investor is defined in the Investment Promotion Law as being a "foreign natural or legal entity" investing in the Lao PDR. A foreign-invested company is a company with any foreign shareholding.

The Investment Promotion Law provides five main business forms relevant to foreign corporations:

- 100% foreign-owned enterprise;
- Joint venture between domestic and foreign investors;
- Business cooperation by contract, which is a contractual arrangement entered into by domestic (including state sector and private sector) and foreign without the establishment of a new juristic entity in the Lao PDR;
- Joint venture between a state enterprise and foreign investor; and
- Joint venture between the state sector and foreign investor.

The most common form of enterprise for foreign investors is a limited liability company.

Registration/Licensing Requirements

A legal entity carrying on "business operations" in the Lao PDR must be duly registered as an enterprise with the Ministry of Industry and Commerce (MOIC)[2]. Registration of a company is evidenced by the issuance of an enterprise registration certificate from the MOIC.

The process for the establishment and licensing of a company in the Lao PDR depends on the intended business activities which are classified as either general, controlled or concessionary activities[3].

The usual process for a foreign investor to establish a company undertaking general activities is:

- Obtain an enterprise registration certificate from the MOIC.
- Prepare and register its articles of association with the State Asset Management Department.
- Obtain a company seal and authorisation from the Ministry of Public Security.
- Issue share certificate(s) and shareholders registry.
- Obtain a capital importation certificate for the importation of registered capital by foreign shareholders.

Sectors that are on the controlled list include plantation service activities; mineral exploration; industrial processing; hazardous waste collection and recycling; transport, logistics and warehousing; media and publishing; commercial banks/branches, financial leasing, securities trading and insurance; professional services such as lawyers and accountants; education sector; hospitals; and gaming. Sectors that are concessionary activities include agriculture and forestry; mining and processing; electric power generation and transmission; public private partnerships; establishment of special economic zones; infrastructure development such as railways, airports, ports, water storage and telecommunications.

If the company intends to undertake controlled or concessionary activities, a company is required to also obtain an investment license from the Ministry of Planning and Investment (MPI).

[2]Article 15, Enterprise Law
[3]Article 3, Controlled and Concessionary Business Decree / Article 19, Enterprise Law

By way of example, if a company intends to construct and operate a hotel on State land under a State land lease or concession agreement, the activity is concessionary in nature. In this case, the company (whether or not foreign invested) will require an enterprise registration certificate from the MOIC[4], an investment license from the MPI[5] and a business operating license from the Ministry of Information, Culture and Tourism[6] together with a registered State land lease or concession agreement entered into by the Ministry of Finance[7].

Additionally, certain business activities also require a sector specific business operating license issued by the relevant line ministry prior to the company commencing business activities. For example, companies constructing condominiums are required to obtain a condominium business operation license from the Ministry of Public Works and Transport[8].

[4]Article 15, Enterprise Law
[5]Item 12, Annex B of Controlled and Concessionary Business Decree
[6]Article 15, Decision on Accommodation (№ 985/MICT, December 14, 2021)
[7]Article 41-46, Investment Promotion Law
[8]Article 106, Land Law
[9]Article 68, Labour Law
[10]Article 68, Labour Law
[11]Article 68, Labour Law
[12]Article 45, Labour Law

Foreign Employment Requirements

Companies must give priority to Lao citizens when hiring staff[9], but are permitted to hire skilled or expert foreign personnel when necessary[10].

Foreign workers cannot represent more than 15% of the total number of Lao nationals employed in non-skilled work, and 25% in skilled work[11].

To hire foreign workers, approval must be obtained from the Ministry of Labour and Social Welfare and a foreign labour quota obtained which allows a certain number of foreign workers to work for the company.

Foreign workers may work under an LA-B2 visa for up to 12 months, which may be extended for further 12-month periods up to a maximum of five years[12]. Each foreign worker must have an LA-B2 visa, work permit, and stay permit.

Foreign Investment Incentives

Investment incentives are granted in the Investment Promotion Law based on the activities of the investor and location of the proposed investment.

The Investment Promotion Law defines the following activities as promoted activities which may be eligible for investment incentives:

1. The use of high-level and modern technology, scientific research, research and development, use of innovative, environment-friendly technology, and efficient use of natural resources and energy;
2. Clean, toxic-free agriculture, seed production, animal breeding, industrial plantations, forestry development, environment and bio-diversity protection, activities promoting rural development and poverty reduction;
3. Environmentally-friendly agricultural processing industry, national traditional and unique handicraft processing industry;
4. Development of environmentally-friendly and sustainable natural, cultural and historical tourism development;
5. Education, sports, human resource development and labour skills development, vocational training institutes or centres, manufacture of education and sports equipment;
6. Construction of modern hospitals, pharmaceutical and medical equipment manufacturing factories, manufacture of and treatment by traditional medicines;
7. Investment, services and development of public infrastructure for urban traffic congestion reduction and residences, infrastructure construction for agricultural production and industrial manufacturing, goods transit services, cross-border transit and international linkage;
8. Policy bank and micro-finance institutions for poverty reduction for the people and communities who are unable to access banks; and
9. Modern department stores that promote domestic products and famous global brands, domestic industrial, handicrafts and agricultural products trade shows and markets.

To obtain investment incentives the above activities are required to have an investment value of at least LAK 1.2 billion (approximately USD 62,300) or use at least 30 Lao national technical staff, or use 50 or more Lao national employees with employment contracts of at least 1 year. For small and medium-sized businesses which do not satisfy the above requirements, investment incentives will be determined in accordance with relevant regulations.

Investment incentives are further based on the location of the investments. Locations in the Lao PDR are divided into three promoted zones, these being:

- Zone 1: Poor, remote zones with socio-economic infrastructure that does not facilitate investment;
- Zone 2: Zones with socio-economic infrastructure that partially facilitates investments.; and
- Zone 3: Special Economic Zones.

The Investment Promotion Law prescribes the investment incentives, as follows:

- Investments in Zone 1 are entitled to a profit tax exemption for 10 years. Investment in business sectors undertaking activities listed in (2), (3), (5) and (6) above, an additional profit tax exemption of 5 years will apply.
- Investments in Zone 2 are entitled to a profit tax exemption for 4 years. Investment in business sectors undertaking activities listed in (2), (3), (5) and (6) above, an additional profit tax exemption of 3 years will apply.
- Investments in Zone 3, Special Economic Zones, will be entitled to a profit tax exemption and investment incentives as provided for in specific regulations.

Profit tax exemption starts from the date the enterprise generates business revenues. Once the profit tax exemption period is over, the enterprise must pay profit tax in accordance with the tax laws.

Restrictions on Foreign Property Ownership

Foreign ownership of land is prohibited in the Lao PDR. Foreign individuals and foreign-invested entities (meaning a company with any non-Lao shareholders) can only be granted land-use rights via[13]:

- lease of privately-owned land from Lao citizens or legal entities[14];
- lease or receipt of a concession of State land from the GOL[15]; or
- purchase of fixed-term land-use rights over specially allocated State land from the GOL[16].

Lease and Concession

Leasehold rights over State land are limited to a term of 50 years which is subject to renewal with approval from the GOL and leasehold rights over private land is limited to a 30-year term which is subject to renewal with approval of the GOL.

Foreigners or foreign-owned entities are permitted to own buildings and structures and other items constructed on land during the term of the lease or concession[17]. However, the ownership rights over buildings and infrastructure on leased land are limited to the term of the leasehold rights[18]. Following the expiry of the lease term, the lessee will no longer have rights to the buildings and infrastructure and the ownership will cede to the lessor, with or without compensation being payable to the lessee (which right to compensation (if any) is usually agreed in the lease agreement).

[13]Article 131 and 133, Land Law
[14]Article 117, Land Law
[15]Article 118 and 119, Land Law
[16]Article 123, Land Law
[17]Article 121(1) and 123, Land Law / Article 67(11), Investment Promotion Law
[18]Article 123 and 232, Land Law
[19]Article 123, Land Law
[20]Article 123, Land Law
[21]Article 125, Land Law
[22]Article 125, Land Law
[23]Article 124, Land Law
[24]Article 123 Land Law

Fixed Term Land-Use Right

The purchase of fixed-term land-use rights over specially allocated State land (Fixed-Term Ownership) involves the sale of a land-use right by the GOL to a Lao citizen or foreigner for the specific purposes of urban development, condominium construction, and construction of other kinds of residential buildings, with a maximum term of 50 years from the date of the sale-purchase of the land-use rights[19]. Upon the Fixed-Term Ownership's expiration, the land-use rights may be repurchased from the GOL on contract terms determined by the GOL[20].

Fixed-Term Ownership requires a sale and purchase agreement between the GOL and purchaser, which can be a foreign individual or a foreign-invested entity. Only the GOL at the central level can sell Fixed-Term Ownership to foreigners[21]. The sale of Fixed-Term Ownership shall be conducted via a bidding process[22].

In addition to the rights that land-use rights holders are entitled to, purchasers of Fixed-Term Ownership also have the following additional rights[23]:

- to own the land-use right, and to own the immovable property built on the land such as buildings and other constructed items;
- to transfer, sell, or lease the land-use right for the remaining term of the Fixed-Term Ownership;
- to exchange, mortgage, and use the immoveable property as an equity contribution to a joint venture for the remaining term of the Fixed-Term Ownership;
- to bequeath the land-use right for an inheritance for the remaining term of the Fixed-Term Ownership; and
- to sell or lease the immovable property built on the land to other individuals and legal entities.

Purchasers of immovable property built on the land during Fixed-Term Ownership can own the property for the remaining term of the Fixed-Term Ownership, and have the right to sell, transfer, or bequeath the property for its remaining term[24].

Condominiums

Under the Land Law, foreign individuals can now purchase and hold ownership of a private unit in a condominium building for the lifespan of the building[25]. However, the ownership of a private unit is not permanent; the private unit's ownership is limited to the condominium building's "lifespan". The meaning of "lifespan" is not defined in the Land Law, and further clarification is required to address this ambiguity. In the case of a condominium constructed under a Fixed-Term Ownership, the ownership of a private unit will be limited to the Fixed-Term Ownership's underlying term (e.g., a maximum term of 50 years).

Purchasers of a private unit in a condominium will be entitled to similar rights as other land-use rights holders, including using the unit, selling the unit, leasing or mortgaging the unit, and transferring the ownership of the unit[26].

Foreign Exchange Control

The onshore use of foreign currency within the Lao PDR is restricted under the FX Law. Individuals and legal entities operating in the Lao PDR are generally prohibited from onshore payment or receipt of foreign exchange for the goods and services rendered to them or by them, or from settling debts[27].

The FX Law provides that the importation and exportation of funds must be conducted consistently with the relevant Lao PDR laws, such that the foreign investors must open a specific bank account with a local commercial bank to support the investment of the investment project and to transfer any of such funds outside of Lao PDR[28].

The importation of registered capital by foreign investors into a local bank account must be evidenced by a capital importation certificate issued by the Bank of Lao[29].

[25]Article 132, Land Law
[26]Article 132, Land Law
[27]Article 9 and 43(1), FX Law
[28]Article 18 and 19, FX Law
[29]Article 18, FX Law
[30]Article 32 and 33, Income Tax Law
[31]Article 34(9), Income Tax Law
[32]Article 34(10), Income Tax Law
[33]Article 38(9), Income Tax Law
[34]Article 38(10), Income Tax Law
[35]Article 39(2), Income Tax Law
[36]Article 39(3), Income Tax Law
[37]Article 39(5), Income Tax Law
[38]Article 36(3), Income Tax Law

Taxes on Possession and Operation of Real Estate

Taxation of Individuals

Income Tax

Income tax is collected from individuals (whether Lao or foreigners) and organisations that generate income in the Lao PDR or abroad as stipulated in the relevant articles of the Income Tax Law[30]. For real estate investment, the types of income subject to income tax include: (i) leases, such as for land, buildings, and other constructed items[31]; and (ii) the sale-purchase or transfer of land-use rights, buildings and other constructed items, or land with buildings and other constructed items[32].

The basis for income tax calculation for lease income is the total income of the rent or assessed value of other in-kind benefits received under the lease[33]. The basis for income tax calculation for sale-purchase or transfer of land-use rights income is the total income derived from or the assessed value of the sale-purchase or transfer of land-use rights transaction[34].

The Income Tax Law imposes different tax rates on the following types of personal income:

- 1% of total income on the sale, purchase, or transfer of agricultural land-use rights for agricultural production[35];
- 2% of total income from the sale, purchase, or transfer of land-use rights, houses and immovable property, or land with immovable property[36]; and
- 10% of total lease income from land, buildings and other constructed items, vehicles, machinery, or other assets[37].

Income tax on lease income and the sale-purchase of land, buildings and other constructed items must be calculated and paid for each transaction[38].

Individuals who generate income from leases must file a tax declaration with the relevant Tax Department within 15 working days of receiving rental income[39]. However, if the rental income set out in the lease agreement is deemed lower than market rates, tax officers have the right to adjust the rental income to calculate the appropriate level of income tax[40].

Taxation of company operating real estate

Profit tax

Profit tax is the Lao PDR equivalent to corporate income tax. Profit tax is levied on annual taxable net profits derived from a company's business operations[41]. This is unless the taxpayer is eligible for profit tax exemptions or concessional tax rates as prescribed under the Investment Promotion Law or an applicable concession agreement[42]. Income of the company derived from rent will be treated as taxable income and will be subject to profit tax at the rate of 20%[43]. The basis of the taxable income is the gross rental or sale income, less deductible expenses for rental or sale income include the maintenance costs, development costs, interest on loan, land tax, insurance premium and depreciation on the buildings.

Value-added Tax (VAT)

A company is required to charge VAT on the rental fees. The standard rate of VAT is 7%[44]. The VAT system follows the conventional VAT system, whereby input VAT is deducted from output VAT[45]. The company can deduct all input VAT on the acquisition, renovation, construction and maintenance of the property. If input VAT is higher than the output VAT as declared in a given month, the company can carry the difference forward for deduction for up to three months. The deduction of input VAT must start from the month the input VAT occurred. If the deduction is not exhausted within three months, the input VAT can be refunded[46].

Land and Asset Tax

The Tax Administration Law provides for a land and asset tax, which is a tax collected from individuals, legal entities, or organisations that use the land and assets in the Lao PDR.

Currently, land tax is levied on the value of land at variable rates as determined in the Presidential Edict of the President of the Lao PDR on Land Tax (№ 01/OP, May 8, 2007). The person liable for the tax is the owner of land use right. The tax depends on the location and classification of land. The land tax is levied annually. However, in July 2023 the National Assembly adopted the new Law on Land Tax. The new Law on Land Tax provides that land tax is a tax collected on the value of land at variable rates as provided for in the new Law on Land Tax. However, this new Law on Land Tax has not been promulgated and has not been effective.

Capital Gains

Income or gains from alienation of the immovable property is exempt from income tax and will be included in the gross income subject to a profit tax.

Incomes from sale of shares are taxed at 2% of the selling price. However, incomes from the alienation of shares of companies listed on the securities exchange are exempt from income tax .

[39]Article 131 and 133, Land Law
[40]Article 117, Land Law
[41]Article 118 and 119, Land Law
[42]Article 123, Land Law
[43]Article 121(1) and 123, Land Law / Article 67(11), Investment Promotion Law
[44]Article 123 and 232, Land Law
[45]Article 123, Land Law
[46]Article 123, Land Law
[47]Article 125, Land Law

Taxes on Acquisition and Transfer of Real Estate

Profit tax

Income from sale or transfer of real estate will be included in the gross income subject to a profit tax.

VAT

In general, the sale of immovable property will be subject to VAT under the VAT Law[48]. However, under the VAT Instruction, the transfer of all or part of property of business in the VAT system will be exempt from the VAT, provided that the following requirements are met[49]:

i. The transferred property of the enterprise is directly used in the business operation of the transferor in the VAT system; and

ii. The transferred property is property of the activities currently being carried out by enterprise and are transferred to individuals or legal entities who are in the VAT system and have the right to deduct the input VAT.

The sale of property would be exempt from VAT if the above conditions are satisfied.

Registration fee

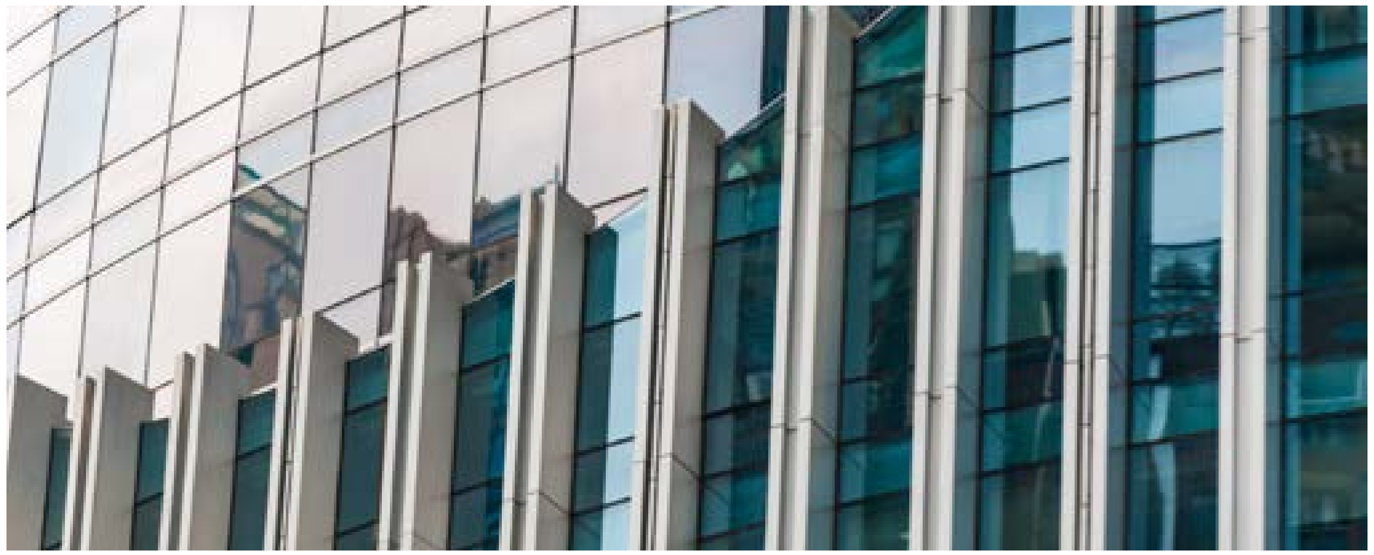
The transfer of immovable property in Lao PDR is subject to registration fee as prescribed in the Executive Decree on Fees and Service Charges. The registration fee depends on the value of the land and/or building with the maximum fee payable being LAK 500,000, where the land and/or building value is more than LAK 10 billion[50].

Stamp duty

The stamp duty must be paid when the property sale and purchase agreement is submitted for registration with the GOL authorities. The maximum is LAK 20,000[51].

Tax Treaties

Investors from countries with double taxation agreements (DTAs) with the Lao PDR may be exempt from paying profit tax and income tax in the Lao PDR. The Lao PDR has entered into DTAs with the following countries: The People's Republic of China, Republic of Korea, Thailand, Vietnam, Brunei, Indonesia, Malaysia, Myanmar, Luxembourg, Republic of Belarus, and Singapore.



[48]Article 11, VAT Law
[49]Article 8.1, VAT Instruction
[50]Article 25(7), Fees and Service Charges Decree
[51]Article 7, Fees and Service Charges Decree

10

Malaysia

Property Tenure / Ownership

Land ownership in Malaysia is based on the Torrens System Land Title registration, administered by the respective state land offices, and coordinated by the Department of Land and Mines in each state. A valid registration is when the registrar of the state land office makes an entry of a person's name on the title document. The title document is conclusive evidence as to such person's legal title or interest in the relevant lands. When a person holds the land title, that ownership is deemed indefeasible, consequently only that same person can transfer the land via a land title to other individuals at the land office.

Generally, there are 2 categories of land tenure in Malaysia, freehold (where the piece of land is transferred by the government indefinitely to an individual) and leasehold (where the right to use the land is limited to a period ranging from 30, 60, or 99 years).

Freehold or leasehold properties are issued with either of the following:

- Individual title for land, houses and commercial properties which are commonly not multi-storey; or
- Strata title

Strata-title ownership is common for apartments, condominiums, and office suites. Owners of strata-title property must sign a deed of mutual covenant governing the maintenance of the common areas and use of the units and common facilities. The strata title ownership has been extended to landed residential properties (e.g., gated-guarded residential) and some industrial properties.

Major Legislation

The principal legislation governing all land matters in Malaysia is the National Land Code (Revised - 2020) (NLC). Pursuant to the Federal Constitution of Malaysia, land matters generally lie within the jurisdiction of the state authority of each state in Malaysia, hence each state has enacted its own subsidiary land legislations, such as various land rules, enactments, and ordinances to supplement the operation of the NLC.

Other major legislation governing properties in Malaysia include:

01 Strata Titles Act 1985

02 Strata Management Act 2013

03 Housing Development (Control and Licensing) Act 1966

04 Town and Country Planning Act 1976

05 Environmental Quality Act 1974

06 Street, Drainage and Building Act 1974

07 Uniform Building By-Laws 1984

08 Stamps Act 1949

09 Real Property Gains Tax Act 1976

10 Land Acquisition Act 1960

Legal Structures for Establishing a Business Presence in Malaysia

Pursuant to the Companies Act 2016, a foreign company is prohibited from carrying on business in Malaysia unless it is registered as a foreign company with the Companies Commission of Malaysia. A foreign company refers to a company, corporation, society, association or an unincorporated society, association, or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Malaysia.

Alternatively, there other options available for a foreign company intending to expand its business reach and develop its business presence in Malaysia:

Branch Office

Foreign companies can set up a branch office in Malaysia to carry on business activities. The branch operates as an extension of the parent company, hence it is not a separate legal entity. Branch offices must perform the same business activities as the parent company.

As a result of the control a parent organisation has over its branch office, the office is therefore considered a non-resident entity in Malaysia and will not be authorised for certain tax exemptions and incentives otherwise reserved for local organisations. The branch office must appoint a branch agent who is a Malaysian resident, and this individual will also be legally bound to the branch office in the case of any legal breaches.

Representative Office

A representative office is a non-trading entity that allows foreign parent companies within the manufacturing and services industry sector to explore business and market opportunities in Malaysia. Given its non-trading nature, the representative office cannot engage in any activities that will generate profit, cannot sign or enter any contracts, sign deals or undertake any trading activities; it is restricted to promotion and liaison activities, conducting market research, and coordinating activities for the parent company.

It should be noted that the establishment of a representative office is not required to be incorporated under the Companies Act 2016 but requires prior approval by the Government of Malaysia.

Local Subsidiary Company

A local subsidiary company of the foreign parent company can be incorporated in the form of a private limited company by shares. It is a separate legal entity from the foreign parent company and can conduct or carry on any and all business activities. As a separate legal entity, the subsidiary will be responsible for its own debts and liabilities incurred during the course of its business operations.

The private limited company is the most common type of entity for foreign investors, as it allows for 100% foreign ownership. That being said, the foreign parent company must be aware of regulations or requirements in certain strategic industries for a private limited company to have a minimum local or Bumiputera equity.

Restrictions on Foreign Ownership

As stipulated in the NLC, before a land is sold to foreign individuals or entities, a foreign purchaser must obtain prior approval from the respective state authority. The regulation of foreign ownership or occupation of property is overseen by the NLC in conjunction with guidelines issued by the Economic Planning Unit of the Prime Minister's Department (EPU) and state authorities. Any sale that violates this requirement will be considered void. Moreover, any attempt by a foreign interest claiming power of attorney to deal with the property will also be deemed invalid and cannot be registered.

The EPU's Guidelines on the Acquisition of Properties (EPU Guidelines) prohibits foreign interest from acquiring:

- properties valued less than MYR 1,000,000 per unit;
- low and low-medium cost (as defined by the respective state authorities) residential units;
- properties built on Malay reserved land[1]; and
- properties allocated to Bumiputera interest[2] in any property development project as determined by the respective state authority.

Foreign interest is defined under the EPU Guidelines as follows:

- an individual that is not a Malaysian citizen;
- an individual that is a permanent resident of Malaysia;
- foreign company or institution (as defined in the Companies Act 1965); or
- local company or local institution where non-citizen, permanent resident or foreign company or institution holds more than 50% of the voting rights.

[1]Malay reserved land means land reserved for alienation to Malays or to natives of the state in which it lies.
[2]Bumiputera means the persons of Malay race or from the aboriginal or indigenous tribes in Malaysia as defined in the Federal Constitution. Bumiputera interest is defined as interest, associated groups of interest or parties acting in concert that compromises, of a Bumiputera individual and/or, Bumiputera institution and trust agency and/or, local company or local institution whereby the Bumiputera entities hold more than 50% of the voting rights in that local company or local institution.

It should be noted that the EPU Guidelines are adopted by each state authority but with variations.

Under the EPU Guidelines, if the acquisition of a property exceeds MYR 20,000,000 in value and leads to a decrease in Bumiputera ownership of the property, prior approval from the EPU as an additional requirement, is necessary prior to the application for consent from the State Authority. An indirect acquisition is not exempted from this requirement. If a property valued above MYR 20,000,000 is acquired by other than Bumiputera interest through other means such as by way of acquisition of shares, resulting in a change of control of the company owned by Bumiputera interest and/or government agency having property more than 50% of its total assets, prior approval from the EPU is required from such transaction.

Additionally, foreign companies should be aware of the equity and paid-up conditions on foreign companies in the acquisition of properties in Malaysia imposed by the EPU. Foreign companies are required to have at least 30% Bumiputra interest shareholdings and the paid-up capital of local companies owned by foreign interest shall be at least MYR 250,000.

Having said that, the acquisition of the properties by foreign interest as set out below do not require the approval of the EPU but fall under the purview of the relevant ministries and/or government departments in Malaysia:

- any acquisition of commercial unit valued at MYR 1,000,000 and above[3];
- any acquisition of industrial land valued at MYR 1,000,000 and above[3];
- any acquisition of agricultural land valued at MYR 1,000,000 and above or at least 5 acres in area for the following purposes[3]:
  - to undertake agricultural activities on a commercial scale using modern or high technology;
  - to undertake agro-tourism projects; or
  - to undertake agricultural or agro-based industrial activities to produce goods for export.
- transfer of property to a foreigner based on family ties is only allowed among immediate family members; and
- acquisition of residential unit by foreign interest valued at MYR 1,000,000 and above. This acquisition, however, do not require the approval of the EPU but falls solely under the purview of the State Authorities.

Certain states may prohibit certain categories of land from being acquired by foreign interest. For example, the foreign buyers in Selangor are only allowed to acquire commercial, industrial, and residential properties, however residential properties are limited to landed properties with landed strata titles. Foreigners are not allowed to purchase agricultural land in Selangor.

Each state sets out the minimum threshold of residential property prices eligible for foreign acquisition. Generally, the threshold for overseas purchasers of residential properties is set at MYR 1,000,000 for the area most popular with foreigners, such as Kuala Lumpur, Johor, and Penang Island. Meanwhile for some other states such as Perlis and Sarawak the threshold is MYR 500,000.

[3]Acquisition of such properties are also subject to the condition that the said property must be registered under a locally incorporate company.

Furthermore, foreign purchasers are eligible to acquire property via the Malaysia My Second Home (MM2H) programme. In general, the threshold value of property ownership for MM2H participants is similar to the threshold value determined by the state for non-residents. Nevertheless, there will be a price advantage for MM2H participants. For instance, the State Government of Perak implement a threshold value of USD 100,000 for residential property acquisition by MM2H participants. This value is relatively lower than the threshold value determined by the State Government of Perak for overseas purchasers who are not MM2H participants.

Foreign Exchange Controls

Malaysia continues to maintain a liberal foreign exchange policy, which are mainly prudent measures to support the overall macroeconomic objective of maintaining monetary and financial stability. These rules apply to residents and non-residents.

The Foreign Exchange Policy issued by the Central Bank of Malaysia defines “non-residents” as follows:

- any person other than resident;
- an overseas branch, a subsidiary, regional office, sales office, or representative office of a resident company;
- Embassies, Consulates, High Commissions, supranational or international organisations; or
- a Malaysian citizen who has obtained permanent resident status of a country or territory outside Malaysia and is residing outside Malaysia.

Investing in Malaysia

A non-resident investor is allowed to:

- undertake any type of investment in ringgit asset or foreign currency (FC) asset in Malaysia (direct or portfolio investment) without any restriction;
- open a ringgit account or FC account with a licensed onshore bank. Funds are free to be remitted into and out of such accounts, subject to normal due diligence process by the licensed onshore bank; and
- repatriate divestment proceeds, profits, dividends, or any income arising from the investments in Malaysia. Repatriation shall be made in FC.

A non-resident investor also has the flexibility to hedge forex exchange (FX) exposure arising from their investments in Malaysia either via a licensed onshore bank or an appointed overseas office (AOO).

Borrowing in Malaysia

A non-resident is free to obtain FC borrowing from any licensed onshore bank for use in or outside Malaysia, and to issue FC-denominated sukuk/bonds in Malaysia for use in or outside Malaysia.

A non-resident other than financial institution is free to borrow in ringgit:

- Any amount from any resident (including a licensed onshore bank) to finance or refinance real sector activities in Malaysia;
- Any amount from immediate family members for any purpose;
- Any amount from employer in Malaysia under the employment terms and conditions for use in Malaysia;
- Any amount of margin financing from:
  - resident stock-broking corporation; or
  - licensed onshore bank with stockbroking license,
  - to purchase securities or financial instruments traded on Bursa Malaysia; or
- Up to attained cash surrender value of any life insurance policy or family takaful certificate purchased from licensed insurer or a licensed takaful operator.

However, a non-resident custodian bank, stock broking corporation, trust bank or international central securities depository acting on behalf of non-resident investor or a non-resident investor purchasing shares or ringgit instrument traded on Bursa Malaysia or RENTAS for its own account is only allowed to obtain overdraft facilities for a maximum tenure of 2 business days from licensed onshore banks solely for the purpose of mitigating settlement failure for ringgit securities and instruments due to inadvertent delay of payment by the non-resident.

Buying and Selling of FX

A non-resident can also undertake FX transactions involving ringgit directly overseas via the AOO of the licensed onshore banks.

A non-resident may undertake the following FX transactions via a licensed onshore bank or an AOO:

- **FX transaction for own account:**
  - Buy or sell FC against ringgit on spot basis for any purpose.
  - Buy or sell FC against ringgit on forward basis based on underlying obligation. A ringgit derivatives contract other than exchange rate offered by a resident is considered as part of underlying obligation. There is also no restriction to unwind or cancel the forward transaction for any underlying except portfolio investment.
- **FX transaction on behalf:**
  - A non-resident entity can enter into FX transaction involving ringgit (spot or forward basis) on behalf of its resident and non-resident related entity.
  - A non-resident institutional investor (NRII), including custodian/trust bank, can enter into FX transaction on behalf of its non-resident clients. The NRII may also participate in the Dynamic Hedging Framework to actively manage its ringgit FX exposure.
  - A non-resident financial institution to enter into FX transaction on behalf of its non-resident clients for settlement of international trade in goods or services with a resident.

Apart from FX transaction, any non-resident (with or without underlying) may also trade ringgit-denominated interest rate derivative with a licensed onshore bank or an AOO.

Import and Export of Ringgit and Foreign Currency by Non-resident Travellers

Non-resident travellers are allowed to carry ringgit only up to USD 10,000 or its 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 limit.

Lease Terms

The NLC distinguishes between "leases", which have a term exceeding three years (and are required to be registered) and "tenancies exempt from registration", which have a term up to three years (and are not registrable).

Leases and tenancies may be made up of the following:

- Lease or tenancy over the whole or part of a land
- Lease or tenancy over part of a building or structure

Where the lease or tenancy is over vacant land, the tenant may have rights for development or further use of the land. Where there is vegetation, buildings, or structures on the land, by implication of the definition of land, the lease or tenancy would include such vegetation, buildings, or structures.

Leases or tenancies may also be in respect of only part of a building or structure. Lessees/tenants in this instance will not normally have rights in and to the land.

The maximum term of leases is provided in the NLC as follows:

- Where the lease is over the entire land, the maximum tenure of the lease is 99 years.
- Where the lease is over part of a land, the maximum tenure of the lease is 30 years.
- Where the parties enter into a tenancy exempt from registration (over the entire or part of the land), the maximum tenure of the tenancy is 3 years.

Parties may negotiate to provide for an extension of the lease by election by one or more parties or by mutual agreement. In the absence of such extension, the lease will expire.

Leases for industrial and commercial lands are normally for longer periods ranging from 5-10 years or 15-30 years. Often, lessees/tenants are entitled to rights of renewal for additional terms.

Large commercial and industrial facilities will sometimes require an electricity substation to be built on the land and the utility company will normally take a long-term lease over the land for the portion where the substation is situated.

Rent is usually fixed for the initial term, but this is subject to contract. The mechanism for determining the revision of rent for a renewal period is usually provided for in the lease/tenancy agreement. It is common when considering rent revision that rent for the renewal period takes into account the current market value of the property. Otherwise, a formula may be provided, which may provide limits for increasing the rent.

There is no specific limitation on rent increases.

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 or cukai tanah which is payable yearly to state authorities. The rate varies with land category and size, but in general the annual quit rent liability is less than MYR 100 on a residential property.

Assessment

Properties within local authorities' boundaries are also required to pay an assessment or cukai pintu. This tax is calculated as a percentage of annual rental value, therefore varying with the property type and the location of the property, multiplied by a set of rates determined by local authorities. In general, assessment tax for residential units is calculated at a rate of 4% of the annual rental value, payable in two instalments per annum.

Taxes on Acquisition and Transfer of Real Estate

Stamp Duty and Transaction Costs

The stamp duty is a tax levied on the instrument of transfer and is calculated on the purchase consideration or the property's market value, whichever is higher. A purchaser (be it an individual or a company) of a real estate is required to pay for the stamp duty on the instrument of transfer of the real estate; and if he is taking a loan to finance the purchase of the real estate, he will in addition be required to pay stamp duty on the loan agreement and the charge documents.

The stamp duty payable by the purchaser, i.e., the transferee of the property, in respect of the instrument of transfer is based on the consideration (i.e., purchase price) of the real estate or the current market value of the real estate (whichever is higher), which varies from 1% to 4%. Meanwhile, the stamp duty payable on the loan agreement is based on the loan margin (i.e., loan amount) at a flat rate of 0.5%.

Brokerage/agency fees: The Board of Valuers, Appraisers, Estate Agents and Property Managers Malaysia – Malaysian Estate Agency Standards defines various estate agency instructions. It dictates a set scale of fees chargeable by registered estate agents, as shown below:

For Sales or Purchase	
Type	**Scale of Fees**
Land and Building	Maximum fee of 3%
Fees for other services such as joint venture, sales of company, property swaps, etc.	Maximum fee of 3%
Chattels including plant and machinery	10% of the proceeds
For Lettings	
Period	**Scale of Fees**
Up to 3-year lease	1.25 months' gross rent
More than 3-year - up to 4-year lease	1.50 months' gross rent
More than 4-year - up to 5-year lease	1.75 months' gross rent
Exceeding 5-year lease (without an option for renewal)	1.75 months' gross rent
Exceeding 5-year lease (with an option for renewal)	1.75 months' gross rent + 0.25 months' rent for every additional year
Rent reviews	50% of the fees chargeable above

Legal fees: This is governed by the Solicitors Remuneration Order 2023. The legal fees in respect of sales, purchases, or other forms of conveyances for completing any transaction involving immovable properties are as follows:

Consideration or Adjudicated Value	Scale of Fees
For the first MYR 500,000	1.25% (subject to a minimum of MYR 500)
For the next MYR 7,000,000	1%
Exceeding MYR 7,500,000	Subject to negotiation on the excess but shall not exceed 1% of such excess

Real Property Gains Tax (RPGT)

Capital gains are generally not subject to income tax in Malaysia. However, RPGT is levied on chargeable gains arising from the disposal of real estate 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 the disposal of real property and shares in real property companies are as follows:

Date of Disposal	Companies	Individual (Citizen & Permanent Residents)	Individual (Non-citizen)
Within 3 years from the date of acquisition	30%	30%	30%
In the 4th year	20%	20%	30%
In the 5th year	15%	15%	30%
6th year onwards	10%	0%	10%

According to the Real Property Gains Tax Act 1976, certain tax exemptions apply to profits earned on the disposal of real property:

Exemption	Exemption Amount	Applicability
Once-in-a-lifetime exemption on any chargeable gain from the disposal of a private residence. The RPGT Act defines a private residence as a building or part of a building owned by an individual or occupied as a place of residence.	MYR 10,000 or 10% of the chargeable gain, whichever is greater.	Malaysian citizens and permanent residents.
Exemption on gains when a property is transferred within the family, either between husband and wife, parent and child, or grandparent and grandchild. Transfer between siblings is excluded.	100% exemption on the chargeable gain.	Malaysian citizens and permanent residents.
Exemption of RPGT for the disposal of low-cost residential homes of MYR 200,000 and below, in the 6th and subsequent years.	100% exemption on the chargeable gain.	Malaysian citizens only.

With the transfer of shares in a company holding property, the stamp duty is 0.3% of the price or value on the date of transfer, whichever is greater. No RPGT is imposed unless there is a transfer of share of a real property company. A real property company is a company holding real property or shares in another real property company with value not less than 75% of the value of the company's total tangible assets. Provisions in the Stamp Act 1949 exempts stamp duty on shares transfer of intergroup companies, subject to conditions being met.

Personal Income Tax

In Malaysia, income derived from letting of real properties is taxable under the Income Tax Act 1967.

The income will be deemed as derived from a business source if maintenance services or support services are comprehensively and actively provided in relation to the real estate. However, if the real estate is rented out without providing maintenance and support services, the rental collected will be regarded as a rental income (non-business source of income).

A new chargeable income band for resident individuals earning more than MYR 2,000,000 has been introduced, with a tax rate of 30% - an increase of 2 percentage points from the 28% rate for year of assessment 2019. As announced in Budget 2023, with effect from the year of assessment 2023, the personal income tax for resident individuals will have the following changes:

- Each of the chargeable income bands from MYR 35,001 to MYR 100,000 is reduced by 2%; and
- Each of the chargeable income bands from MYR 100,001 to MYR 1,000,000 is increased by between 0.5% and 2%.

Application of a 15% tax rate for C-Suite Executive or those in key positions (non-residents) in companies that relocated manufacturing activities to Malaysia will be extended until 2024. The 15% tax rate is applied for successful applicants for five consecutive assessment years. Effective January 1, 2022, foreign-sourced incomes of tax residents will no longer be exempted when remitted to Malaysia.

Incentives for New Investment

In Malaysia, tax incentives, both direct and indirect, are provided for in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Excise Act 1976, and Free Zones Act 1990. These Acts cover investments in the manufacturing, agriculture, tourism, and approved services sectors as well as research and development, training, and environmental protection activities. The direct tax incentives grant partial or total relief from income tax payment for a specified period, while indirect tax incentives are in the form of exemptions from import duty and excise duty.

The major tax incentives are the Pioneer Status and the Investment Tax Allowance.

Pioneer Status

Companies awarded pioneer status are subject to tax on only 30% of their statutory income, enjoying an exemption that spans five years, starting from the day its production level reaches 30% of its capacity.

Any unabsorbed capital allowances incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company. Accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company for a period of seven consecutive years.

Investment Tax Allowance

Companies have the opportunity to take advantage of a 60% allowance on eligible capital expenditure incurred within five years, which exempts them from income tax. This allowance can be utilised to offset 70% of their statutory income annually during the assessment of their business operations.

In its effort to attract companies to relocate to Malaysia, the Malaysian government as part of Budget 2023, has decided to extend tax incentives given to manufacturing companies. Furthermore, the aerospace industry has been granted an extended application period for tax incentives until December 31, 2025, while the shipbuilding and ship repairing industry's extended application period has been set until December 31, 2027.

In line with the country's commitment to promoting environmental sustainability, the government has taken measures to enhance the Green Investment Allowance (GITA) Package and Green Income Tax Exemption (GITE). These initiatives have been extended until December 31 2025, and the tax allowance and exemption period has been extended from three to five years.

The government has also introduced additional favourable tax treatment aimed at supporting specific environmentally friendly endeavours, inter alia:

- Manufacturers engaged in producing electric vehicle (EV) charging equipment will enjoy a 100% income tax exemption on their statutory income from the year of assessment 2023 to 2032. Companies that invest after the year of assessment 2023 will be entitled to the tax incentive for the remaining exemption period only. Additionally, a 100% investment tax allowance will be granted for a duration of five years, allowing companies to offset 100% of their statutory income for each year of assessment.
- Companies involved in in-house Carbon Capture and Storage (CCS) technology and/or CCS services will receive a 100% investment tax allowance on qualifying capital expenditure for ten years. This allowance can be used to offset 100% of their statutory business income. Furthermore, there will be a full exemption on import duty and sales tax for CCS technology equipment, effective from January 1, 2023 until December 31, 2027. The government will provide an additional tax deduction for fees incurred in using CCS services and allowable pre-commencement expenses for CCS operation within a period of five years from the commencement date of operation. Moreover, CCS service users will benefit from a 70% tax exemption on their statutory income for a period of ten years.

Companies aiming to be listed on Bursa Malaysia will continue to benefit from a tax reduction of up to MYR 1,500,000 on expenses incurred for listings on the ACE and LEAP Markets until the year of assessment 2025. This tax incentive will now also include the cost of listing technology-based companies on Bursa Malaysia's Main Market.

One noteworthy tax allowance that pertains to property investment in Malaysia is the special tax incentives provided for the Tun Razak Exchange (TRX) project, a comprehensive property development featuring office towers for finance and banking, residences, and retail spaces in Kuala Lumpur. To expedite the development of TRX, the government has granted the following incentives:

- Property developers in TRX will benefit from a 70% income tax exemption on their statutory income derived from the disposal of any building or rights over a building, or part thereof, for a period of five years until the year of assessment 2025.
- Additionally, property developers in TRX will enjoy a 70% income tax exemption on their statutory income arising from the rental of any building or part thereof, for a duration of five years until the year of assessment 2027.
- TRX Marquee status companies will receive an extra 50% tax deduction on rental payments incurred for buildings used for business purposes in TRX.
- TRX Marquee status companies will be eligible for a 10% industrial building allowance on qualifying building expenditure incurred until December 31, 2025.
- A special accelerated capital allowance incentive is offered to TRX Marquee status companies for renovation costs incurred until December 31, 2025.
- TRX Marquee status companies can claim a single deduction for prescribed relocation costs incurred for relocation, provided it takes place on or before December 31, 2025.

Tax Treaties: Avoidance of Double Taxation

The Double Taxation Agreements are designed to prevent double taxation by outlining the tax jurisdiction of each country concerning cross-border income flows. These agreements also include provisions for tax credits or exemptions.

As of August 4, 2023, Malaysia has effective double taxation agreements with the following jurisdictions:

Albania	Italy	Saudi Arabia*
Argentina*	Japan	Seychelles
Australia	Jordan	Singapore
Austria	Kazakhstan	South Africa
Bahrain	Korea Republic	Spain
Bangladesh	Kuwait	Slovakia
Belgium	Kyrgyzstan	Sri Lanka
Bosnia and Herzegovina	Laos	Sudan
Brunei	Lebanon	Sweden
Cambodia	Luxembourg	Switzerland
Canada	Malta	Syria
Chile	Mauritius	Thailand
China	Mongolia	Turkey
Croatia	Morocco	Turkmenistan
Czech Republic	Myanmar	United Arab Emirates
Denmark	Namibia	Ukraine
Egypt	Netherlands	United Kingdom
Fiji	New Zealand	United States of America
Finland	Norway	Uzbekistan
France	Pakistan	Venezuela
Germany	Papua New Guinea	Vietnam
Hong Kong	Philippines	Zimbabwe
Hungary	Poland	
India	Qatar	
Indonesia	Romania	
Iran	Russia	
Ireland	San Marino	

*Limited Agreement

Real Estate Investment Trusts (REIT)

A REIT is a fund or a trust that owns and manages income-producing commercial real estate (shopping complexes, hospitals, plantations, industrial properties, hotels and office blocks).

A management company for a REIT is permitted to deduct distribution paid to its shareholders from its corporate taxable income. However, to enjoy this tax-free status, the REIT must have most of its assets and income tied to the real estate and distribute at least 90% of its total income to investors/unit holders annually.

Both the Guidelines on Listed Real Estate Investment Trusts (Listed REIT Guidelines) and Guidelines on Real Estate Investment Trusts (Unlisted REIT Guidelines) were revised by the Securities Commission on November 28, 2022.

A management company of an unlisted REIT is required to have a minimum 30% of local equity and is required to maintain a minimum shareholder funds of MYR 1,000,000 at all times. Such requirements are not applicable to listed REITs.

The authorised investments of listed REITs and unlisted REITs differs as shown in the table below:

Listed REITs	Unlisted REITs
May only invest in:	May only invest in:
• real estate	• real estate;
• non-real estate assets and	• single-purpose companies;
• cash, deposits, and money market instruments	• real estate-related assets;
• A minimum 75% of its total asset value must be invested in real estate that generates recurrent rental income at all times.	• non-real estate-related assets; and cash, deposits, and money market instruments.
	• A minimum 50% of its total asset value must be invested in real estate and/or single-purpose companies at all times.
	• Investment in non-real estate-related assets and/or cash, deposits and money market instruments must not exceed 25% of a fund's total asset value.

Subject to the requirements as stated in the Listed REIT Guidelines and Unlisted REIT Guidelines, a REIT is allowed to borrow or obtain financing facilities to invest in real estate and for capital expenditure purposes. Unlisted REITs are also expressly allowed to borrow or obtain financing facilities to meet repurchase requests for units. For this purpose, the borrowing or financing facilities period should not exceed six months from the date the borrowings or financing facilities are incurred.

The total borrowings or financing facilities, including borrowings or financing through issuance of debt securities or sukuk, must not exceed 50% of the total asset value of the REIT at the time the borrowings or financing facilities.

As of June 30, 2023, there are a total of 19 real estate investment trusts listed on Bursa Malaysia:

- AmFirst Real Estate Investment Trust
- Axis Real Estate Investment Trust
- • AmanahRaya Real Estate Investment Trust
- Atrium Real Estate Investment Trust
- CapitaLand Malaysia Trust (formerly known as CapitaLand Malaysia Mall Trust)
- Al-'Aqar Healthcare REIT
- Al-Salam Real Estate Investment Trust
- Tower Real Estate Investment Trust
- Hektar Real Estate Investment Trust
- AME Real Estate Investment Trust
- IGB Real Estate Investment Trust
- IGB Commercial Real Estate Investment Trust
- KIP Real Estate Investment Trust
- KLCC Real Estate Investment Trust
- Pavilion Real Estate Investment Trust
- YTL Hospitality REIT
- Sentral REIT (formerly known as MRCB-Quill REIT)
- Sunway Real Estate Investment Trust
- UOA Real Estate Investment Trust

11

Myanmar

Property tenure/Ownership

There are multiple forms of land with varied rights and limitations. Save for a limited number of freehold lands allotted before 1950, all other categories of land are state-owned. The state-owned lands are categorised for different usages and purposes, which eligible individuals or companies can lease from the Government. Some of the most common forms of land found in Myanmar are as follows:

I. Grant Land: Being state-owned, grant lands are leased to grantees long-term, ranging from 10 to 90 years. Grantees have the rights and obligations as may be prescribed under the grant and Myanmar Land and Revenue Act (including its implementing regulations).

II. Freehold Land: Allotted before 1950, freehold lands have no restriction on the owner's rights concerning the leasing, selling, or transfer of such land.

III. Farmland or Agricultural Land: These lands are granted for cultivation or agriculture. Such land may also be transferred, leased or sub-leased with the consent of the Government.

IV. Vacant Land or Fallow Land or Virgin Land: Vacant/fallow/virgin land refers to land that has never been cultivated or has been abandoned. The State specifically reserves such lands for agriculture, livestock breeding, or mining purposes.

V. Monastery or Religious Land: Land that has been given by the Government to a religious entity to be used for religious purposes.

VI. Government Leased Land: These are lands that are leased by the Government to investors for developing the land for some particular project activity. These lands are to be used explicitly for their leased purposes.

VII. Government Leased Land: These are lands that are leased by the Government to investors for developing the land for some particular project activity. These lands are to be used explicitly for their leased purposes.

Major Legislation

01 Myanmar Constitution 2008

02 Transfer of Property Act 1882

03 Transfer of Immovable Property Restriction Act 1987 (TIPRA);

04 Special Economic Zones (SEZ) Law 2012;

05 Myanmar Investment Law 2016 (MIL);

06 Condominium Law 2016;

07 Land and Revenue Act 1876;

08 Land Acquisition, Resettlement and Rehabilitation Law 2019;

09 Farmland Law 2012

10 Vacant, Fallow and Virgin Lands Management Law 2012

11 Registration Law 2018; and

12 Stamp Duty Act, 1899.

Operation Requirements for Foreign Corporations

Foreign corporations can operate as private companies limited by shares, public companies limited by shares, companies limited by guarantee, or unlimited companies by incorporating and registering with the Directorate of Investment and Company Administration (DICA).

Foreign corporations may also operate in Myanmar as an overseas corporation, business association, or any other corporation entitled to register as a company as per MCL or such other entities as may be prescribed by the Union Minister by registering with DICA.

Foreign corporations require a MIC Permit for certain businesses falling within the criteria set out under MIL. They may further need approvals or licenses from sector-specific departments based on their activities.

Registration/Licensing Requirements

All entities operating a business in Myanmar must register with DICA. The entities must obtain licences if the sector they conduct operations requires a licence before commencing operations. Entities involved in various sectors, such as banking, telecommunications, hospitality, import and export, are required to obtain the appropriate licences as stipulated by the laws governing those sectors. Further, foreign investors may invest only in activities permitted by the Myanmar Investment Commission (MIC). Foreign investors may also require a MIC Permit if they fall within the criteria set out in the MIL and its implementing rules.

Foreign Employment Requirements

A company registered under the MCL may employ foreign workers under relevant labour laws and its implementing rules. Companies with MIC permits may appoint only skilled foreign workers. While no threshold requirement is stipulated under MCL and MIL, DICA while scrutinising visa applications may not allow a higher proportion of foreign workers vis-à-vis local employees.

A company in the SEZ shall employ only the citizens in work where high technology and skill are not required. In employing Myanmar skilled workers, technicians, and staff, the company must appoint the local citizens at least 25% of the first two years from the commencing year of operation, at least 50% in the second two years, and at least 75 % in the third two years. If the company wishes to employ foreign employees beyond the allocated quota, the investor must apply the TSEZMC and obtain its written approval.

A single-entry business visa for up to 70 days is issued to foreign employees for their first entry into Myanmar. The foreign employee may further get their single-entry business visa renewed to a multiple-entry business for three months, six months and one year. The foreign employee may get further extensions on a yearly basis.

Foreign Investment Incentives

The MIC may grant certain exemptions and reliefs to foreign investors with a MIC permit stipulated under the MIL. The MIC may grant any or none of the following discretionary benefits:

I. The foreign companies with a MIC permit or endorsement may enter into long-term immovable property leases, for up to 50 years that are renewable twice for terms of 10 years each;

II. The Government guarantees not to take any measures which are expropriated or indirectly expropriate to not against direct or is likely to affect or result in the termination of an investment with a few exceptions. A fair and adequate compensation shall be designated as an equivalent to the market value prevailing at the time of expropriation of the investment.

III. Foreign investors will be eligible for corporate income tax exemption for seven, five, or three years. The duration of the tax exemption will be based on whether the investment is made in an underdeveloped, moderately developed, or adequately developed region or State;

IV. If the MIL entity reinvests profit from its business or part of its reserve funds within one year, the tax exemption/relief may be extended to income from such reinvested profit or reserve funds;

V. A right to accelerate the depreciation rate for the machinery, equipment, buildings, or other working capital and to claim the same as deductible expense;

VI. If the products of any production work are exported, the tax exemption will be allowed for up to 50% of the profits on these exports;

VII. Expenses for research and development may be deducted from income;

VIII. A right to carry forward and set-off also up to three consecutive years from the year the loss is sustained if the loss is suffered within two years of exemption or relief from income tax becoming applicable;

IX. The MIC may grant exemptions or reliefs from customs duties, internal taxes, or both for imported machinery, equipment, instruments, machinery components, spare parts, construction materials unavailable locally, and materials necessary for the business operations during the construction period or during the preparatory period of the investment business;

X. A right to exemption/relief of duty, other internal tax or both on imported raw materials for three years after establishment;

XI. Exemption and relief of commercial tax on the products manufactured for export.

XII. Similarly, some of the vital investment incentives for foreign investors in the SEZ include long-term immovable property leases for up to 50 years that are renewable for a term of 25 years, time-bound income tax exemption for free zone/promotion zone investors, import duty waivers and exemptions to investors, custom duty refunds and streamlined dispute resolution measures.

Restrictions on Foreign Property Ownership

According to the TIPRA, foreign entities or individuals are restricted from owning immovable property in Myanmar. TIPRA also restricts the lease term for foreign nationals, prescribing a maximum term of one year for any lease of immovable property by a foreign individual or entity. As an exception, foreign investors with land rights authorisation under the MIC and SEZ may hold the land longer.

Foreign Exchange Control

FEML and it's implementing rules regulate foreign exchange transactions through two categorised forms of payments:

Current Account Payments: Payments for cross-border sales of trade and services, dividends, family expenses, etc., can be remitted through authorised dealer banks (AD Banks) without having to get prior approval from the Central Bank of Myanmar (CBM).

Capital Account Payments: These kinds of payments, not current account payments, would require approval from CBM before the transaction could be carried out.

However, some additional approvals may be necessary for some current account transactions before AD Banks can effectuate the transaction. For example, dividend repatriation for a MIC Permit/endorsement order holding company can only be done after approval from the MIC.

In 2022, due to the dollar crisis in Myanmar, the regulators have implemented an ad-hoc mechanism whereby a Foreign Exchange Supervisory Committee has been established to supervise foreign exchange transactions and has brought several temporary policy changes regarding foreign exchange. All transactions, including current account transactions, would require prior approval from FESC before offshore remittances.

Taxes on Possession and Operation of Real Estate

Real estate companies are subject to the following Myanmar taxes:

I. Corporate income tax of 22% (or 17% if listed under the Yangon Stock Exchange) based on taxable income. A tax holiday period may apply if the company is registered under the Myanmar Investment Law and the MIC approves such tax incentives. The tax holiday period ranges from three to seven years, depending on the investment location. An additional income tax exemption period may apply if the profits are reinvested within one year.

II. Commercial tax (similar to value-added tax) on goods produced in Myanmar, services rendered in Myanmar, and goods imported into Myanmar. The tax rate is generally 5% based on sales proceeds (or landed cost in case of importation) unless specifically exempted or covered by a lower rate under the CT Law. A lower CT rate of 3% will apply on the sale of buildings constructed in Myanmar, whether through a long-term lease with the State or a partnership with a lessor.

III. They are withholding tax on payments to resident and non-resident suppliers. Under the Myanmar withholding tax rules, payments to a resident company or individual are generally exempt from withholding tax. However, this will not apply to qualified payments made by government institutions or royalty payments taxed at 2% and 15%, respectively. Meanwhile, payments to a non-resident can be subject to 2.5% (if the purchase of goods and services in Myanmar) or to 15% (if relating to interest and royalty payments). Exemption on offshore services and relief under a relevant tax treaty with Myanmar may be applied subject to prior confirmation from the tax authorities.

IV. Taxes on importation upon importing tangible goods into Myanmar. This covers the following: (a) customs duties ranging from 0-60% depending on the HS Code classification under the 2022 Myanmar Customs Tariff; (b) 5% CT on importation based on landed cost; and (c) 2% advance income tax based on customs value. An exemption from taxes on machinery, equipment, and spare parts imported during construction may apply if the company is registered with the MIC.

V. Property tax on real properties owned by the real estate company. Local development committees impose these taxes and municipal charges and may vary per location. For Yangon, property tax covers general tax (up to 8%), lighting tax (up to 5%), water tax (up to 3.25%), and conservancy tax (up to 8.5%) based on annual value. The taxes can be collected either from the owner or the occupant, subject to the parties' agreement.

VI. Personal income tax for employees working in Myanmar. Resident nationals and resident foreigners (or those who reside in Myanmar for at least 183 days during the taxable year April 1 to March 31) are taxed at 0-25% graduated rates on all income derived from sources within and outside Myanmar. Non-resident foreigners are taxed only on income derived from sources within Myanmar at the same rates.

VII. tamp duties on the affixing of judicial and non-judicial stamps. Judicial stamps are used in judicial proceedings, while non-judicial stamps are for general purposes. Stamp duty rates vary per type of instrument or document as listed in the Myanmar Stamp Act Schedule. For example, a lease of immovable property is subject to stamp duty at 0.5% to 2% depending on the lease term. Meanwhile, the conveyance of immovable property will be subject to 4% stamp duty (plus any applicable municipal charges). Further, a separate stamp duty will also apply to financing instruments.

Taxes on Acquisition and Transfer of Real Estate

A real estate transaction will typically be subject to capital gains tax (CGT) and stamp duty.

I. CGT is charged on gains from the sale, exchange, or transfer of capital assets in Myanmar exceeding MMK 10 million during the year. The term "capital assets" means any land, building, vehicle, or capital asset connected with an enterprise, including shares, bonds, and similar instruments. The rate is generally at 10% based on the transaction's capital gains (consideration less deductible cost of acquiring the asset).

II. Stamp duty on the sale or conveyance of immovable property is normally at 4% (2% duty rate plus 2% additional surcharge). However, additional municipal charges may apply depending on the property's location.

III. Any transfer not being testamentary, like a will or a lease below one year, would require registration with the Office of Registrar of Deeds for legal enforceability. The applicable registration fee is ad valorem 0.5%.

The authorities will assess the value of the real estate before paying taxes. Usually, the CGT is payable by the seller, while the buyer pays the stamp duty unless otherwise agreed under the contract terms.

In addition, the buyer (assumed to be an individual/citizen) should be able to show proof that the money used to purchase the real estate has already been appropriately taxed. Otherwise, the buyer can be subject to a tax on undisclosed sources of income, which ranges from 3% to 30%, depending on the amount of undisclosed income.

Tax Treaties: Avoidance of Double Taxation

Myanmar currently has DTAs with eight countries: India, the Lao PDR, Malaysia, Singapore, South Korea, Thailand, the United Kingdom, and Vietnam. However, DTA relief is not automatic in Myanmar. A taxpayer must apply for confirmation from the IRD before availing of the DTA benefits. The taxpayer must submit an application letter, including a copy of relevant contracts and the non-resident's residency certificates to assess the tax authorities.

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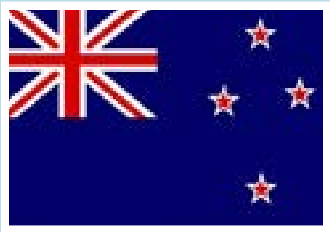
New Zealand



BELL GULLY

Types of Legal Estate

The majority of land in New Zealand is comprised in one of four main types of legal estate:

- Freehold title (also known as a “fee simple” title).
- Leasehold title.
- Unit title (also known as a “strata” title).
- Cross lease title.

In addition, some land (approximately 6% of land in New Zealand) is Māori land, which is held under the Te Ture Whenua Māori Act 1993. That Act acknowledges the Māori practice of joint customary ownership (as opposed to individual ownership).

Freehold

Freehold property is generally considered to be the highest form of land ownership in New Zealand, as the period of ownership to the land is not limited (unlike a leasehold or cross lease title, as set out below) nor subject to controls and restrictions by a landlord or a body corporate (as with leasehold and unit titles respectively, as set out below).

However, the use or development of a freehold property can be restricted by numerous laws, regulations and bylaws, and also by any interests registered against the title to the property.

Leasehold

Leasehold property is (as the name suggests) land held under a lease. The party having a leasehold estate (the “lessee” or “tenant”) does not own the underlying land – which remains owned by the lessor (or “landlord”). Instead, the lessee has the right to occupy the underlying land for a limited period of time. A lessee of leasehold property is also typically subject to additional contractual limitations as to their use of the land, as set out in the terms of the lease.

As is the case with freehold property, the use of leasehold property is also subject to numerous laws and regulations, together with any interests registered against the title to the property.

Unit

A unit title is a form of property estate which is commonly utilised for apartment and townhouse developments. The owner of a unit title acquires ownership of their “unit”, together with an undivided share of the common property (e.g. gardens, lifts and lobbies) alongside the other owners in the development.

Each owner of a unit title becomes a member of a “body corporate”, which is an entity created for each unit title development and which is responsible for making decisions relating to the administration, management and maintenance of the complex and common property. The Unit Titles Act 2010 sets out the framework for the ownership and management of unit titles, including how decisions must be made by the body corporate.

Cross Lease Title

A cross lease is a composite form of title that contains elements of both freehold and leasehold ownership, and is generally only used for residential dwellings. In general terms, the owner of a cross lease title:

- owns an undivided share in the underlying freehold land (alongside the other cross lease owners within a cross lease development); and
- leases their individual dwelling (usually for a term of 999 years) from all of the cross-lease owners collectively.

An owner of a cross lease title is therefore a part owner of the freehold title for the cross-lease development (in common with the other owners), a lessor under each of the cross leases (in common with the other owners), and an exclusive lessee of their own dwelling.

Title Registration

New Zealand operates under an electronic title registration system administered by Land Information New Zealand (LINZ).

A title, and any interests registered against a title, can be ordered electronically from LINZ’s Landonline database, which is New Zealand’s electronic land register.

A title search will not reveal any unregistered interests. For example, a private agreement between the property owner and another party relating to access over the property will not be shown on the title, unless the agreement is registrable and has been registered.

Although leases can be registered in New Zealand, they are not typically registered (unless the lease is for a long term) on the basis that (at law) a lease runs with the land and is therefore binding on any future purchaser of the lessor’s interest.

Key Property Legislation

The key New Zealand property-related laws are:

01 Property Law Act 2007.

02 Land Transfer Act 2017.

03 Unit Titles Act 2010.

04 Overseas Investment Act 2005.

05 Building Act 2004.

06 Resource Management Act 1991.

07 Public Works Act 1981.

08 Te Ture Whenua Māori Act 1993/Māori Land Act 1993.

Foreign Investment in New Zealand

In New Zealand, certain types of investments by an "overseas person" in:

- land classified as "sensitive land"; or
- business assets (including real estate) classified as "significant business assets",

require the consent of the Overseas Investment Office (OIO) under the Overseas Investment Act 2005 (OIA

Who are "Overseas Persons"?

In broad terms, the OIA defines an "overseas person" as:

- an individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand, or
- a company that is:
  - incorporated outside New Zealand; or
  - more than 25% owned or controlled by "overseas persons" under the OIA.

Additional tests apply to partnerships, unincorporated joint ventures, trusts and unit trusts. Alternative (more lenient) tests apply to New Zealand listed issuers and managed investment schemes.

"Associates" of overseas persons are also caught by the OIA. The term "associate" is defined broadly under the OIA, and is designed to capture a range of people/entities – including someone acting as the agent or representative of an overseas person.

What is "Sensitive Land"?

"Sensitive land" is defined in the OIA, and comprises various categories of land including:

- residential land;
- non-urban land exceeding 5 hectares; and
- marine and coastal land exceeding 0.2 hectares.

The acquisition by an overseas person of an "interest" in sensitive land requires consent. Under the OIA, an interest includes a freehold interest, or a leasehold interest of a certain term.

Determining whether land is "sensitive land", and whether the interest being acquired is captured under the OIA, are complex exercises and should only be undertaken by an OIO-accredited supplier.

What are "Significant Business Assets"?

"Significant business assets" are (broadly) high-value assets that are used in carrying on business in New Zealand, that are worth more than:

- NZD 100 million; or
- an alternative higher monetary threshold that applies to investments by overseas persons from certain jurisdictions.

Significant business assets include securities (such as shares in a business) and real estate.

Consent Pathways

The application requirements under the OIO regime are complex, and consent pathways and their corresponding application fees and timeframes vary depending on the nature of the transaction, the investor (including its ownership structure) and the New Zealand assets involved. Some of the most common consent pathways are set out below:

Sensitive Land Consent Pathway

An applicant for consent to acquire an interest in sensitive land (other than residential land) must:

- satisfy the "benefit to New Zealand" test, which requires the applicant to demonstrate that the investment is likely to benefit New Zealand. This test measures the transaction's benefit to New Zealand against seven factors set out in the OIA, such as whether the transaction will result in economic benefits, environmental benefits, or advancement of a significant government policy. The OIO will assess the benefits by comparing the likely result of the investment against the existing situation;
- if the land is (or includes) farm land of more than 5 hectares, then in most cases certain advertising requirements must be complied with before a transaction is entered into. Further, the "benefit to New Zealand" test is modified to require the applicant to demonstrate a "substantial" benefit by reference to economic benefits to New Zealand and the extent to which the proposed transaction will result in any oversight of, or participation by, New Zealanders in relation to the land;
- in some cases, the applicant must show that it or, if the applicant is not an individual, each of the "individuals with control" (IWC) of the entity, is either a New Zealand citizen, ordinarily resident in New Zealand or intending to reside in New Zealand indefinitely; and
- in the majority of cases, satisfy the 'investor test' (see the "significant business assets section below).

Sensitive Land (residential land which is not otherwise sensitive) Pathway

Several consent pathways are available for overseas persons to acquire land that is classified as sensitive land solely on the basis that it is residential land. This includes:

- Commitment to reside in New Zealand pathway – available for persons who hold a New Zealand residence class visa but who are not yet "ordinarily resident" in New Zealand to buy a property to live in.
- Pathways to develop residential land – three pathways exist for overseas developers or investors to invest in residential land, such as where the overseas investor is building more houses on the land to on-sell to other parties, or where the overseas investor is proposing to use the residential land for a non-residential use.

Significant Business Assets Consent Pathway

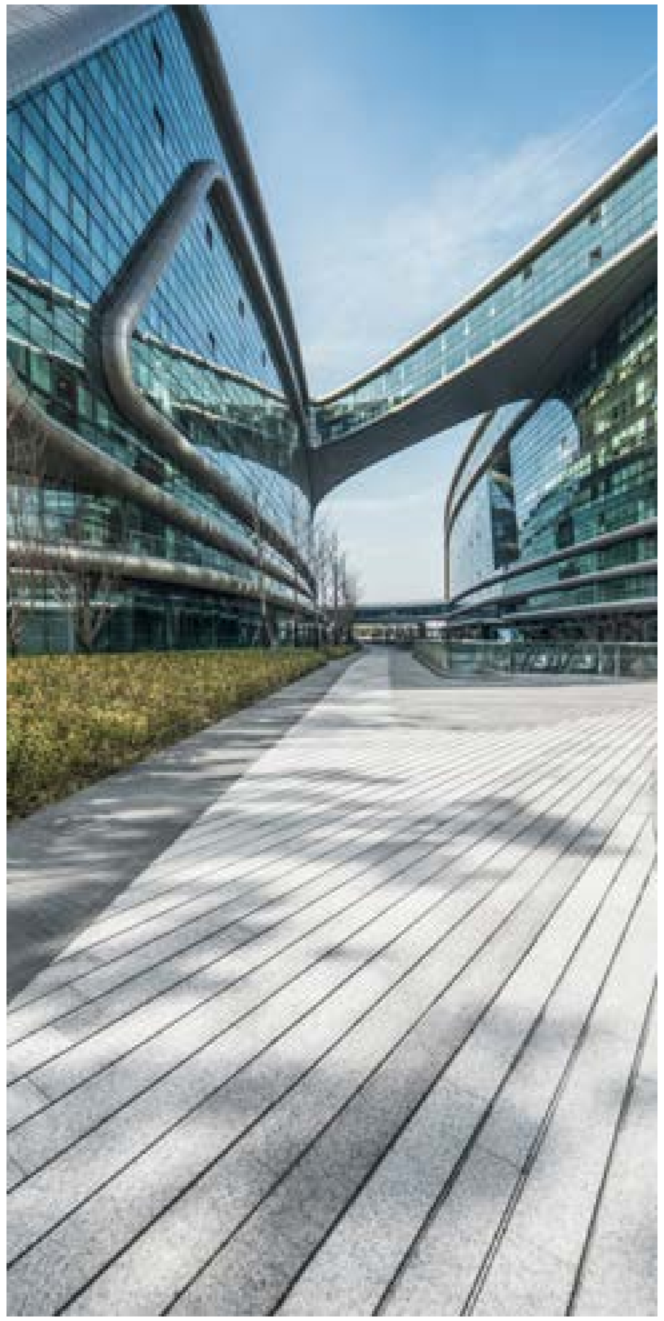
An applicant for consent to acquire significant business assets must satisfy the "investor test", whereby the OIO must be satisfied that the investor (and the entities/persons that own and control it) are suitable to own sensitive New Zealand assets. This is assessed against 12 character and capability factors, including whether the investor has a criminal record, and whether they are prohibited from being a company director

National Interest Assessment

Some consent applications are subject to a "national interest" assessment. In addition to the usual consent requirements for the relevant transaction, the New Zealand Minister of Finance must review the transaction to determine whether it is contrary to New Zealand's national interest. While this assessment is only mandatory for transactions that meet certain criteria, the Minister may use his/her discretion to require a national interest assessment for any transaction/consent application.

Operational Requirements for Foreign Corporations

A foreign corporation may conduct business in New Zealand through various structures – as a corporation, in partnership, through a trust, or through a joint venture. Each business structure has its own legal characteristics, obligations and tax implications, so careful consideration should be given to which structure is appropriate for the business.



Operating through a New Zealand Subsidiary

A foreign corporation which decides to conduct business using the company structure could consider incorporating a New Zealand company (i.e. a subsidiary) under the New Zealand Companies Act 1993 (Companies Act) or acquiring an already established New Zealand company. A company is an attractive option for most foreign corporations conducting business in New Zealand because it is a separate legal entity that provides limited liability for its shareholders. This means that, in general, shareholders are only liable to the extent of their investment in the subsidiary, and the subsidiary is responsible for its own assets and liabilities.

A company can generally be set up in New Zealand within one business day, provided all the relevant information regarding the company, directors, shareholders, and share capital is known. A company must have at least one shareholder, a New Zealand registered office and a New Zealand address for service. It must also have a director who either lives in New Zealand, or lives in Australia and is also a director of an Australian incorporated company. There are no minimum capital requirements for establishing a company in New Zealand or specific limitations on the scope of its business.

The Companies Act imposes duties on directors (which may give rise to personal liability) and requires companies to maintain various records and registers of their accounting and administrative transactions. It also requires certain documents to be filed with the New Zealand Companies Office from time to time so that an updated record of the company's affairs is available for inspection by the public. Certain large companies must prepare and lodge with the Companies Office annual financial reports.

Operating as a New Zealand Branch

It is possible for a foreign corporation to carry on business in New Zealand as a "branch office" in its own name. In those circumstances the corporation is required to register as an "overseas company" under the Companies Act. This is a relatively simple administrative process and requires the provision of (in broad terms) similar information to that which is provided on incorporation of a New Zealand company. A person resident or incorporated in New Zealand must be authorised to accept service of documents in New Zealand on behalf of the overseas company. Once registered, the branch must comply with certain ongoing administrative reporting obligations (which are not onerous) and financial reporting obligations

Operating as a Limited Partnership

In New Zealand, a limited partnership is a separate legal personality, distinct from its owners (i.e. the partners), in the same way that a company is distinct from its shareholders. Subject to the New Zealand Limited Partnerships Act 2008 (LPA), a limited partnership can carry on any business or activity and enter into any transaction. A limited partnership is formed upon registration of the limited partnership with the New Zealand Companies Office, which is a similar process to incorporating a company in New Zealand. For a limited partnership to be registered it must be composed of both general partners and limited partners, and have a written limited partnership agreement containing certain matters required by the LPA. A corporate general partner of a New Zealand-registered limited partnership must be a New Zealand-incorporated company or an overseas company registered as carrying on business in New Zealand (with at least one director who either lives in New Zealand, or lives in Australia and is also a director of an Australian incorporated company). A limited partner can be an overseas person.

An overseas limited partnership can also carry on business in New Zealand if it is registered under the LPA.

Foreign Employment Limitations

Anyone who is not a New Zealand citizen, the holder of a New Zealand residence class visa, Australian citizen or the holder of an Australian permanent residence visa, must have a visa to work in New Zealand.

Temporary work visas may be available to people who:

- have a job offer from a New Zealand accredited employer;
- are coming to New Zealand for a particular purpose, season or event;
- wish to gain work experience or work after studying in New Zealand;
- are students and wish to work in New Zealand; or
- wish to join a partner in New Zealand and work.

Certain types of work do not require a work visa. For example, if the employment in New Zealand involves short 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.

Taxes

Taxes on Ownership of Real Estate

In New Zealand, local government authorities (also known as councils) raise revenue through a form of land tax known as "rates". Different rates can be levied for different purposes:

- General rates are payable by all landowners in a particular geographical area, and are calculated based on property value.
- Targeted rates are levied to fund a particular function or group of functions, and can be calculated based on a broader range of criteria. For example, the Auckland Council recently sought to introduce a targeted rate applicable to properties let via web-based accommodation services (commonly referred to as the 'Airbnb tax').

Taxes on the Acquisition/Transfer of Real Estate

Capital Gains Tax

There is no comprehensive capital gains tax in New Zealand. However, gains derived on the sale of land may be subject to income tax in some circumstances, including where:

- the land is sold in the course of a profit-making undertaking or scheme;
- the land in question was acquired with a purpose or intention of disposal;
- the taxpayer (or any person associated with the taxpayer) carries on a business of dealing in land, developing land or dividing land into lots, or erecting buildings and:
  - the land was acquired for the purpose of that business; or
  - the land is disposed of within 10 years of acquisition;
- the taxpayer commences on an undertaking or scheme involving the development or division of the land into lots:
  - within 10 years of acquiring the land, and the development or division work is not minor; or
  - the development or division work involves significant expenditure on any amenity, service or work customarily undertaken or provided in major projects involving the development of land for commercial, industrial, or residential purposes (e.g., channelling, contouring, roading); or
- the taxpayer disposes of the land within 10 years of acquisition for a profit, and at least 20% of that profit arises from a relevant factor relating to local planning rules (e.g., a grant of resource consent in relation to the land).

See also the further comments below in relation to the taxation of residential property.

Stamp Duty

New Zealand does not impose any form of stamp duty in relation to land.

Goods and Services Tax

Goods and services tax (GST) is charged on the supply (other than an exempt supply) of goods and/or services in New Zealand, by a person who is registered for GST, in the course or furtherance of a taxable activity. The standard rate of GST is currently 15%. In certain circumstances, supplies are 'zero-rated', which means that GST is charged at the rate of 0%. Registered persons making zero-rated supplies of goods and/or services are entitled to GST input tax credits for inputs acquired by them for use in making taxable supplies (no such credit is available for inputs acquired for use in making exempt supplies).

The sale of land by a registered person in the course or furtherance of their taxable activity will be a taxable supply of goods for GST purposes and will be subject to GST. If the purchaser of the land is another registered person, who acquires the land with the intention of using it for making taxable supplies and does not intend to use the land as a principal place of residence for themselves or any associate, the supply will be zero-rated (known as land zero-rating).

If the conditions for land zero-rating are not met, the supply may nevertheless be zero-rated for GST if the land is supplied as part of a 'going concern'. In order to qualify as the supply of a going concern, all of the goods and services that are necessary for the continued operation of that taxable activity must be supplied to the recipient. A bare supply of land (including buildings, etc affixed to the land) is unlikely to qualify as the supply of a going concern.

Where GST is payable in a land transaction, it is generally payable by the vendor rather than the purchaser. This is subject to one exception – if the parties to the sale have treated the sale as zero-rated for GST purposes under the land zero-rating rules, and after the settlement date it is found that the conditions for zero-rating were not met, then the purchaser of the land is liable to pay the GST.

Taxes on Residential Land

New Zealand has a number of bespoke taxation measures that apply to residential land. The two key measures are:

"Bright-line" Test

Gains derived on a transfer of residential property (other than the vendor's "main home") acquired on or after March 27, 2021 will be assessable income of the vendor, if the transfer occurs within 10 years after the vendor acquired the property (or within 5 years after the vendor acquired the property if the property is a newly-built dwelling). A separate 5 year bright-line rule applies for residential property acquired between March 29, 2018 and March 27, 2021. The bright-line rule operates as a de facto capital gains tax in relation to residential property.

Interest Limitation Rule

Interest costs incurred after October 1, 2021 in relation to residential property (e.g. interest on debt funding to acquire the property) are now generally non-deductible to the landowner. Exceptions exist for debt funding newly-built dwellings (where a 20-year interest deduction period is available) and build-to-rent developments. Interest on debt that funded residential property acquired before March 27, 2021 is deductible, however those deductions are being gradually phased out (and will be completely phased out by 2026).

Sales of residential property by offshore vendors within the "bright-line" period may be subject to "residential land withholding tax" (RLWT). Where RLWT applies, it must be deducted by the vendor's conveyancer (or the purchaser's conveyancer, if the vendor has no conveyancer) and paid to the Inland Revenue Department (IRD). Persons who carry on a business of developing or dividing land into lots, or of erecting buildings may be exempted from RLWT, if there are sufficient grounds to believe that they will comply with their tax obligations in relation to the land.

Tax Depreciation

New Zealand law permits a deduction for depreciation on buildings, other than residential buildings with an estimated useful life of 50 years or more. A "residential building" is defined to mean a "dwelling" and includes buildings used for the purposes of providing short-term accommodation. The depreciation rate for non-residential buildings is 2% diminishing value or 1.5% straight-line (although taxpayers may apply for a special depreciation rate, if there are specific circumstances which mean that the standard rates are not appropriate).

Commercial fit-out, plant and capital equipment may similarly be depreciated in accordance with rates set by the IRD, reflecting the economic life of the relevant asset.

Taxpayers are not entitled to any deduction for depreciation losses incurred in respect of land, other than a right to use land.

Corporate Taxation

Companies that are tax resident in New Zealand are subject to tax on their worldwide income at the corporate income tax rate of 28%. A "company" for this purpose means any body corporate or other entity that has a legal existence separate from that of its members, whether incorporated or created in New Zealand or elsewhere (including a limited partnership, if the limited partnership is treated as a separate legal entity under the general law of the jurisdiction where it is established) and certain other entities, such as unit trusts.

A company will be regarded as tax resident in New Zealand under domestic law if:

- it is incorporated in New Zealand;
- its head office is in New Zealand;
- its centre of management is in New Zealand; or
- its directors, in their capacity as directors, exercise control of the company in New Zealand (even if the directors' decision-making also occurs outside New Zealand).

Companies that are not tax resident in New Zealand may be subject to tax in New Zealand on their New Zealand-sourced income, subject to any applicable relief under a double tax treaty (though New Zealand's double tax treaties typically reserve full taxing rights to New Zealand in respect of income derived from land).

Personal Taxation

Individuals who are tax resident in New Zealand are subject to tax on their worldwide income in accordance with a graduated scale, as set out below:

Income	Tax rate (as at April 1, 2023)
Up to NZD 14,000 (USD 8,840)	10.5%
NZD 14,001 – NZD 48,000 (USD 8,841 – USD 30,310)	17.5%
NZD 48,001 – NZD 70,000 (USD 30,311 – USD 44,205)	30%
NZD 70,001 – NZD 180,000 (USD 44,206 – USD 113,670)	33%
NZD 180,001 (USD 113,671) and above	39%

An individual will be regarded as tax resident in New Zealand under domestic law if:

- the individual is present in New Zealand for more than 183 days in a 12-month period (conversely, an individual will cease to be tax resident in New Zealand if they are absent from New Zealand for more than 325 days in a 12 month period); and/or
- the individual has a permanent place of abode in New Zealand.

New tax residents have the benefit of a temporary exemption from New Zealand income tax on foreign-sourced income (other than income from personal services), known as the transitional resident's exemption. The transitional resident's exemption extends for 48 months from the point in time when the individual first satisfies the criteria to be a New Zealand tax resident.

Individuals who are not tax resident in New Zealand may be subject to tax in New Zealand on their New Zealand-sourced income, subject to any applicable relief under a double tax treaty (though New Zealand's double tax treaties typically reserve full taxing rights to New Zealand in respect of income derived from land).

Partnership Taxation

Partnerships – including a limited partnership that does not have separate legal personality under the general law of the jurisdiction where it is established – are taxed on a look-through basis in New Zealand. This is particularly advantageous for investor groups comprising a mix of resident and non-resident entities/individuals (or non-resident entities/individuals who are resident in different jurisdictions).

Avoidance of Double Taxation

New Zealand's Tax Treaty Network

New Zealand is party to double tax agreements with 40 of its main trading and investment partners. These treaties are expressly incorporated into New Zealand domestic law and have overriding effect in the event of any conflict with another provision of domestic law (subject to limited exceptions, including the application of New Zealand's general anti-avoidance rule).

A number of New Zealand's double tax agreements are subject to modification in accordance with the provisions of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (commonly referred to as the MLI), which entered into force in New Zealand with effect from October 1, 2018.

New Zealand has also entered in 21 tax information exchange agreements and is party to the Convention on Mutual Administrative Assistance in Tax Matters.

The IRD maintains a full list of New Zealand's double tax agreements and information exchange agreements. This list is available at: https://www.taxpolicy.ird.govt.nz/tax-treaties.

Unilateral Relief from Double Taxation: Foreign Tax Credits

New Zealand domestic law provides unilateral relief from double taxation through the recognition of foreign tax credits for foreign income tax paid in respect of foreign-sourced income. The amount of the credit is limited to the amount of New Zealand tax that would otherwise have been payable in respect of the relevant amount of foreign-sourced income.

Where a person is liable to tax in a foreign jurisdiction on the basis of citizenship, residence or domicile, the amount of the foreign tax credit is limited to the amount of foreign income tax that would have been paid in the foreign jurisdiction if the person were not a citizen, a resident, or domiciled in that country. In other words, a foreign tax credit is only available under New Zealand domestic law for foreign income tax that is levied on the basis of source.

Further Matters Relating to Cross-border Taxation

Non-resident Withholding Tax

Dividends, interest and royalties paid to a recipient that is non-resident in New Zealand for tax purposes are typically subject to non-resident withholding tax (NRWT) (certain exceptions apply in relation to interest derived by non-residents carrying on business through a fixed establishment in New Zealand).

The rate of NRWT varies depending on the nature of the payment:

- Dividends paid by a New Zealand company out of fully-taxed profits can often be distributed with no further withholding cost. Otherwise, NRWT applies at the rate of 30%.
- Payments of interest and royalties are generally subject to NRWT at the rate of 15%.
- The rate of NRWT on interest paid to a non-resident, third party lender can be reduced to 0% by the payment of "approved issuer levy" (AIL). AIL is charged to the borrower at a rate equal to 2% of the gross interest payment. AIL is structured as a form of stamp duty and must be paid by the borrower in addition to the amount of the interest payment (i.e. not by way of withholding) unless otherwise agreed between the parties.

The rates noted above are subject to modification under the terms of New Zealand's double tax treaties (typically, to at least 15% in the case of NRWT on dividends, and to 10% in respect of interest/royalties).

Thin Capitalisation and Transfer Pricing

Deductions for interest on inbound related party debt may be limited by the application of New Zealand's thin capitalisation and transfer pricing rules.

New Zealand's thin capitalisation rules apply to deny interest deductions to a New Zealand taxpayer where:

- the debt to assets percentage of the taxpayer's New Zealand group exceeds 60%; and
- the debt to assets percentage of the taxpayer's New Zealand group is more than 100% of the debt to assets percentage of the taxpayer's worldwide group (i.e. the New Zealand group is overleveraged, relative to the worldwide group).

The thin capitalisation position must be reassessed periodically, based on the debt to assets ratio at the relevant measurement date(s).

New Zealand's transfer pricing rules require interest on cross-border related-party debt to be limited to an arm's length amount. For a taxpayer with NZD 10 million or more in aggregated cross-border related borrowing, the pricing of interest on such loans is governed by New Zealand's bespoke "restricted transfer pricing" rules, which impute a deemed credit rating to the borrower and require any "exotic" features of the loan (for example, the subordination of related party debt in favour of third-party debt) to be disregarded.

Hybrid Mismatch Rules

New Zealand has adopted hybrid mismatch rules to implement recommendations made by the OECD in its hybrid mismatch report and branch mismatch report. The effect of the rules is, broadly, to neutralise the effects of related party arrangements that would otherwise give rise to:

- a deduction in more than one jurisdiction; or
- a deduction in one jurisdiction, without giving rise to assessable income in another jurisdiction.

Real Estate Investment Trusts (REITs)

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 Financial Markets Conduct Act 2013, the Companies Act 1993 and by their trust deed or constitution. REITs in other forms (for example, unlisted property trusts) are also governed by the Financial Markets Conduct Act 2013 (if offers are made to the public) and the legislation specific to their legal form (unit trusts in operation before commencement of the Financial Markets Conduct Act 2013, for example, are governed by the Unit Trusts Act 1960).

There are no specific provisions of New Zealand tax law applicable to REITs. However, widely held property trusts can generally qualify as portfolio investment entities (PIEs) for tax purposes. PIEs pay tax at a blended tax rate that reflects the tax rates of its unitholders/investors, and distributions from PIEs are generally not taxed.

Buying, Selling and Leasing Property in New Zealand

Buying and Selling Property

In New Zealand, agreements for the sale and purchase of land must be in writing and signed by the parties or their authorised signatories.

Agreements for sale and purchase are commonly subject to one or more conditions. Common conditions include due diligence conditions, purchaser OIO consent conditions (see above), and finance conditions. Where the agreement includes a due diligence condition, then due diligence on the property will be undertaken during this period (rather than the pre-contract period).

Changes in ownership to land are registered electronically (see above). "Indefeasibility" is a core concept of the New Zealand land transfer system. It protects the registered owner against claims of a competing owner, and against encumbrances, estates and interests not appearing on the title register. This system is supported by a New Zealand Government guarantee as to the accuracy of the registered rights (backed by a compensation regime for persons who are precluded by the title registration system from asserting a claim). Indefeasibility can be defeated in very limited circumstances, including if it can be proven that fraudulent activity has been carried out by the owners in obtaining the title. With the concept of indefeasibility, together with the Government guarantee/compensation regime, separate title insurance is generally not a feature of New Zealand land transactions.

Leasing Property

A summary of common provisions included in New Zealand leases is set out in the table below	
Unit of measurement	
Unit of measurement	Square Metres
Rental payments	
Rents	An annual rent (in NZD) specified in the lease. Rent is typically charged on a net basis, with a contribution towards "outgoings" (or "operating expenses") also payable by the tenant
Typical lease term	No "typical" lease term – these are the subject of a commercial agreement, and will often be anywhere from 2 to 10 years, with rights of renewal for further terms available to the tenant
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	Usually ranges from 1-3 months' rent in advance. In addition, leases often include an unlimited guarantee given by a parent company, director or shareholder of the tenant, or a requirement for the tenant to maintain a bank guarantee (often for 6-12 months' rent) in favour of the landlord during the term
Security of tenure	Tenure is guaranteed for the duration of the lease term, unless terminated earlier according to the lease. For example, the lease may be terminated early due to a breach by one of the parties.
Does tenant have statutory rights to renewal	Tenant does not have any statutory rights of renewal. The rights of renewal available are as agreed by the parties and specified in the lease
Basis of rent increases or rent review	These are generally one (or more) of: - market rent reviews - rent reviews based on increases in the Consumer Price Index; or - fixed percentage increases
Frequency of rent increase or rent review	This will vary subject to negotiation between the parties. Market rent reviews are often every 5 years, whereas CPI/fixed increases are often annual

Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Payable by the tenant by way of the outgoings
Car parking	May be included for additional rent agreed at the outset
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord (charged back to the tenant as an outgoing)
Responsibility for external/ structural repairs	Landlord
Responsibility for building insurance	Landlord (charged back to the tenant as an outgoing)
Disposal of leases	
Tenant subleasing and assignment rights	Assignment or subleasing is generally prohibited unless the prior written consent of the landlord is obtained. The landlord is (where reasonable in the circumstances) entitled to impose one or more conditions, such as the tenant not being in breach of the lease at the time, and (for an assignment) the assignee providing a suitable security such as a parent company guarantee or bank guarantee. A change of control of the tenant is typically deemed to be an assignment of the lease
Tenant early termination rights	Tenant break clauses (at will) are uncommon, but can be agreed at the outset of the lease. Tenant termination rights are typically limited to situations where the premises are damaged or destroyed, or are inaccessible for a specified period
Tenant's building reinstatement responsibilities at lease-end	These clauses typically require the tenant to return the premises to the same condition as at the commencement date of the lease (fair wear and tear excepted), remove the tenant's fixtures and fittings from the premises, and make good any damage caused by the tenant during removal

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Philippines

Property Tenure/Ownership

There are two common types of property holdings in the Philippines: (1) Ownership and (2) Leasehold.

Ownership

Under the 1987 Philippine Constitution, only Filipino citizens and corporations or partnerships at least 60% Philippine owned are entitled to acquire land in the Philippines. Ownership of real property other than land are not subject to such foreign ownership restriction and generally can be owned by foreign individuals or corporations. However, if the ownership of a building necessarily includes ownership of the land where it sits, as in a condominium, then the foreign ownership restriction on land will apply. Ownership is normally evidenced by the Transfer Certificate of Title or Condominium Certificate of Title.

Leasehold

Filipino citizens or corporations that are at least 60% Filipino-owned may also hold land through a lease. Foreigners or foreign-owned corporations are allowed to enter into long-term leases of private lands subject to the limitations under the law including the following:

- Republic Act (R.A.) 7652 or the Investors' Lease Act allows foreign investors to lease private lands for a maximum period of 50 years, renewable once for up to 25 years.
- The leased area must be used solely for the purpose of the investment, subject to certain conditions such as the Comprehensive Agrarian Reform Law and the Local Government Code.
- The leasehold right acquired under long-term leases can be sold, transferred, or assigned.
- If the buyer, transferee, or assignee is a foreigner or foreign-owned enterprise, the conditions and limitations on the use of the leased property continue to apply.

Major Legislation

01 1987 Constitution.

02 Presidential Decree (PD) No. 1529, as amended or the Property Registration Decree.

03 Batas Pambansa (BP) No. 185 or Land Ownership by Filipino Overseas.

04 Republic Act (RA) No.7160, as amended or the Local Government Code.

05 PD No. 957 or the Subdivision and Condominium Buyers' Protective Decree.

06 PD No. 1096 or the National Building Code of the Philippines

07 PD No. 1216 which defines open spaces.

08 PD No. 1517 or the Urban Land Reform Act.

09 RA No. 9653 or the Rent Control Act of 2009.

10 RA No. 4726, as amended by RA 7899 or the Condominium Act.

11 RA No. 6657, as amended by RA No. 9700 or the Comprehensive Agrarian Reform Program.

12 RA No. 7042, as amended by RA No. 8179 and RA No. 111647, or the Foreign Investment Act.

13 RA No. 6552 or the Realty Installment Buyer Protection Act.

14 Commonwealth Act (CA) No. 141, as amended by RA No. 11231 or the Public Land Act.

15 RA No. 7652 or the Investors' Lease Act.

16 RA No. 7916, as amended by RA No. 8748 or the Special Economic Zone Act.

17 RA No. 8756 amending the E.O. 226 (Omnibus Investment Code) or the Regional Headquarters Act.

18 RA No. 8762, as amended by RA 11595, or the Retail Trade Liberalisation Act.

19 RA No. 9161 or the Rental Reform Act.

20 RA No. 9182 or the Special Purpose Vehicle Act.

21 Land Use and Zoning Ordinances of the various local government units.

22 RA No. 9856 or the Real Estate Investment Trust (REIT) Act of 2009.

23 RA No. 8371 or the Indigenous Peoples' Rights Act.

24 National Internal Revenue Code of 1997, as amended by Tax Reform Acceleration and Inclusion (TRAIN) Act or RA No. 10963, and Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act or RA No. 11534 and its Implementing Rules and Regulations.

Operations Requirements for Foreign Corporations

- Foreign companies can establish a business presence in the Philippines through various investment vehicles: (1) Branch, (2) Subsidiary, (3) Representative Office, (4) Regional/Area Headquarters (RHQ), or Regional Operating Headquarters (ROHQ); and (5) Partnerships. The choice of investment vehicle depends on the activities to be undertaken by the entity:
- A branch is an extension of the foreign enterprise, has no separate juridical personality separate from its parent, and derives income from the Philippines. Minimum capital requirements apply.
- A subsidiary has separate juridical personality from its stockholders, and shareholders' liability is limited to their capital contribution. If the activities to be undertaken by the subsidiary are not subject to nationality restrictions, then it may be wholly owned by non-Filipinos. Minimum capital requirements vary based on foreign equity and business activities.
- A representative office is an extension of the foreign company, does not derive income from the Philippines, and is fully subsidised by the head office. The usual activities of a representative office are dissemination of information, promotion of company products, and quality control of products. Minimum inward remittance is required.
- RHQ supervises and coordinates subsidiaries, affiliates, and branches in the Asia-Pacific region. They are not allowed to do business or earn income in the Philippines.
- ROHQ provides services to affiliates, subsidiaries, or branches and are allowed to derive income from qualifying services. Minimum inward remittance is required.
- A partnership has juridical personality separate from the people composing it. However, unlike in a corporation where shareholders are only liable to creditors to the extent of their capital contribution, partners may be held to personally answer to creditors for debts of the partnership not sufficiently covered by partnership assets. Minimum capital requirements vary based on foreign equity and business activities.

Registration/Licensing Requirements

Registration with the SEC

- The SEC uses an online facility called the Electronic Simplified Processing of Application for Registration of Company (eSPARC) system for registration, which allows applicants to submit proposed company names and details required for incorporation online. The required documents for incorporation or registration depends on the type of corporate vehicle (subsidiary, branch office, representative office, regional headquarters). Documents that are executed outside the Philippines must be apostilled in the place where it is executed.
- Filing fees and requirements vary for each investment vehicle.

Post-Registration Requirements

- After receiving the SEC's approval of the application for registration, businesses need to register with other government agencies.
- The post-registration process typically includes tax registration with the Bureau of Internal Revenue (BIR), obtaining local business permits and licences from Local Government Units (LGU) where the business will be operating, and registrations with government agencies implementing employee welfare laws such as the Social Security System, the National Health Insurance Corporation, and Home Development Mutual Fund, the Department of Labor and Employment (DOLE).
- Upon registration with the BIR, the entity will obtain its taxpayer identification number (TIN), register its books of accounts, secure authority to print receipts (ATP) and have their books of account audited if their gross annual sales exceed PHP 3,000,000.00.
- LGUs collect taxes and fees from businesses operating within their jurisdiction.
- Importing businesses need to secure accreditation as an Importer from the Bureau of Customs.

Reportorial Requirements

- General information sheet (GIS) must be annually submitted to the SEC by all registered enterprises, including foreign corporations.
- Financial statements (FS) must be submitted annually within 120 days of the fiscal year-end, audited by an independent certified public accountant.
- The GIS and FS must be filed electronically using the SEC's Electronic Filing and Submission Tool (eFAST) system. Corporations need to enroll in eFAST and provide necessary documents such as application form, board resolution, and official and alternative contact information.
- Approval of the application will be received via email, and an access key (User ID and Password) will be issued for filing reports through eFAST.
- Corporations with public interest must also submit director or trustee compensation and appraisal reports.
- Failure to comply with reportorial requirements three times within five years may result in delinquent status of the entity.

Restrictions on Foreign Property Ownership

Foreigners are generally prohibited from owning land in the Philippines, with the exception of cases involving hereditary inheritance. However, foreigners who invest in the country are permitted to lease private land for a period of 50 years, which can be renewed once for an additional maximum period of 25 years.

Under the Condominium Act, foreign investors and foreign-owned corporations are allowed to acquire condominium units under certain circumstances. If a corporation holds ownership of the common areas, the transfer or sale of units to non-Filipinos is permitted as long as the foreigners' stake in the project does not exceed the 40% limit prescribed by the existing laws.

Foreign Employment Requirements

Work Permits

Foreign nationals who want to work in the Philippines need to apply for an Alien Employment Permit (AEP) within 10 working days of signing the contract or before starting employment.

Exemptions from the AEP requirement include certain diplomatic corps members, accredited officials of international organisations, officers and staff of foreign embassies, and more. These foreign nationals exempted from securing an AEP may request for a Certificate of Exemption from the appropriate Regional Office of DOLE.

Special Work Permits (9(a) Visa) are issued for specific activities or services outside of an employment arrangement, valid for up to 6 months.

Provisional Work Permits are issued while waiting for the AEP or Section 9(g) work visa.

Special Temporary Permits allow foreign professionals to practice in the Philippines for a limited time.

Work/Investor Visas

Pre-arranged Employment Visa (9(g) Visa) allows foreign nationals to engage in lawful occupations in the Philippines and requires an AEP from DOLE.

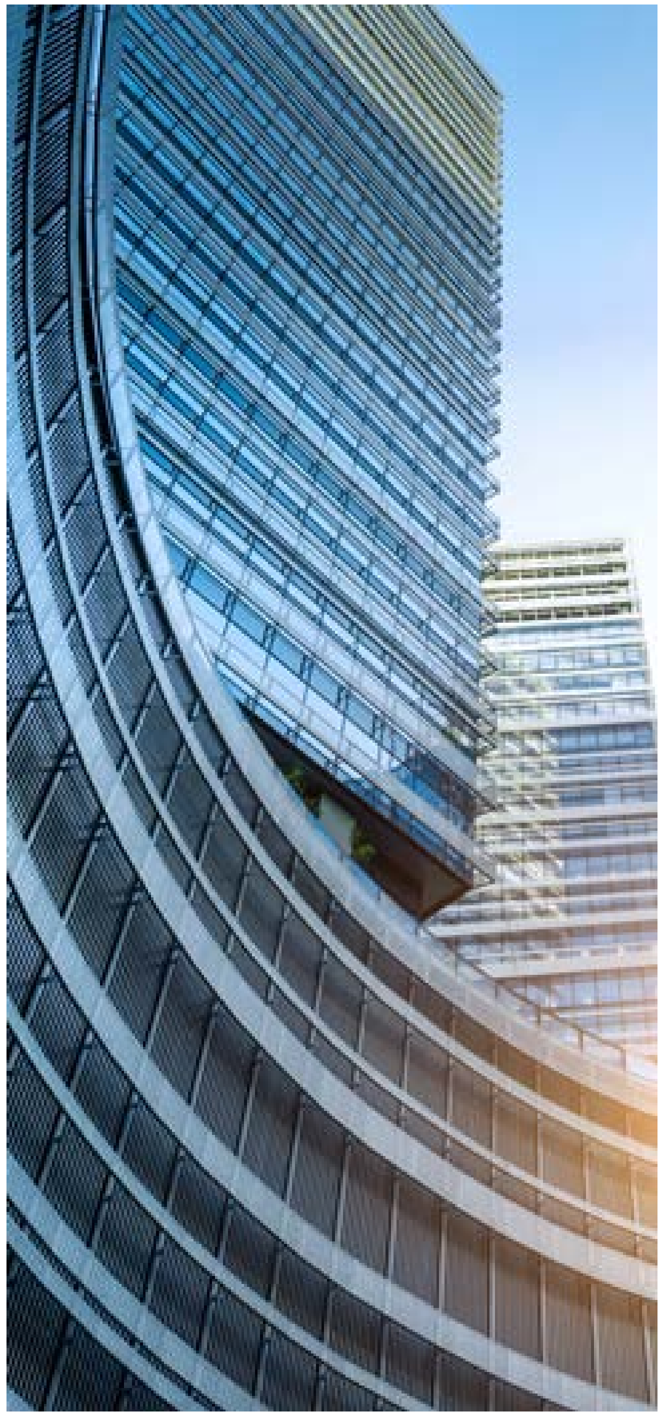
Treaty Trader or Treaty Investor Visa (9(d) Visa) is for foreign investors engaged in substantial trade between the Philippines and their country, with treaties existing with the US, Japan and Germany.

Other non-immigrant visas are also available including those granted on public interest or policy considerations; visas for foreigners in the Clark Special Economic Zone, Cagayan Economic Zone, Aurora Special Economic Zone, and Aurora Pacific Economic Zone and Freeport Authority.

Special Resident Visas

Special Investors' Resident Visa (SIRV) is available for certain investors who qualify under the Omnibus Investments Code.

Special Resident Retiree's Visa (SRRV) is for foreign nationals intending to retire in the Philippines, granting them permanent/indefinite stay.



Foreign Investment Incentives

There are a host of incentives available to foreign investors under Philippine laws, primarily those registered under Board of Investments (BOI) and Philippine Economic Zone Authority (PEZA). The Corporate Recovery and Tax Incentives for Enterprises Act (CREATE), which became effective in 2021, introduced Title XIII on tax incentives covering all existing Investment Promotion Agencies (IPA), which include, but are not limited to BOI, PEZA, Bases Conversion and Development Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), Cagayan Economic Zone Authority (CEZA), Authority of the Freeport Area of Bataan (AFAB) and Tourism Infrastructure and Enterprise Zone Authority (TIEZA). These IPAs will maintain their functions and powers as provided under the special laws governing them except to the extent modified by the provisions of the CREATE Act. Among the key incentives are:

- ITH of 4 to 7 years, depending on location and industry priorities;
- Upon expiry of the ITH, registered business enterprises (RBE) may be entitled to either special corporate income tax (SCIT) rate of 5% on gross income earned or enhanced deductions (ED);
- Customs Duty Exemption on Importation of Capital Equipment, Raw Materials, Spare Parts, or Accessories directly and exclusively used in the registered project or activity by the RBE;
- For registered export enterprise, VAT exemption on importation and VAT zero-rating on local purchases, applicable to goods and services directly and exclusively used in the registered project or activity of the RBE.

Foreign Exchange Controls

Profit Remittance and Capital Repatriation

Registration with the BSP is required for inward foreign direct investments if the foreign exchange that will be used for repatriation of investment or remittance of profit/dividends is sourced from the Philippine banking system. Registration is not required if the foreign exchange for repatriation and remittance is sourced outside the Philippine banking system.

Foreign Loan Payments

Foreign loans must be registered with the BSP if foreign exchange from the banking system will be used for loan payments. No registration is required if the foreign exchange is sourced outside the banking system. Purely private sector loans no longer require prior BSP approval since Circular No. 984 issued on December 22, 2017.

Payment of Imports

Authorised Agent Banks can sell foreign exchange for import payments without prior BSP approval, subject to certain reportorial requirements and prescribed arrangements.

Electronic Submission of Documents for Foreign Exchange Transactions

Circular No. 1171 allows for the electronic submission of documents for foreign exchange transactions, including BSP-issued electronic forms and supporting documents.

Taxes on Possession and Use of Real Estate

Real Property Tax

Provinces, cities and municipalities within the Metropolitan Manila area may impose an annual real property tax on real property such as land, buildings, machinery and other real property improvements situated within their respective jurisdictions.

Special Education Fund

Likewise, an additional levy at a rate of 1% of the assessed value of the real property shall be imposed for the Special Education Fund.

Idle Land Tax

Local government units are allowed to impose an idle land tax of not more than 5% of the assessed value of the property if the land is considered as idle. The idle land tax is in addition to the real property tax.

Corporate Income Tax

In general, an income tax rate of 25% shall be imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation organised in or existing under the laws of the Philippines. However, corporations with net taxable income not exceeding PHP 5,000,000 and with total assets not exceeding PHP 100,000,000, excluding land on which the particular business entity's office, plant, and equipment are situated during the taxable year for which the tax is imposed, shall be taxed at 20%.

On the other hand, resident foreign corporations shall be subject to Philippine income tax of 25% on taxable income derived from sources within the Philippines, while non-resident foreign corporations are subject to 25% income tax on its gross income from sources within the Philippines.

Minimum Corporate Income Tax (MCIT)

Pursuant to the Tax Code, as amended, an MCIT of 2% (1% effective July 1, 2020 until June 30, 2023) is imposed on a corporation subject to normal corporate income tax beginning on the 4th taxable year immediately following the year in which such corporation commenced its business operations. The MCIT must be paid if the corporation has zero or negative taxable income, or the MCIT is greater than the regular corporate income tax liability for the taxable year.

Personal Income Tax

Individual resident citizens are taxed on their worldwide income, while non-resident citizens as well as resident and non-resident 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 sub-categories are, at times, also taxed differently. Individual taxpayers also enjoy certain types of personal exemptions.

The taxable income of citizens, resident aliens, and non-resident aliens engaged in trade or business are taxed at graduated rates ranging from 0% to 35%.

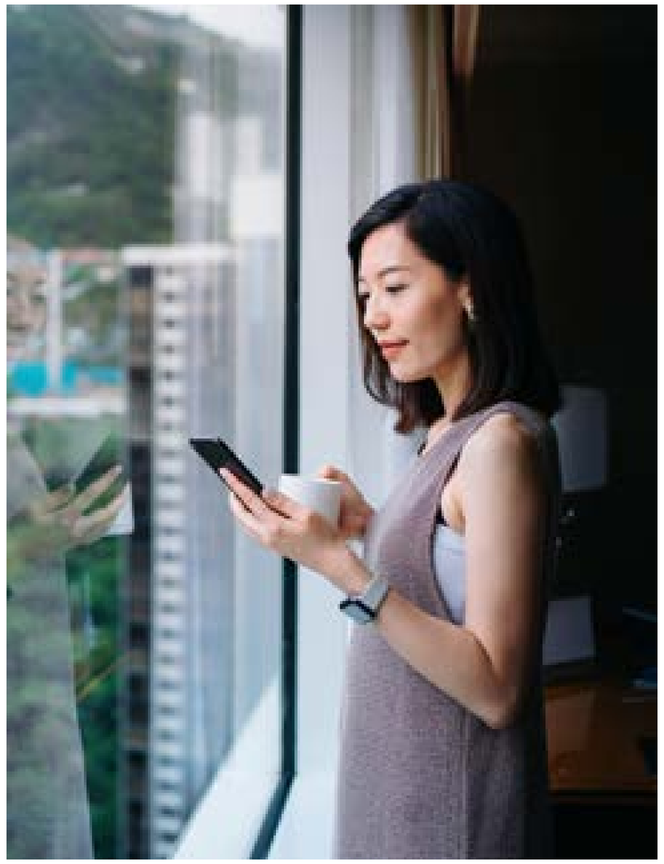
Non-resident aliens not engaged in trade or business are subject to a tax at the rate of 25% on gross income derived from sources within the Philippines.

Value-Added Tax (VAT)

Pursuant to Section 105 of the NIRC, any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to 12% VAT, if annual gross sales/receipts exceed PHP 3,000,000. VAT is an indirect tax, and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. Thus, rental and leasing income shall be subject to 12% VAT except: 1) lease of a residential unit with a monthly rental not exceeding PHP 15,000; and 2) non-VAT registered entity whose sales or leases of goods or properties or the performance of services, except those otherwise exempt from VAT, do not exceed PHP 3,000,000.

Creditable Withholding Tax

Rental and leasing income derived by domestic and resident foreign corporations is subject to creditable withholding tax of 5%.



Payments Made to a Resident Entity

A taxpayer is also required to withhold expanded withholding tax (EWT) on certain income payments to its local counterparties. The following income payments subject to EWT, which are the most common and may be relevant to an entity engaged in real estate business, include, but are not limited to:

Income Payments	Rate
Income Payments to certain contractors (general engineering contractors, general building contractors, specialty contractors, other contractors)	2%
Rental of real and personal properties	5%
Professional fees, talent fees (to juridical entities)	
in general	10%
where gross income for the current year exceeds PHP 720,000	15%
Professional fees, talent fees (to individuals)	
in general	5%
where gross income for the current year exceeds PHP 3,000,000	10%
Income payments by top withholding agents to their regular local supplier of goods and services	
Goods	1%
Services	2%

Likewise, the following income payments to local counterparties are subject to final withholding tax (FWT):

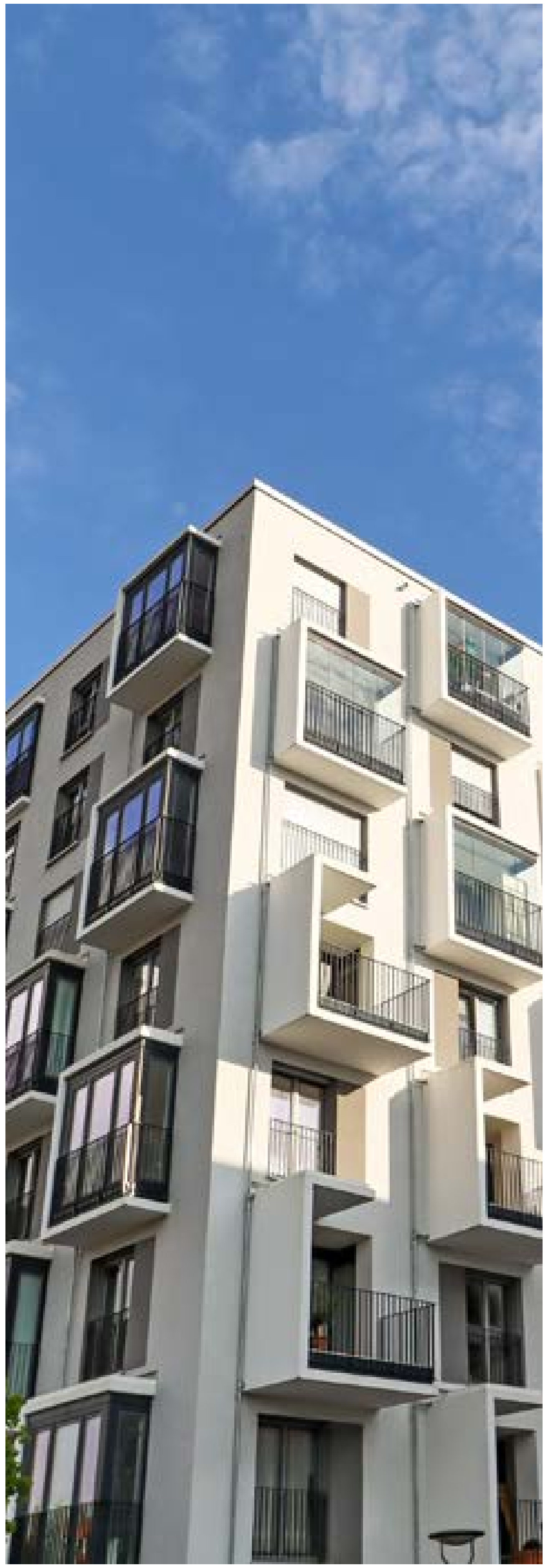
Final Withholding Tax on Income Payments to Domestic Corporation	Rate
Interest on bank deposits and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements derived from sources within the Philippines	20%
Interest from a depository bank under the Expanded Foreign Currency Deposit System or from an offshore banking unit	15%
Royalties	20%
Capital gains on the sale, exchange or other disposition of land and buildings in the Philippines held as capital assets, and on real property not used in business	6%
Capital gains from sale of shares of stock not traded in the stock exchange	15%
Intercorporate Dividends	Exempt

Payments of cash or property dividends to a resident citizen of the Philippines shall be subject to 10% final withholding tax.

Payments Made to a Non-resident

The following income payments to a non-resident foreign corporation shall be subject to FWT (subject to tax treaty relief, if applicable):

Final Withholding Tax on Income Derived from All Sources Within the Philippines by a Non-Resident Foreign Corporation	Rate
Dividends	15%/25% generally 15% if the non-resident foreign company allows deemed paid tax credit of at least 10% or exempts dividends.
Interest	25% generally 20% interest on foreign loans
Royalties	25%
Payments to cinematographic film owner, lessor or distributor	25%
Rentals, lease or charter fees for leases or charters of vessels	4.5%
Rentals, charters, or fees for aircraft, machinery and other equipment	7.5%
On other gross income derived from all sources within the Philippines	25%
Capital gains from sale of shares of stock not traded in the stock exchange	15%
Branch Profit Remittance Tax on remittance by a Philippine branch of a foreign corporation to its head office	15%



Withholding VAT

Payment for lease or use of properties or property rights to nonresident owners shall be subject to 12% withholding VAT at the time of payment. Likewise, services rendered in the Philippines by non-residents are subject to 12% withholding VAT.

Taxes on Acquisition and Transfer of Real Estate

The following taxes and fees are imposed on the acquisition and transfer of real estate:

01 Documentary Stamp Tax

02 Capital Gains Tax

03 Creditable Withholding Tax

04 Transfer Taxes

05 Registration Fees or Land Registration Authority Fees

06 Value-Added Tax

07 Notarial Fees

08 Registration Fees with the Register of Deeds

Tax Treaties: Avoidance of Double Taxation

The Philippines has entered into double taxation agreements with the following countries:

Australia	Mexico
Austria	New Zealand
Bahrain	Nigeria
Bangladesh	Norway
Belgium	Pakistan
Brazil	Poland
Canada	Qatar
China	Romania
Czech Republic	Russia
Denmark	Singapore
Finland	Sri Lanka
France	Spain
Germany	Sweden
Hungary	Switzerland
India	Thailand
Indonesia	The Netherlands
Israel	Turkey
Italy	United Arab Emirates
Japan	United Kingdom
Korea	United States of America
Kuwait	Vietnam
Malaysia	Yugoslavia

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Singapore

Property Tenure/Ownership

Two main types of land tenure are granted:

- Freehold title
  - Estate in fee simple
  - Estate in perpetuity (e.g. statutory land grant)
- Leasehold title (more commonly 30 or 60 for industrial properties and 99 or 999 years for commercial and residential properties)

Generally, buildings form part of the land on which they are erected and ownership of land and buildings are not separate from each other.

Major Property Legislation

01 Building Control Act 1989

02 Executive Condominium Housing Scheme Act 1996

03 Land Betterment Charge Act 2021

04 Planning Act 1998

05 Residential Property Act 1976

06 State Lands Act 1920

07 Building Maintenance and Strata Management Act 2004

08 Housing Developers (Control and Licensing) Act 1965

09 Land Titles Act 1993

10 Property Tax Act 1960

11 Sale of Commercial Properties Act 1979

12 Conveyancing and Law of Property Act 1886

13 Land Acquisition Act 1966

14 Land Titles (Strata) Act 1967

15 Registration of Deeds Act 1988

16 Stamp Duties Act 1929

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
- Variable Capital Company – ACRA and MAS

Registration/Licensing 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 stock-broking firms).

All businesses carried out in Singapore must be registered with ACRA (unless exempt under the Business Names Registration Act). 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.

An employer may apply for an Employment Pass (EP) for a foreigner if the foreigner will have a fixed monthly salary of at least SGD 5,000 (this is the minimum – a higher salary applies in the financial services sector and for older employees or those with more experience) and acceptable qualifications. From September 1, 2023, in addition to meeting the qualifying salary, EP candidates must also pass a points-based framework, which assesses both the candidate and the employer and takes into account multiple criteria such as salary, qualifications, diversity, support for local employment, whether the role is on the Skilled Occupations List and any strategic economic priorities the hire supports.

An employer may apply for an S Pass for a mid-level skilled foreigner if the foreigner will have a fixed monthly salary of at least SGD 3,000 (this is the minimum – a higher salary applies in the financial services sector and for older employees or those with more experience). The minimum qualifying salary will increase to SGD 3,150 on September 1, 2023 and at least SGD 3,300 (to be finalised) on September 1, 2025.

Foreigners with an EP or S Pass need to earn a fixed monthly salary of at least SGD 6,000 in order for their employer to apply for a Dependent's Pass or Long Term Visit Pass for their spouses or unmarried children under 21 years of age to stay in Singapore.

Those who do not satisfy either the basic monthly income or education criteria may be eligible for a Work Permit. There are also a range of other visas designed to attract talent into Singapore, including the Overseas Networks & Expertise Pass (ONEPass), Personalised Employment Pass, EntrePass and TechPass, some of which do not require employer sponsorship.

Tax Incentives

The major incentive schemes available to investors include

- Land Intensification Allowance
- Resource Efficiency Grant for Energy
- Investment Allowance Scheme
- Research and Innovation Incentive Scheme for Companies
- Pioneer Certificate Incentive
- Development and Expansion Incentive
- Finance and Treasury Centre Incentive
- Enterprise Innovation Scheme
- Global Trader Programme
- Double Tax Deduction for Internationalisation Scheme
- Mergers and Acquisitions Allowance

Restrictions on Ownership of Property by Foreigners

The broad types of properties for which a foreign person must seek approval to purchase include:

- Vacant residential land
- Landed dwelling houses
- Shophouses for non-commercial use
- Association premises
- Place of worship
- Workers' dormitory
- Serviced apartments and boarding houses not registered under the Hotels Act 1954

A foreign person is defined under the Residential Property Act 1976 to mean any person who is not any of the following:

- A Singapore citizen
- A Singapore company
- A Singapore limited liability partnership
- A Singapore society

Each of the abovementioned categories are defined in the Residential Property Act 1976.

A foreign person must obtain approval from the Land Dealings Approval Unit, Singapore Land Authority, to buy any restricted property. Applications to the Land Dealings Approval Unit will take time and are assessed on a case-by-case basis. Approvals, if granted, are typically subject to conditions.

Under the Residential Property Act 1976, there are certain categories of properties for which a foreign person may acquire without approval:

- Condominium units
- Strata landed houses in an approved condominium development
- Industrial and commercial properties
- Shophouses for commercial use
- Hotels registered under the Hotels Act 1954

In addition, any foreign person who intends to purchase property to develop a residential project will (with certain exceptions) have to apply for a Qualifying Certificate when it purchases residential land for development. The Qualifying Certificate imposes conditions on the developer, including deadlines for project completion and disposal of units in the development.

Foreign Exchange Controls

There are generally 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, non-financial institution 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 dollars 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.

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 gross annual rent of the property, excluding the rent for furniture, fittings and maintenance fees. It is determined based on estimated market rentals of similar or comparable properties and not on the actual rental income received.

However, the annual values of certain categories of properties are determined differently. Some of these include:

- For land and development sites, the annual value is determined at 5% of the estimated freehold market value of the land (notwithstanding that the land may be leasehold). This applies for both vacant land and land under construction.
- For specialised properties that are rarely rented out (such as refineries, petrochemical and power plants etc.), the annual value may be determined using the statutory formula or other valuation methods such as the Profit's Method and the Contractor's Test.
- For hotels, the annual value of the hotel rooms is determined based on the prevailing rate of 25% of gross hotel room receipts for the preceding year, while the annual value of the food and beverage outlets and function rooms located in the hotel premises is determined based on the prevailing rate of 10% of the gross food and beverage and function room receipts for the preceding year.
- For all other assessable areas of the hotel premises (such as retail shops and car parks etc.), the annual values are determined based on their estimated prevailing market rent.

The property tax rate for all non-residential properties, is 10% of the annual value. Owner-occupier tax rates do not apply to non-residential properties even if the properties are purchased for own use/occupation.

Progressive property tax rates apply to all residential properties as follows:

Non-owner-occupied residential properties

Net profit	2023 Tax Rates	2024 Tax Rates
First $30,000 Next $15,000	11% 16%	12% 20%
First $45,000 Next $15,000	- 21%	- 28%
First $60,000 Above $60,000	- 27%	- 36%

Owner-occupied residential properties

	2023 Tax Rates	2024 Tax Rates
First $8,000 Next $22,000	0% 4%	0% 4%
First $30,000 Next $10,000	- 5%	- 6%
First $40,000 Next $15,000	- 7%	- 10%
First $55,000 Next $15,000	- 10%	- 14%
First $70,000 Next $15,000	- 14%	- 20%
First $85,000 Next $15,000	- 18%	- 26%
First $100,000 Above $100,000	- 23%	- 32%

Vacant land under construction for a single house intended for owner-occupation can be taxed at the owner-occupier tax rates for the period under construction (up to a maximum of two years). This remission is subject to conditions, including that the house must be owner-occupied for at least one year following its completion and that the annual value of the land is less than SGD 90,260.

Taxes on Acquisition and Transfer of Real Estate

Stamp duty is generally payable on the documents relating to transactions involving immovable property in Singapore. 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 after the document is first executed in Singapore, or if first executed outside Singapore, within 30 days after it has been first received in Singapore.

Stamp duty is payable by the relevant parties at fixed rates on the contractual consideration or market value/ rent of the property, whichever is the higher.

Buyer's Stamp Duty (BSD)

BSD is chargeable on the sale and purchase agreement and is payable by the buyer, unless the parties agree otherwise. BSD is computed based on the purchase consideration or market value of the property, whichever is higher. The BSD rates on or after February 15, 2023 are as follows:

Purchase Price or Market Value of Property (SGD)	BSD Rates for Residential Properties	BSD Rates for Non-residential Properties
First $180,000	1%	1%
Next $180,000	2%	2%
Next $640,000	3%	3%
Next $500,000	4%	4%
Next 1,500,000	5%	5%
Remaining Amount	6%	

For properties which comprise both residential and non-residential components, BSD rates for residential and non-residential properties apply on the respective components.

Additional Buyer's Stamp Duty (ABSD)

ABSD may also be payable depending on the profile of the buyers. ABSD is payable in addition to BSD. Similar to BSD, ABSD is chargeable on the sale and purchase agreement and is payable by the buyer, unless the parties agree otherwise. ABSD is computed based on the purchase consideration or market value of the property, whichever is higher. The ABSD rates on or after April 27, 2023 are as follows:

Profile of Buyer	ABSD Rates
Singapore Citizens (SC) buying 1st residential property	N/A
SC buying 2nd residential property	20%
SC buying 3rd and subsequent residential property	30%
Singapore Permanent Residents (SPR) buying 1st residential property	5%
SPR buying 2nd residential property	30%
SPR buying 3rd and subsequent residential property	35%
Foreigners (FR) buying any residential property	60%
Entities buying any residential property	65%
Housing Developers buying any residential property	35% + 5%
Trustee buying any residential property	65%

The property is counted regardless of whether it is owned wholly, partially or jointly with others. Apart from properties that have been purchased, properties acquired or transferred by way of gift, inheritance, release, settlement, declaration of trust (where the beneficial owners of the trust property are identifiable), letter of authority and exchange are to be included in the property count.

If the property is bought jointly by buyers with different profiles, the higher ABSD rate will apply.

ABSD remission is available to certain foreigners under the respective Free Trade Agreements. Currently, Nationals or Permanent Residents of Iceland, Liechtenstein, Norway or Switzerland and Nationals of the United States of America, will be accorded the same stamp duty treatment as Singapore Citizens. ABSD remission may also be available in the following scenarios, subject to conditions:

- Purchase of remnant land from the State
- Sites for development of residential units
- Purchase by way of trust for identifiable individual beneficiaries

Seller's Stamp Duty (SSD)

Stamp duty is also payable by:

- A seller of a residential property who acquires residential property and sells or disposes of the residential property within the holding period based on the SSD rates, both as stipulated below:

Date of Purchase or Date of Change of Zoning / Use	Holding Period	SSD Rates (on the actual price or market value, whichever is higher)
Between February 20, 2010 and August 29, 2010 (both dates inclusive)	Up to 1 year	1% on first SGD 180,000 2% on next SGD 180,000 3% on remainder
	More than 1 year	No SSD payable
Between August 30, 2010 and January 13, 2011 (both dates inclusive)	Up to 1 year	1% on first SGD 180,000 2% on next SGD 180,000 3% on remainder
	More than 1 year and up to 2 years	0.67% on first SGD 180,000 1.33% on next SGD 180,000 2% on remainder
	More than 2 years and up to 3 years	0.33% on first SGD 180,000 0.67% on next SGD 180,000 1% on remainder
	More than 3 years	No SSD payable
Between January 14, 2011 to March 10, 2017 (both dates inclusive)	Up to 1 year	16%
	More than 1 year and up to 2 years	12%
	More than 2 years and up to 3 years	8%
	More than 3 years and up to 4 years	4%
	More than 4 years	No SSD payable
On and after March 11, 2017	Up to 1 year	12%
	More than 1 year and up to 2 years	8%
	More than 2 years and up to 3 years	4%
	More than 3 years	No SSD payable

- A seller of an industrial property, who acquires industrial property or changes its zoning or use, and sells or disposes of the property within 3 years, from the date of acquisition or date of change of zoning/use on or after January 12, 2013, at the following SSD rates:

Holding Period	SSD Rates (on the actual price or market value, whichever is higher)
Up to 1 year	15%
More than 1 year and up to 2 years	10%
More than 2 years and up to 3 years	5%
More than 3 years	No SSD payable

Where parts of the property were acquired by the vendor at different times, the holding period for each part acquired will be computed from the respective acquisition date.

Where the sale or disposal comprises only a partial interest in the property, SSD payable will be based on the higher of the selling price or market value of the partial interest.

Leases

Stamp duty is payable on documents relating to leases of immovable properties in Singapore such as lease or tenancy agreements. Leases are to be distinguished from licences of immovable properties, which are generally not subject to stamp duty. The stamp duty rates for leases are as follows:

Lease Term	Stamp Duty Rates
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 average annual rent for the period of the lease

Average annual rent refers to the higher of the average annual contractual or annualised market rent and includes other considerations such as payments for:

- Advertising and promotion charge
- Furniture/Fittings charge
- Maintenance charge
- Service charge
- Any other charges, excluding GST charges

Stamp duty payable on lease documents involving premium will be computed on the gross rent of the rented property and premium paid for the tenancy term or market rent, whichever is higher. Stamp duty is payable on the premium based on the BSD rates.

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.

Stamp duty may also be chargeable on variations of lease, supplemental agreements to leases, novation of lease, assignment of lease and surrender of lease.

Stamp Duty Remissions and Reliefs for Property

Parties may be eligible for certain stamp duty remissions or reliefs in the following scenarios, provided that the conditions for remission or relief are met:

- Aborted sale and purchase agreement or terminated lease
- Certain matrimonial proceedings
- Conveyance directions
- Donations to an Institution of Public Character
- Transfer of assets between associated permitted entities
- Reconstruction or amalgamation of companies
- Conversion of firm to limited liability partnership
- Conversion of private company to limited liability partnership

Partial Tax Exemption for Companies

With effect from YA 2020, partial tax exemption is given to companies on normal chargeable income of the first SGD 200,000, as follows:

Chargeable Income	% Exempt from Tax	Amount Exempted from Tax
First SGD 10,000	75%	SGD 7,500
Next SGD 190,000	50%	SGD 95,000
Total SGD 200,000		SGD 102,500

For property developers, for tax purposes, the profits of a property development project are recognised when the project is substantially completed i.e. when the Temporary Occupation Permit (TOP) is issued. Expenses that are directly attributable to the acquisition of land and property development activities are to be capitalised and accumulated in the Development Cost Account up to the YA in which the TOP is issued.

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 jurisdiction against the Singapore tax that is payable on the same income. A company is a tax resident in Singapore if the control and management of its business is exercised in Singapore. In order to qualify for FTC, tax must have been paid or payable on the same income (which is also subject to taxation in Singapore) in the foreign jurisdiction by the Singapore tax resident company. FTC comes in the form of double tax relief or unilateral tax credit.

Double Tax Relief (DTR)

DTR is the credit relief provided under the Avoidance of Double Taxation Agreements (DTA) that Singapore has concluded with other jurisdictions. The jurisdictions with which Singapore has tax treaties are listed below:

Albania	Lithuania
Armenia	Luxembourg
Australia	Malaysia
Austria	Malta
Bahrain	Mauritius
Bangladesh	Mexico
Barbados	Mongolia
Belarus	Morocco
Belgium	Myanmar
Bermuda (EOI arrangement)	Netherlands
Brazil	New Zealand
Brunei	Nigeria
Bulgaria	Norway
Cabo Verde (not ratified)	Oman
Cambodia	Pakistan
Canada	Panama
Chile (limited DTA)	Papua New Guinea
China	Philippines
Cyprus	Poland
Czech Republic	Portugal
Denmark	Qatar
Ecuador	Republic of Korea
Egypt	Romania
Estonia	Russian Federation
Ethiopia	Rwanda

Fiji	San Marino
Finland	Saudi Arabia
France	Seychelles
Gabon (not ratified)	Slovakia
Georgia	Slovenia
Germany	South Africa
Guernsey	Spain
Hong Kong (limited DTA)	Sri Lanka
Hungary	Sweden
India	Switzerland
Indonesia	Taiwan
Ireland	Thailand
Isle of Man	Tunisia
Israel	Turkey
Italy	Turkmenistan
Japan	Ukraine
Jersey	United Arab Emirates
Jordan	United Kingdom
Kazakhstan	United States of America (limited DTA with EOI arrangement)
Kenya (not ratified)	Uruguay
Kuwait	Uzbekistan
Laos	Vietnam
Latvia	Libya
Liechtenstein	

Unilateral Tax Credit (UTC)

A UTC may be granted on all foreign-sourced income received in Singapore by Singapore tax residents from jurisdictions that do not have DTAs with Singapore.

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 highest corporate tax rate of the foreign country from which the income was received is at least 15%. 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.

Withholding Tax

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, fees or other payments in connection with any loan or indebtedness	15%
Royalty or other lump sum payments for the use of movable properties (e.g. intellectual property)	10%
Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information	10%
Rent or other payments for the use of movable properties	15%
Technical assistance and service fees	Prevailing corporate tax rate
Management fees	Prevailing corporate tax rate
Proceeds from sale of any real property by a non-resident property trader	15%
Distribution of taxable income made by a Real Estate Investment Trust to a unitholder who is a non-resident non-individual	10%

Personal Taxation

In general, the Comptroller of Income Tax treats individuals as tax residents if they are:

- Singaporeans
- Singaporean Permanent Residents
- Foreigners who have:

I. stayed/worked in Singapore for at least 183 days in the previous calendar year;

II. stayed/worked in Singapore continuously for 3 consecutive years, even if the period of stay in Singapore may be less than 183 days in the first and/or third year;

III. worked in Singapore for a continuous period straddling 2 calendar years and the total period of stay is at least 183 days (which includes physical presence immediately before and after employment). This applies to employees who entered Singapore but excludes directors of a company, public entertainers, or professionals.

Otherwise, they will be treated as non-residents for tax purposes, and their employment income is taxed at 15% or at the progressive resident tax rates, whichever is the higher tax amount. All other income including rental income from properties, pension, director's fees and consultation fees received by a non-resident will be taxed at 22% up to YA 2023 and 24% with effect from YA 2024.

Tax residents are taxed on all income derived in Singapore, after provisions are made for certain tax deductions and personal reliefs. Currently, the total amount of personal income tax reliefs which can be allowed is subject to an overall relief cap of SGD 80,000 per YA.

The resident tax rates from YA 2017 to YA 2023 are levied on a progressive basis ranging from 0% to 22%, as follows:

Chargeable Income	Rate (%)	Gross Tax Payable (SGD)
First SGD 20,000	0	0
Next SGD 10,000	2	200
First SGD 30,000	-	200
Next SGD 10,000	3.5	350
First SGD 40,000	-	550
Next SGD 40,000	7	2,800
First SGD 80,000	-	3,350
Next SGD 40,000	11.5	4,600
First SGD 120,000	-	7,950
Next SGD 40,000	15	6,000
First SGD 160,000	-	13,950
Next SGD 40,000	18	7,200
First SGD 200,000	-	21,150
Next SGD 40,000	19	7,600
First SGD 240,000	-	28,750
Next SGD 40,000	19.5	7,800
First SGD 280,000	-	36,550
Next SGD 40,000	20	8,000
First SGD 320,000	-	44,550
Above SGD 320,000	22	

The resident tax rates from YA 2024 onwards are levied on a progressive basis ranging from 0% to 24%, as follows:

Chargeable Income	Rate (%)	Gross Tax Payable (SGD)
First SGD 20,000	0	0
Next SGD 10,000	2	200
First SGD 30,000	-	200
Next SGD 10,000	3.5	350
First SGD 40,000	-	550
Next SGD 40,000	7	2,800
First SGD 80,000	-	3,350
Next SGD 40,000	11.5	4,600
First SGD 120,000	-	7,950
Next SGD 40,000	15	6,000
First SGD 160,000	-	13,950
Next SGD 40,000	18	7,200
First SGD 200,000	-	21,150
Next SGD 40,000	19	7,600
First SGD 240,000	-	28,750
Next SGD 40,000	19.5	7,800
First SGD 280,000	-	36,550
Next SGD 40,000	20	8,000
First SGD 320,000	-	44,550
Next SGD 180,000	22	36,600
First SGD 500,000	-	84,150
Next SGD 500,000	23	115,000
First SGD 1 million	-	199,150
In excess of SGD 1 million	24	

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 as a collective investment scheme under the Securities and Futures Act 2001 and must comply with the Code on Collective Investment Schemes issued by the MAS.

Singapore is the largest REIT market in Asia ex-Japan with 42 REITs and property trusts with a total market capitalisation of SGD 101 billion as at February 28, 2023. Over 90% of Singapore REITs and property trusts own properties outside Singapore across Asia Pacific, South Asia, Europe and the US.

Key Restrictions

Investments and activities

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/units in the REIT 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 restrictions and requirements:
- At least 75% 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 investments in uncompleted property developments should not exceed 10% 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% 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% 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

Borrowings

A REIT may borrow for investment or redemption purposes, and it may mortgage its assets to secure such borrowings. The total borrowings and deferred payments of a REIT should not exceed 45% of the REIT's deposited property.

Land Betterment Charge (LBC)

Developers seeking to redevelop land or lift restrictive covenants or title restrictions affecting land may be liable to pay LBC, which is a tax on the increase in land value resulting from a chargeable consent given in relation to the land. The LBC consolidates what were previously 3 different charges known as the development charge, temporary development levy and differential premium.

The LBC rates, which are charged on a per square metre basis, are reviewed and revised every six months. The exact rates payable depend on the sector of Singapore in which the property is located, as well as the property type.

Income Tax

Currently, 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 amounts 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 (including the period of holding the property, the frequency and the number of transactions made by the taxpayer, the reasons for buying and selling of property and the financial means of the taxpayer to hold the property for long term) 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 must, before paying to the seller any money which is the whole or part of the consideration for the disposal of the property, deduct therefrom withholding tax at the rate of 15% on every dollar of such payment.

The buyer or the buyer's lawyer must immediately give notice of the deduction of tax to the Comptroller and must pay the amount so deducted to the Comptroller by the stipulated deadline under the Income Tax Act 1947.

Goods and Services Tax (GST)

The 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 8% with effect from January 1, 2023 and 9% with effect from January 1, 2024, unless they are zero-rated (GST rate of 0%). Currently, the export of supplies of goods and the provision of international services are zero-rated.

Generally, the sale and lease of all properties in Singapore are subject to GST, except for the sale and lease of residential properties which are exempt from GST.

Where the sale or lease relates to a mixed-use property, GST is chargeable on the part of the property that is approved for non-residential use while the part of the property that is approved for residential use is exempt from 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, where a sale or lease of residential property includes the supply of furniture and fittings, GST is chargeable on the sale or lease of such furniture and fittings.

Corporate Tax

Companies are taxed on profits derived from sources in Singapore and income received in Singapore from sources outside the country, which are subject to certain exemptions stated below. Corporate 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 is 17%. However, companies are entitled to the following tax exemption schemes:

Tax Exemption for Qualifying Start-up Companies

With effect from Year of Assessment (YA) 2020, tax exemption is given to qualifying start-up companies on normal chargeable income for each of the first three consecutive YAs of the first SGD 200,000, as follows:

Chargeable Income	% Exempt from Tax	Amount Exempted from Tax
First SGD 100,000	75%	SGD 75,000
Next SGD 100,000	50%	SGD 50,000
Total SGD 200,000		SGD 125,000

Please note that this scheme does not apply to companies (i) whose principal activity is that of investment holding, or (ii) that undertake property development for sale, investment, or 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.

Partial Tax Exemption for Companies

With effect from YA 2020, partial tax exemption is given to companies on normal chargeable income of the first SGD 200,000, as follows:

Chargeable Income	% Exempt from Tax	Amount Exempted from Tax
First SGD 10,000	75%	SGD 7,500
Next SGD 190,000	50%	SGD 95,000
Total SGD 200,000		SGD 102,500

For property developers, for tax purposes, the profits of a property development project are recognised when the project is substantially completed i.e. when the Temporary Occupation Permit (TOP) is issued. Expenses that are directly attributable to the acquisition of land and property development activities are to be capitalised and accumulated in the Development Cost Account up to the YA in which the TOP is issued.

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 jurisdiction against the Singapore tax that is payable on the same income. A company is a tax resident in Singapore if the control and management of its business is exercised in Singapore. In order to qualify for FTC, tax must have been paid or payable on the same income (which is also subject to taxation in Singapore) in the foreign jurisdiction by the Singapore tax resident company. FTC comes in the form of double tax relief or unilateral tax credit.

Double Tax Relief (DTR)

DTR is the credit relief provided under the Avoidance of Double Taxation Agreements (DTA) that Singapore has concluded with other jurisdictions. The jurisdictions with which Singapore has tax treaties are listed below:

Albania	Lithuania
Armenia	Luxembourg
Australia	Malaysia
Austria	Malta
Bahrain	Mauritius
Bangladesh	Mexico
Barbados	Mongolia
Belarus	Morocco
Belgium	Myanmar
Bermuda (EOI arrangement)	Netherlands
Brazil	New Zealand
Brunei	Nigeria
Bulgaria	Norway
Cabo Verde (not ratified)	Oman
Cambodia	Pakistan
Canada	Panama
Chile (limited DTA)	Papua New Guinea
China	Philippines
Cyprus	Poland
Czech Republic	Portugal
Denmark	Qatar
Ecuador	Republic of Korea
Egypt	Romania
Estonia	Russian Federation
Ethiopia	Rwanda

Fiji	San Marino
Finland	Saudi Arabia
France	Seychelles
Gabon (not ratified)	Slovakia
Georgia	Slovenia
Germany	South Africa
Guernsey	Spain
Hong Kong (limited DTA)	Sri Lanka
Hungary	Sweden
India	Switzerland
Indonesia	Taiwan
Ireland	Thailand
Isle of Man	Tunisia
Israel	Turkey
Italy	Turkmenistan
Japan	Ukraine
Jersey	United Arab Emirates
Jordan	United Kingdom
Kazakhstan	United States of America (limited DTA with EOI arrangement)
Kenya (not ratified)	Uruguay
Kuwait	Uzbekistan
Laos	Vietnam
Latvia	Libya
Liechtenstein	

Unilateral Tax Credit (UTC)

A UTC may be granted on all foreign-sourced income received in Singapore by Singapore tax residents from jurisdictions that do not have DTAs with Singapore.

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 highest corporate tax rate of the foreign country from which the income was received is at least 15%. 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.

Withholding Tax

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, fees or other payments in connection with any loan or indebtedness	15%
Royalty or other lump sum payments for the use of movable properties (e.g. intellectual property)	10%
Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information	10%
Rent or other payments for the use of movable properties	15%
Technical assistance and service fees	Prevailing corporate tax rate
Management fees	Prevailing corporate tax rate
Proceeds from sale of any real property by a non-resident property trader	15%
Distribution of taxable income made by a Real Estate Investment Trust to a unitholder who is a non-resident non-individual	10%

Personal Taxation

In general, the Comptroller of Income Tax treats individuals as tax residents if they are:

- Singaporeans
- Singaporean Permanent Residents
- Foreigners who have:

I. stayed/worked in Singapore for at least 183 days in the previous calendar year;

II. stayed/worked in Singapore continuously for 3 consecutive years, even if the period of stay in Singapore may be less than 183 days in the first and/or third year;

III. worked in Singapore for a continuous period straddling 2 calendar years and the total period of stay is at least 183 days (which includes physical presence immediately before and after employment). This applies to employees who entered Singapore but excludes directors of a company, public entertainers, or professionals.

Otherwise, they will be treated as non-residents for tax purposes, and their employment income is taxed at 15% or at the progressive resident tax rates, whichever is the higher tax amount. All other income including rental income from properties, pension, director's fees and consultation fees received by a non-resident will be taxed at 22% up to YA 2023 and 24% with effect from YA 2024.

Tax residents are taxed on all income derived in Singapore, after provisions are made for certain tax deductions and personal reliefs. Currently, the total amount of personal income tax reliefs which can be allowed is subject to an overall relief cap of SGD 80,000 per YA.

The resident tax rates from YA 2017 to YA 2023 are levied on a progressive basis ranging from 0% to 22%, as follows:

Chargeable Income	Rate (%)	Gross Tax Payable (SGD)
First SGD 20,000	0	0
Next SGD 10,000	2	200
First SGD 30,000	-	200
Next SGD 10,000	3.5	350
First SGD 40,000	-	550
Next SGD 40,000	7	2,800
First SGD 80,000	-	3,350
Next SGD 40,000	11.5	4,600
First SGD 120,000	-	7,950
Next SGD 40,000	15	6,000
First SGD 160,000	-	13,950
Next SGD 40,000	18	7,200
First SGD 200,000	-	21,150
Next SGD 40,000	19	7,600
First SGD 240,000	-	28,750
Next SGD 40,000	19.5	7,800
First SGD 280,000	-	36,550
Next SGD 40,000	20	8,000
First SGD 320,000	-	44,550
Above SGD 320,000	22	

The resident tax rates from YA 2024 onwards are levied on a progressive basis ranging from 0% to 24%, as follows:

Chargeable Income	Rate (%)	Gross Tax Payable (SGD)
First SGD 20,000	0	0
Next SGD 10,000	2	200
First SGD 30,000	-	200
Next SGD 10,000	3.5	350
First SGD 40,000	-	550
Next SGD 40,000	7	2,800
First SGD 80,000	-	3,350
Next SGD 40,000	11.5	4,600
First SGD 120,000	-	7,950
Next SGD 40,000	15	6,000
First SGD 160,000	-	13,950
Next SGD 40,000	18	7,200
First SGD 200,000	-	21,150
Next SGD 40,000	19	7,600
First SGD 240,000	-	28,750
Next SGD 40,000	19.5	7,800
First SGD 280,000	-	36,550
Next SGD 40,000	20	8,000
First SGD 320,000	-	44,550
Next SGD 180,000	22	36,600
First SGD 500,000	-	84,150
Next SGD 500,000	23	115,000
First SGD 1 million	-	199,150
In excess of SGD 1 million	24	

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 as a collective investment scheme under the Securities and Futures Act 2001 and must comply with the Code on Collective Investment Schemes issued by the MAS.

Singapore is the largest REIT market in Asia ex-Japan with 42 REITs and property trusts with a total market capitalisation of SGD 101 billion as at February 28, 2023. Over 90% of Singapore REITs and property trusts own properties outside Singapore across Asia Pacific, South Asia, Europe and the US.

Key Restrictions

Investments and activities

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/units in the REIT 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 restrictions and requirements:
- At least 75% 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 investments in uncompleted property developments should not exceed 10% 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% 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% 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

Borrowings

A REIT may borrow for investment or redemption purposes, and it may mortgage its assets to secure such borrowings. The total borrowings and deferred payments of a REIT should not exceed 45% of the REIT's 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% for the period up to December 31, 2025.

A foreign non-individual investor is one who is not a resident of Singapore for income tax purposes and:

- Who does not carry on business through a permanent establishment in Singapore, or;
- 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.

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.

Common Terms of Lease for Commercial Lease Agreements of Premises in a Building	
Unit of measurement	
Unit of measurement	Square Feet or Square Metres
Rental payments	
Rents	SGD per sq ft or sqm per month
Typical lease term	3 years; longer terms in excess of 5 years may be negotiated large-space or anchor 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, any option to renew is to be negotiated and if agreed, specified in the lease
Basis of rent increases or rent review	Open market rental value
Frequency of rent increase or rent review	Occasionally yearly, more commonly only at time of renewal
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 are usually separately metered
Car parking	Allocation is usually based on sq ft leased at seasonal charges
Responsibility for internal repairs	Tenant
Responsibility for outgoings	Landlord (charged back via service charge)
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord
Responsibility for building insurance	Landlord
Disposal of leases	Landlord (charged back via service charge)
Tenant subleasing & assignment rights	Generally prohibited; occasionally a sublease or assignment to related corporations of the tenant may be negotiated
Tenant early termination rights	Generally not available
Tenant's building reinstatement responsibilities at lease-end	Original condition

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South Korea

HwaHyun

Property Tenure/Property Rights

Under the Civil Act, real estate refers to property that includes land and its fixtures. Land refers to specific areas of the Earth's surface, while soil and rocks are considered basic components of land. Fixtures, on the other hand, are immovable properties attached to the land, such as buildings, trees, and bridges. Buildings are treated as separate real properties, completely independent of the land on which they are situated.

Ownership

Ownership ("soyu-gwon") refers to the exclusive right to use, profit from, and dispose of a property in perpetuity within the confines of the law. The ownership of land includes both the space above and below the surface subject to legal limitations and regulations. With respect to adjacent or neighboring lands, there are also statutory restrictions on their use.

There are three types of co-ownership: namely, (i) joint ownership ("gong-yu"), (ii) joint ownership in partnership ("hap-yu"), and (iii) collective ownership ("chong-yu"). Joint ownership is a form of co-ownership where multiple persons collectively own a property and each co-owner has the right to dispose of their share and use or profit from the property in proportion to their ownership share. Joint ownership in partnership is a specific form of co-ownership where co-owners are partners in a partnership, and each partner has its share in a property they own but generally requires the agreement of all partners to dispose their share. Collective ownership exists when members of a non-legal entity collectively own a property, in that each co-owner has an undivided share in the property.

In real estate transactions, any acquisition, change, or disposition of ownership in real estate must be registered in the Real Estate Register to take legal effect. Registration provides public notice of the ownership rights and helps establish the priority of interests in the real estate.

Usufruct Rights

Leasehold ("jeonse-gwon") refers to the property right that allows a person to occupy someone else's real estate, use it, and profit from it according to the purpose of the real estate, in exchange for a deposit. It requires registration in the Real Estate Register and grants the right to receive priority repayment of the deposit over subordinate property right holders and other general creditors. In contrast, a lease right ("imcha-gwon") is a contractual right where one party agrees to allow another party to use and profit from a real estate in exchange for rent.

Superficies ('jisang-gwon") is a property right that allows a person to use a piece of land owned by someone else in order to own a building, structure, or trees on that land. It can be established through a mutual agreement and registration in the Real Estate Register or by statutory provisions. Statutory minimum periods exist for a superficies, but there is no statutory maximum period. A superficies can be transferred to a third party without the permission of the landowner.

Easement ("jiyeok-gwon") is a property right that grants someone the right to use or access someone else's land for their own land's benefit. It can be created through a mutual agreement and registration in the Real Estate Register. An easement does not require the lands to be adjacent to each other.

Collateral Property Rights

Mortgage right ("jeodang-gwon") refers to the legal right or interest held by a lender ("mortgagee") over a real estate property that serves as security for a debt owed by the borrower ("mortgagor"). The mortgage right grants the lender a priority position in receiving repayment of the debt from the proceeds of the real estate if the borrower defaults. The mortgagor retains ownership of the real property but provides it as security. The mortgage right is established through a legal agreement and must be recorded in the Real Estate Register to be legally effective. It cannot be separately transferred to a third party.

Possessory lien ("yuchi-gwon") is a legal right that allows a person who has possession of someone else's property to retain possession of it until they receive payment for debts owed with respect to such property. The possessor of the property can withhold the property as leverage until the debt is settled. The possessory lien gives them the right to retain possession but does not grant ownership of the property.

Major Property Legislation

Real Estate

01 The Civil Act

02 The Housing Act

03 The National Land Planning and Utilisation Act

04 The Urban Development Act

05 The Building Act

06 The Act on Improvement of Urban Areas and Residential Environment

07 The Industrial Cluster Development and Factory Establishment Act

08 The Cadastral Act

09 The Real Estate Registration Act

10 The Act on Public Announcement of Real Estate Values

11 The Real Estate Transaction Reporting ActResidential Environment

12 The Housing Lease Protection ActFactory Establishment Act

13 The Commercial Building Lease Protection Act

Code of Conduct for Retail Leasing in Singapore

The new Code of Conduct for Leasing of Retail Premises in Singapore (Code) was introduced by the Singapore Business Federation on March 26, 2021. The Code serves as a set of principles and guidelines to facilitate a fair and balanced position between landlords and tenants of qualifying retail premises, including restaurants, retail shops, clinics and commercial schools. The Code applies to lease agreements entered into on or after June 1, 2021 with a tenure of more than 1 year and parties negotiating these leases should ensure that their lease is consistent with the leasing principles set out in the Code which covers various areas such as rent structure, security deposit amount, pre-termination by tenant due to exceptional conditions and pre-termination by landlord due to landlord's redevelopment works.

A number of major retail landlords from the private sector and all government landlords have committed to abide by the Code with effect from June 1, 2021. While the Code does not yet have the force of law, the Government has plans to make the Code mandatory via legislation. Currently, the Code provides that either party may refer non-compliance matters to the Fair Tenancy Industry Committee (FTIC) during lease negotiations. FTIC will collate and monitor the reported cases and if there are many reports made against a particular party, FTIC may name and shame the party for acting in a manner that is against the Code and the spirit of the fair tenancy framework.

Key Environmental and Sustainability Issues in Real Estate

Environmental Liability

In general, an owner or occupier of property will be liable for any pollution and will be responsible for the environmental clean-up even if it did not cause the pollution or if the pollution occurred before it acquired or occupied the property.

Accordingly, it will be prudent for a buyer or lessee to conduct environmental due diligence, especially if the property being acquired is for industrial use. For properties leased from JTC Corporation (JTC) (a statutory board of Singapore which is the largest industrial landlord), a subsequent lessee may be liable to JTC to decontaminate the property if the level of contaminants at the property is found to be higher than the levels assessed under a previous environmental baseline study.

Energy Standards

New buildings in Singapore are generally required to adhere to the minimum environmental sustainability standard set by the Building and Construction Authority (BCA). Other regulatory measures include mandatory submission of periodic energy audits, building information and energy consumption data, mandatory energy management system and regulation of the district cooling systems under the District Cooling Act 2001 (which currently applies to certain land lots at the Marina Bay area).

In 2024, BCA will introduce the Mandatory Energy Improvement (MEI) regime which will subject buildings to undergo energy audits and implement measures to improve their energy use intensity (EUI). Building owners will be required to maintain the EUI improvement over a minimum period, which will reduce the overall environmental impact from building operations and help them enjoy cost savings from lower energy use. The MEI regime will apply to the most energy intensive commercial buildings, healthcare facilities, sports and recreation centres and institutional buildings with a gross floor area of 5,000 square metres and above.

Green Leases

A green lease is an agreement between landlord and tenant which sets out environmental objectives on how the building is to be improved, managed and/or occupied in a sustainable manner. Green leases are currently not mandatory in Singapore and green lease provisions can be freely negotiated to suit the ESG needs of the investor or the particular transaction.

BCA has published in 2021 a green lease toolkit to aid landlords and tenants to work together to improve their environmental performance over the life of the building in which they manage or occupy. BCA's green lease toolkit provides a list of standard specimen clauses (which can be freely negotiated) that contain specific provisions for sustainable design and management as well as health and well-being. This includes monitoring and improving energy efficiency, water efficiency, sustainable material, waste management, indoor environmental quality, comfort and well-being of the users and occupants.

Investment

01 The Foreign Investment Promotion Act

02 The Special Taxation and Restriction Act

03 The Special Local Taxation and Restriction Act

04 The Foreign Exchange Transaction Act

05 The Financial Investment Services and Capital Markets Act

06 The Act on Business of Operating Indirect Investment and Assets

07 The Real Estate Investment Company Act

08 The Asset-backed Securitisation Act

Operational Req uirements for Foreign Corporations

Modes of Entry

There are two ways for a foreign company to enter and operate in Korea: (1) establishing a foreign-invested company, and (2) establishing a local office in Korea.

Foreign-invested Company

Regulated under the Foreign Investment Promotion Act, a foreign-invested company is a legal entity in which any foreigner or foreign company invests and becomes a shareholder. It operates as same as a regular legal entity in Korea but must have an initial capital of at least KRW 100 million. The Commercial Act provides the following five legal entity forms:

- Joint-Stock company ("jusig-hoesa")
- Limited liability company ("yuhanchaegim-hoesa")
- Limited company ("yuhan-hoesa")
- Partnership company ("habmyeong-hoesa")
- Limited partnership company ("habja-hoesa")

Korean Office

A foreign company can establish an office in Korea under the Foreign Exchange Transaction Act. Such Korean office can take a form of (i) branch (sales office) which engages in commercial activities, or (ii) liaison office which engages in non-commercial activities such as market research, data collection, and advertising.

Registration/Licensing Requirements

Among a total of 1,196 sectors in Korea, (i) 1,106 sectors are open to foreign direct investment without restrictions, (ii) 61 sectors are prohibited (including legislation, diplomacy, and national defense sectors), and (iii) 29 sectors are subject to restrictions on maximum foreign shareholding.

Foreign-invested Company

- A foreign investor is required to file a foreign investment report prior to incorporation.
- Incorporation is completed upon its registration in the Corporate Register.
- A foreign-invested company must obtain a business licence or permit if required for the business it wishes to conduct.
- A foreign-invested company is required to file a notification of incorporation and a petition for business registration with any Tax Office located in Korea.
- As a final step, a foreign-invested company is required to register it as a foreign-invested company.

Korean Office

- As for a branch (sales office), the following procedures are required: (i) filing of a notification of branch establishment, (ii) registration of branch establishment in the Corporate Register, and (iii) applying for business registration.
- As for a liaison office, the following procedures are required: (i) filing of a notification of liaison office establishment, and (ii) applying for unique taxpayer number.

Foreign Investment Incentives

Tax Incentives for Foreign-invested Companies

Tax reductions and exemptions are available for certain foreign-invested companies and their foreign engineers and foreign workers.

Some of the foreign-invested companies eligible for tax reductions and exemptions under the Special Taxation and Restriction Act and its Enforcement Decree include those that:

I. construct and operate factory facilities incorporating new growth engine and source technologies. To qualify for tax reductions and exemptions, these companies must make a minimum investment of USD 2,000,000;

II. occupy a tenancy in a foreign investment zone or free trade zone and meet the requirement of various minimum investment thresholds;

III. engage in the development of an enterprise city project. To be eligible for tax reductions and exemptions, the project must have a total value of at least USD 500,000,000. Additionally, the companies must invest a minimum of USD 30,000,000 or hold a 50% investment ratio.

The following outlines the benefits of tax reduction and exemption available for specific designated periods:

I. Acquisition tax and property tax reduction/exemption: If a foreign-invested company acquires and holds real estate for the purpose of operating a tax-reduction/exempt business, the acquisition tax and the property tax on that property will be reduced or exempted;

II. Customs duties, individual consumption tax, and value-added tax exemption: Capital goods purchased for the purpose of a tax reduction/exempt business are eligible for exemptions from customs duties, individual consumption tax, and value-added tax;

III. Income tax reduction for foreign engineers: Foreign engineers rendering services in Korea benefit from a 50% reduction in income tax on their earned income.

IV. Flat tax rate for foreign executives: Foreign executives are subject to a flat tax rate of 19% for their earned income, as opposed to the regular comprehensive income tax rates ranging from 6% to 45%.

These benefits aim to encourage foreign investment, attract foreign professionals, and facilitate business activities by offering tax advantages to eligible entities within the specified timeframes. The provisions operate within the framework of relevant tax legislation, regulations, and local statutes.

Restrictions on Foreign Property Ownership

Foreigners acquiring real estate in Korea are subject to laws such as the Real Estate Transaction Reporting Act, the Foreign Investment Promotion Act, and the Foreign Exchange Transaction Act. Except for certain land acquisition subject to government approval, real estate can be acquired by reporting only, and the acquisition procedures and regulations do not discriminate against foreigners.

If the parties (including a foreigner) enter into a contract for sale and purchase of real estate or supply of real estate, they shall jointly report the actual transaction price and other information within 30 days from the date of the contract to the regional municipality having jurisdiction over the location of the real estate ("Municipal Authority").

If a piece of land to be acquired by a foreigner is located in a zone or area falling under any of the following, the foreigner shall obtain approval to acquire the land from the Municipal Authority before entering into a contract to acquire the land:

I. military bases and military facility protection areas

II. designated cultural relics and their protection areas

III. natural monuments, scenic spots, municipal and provincial natural heritage sites, and their protection areas

IV. ecological and landscape conservation areas

V. wildlife special protection areas

The term "foreigners" above means an individual, corporation, or organisation that falls under any of the following:

I. an individual who does not hold the nationality of the Republic of Korea;

II. a corporation or organisation established under the laws of a foreign country;

III. a corporation or association in which more than one-half of its shareholders or members are persons falling under any of the preceding (i) and (ii);

IV. a corporation or association in which more than one-half of its executives, including officers and directors, are persons falling under the preceding (i);

V. a legal entity or organisation in which a person falling under (i) or a legal entity or organisation falling under (ii) holds more than one-half of the capital or more than one-half of the voting rights.

VI. Foreign government

VII. International organisations

Foreign Exchange Controls

The Foreign Exchange Transaction Act (FETA) is a law that regulates foreign exchange transactions. The FETA applies to transactions involving the exchange of foreign currencies, including the purchase, sale and remittance of funds in foreign currencies.

The FETA generally allows free foreign exchange transactions in connection with international trade in goods and services. However, the FETA requires most capital foreign exchange transactions to be either approved by or reported to the authorities.

On February 10, 2023, the Korean government released a "Direction for Foreign Exchange Policy Reform", outlining its plan to revise foreign exchange laws and regulations in two phases.

In the first phase, which will be implemented in the second half of 2023, foreign exchange regulations will be amended to improve the convenience of foreign exchange transactions. Some specific changes will include,

I. increasing the threshold for exemption from the requirement to provide supporting documents for overseas remittances from USD 50,000 to USD 100,000 per year;

II. modifying certain transactions from pre-reporting to post-reporting requirement (e.g., a foreign currency loan from a non-resident of USD 30 million or less will no longer require a pre-reporting); and

III. allowing foreign investors to purchase Korean won from any bank offering lower foreign exchange fees, even if they do not have an existing investment account with that bank.

In the second phase, the government plans to further reduce the burden of pre-reporting of foreign exchange transactions. This will be achieved by introducing the principle of "general freedom of transactions with exceptional regulations" into the foreign exchange regulatory regime.

Taxes on Possession and Operation of Real Estate

Property taxes are local taxes imposed each year on land, buildings, housing, ships, and aircrafts. The responsibility for levying property taxes lies with various local municipalities such as cities, counties, districts, special self-governing provinces, and special self-governing cities.

Individuals who are the de facto owners of a property as of the tax base date, which is June 1 of each year, are responsible for paying property taxes. However, in cases where there is a change in ownership through a property sale, but the de facto owner is unknown or cannot be determined due to the registered owner's failure to report the change, the registered owner listed in the Real Estate Register is still considered he taxpayer.

The tax base for property tax on land, buildings, and housing shall be the value calculated by multiplying the market standard value by the fair market value ratio in consideration of real estate market trends and local financial conditions.

The rate of property tax is determined on the basis of the use and status of the property. The tax rate for land subject to comprehensive combined taxation and separate combined taxation is determined using a three-stage progressive tax rate ranging from 0.2% to 0.5%, and the tax rates for land subject to separate taxation are 0.07%, 0.2% and 4%, depending on the type of property. The tax rate on housing ranges from 0.1% to 0.4% in four stages, with the rate increasing as the value of the housing increases. Buildings not classified as housing have a fixed tax rate of 0.25%.

Newly constructed or expanded factory buildings within an over-concentration control area will be subject to a property tax at a rate five times higher than the standard rate for a period of five years.

Taxes on Acquisition and Transfer of Real Estate

Acquisition Tax

Under the Local Tax Act, acquisition refers to acquiring something through various means, including purchase, exchange, inheritance, gift, donation, contribution in kind to a company, construction, or any other similar method.

For the purposes of calculating the acquisition tax, the taxable amount or tax base is determined based on the value of the acquired property at the time it was acquired.

The acquisition tax is levied and administered at the local level, with municipalities having the power to impose and collect such taxes. When a real estate is acquired and is subject to the acquisition tax, it is the specific municipality governing that location where the real estate subject to the tax is situated.

Acquisition Standard Tax Rate

	Standard Tax Rate
Farm Land	3% (purchase) 2.3% (inheritance)
Housing	1~12% (purchase)
All Real Estate except Farm Land and Housing	4% (purchase)
All Real Estate except Farm Land	2.8% (inheritance)
All Real Estate	3.5% (gift)

Acquisition Special Tax Rate

	Special Tax Rate
Acquisition within Overconcentration Control Area	Standard Tax Rate + 4%
Acquisition in Large Cities	(Standard Tax Rate * 3) - 4%
Luxury Property	Standard Tax rate + 8%

Within the context of the acquisition tax, there are two additional types of taxes called surtaxes. These surtaxes, namely the rural special tax and local education tax, are imposed in addition to the regular acquisition tax. The tax rates of these surtaxes vary depending on the type of the real estate being acquired and the ways in which the acquisition takes place.

Transfer Tax

A transfer refers to the substantive exchange of an asset in return for consideration, which can occur through a sale, exchange, or in-kind contribution to a company. Consequently, gratuitous transfers, such as inheritance or gifts made without any consideration, are not classified as transfers. Additionally, trusts that solely formalise the transfer of rights do not qualify as transfers.

In typical transactions like sales and purchases, the transfer date is usually the settlement date when payment is made. However, if the payment date is unclear or if the transfer of ownership is recorded in the Real Estate Register prior to payment, the date of recordation is considered the transfer date.

Transfer tax is a tax imposed on the gains realised from the transfer of property in exchange for consideration, specifically when transferring the retained interest in land, buildings, and other assets.

Transfer tax is a type of national tax imposed by the central government. The transfer tax on real properties is calculated based on the net gains generated by each taxpayer during a specific tax period.

Value-added Tax/Goods and Services Tax

Value-added tax (VAT) is levied on the following transactions: (i) the supply of goods and services by an enterprise; and (ii) the importation of goods.

For VAT purposes, an enterprise independently provides goods or services in the course of its business activities, irrespective of whether the business operates for profit or non-profit purposes.

The standard rate of VAT is set at 10%. However, if the supply of goods qualifies as an export or if services are provided outside of Korea, the VAT rate is reduced to 0%. Additionally, there are exemptions from VAT for certain types of goods and services. For example, when land is being sold, the seller of the land is not required to charge VAT on the transaction. Also, if someone is providing a rental service for residential housing along with the land it is built on, the landlord is not obligated to include VAT in the rental charges.

Tax Depreciation

The Corporate Tax Act classifies assets eligible for depreciation into two categories: tangible assets and intangible assets. Buildings (including ancillary facilities) and constructions are considered depreciable assets with the category of tangible assets. However, depreciable assets do not include inventory (such as real estate intended for sale in the business of real estate sales) and investment assets. Additionally, assets that do not experience a decrease in value over time (such as land) are also excluded from depreciable assets.

Under the Corporate Tax Act, legal entities are not permitted to arbitrarily determine the useful life of depreciable assets. Instead, the Act stipulates the useful life and provides guidelines for depreciation using the straight-line, declining-balance, and units of production methods. These methods define how the cost of the assets should be allocated over their useful life for the purpose of calculating depreciation expenses.

Corporate Taxation

Corporate tax, also known as corporate income tax, is a tax imposed on the income earned by a legal entity. It applies to both legal entities and certain entities that are recognised as legal entities for tax purposes.

There are two types of corporate taxpayers: domestic legal entities and foreign legal entities with income sourced in Korea. Domestic legal entities are considered unlimited taxpayers, meaning they are liable for tax on their worldwide income. On the other hand, foreign legal entities are classified as limited taxpayers and are only required to pay tax on income derived from sources within Korea.

A domestic legal entity is defined as a legal entity that has its headquarters, principal office, or substantive management location in Korea. Conversely, a foreign legal entity is a legal entity whose headquarters or principal office is located in a foreign country, as long as the substantive management of its business is not based in Korea.

The income subject to corporate tax for domestic legal entities can be categorised as follows:

I. Business Income: The taxable income of a domestic legal entity is determined based on the profits generated from transactions that contribute to the net asset growth of the legal entity, as per the net worth increase theory. According to this theory, if a legal entity's net worth has increased during a specific tax period, it is assumed that they have received taxable income, regardless of the source of that income;

II. Liquidation income: When a legal entity undergoes dissolution, the liquidation income refers to the value of the remaining assets after subtracting the total amount of its capital and retained earnings; and,

III. Income from transfer: If a legal entity transfers non-business land or other assets, the law mandates that capital gains tax be paid in addition to the regular corporate tax applicable for each business year.

For foreign legal entities, they are subject to taxation on their income sourced in Korea as specifically listed in the law for each business year. They are also liable to pay corporate tax on land transfers and other similar transactions. However, foreign legal entities are not taxed on liquidation income.

Corporate Tax Rate on Business Income

Taxable Income (KRW)	Marginal Tax Rate
200 million or lower	9%
From over 200 million to 20 billion	19%
From over 20 billion to 300 billion	21%
Over 300 billion	24%

There is an additional tax, known as the local income tax, imposed on corporate income. This local income tax is calculated as 10% of the corporate tax rate. In other words, if the corporate tax rate is, for example, 21%, then the local income tax on corporate income would be 10% of that rate, which would be 2.1%. Therefore, the total tax rate for corporate income, considering both the corporate tax and the local income tax, would be 23.1%.

Personal Taxation

Income tax is a tax levied on the earnings of individuals, contrasting with corporate tax which applies to income earned by legal entities. Under the income tax regime, different types of income are classified into specific categories, each with its own set of rules regarding tax deductions and expenses. However, income that does not fall within the defined categories outlined in the Income Tax Act is not subject to taxation.

Individuals subject to the Income Tax Act are divided into two categories: (i) residents and (ii) non-residents with income sourced from Korea. A resident is an individual who either has a legal domicile in Korea or has resided in Korea for 183 days or more. On the other hand, a non-resident is an individual who does not meet the criteria for residency.

Residents are liable to pay taxes on their worldwide income, while non-residents are only taxed on income derived from sources within Korea as specified in the Income Tax Act.

There is a special rule applicable to foreign individuals who are residents. If such individuals have been domiciled or resided in Korea for a total of five years or less within the ten years preceding the end of the relevant tax period, their income generated from abroad, which is not paid in or remitted to Korea, is generally exempt from taxation under the Income Tax Act.

The tax treatment varies depending on the type of income. For income falling under the category of comprehensive income, it is aggregated, and a progressive tax rate is applied. In contrast, income types other than comprehensive income (such as retirement payments and capital gains) are not aggregated with comprehensive income. Instead, a separate tax base is calculated for each of these income types, and a distinct tax rate is applied.

Income Tax Rate on Comprehensive Income

Taxable Income (KRW)	Marginal Tax Rate
14 million or lower	6%
From over 12 million to 50 million	15%
From over 50 million to 88 million	24%
From over 88 million to 150 million	35%
From over 150 million to 300 million	38%
From over 300 million to 500 million	40%
From over 500 million to 1 billion	42%
Over 1 billion	45%

Tax Treaties: Avoidance of Double Taxation

Tax treaties have been established with a total of 94 jurisdictions, including:

Albania	Mexico
Algeria	Mongolia
Australia	Morocco
Azerbaijan	Myanmar
Bahrain	Nepal
Bangladesh	Norway
Belarus	Oman
Belgium	Pakistan
Brazil	Panama
Brunei	Papua New Guinea
Bulgaria	Peru
Canada	Philippines
Chile	Poland
Colombia	Portugal
Croatia	Qatar
Czech Republic	Romania
Denmark	Russia
Ecuador	Saudi Arabia
Germany	Serbia
Greece	Singapore
Hong Kong	Slovakia
Hungary	Slovenia
Iceland	South Africa
India	Spain
Indonesia	Sri Lanka
Iran	Sweden
Ireland	Switzerland
Israel	Tajikistan
Italy	Thailand
Japan	Tunisia
Jordan	Turkey

Kazakhstan	Turkmenistan
Kenya	Ukraine
Kuwait	United Arab Emirates
Kyrgyz	United Kingdom
Laos	United States of America
Latvia	Uruguay
Lithuania	Uzbekistan
Luxembourg	Venezuela
Malaysia	Vietnam
Malta	

Real Estate Investment Trusts

Introduction

A real estate investment trust (REIT) is a company established as a joint-stock company with the primary purpose of investing in and managing real estate assets.

There are three types of REITs under the Real Estate Investment Company Act:

I. Self-managed REIT: This REIT directly invests in and manages assets using full-time employees, including asset management professionals.

II. Entrusted management REIT: This REIT entrusts the investment and management of assets to an asset management company.

III. Corporate restructuring REIT: This REIT invests in real estate to support corporate restructuring and entrusts the investment and management of assets to an asset management company.

Restrictions

Establishment of REIT

The initial capital required for a self-managed REIT is a minimum of KRW 500 million, while an entrusted management REIT and a corporate restructuring REIT require a minimum initial capital of KRW 300 million. It is not possible to establish a REIT through in-kind investment.

During the Minimum Capital Reserve Period (the first six months from the date of business licence or registration), a REIT must maintain a minimum capital amount as follows:

I. Self-managed REIT: KRW 7 billion;

II. Entrusted management REIT and corporate restructuring REIT: KRW 5 billion

Business Scope

A REIT may not engage in any business other than investing in and managing real estate assets in the following ways:

I. Acquisition, development, improvement, and disposal of real estate;

II. Management (including facility operation), leasing, and subleasing;

III. Lending and depositing to entities for real estate development projects.

To carry out these activities, a REIT must obtain approval from or register with the Ministry of Land, Infrastructure, and Transport.

Composition of Assets

After the Minimum Capital Reserve Period, a REIT must ensure that at least 80% of its total assets consist of real estate, real estate-related securities, and cash at the end of each quarter (among the total assets, a minimum of 70% must be in real estate, including buildings under construction).

Stocks

After the Minimum Capital Reserve Period, no single shareholder, along with their related parties, can collectively own more than 50% of the total number of shares issued by a REIT (except for a corporate restructuring REIT).

Within two years from the date of business licence or registration, a REIT (except for a corporate restructuring REIT) is required to offer at least 30% of the total number of shares to the public.

Dividends

A REIT is required to distribute at least 90% of its distributable profits to its shareholders, and it is exempted from the legal requirement to accumulate profits in retained earnings.

Public Listing

If a REIT (except for a corporate restructuring REIT) meets the listing requirements under the Financial Investment Securities and Capital Market Act, it must promptly list its shares on the securities market for trading.

Taxation

To encourage the use of indirect investment through REITs, the government provides certain tax benefits to REITs. These tax benefits specifically apply to various aspects such as acquisition tax, property tax, and transfer tax on the real estate assets owned by REITs, as well as corporate income tax. However, different types of REITs are eligible for different tax benefits.

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	KRW/pyung/month on the gross area
Typical lease term	2-5 years
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	10 months or Jeonse lease
Security of tenure	For the duration of the original lease term and any statutory renewed term
Does tenant have statutory rights to renewal	Yes (subject to exceptions)
Basis of rent increases or rent review	Based either on market rates or inflation rates (CPI rate); statutory limits applied
Frequency of rent increase 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	Subject to landlord approval (generally prohibited by lease contract)
Tenant early termination rights	Only during the statutory renewed term
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition

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Sri Lanka

Property Tenure/Ownership

There are two types of property tenure in Sri Lanka:

- Freehold
- Leasehold

The terms of leases granted by the government and/or private individuals may vary and may depend on the purpose for which the land is to be used and the agreement between the parties.

Major Property Legislation

Some of the main legislations are as follows:

01 Land (Restriction on Alienation) Act No.38 of 2014, as amended;

02 Apartment Ownership Law No.11 of 1973, as amended

03 Prevention of Frauds Ordinance;

04 Registration of Documents Ordinance;

05 Stamp Duty Act;

06 Land Reform Law; and

07 Registration of Title Act No. 21 of 1998.

Subject to the restrictions on the transfer of land under the Land (Restrictions on Alienation) Act (Land Act), property can be owned either by the state, by private individuals or by corporate entities. In respect of private land, ownership is obtained by the execution of deeds of transfer or gifts in the presence of a notary public and two witnesses, in accordance with the provisions of the Prevention of Frauds Ordinance.

All other transactions in respect of land, such as leases, mortgages and other dispositions, should also comply with the provisions of the Prevention of Frauds Ordinance. Accordingly, such documents would have to be executed before a notary public and two witnesses. The executed instrument would have to be registered under the provisions of the Registration of Documents Ordinance. A Deed which is required to be registered within the jurisdiction where the Notary practices should be submitted for registration within 30 days from the date of attestation whilst any Deed required to be registered outside the Notary's jurisdiction would need to be submitted for registration within a period of 90 days from the date of execution of the Deed.

The government has also enacted the Registration of Title Act No. 21 of 1998 which is not in operation in full throughout the island yet. Under this Act, registration of title has been introduced in pursuance of which once the certificate of title has been registered, such registration would be proof of the ownership of the land in respect of which such title has been granted.

In respect of high-rise buildings, there are additional provisions under the Apartment Ownership Law No. 11 of 1973 (as amended from time to time) for the transfer, alienation, mortgage and similar transactions in respect of units of condominium property.

Operational Requirements for Foreign Corporations

Foreign investors can, subject to the restrictions/limitations imposed by Sri Lanka's Foreign Exchange laws, establish a business presence in Sri Lanka by:

- Incorporating a fully owned subsidiary or a company in which it has majority control or a minority stake; or
- Acquiring shares in an existing Sri Lankan Company; or
- Registering as an overseas company.

Sri Lanka also permits registration of offshore companies with investment concessions provided under regulations governing "commercial hub operations".

The applicable procedural requirements in the above cases involve registering of relevant statutory forms and constitutional documents with the Department of the Registrar of Companies of Sri Lanka on payment of stipulated fees. This process has now been digitalised and can be accessed through the E-ROC digital platform.

In terms of Sri Lanka's Foreign Exchange laws, foreign investment in local companies must be remitted into the country via an Inward Investment Account (IIA) to be opened with any licensed local commercial bank. Repatriation of 100% of profits arising from business carried out in Sri Lanka is permissible without restriction under the Foreign Exchange law/regulations, subject to the payment of applicable taxes. However, in compliance with Sri Lanka's Foreign Exchange laws, such repatriation must be routed via the IIA being the account from which the original investment had been remitted to Sri Lanka by the foreign investor.

Companies incorporated in Sri Lanka and registered overseas companies are, during the course of their corporate existence or registration respectively, subject to continuous public disclosure obligations imposed by way of filings with the Department of the Registrar of Companies of Sri Lanka.

The registration or licensing requirements for commercial entities in Sri Lanka would be dependent also on the type of industry, operational structure and business that the foreign investor would be engaged in.

Sri Lanka's Foreign Exchange laws restrict or limits (a) foreign ownership of shares (specifically in respect of voting shares) of Sri Lankan companies engaged in protected business sectors (specified in the Foreign Exchange laws) and (b) the type of commercial, trading or industrial activities that may be carried out in Sri Lanka by registered overseas companies.

Prevailing Foreign Exchange regulations restrict, up to 40% foreign ownership of fully paid voting shares of local companies engaged in any of the following areas of activities (unless the approval of the Board of Investment of Sri Lanka has been granted for a higher percentage):

- production of goods where Sri Lanka's exports are subject to internationally determined quota restrictions;
- growing and primary processing of tea, rubber, coconut, cocoa, rice, sugar and spices;
- mining and primary processing of non-renewable national resources;
- timber-based industries using local timber;
- deep sea fishing (as defined by the Minister to whom the subject of fisheries is assigned);
- mass communication;
- education;
- freight forwarding;
- travel agencies; and
- shipping agencies.

Foreign ownership of voting shares of local companies carrying on or proposing to carry on business in the sectors set out below is permitted only up to the percentage of the number of fully paid voting shares of that company that have been approved by the Sri Lankan Government or any legal or administrative authority set up for approving such investment:

- Air transportation;
- Coastal shipping (as defined by the Minister to whom the subject of shipping is assigned);
- Industrial undertaking in the Second Schedule of the Industrial Promotion Act No. 46 of 1990 namely (a) any industry manufacturing arms, ammunitions, explosives, military vehicles and equipment, aircraft and other military hardware; (b) any industry manufacturing poisons, narcotics, alcohols, dangerous drugs and toxic, hazardous or carcinogenic materials; (c) any industry producing currency, coins or security documents;
- Large scale mechanised mining of gems; and
- Lotteries.

Foreign ownership in voting shares of local companies is completely restricted in the following areas:

- pawn broking;
- retail trade where the capital contributed by persons resident outside Sri Lankan is less than USD 5 million;
- coastal fishing (as defined by the Minister to whom the subject of fisheries is assigned).

Foreign entities seeking investment incentives, such as exemptions from applicable laws referred in Schedule B of the Board of Investment Law No. 4 of 1978 (as amended) (BOI Law) should secure registration under section 17 of the BOI Law or have their investment identified by the Board of Investment of Sri Lanka as a strategic development project under the Strategic Development Projects Act No.14 of 2008 (as amended). Eligibility is based on the foreign investment value and the importance of the investment sector to the Sri Lankan economy and other stipulated criteria.

Further, pursuant to the Colombo Port City Economic Commission Act No. 11 of 2021 and the regulations made thereunder, the Colombo Port City was established as a special economic zone and permits the registration of offshore companies who intend to engage in business in and from the area of authority of the Colombo Port City.
These regulations grant the commission authority to lease land within the Colombo Port City and to transfer condominium parcels on a freehold basis to investors or developers (as the case may be). Unlike in the standard procedure of establishing a business presence in Sri Lanka (as discussed above), all applicable procedural requirements for business carried out within the Colombo Port City are facilitated by the single window facilitator, i.e., the Colombo Port City Economic Commission.

In relation to foreign employment restrictions in Sri Lanka, foreign nationals are not permitted to be employed unless it can be established that their expertise is essential to the national economy. All foreigners working in Sri Lanka must obtain valid visas therefor. However, a business carried out within the Colombo Port City may employ any person irrespective of whether he/she is a resident or non-resident of Sri Lanka. The Colombo Port City Economic Commission Act indicates that remuneration to such persons would need to be provided in a designated foreign currency other than in Sri Lankan Rupees, and the income earned by such persons will not be subject to income tax in Sri Lanka.

Restrictions on Foreign Property Ownership

Transfer of land is prohibited to the following:

- foreign individual
- foreign company
- company incorporated in Sri Lanka where any foreign shareholding in such company either directly or indirectly is 50% or above.

It is relevant to note that where the foreign shareholding is directly or indirectly above 50% such a company would fall within the definition. Accordingly, formation of a subsidiary company by a company where a foreign shareholding is over 50% for the purpose of purchasing immovable property would not be permitted.

Land is defined to mean any State or private land and includes any interest in land covered with water and any house or building which stands on that land.

The following transfers are exempted from the application of the law:

- Land transferred to Diplomatic Missions of another State or International, Multilateral or Bilateral Organisation recognised within the meaning of the Diplomatic Privileges Act.
- A condominium parcel specified under the Apartment Ownership Law provided that the entire value is paid up front, through an inward foreign remittance prior to the execution of the relevant deed of transfer.
- A foreign investor in consequent to a decision of the Cabinet taken prior to January 1, 2013 involving direct investment of foreign currency, as per the related agreements on such investment, and structured on the basis of any written law governing the tax regime prior to January 1, 2013 and has ensured compliance by making inward remittances to Sri Lanka.
- Land transferred by intestacy, gift or testamentary disposition to a next of kin (who is a foreigner) of the owner of such land.
- Land transferred to dual citizens of Sri Lanka.
- Land transferred to any bank, in which any foreign shareholding is 50% or above:
  - At any auction conducted by such Bank in terms of the Recovery of Loans by Banks (Special Provisions) Act or Mortgage Act, in the discharge of a mortgage of such land to such bank.
  - In execution of a decree of court to enforce the recovery of a loan given by such bank.
- Land transferred to any financial institution:
  - where such land has been mortgaged to such institution.
  - in order to execute a lease and an agreement to sell or a loan and an agreement to sell.
  - in execution of a decree of court to enforce the recovery of a loan given by such institution.
- Any transfer to a Company between the period commencing on January 1, 2013 and ending on the date the Land Act was certified, if such company has been in active operation in Sri Lanka for a period of not less than 10 consecutive years prior to the date of transfer of such land.
- Land transferred after April 1, 2018 to a company listed in the Colombo Stock Exchange irrespective of its foreign ownership.

Effect of Increasing Foreign Shareholding

Where land is transferred to a company incorporated in Sri Lanka with less than 50% foreign shareholding, such company cannot increase the foreign shareholding to 50% or above for a consecutive period of 20 years from the date of such transfer. If the foreign shareholding is so increased the transfer of land will be void and shall have no effect in law.

The Land Act, however, allows a company to rectify an increase of the foreign shareholding. If the foreign shareholding is so reduced, the transfer of land shall be deemed to be legally valid, with effect from the date of restoring the foreign shareholding of such company to less than 50%.

Restrictions on Mortgaging

Any land transferred or leased to a foreigner (under the exemptions provided for above) cannot be mortgaged or pledged for a period of 5 years with effect from the date of execution of the relevant instrument after the date on which the certificate of speaker is endorsed in respect of this Act.

Secretaries Certificates

Where land is transferred to a company which is less 50% shareholding the company Secretary should furnish to the Registrar of Lands a certificate to the effect that foreign shareholding is less than 50% and the Secretary should inform every 6 months from the date of registration of the relevant deed that the foreign shareholding has not exceeded 50%.

Foreign Investment Incentives

Sri Lanka, a functioning market economy, apart from having “Investment Protection Agreements” and “Double Taxation Relief Agreements” with many countries plus “Free Trade Agreements” with India, Pakistan and Singapore, GSP Schemes with the United Kingdom, the European Union and the United States of America and regional trade agreements, such as the APTA and SAFTA, also offers competitive incentives for foreign investment.

Incentives are provided to investors who register with the Board of Investment of Sri Lanka (BOI) under section 17 of the Board of Investment Law No. 4 of 1978 based on whether the investment constitutes (a) small; medium; or large-scale investment; (b) project expansion; or (c) strategic import replacement enterprise/expansion. There are also different qualifying criteria for different sectors such as manufacturing, agriculture and agro processing, infrastructure and services. Incentives that may be provided by the BOI consist of the grant of duty-free imports for capital goods and raw materials (for export-oriented services), and enhanced capital allowances. Special incentives may also be granted to businesses operating in specialised processing zones.

Investments identified by the BOI as a strategic development project under the Strategic Development Projects Act No.14 of 2008 (as amended) would be eligible for full or partial exemptions on Income Tax; Value Added Tax; etc and other special concessions up to a maximum of 25 years.

Some sectors are not open for foreign investments or may be subject to government approval and/or regulations. Foreign investors are advised to check the website of the BOI to see if their business falls into these sectors.

Under the Commercial Hub Regulation No. 1 of 2019, enterprises which, in terms of the Agreements entered into with the BOI to engage in (a) entrepot trade involving import, minor processing and re-export, any manufacturing activity for export; (b) off-shore business; (c) providing front-end services to clients abroad; (d) headquarters operations of leading buyers for the management of the financial supply chain and billing operations; (e) logistics services such as bonded warehouse or the operation of multi–country consolidation in Sri Lanka; are entitled to exemptions from the application of provisions of the Customs Ordinance (subject to specified exceptions), Import and Export Control Act, the Foreign Exchange Act and the acts referred to in the schedule of Part IV of the Finance Act No. 12 of 2012 (as amended) and are also entitled to exemptions from dividend tax under the provisions of the Inland Revenue Act No. 24 of 2017 (as amended) and the supply of goods to an enterprise engaged in the above eligible activities shall be treated as an export and thus VAT will be zero rated.

Sri Lanka welcomes foreign investors. Further information relating to foreign investment incentives can be found on the website of the BOI - under the tab “Setting up in Sri Lanka”.

The Government of Sri Lanka also aims to attract foreign investors through the development of the Colombo International Financial City which is a special economic zone and the Colombo Port City Economic Commission Act No. 11 of 2021 exempts businesses established within the Colombo Port City from certain compliance obligations under the laws of Sri Lanka and authorises the Colombo Port City Economic Commission to provide concessions under particular laws for the promotion of business and to attract foreign investments.

Foreign Exchange Regulations

The Exchange Control Act has now been replaced by the Foreign Exchange Act No.12 of 2017 (FEA).

In terms of the FEA, in the event of transfer of immovable property (land and buildings) owned by a non-resident (this would include foreigners as well as Sri Lankan migrants), a licensed commercial bank is permitted to repatriate sale proceeds including capital gains (if any) of a sale of property in Sri Lanka, paid in SLR by a person resident in Sri Lanka to a person resident outside Sri Lanka. As such it is possible for the non-resident (via his Bank) to:

- Repatriate the sale proceeds via an Inward Investment Account (IIA, formerly called an SIA Account) of the owner, if the original purchase of the property was made using funds in the IIA; or
- Repatriate the proceeds to an account maintained outside Sri Lanka by the owner of the property, upon furnishing proof to the Bank of inward remittances (including funds sent by the owner to an account of a third party in Sri Lanka who has facilitated the purchase of the property) for the original purchase and/or improvement of the property.

A Sri Lankan emigrant/non-resident is eligible for migration allowances, which includes proceeds realised from the sale of movable and immovable property. The Sri Lankan non-resident should therefore, upon sale of immovable property in Sri Lanka to a person resident in Sri Lanka, deposit the sale proceeds to a Capital Transactions Rupee Account (CTRA) with a licensed commercial bank in Sri Lanka. As the Bank is authorised to sanction remittance of the proceeds in the CTRA, the non-resident can do so by making an application to the Bank with whom he holds the Account, along with the tax clearance certificate obtained from the Department of Inland Revenue and any other supporting document required by the Bank.

The Bank is authorised to permit an initial remittance of USD 200,000, subject to earlier remittances, if any.

Thereafter annual remittances are permitted after the lapse of 12 months from the initial transfer and except for the first allowance, subsequent allowances shall be transferable per calendar year, subject to submission of a tax clearance certificate and any other supporting documentation required by the Bank.

Taxes on Acquisition and Transfer of Real Estate

Stamp duty on a deed of transfer is as follows:

- 3% for the first SLR 100,000; and
- 4% for every SLR 100,000 or part thereof.

Stamp duty on a lease agreement is SLR 10 for every SLR 1,000 or part thereof.

Stamp duty is usually payable in the event of a transfer by the purchaser and in the event of a Lease Agreement by the lessee, unless the lessor and the lessee have an agreement to the contrary.

Capital Gains Tax is also applicable and the seller of a property would need to consult his tax advisors in connection with the amount payable.

As per the Land (Restriction on Alienation) Act No.3 of 2017, Section 5 of the Land (Restriction on Alienation) Act No.38 of 2014 was amended. In terms of this amendment the provisions relating to the Land Lease Tax shall not apply to the lease of land by the following entities:

- A foreign individual
- A foreign company
- A company incorporated in Sri Lanka where any foreign shareholding in such company either directly or indirectly is 50% or above

in respect of any Indenture of Lease executed after January 8, 2017.

Taxes on Possession and Operation of Real Estate

Assessment rates are payable to the local authority of the area where the land is situated. This would be calculated on the basis of an annual value given by the local authority after an inspection/valuation of the property. Assessment rates are payable quarterly.

In addition, there are certain charges payable to the Urban Development Authority (UDA). However, UDA charges are not applicable to all premises and would be payable depending on the nature and use of the premises.

Tax Treaties: Avoidance of Double Taxation

Sri Lanka has entered into double tax avoidance agreements with several jurisdictions, in terms of which taxpayers may claim credits with respect to specified taxes. Below is a list of countries or territories that Sri Lanka has entered into double tax avoidance agreements with as at April 26, 2023:

Australia	Norway
Bahrain	Oman
Bangladesh	Pakistan
Belarus	Palestine
Belgium	People's Republic of China
Canada	Philippines
Czech Republic	Poland
Denmark	Qatar
Egypt	Republic of Korea
Germany	Romania
Finland	Russian Federation
France	SAARC Countries
Hong Kong	Saudi Arabia
India	Seychelles
Indonesia	Singapore
Iran	Sweden
Italy	Switzerland
Japan	Thailand
Jordan	Turkey
Kuwait	United Arab Emirates
Luxembourg	United Kingdom
Malaysia	United States of America
Mauritius	Vietnam
Nepal	Yugoslavia
Netherlands	

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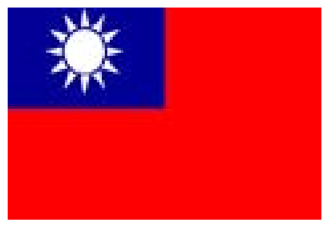
Taiwan



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, promulgated on August 1, 2012 and last amended on July 1, 2021, the Ministry of the Interior (MOI) established a registration system under which (1) the seller and purchaser of a real property sale and purchase transaction must register the actual transaction price when applying for the transfer of the title; (2) the broker of a pre-sale property must register the actual transaction price within 30 days of the signing of the sale and purchase agreement; and (3) the broker of a lease transaction must register the actual transaction price within 30 days of the signing of the lease agreement.

Restrictions on Foreign Ownership

Foreign individuals and companies (except for nationals and companies of the People's Republic of China (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 units in 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 units in buildings. Furthermore, to prevent PRC individuals from driving up real property prices in particular areas, the MOI introduced a new control measure on July 1, 2015 under which no more than 10% of the total number of units in the same building or community may be owned by PRC individuals; however, if the total number of units in the same building or community is less than 10, PRC individuals may not own more than one unit. Furthermore, as real estate prices in metropolitan areas in Taiwan have continued to surge since 2009 and with increasingly more PRC investors acquiring real estate in Taiwan, the MOI amended the said Regulations on June 9, 2017 again in order to curb real estate speculation by PRC investors and to stabilise the local real estate market. Among others, the amendments to the said Regulations stipulate that PRC investors' applications to acquire, create or transfer real estate rights must be denied in any of the following events: (1) Taiwan's major infrastructure might be affected; (2) land monopolisation or speculation is suspected; (3) the comprehensive development of the national territory might be affected; or (4) central competent authorities believe that national security or social security might be compromised.

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

01 Land Act

02 Land Tax Act

03 Deeds Tax Act

04 House Tax Act

05 Urban Planning Act

06 Regulations on Urban Renewal

07 Building Act

08 Regulations on Management of Apartment Buildings

09 Management Rules for Hillside Buildings

10 Management Rules for Interior Fixtures of Buildings

11 Regulations on Permission of the Acquisition, Creation or Transfer of Property Rights of Real Estate in Taiwan by PRC People

12 Rules on Superficies on State-owned Non-public Land

13 Statute for Investment by Foreign Nationals

14 Statute for Investment by Overseas Chinese

15 List of Negative Investments by Overseas Chinese and Foreign Nationals

16 Act for Promotion of Private Participation in Infrastructure Projects

17 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/Licensing 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; or
- 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% to 5% of the current assessed value of the house, depending on the type of use.

Purposes		Statutory rate (%)		Actual rates enforced (%)* - Taipei as an example
		Min. Rate	Max. Rate	
For residential purposes	Used by the owner himself/herself, his/her spouse or relatives of a direct lineage of the household or leased for public welfare purposes	1.2		1.2 (special rate may apply, e.g., 0.6% special rate for 1 unit located in Taipei City with household registration thereon and which can be used as residence under the applicable urban planning regulations)
	Not occupied by the owner, his/her spouse or relatives of a direct lineage of the household	1.5	3.6	Holding no more than 2 units – 2.4 per unit; Holding 3 units or more – 3.6 per unit
For non-residential purposes	Used for business purposes	3	5	3
	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, Taoyuan 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 (MOF) 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% to 5.5%, 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 two 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% 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 generally 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% to 40%, 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% or more only). The holding period discounts are available where the subject property has been held for more than 20 years, 30 years or 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%

Despite the foregoing, it is worth noting that the Taiwan government has adopted a new tax system, which took effect on January 1, 2016 and last amended on July 1, 2021 (New Tax System). Under the New Tax System, a seller's total capital gains from the sale of buildings and/or land acquired on or after January 1, 2016 are subject to income tax. In addition, the tax rates that apply to non-Taiwan residents and foreign entities are different from those that apply to Taiwan residents and entities with headquarters in Taiwan. For non-Taiwan residents and foreign entities, the tax rates are (1) 45% for buildings and/or land owned for no more than two years prior to the sale; and (2) 35% for buildings and/or land owned for more than two years prior to the sale.

Value Added Tax/Goods and Services Tax

Taiwan has a 5% 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:

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.

Corporate Taxation

Except for the gains from the sale of the land and/or buildings subject to the New Tax System, 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	Rate (% of value of the deed)
Less than TWD 120,000 (USD 4,000	Exempt from tax
More than TWD 120,000 (USD 4,000)	20% of total taxable income, but the tax payable shall not exceed 50% of the portion of taxable income above TWD 120,000 (USD 4,000)

Net losses can be carried forward for a maximum of ten 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 33,333).

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 2022):

Taxable income	Tax rate
TWD 0-560,000 (USD 0-18,667)	5%
TWD 560,001-1,260,000 (USD 18,667-42,000)	12%
TWD 1,260,001-2,520,000 (USD 42,000-84,000)	20%
TWD 2,520,001-4,720,000 (USD 84,000-157,333)	30%
TWD 4,720,001 (USD 157,333) 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.

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 6% (in the event that his/her monthly income is no more than 1.5 times the minimum wage) or 18% (in the event that his/her monthly income is more than 1.5 times the minimum wage), 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.

Meanwhile, please note that with regard to the gains from the sale of land and/or buildings that are subject to the New Tax System, the tax rates applicable to Taiwan residents are as follows:

Holding Period Prior to Sale	Tax rate
two years or less	45%
more than two years but no more than five years	35%
more than five years but no more than ten years	20%
More than ten years	15%

[Note 1] When an heir or a legatee sells a building and/or land obtained through inheritance or legacy, the period for which the said building and/or land were/was held by the deceased can be included when calculating the period of his/her holding such building and/or land.

[Note 2] With regard to (1) buildings and/or land owned for less than five years prior to the sale thereof owing to a job transfer, involuntary redundancy from employment, or any other involuntary cause of a seller; (2) a seller who uses his/her own land to enter into a joint construction and allocation project with a profit seeking enterprise and subsequently sells his/her unit(s) in the building and/or land within five years of acquisition of land; or (3) buildings and/or land that are transferred for the first time after the completion of construction and have been held for no more than five years where the buildings and/or land are acquired through participation in urban renewal by providing land, legal buildings, other rights, or capital in accordance with the Regulations on Urban Renewal or the participation in reconstruction in accordance with the Statute for Expediting Reconstruction of Urban Unsafe and Old Buildings, the tax rate applicable to he gains from the sale of such buildings and/or land is 20%.

Tax Treaties: Avoidance of Double Taxation

Double taxation agreements as of March 29, 2023:

Australia	Malaysia
Austria	North Macedonia
Belgium	Netherlands
Canada	New Zealand
Czech Republic	Paraguay
Denmark	Poland
France	Saudi Arabia
Gambia	Senegal
Germany	Singapore
Hungary	Slovakia
India	South Africa
Indonesia	Eswatini
Israel	Sweden
Italy	Switzerland
Japan	Thailand
Kiribati	United Kingdom
Luxembourg	Vietnam

International Transport Tax Treaties for Shipping or Air Transport* as of March 29, 2023:

For the purpose of this table: A = Air Transport and S = Shipping Transport		
Canada (A)	EU (S)	Germany (S)
Japan (S&A)	Korea (S&A)	Luxembourg (A)
Macau (A)	Netherlands (S&A)	Norway (S)
Sweden (S)	Thailand (A)	United States (S&A)

* Generally, International Transport Tax exemptions allow countries to import and export cargoes 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 Securitisation 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 April 25, 2023, there are seven REITs listed on the Taiwan Stock Exchange and 16 REATs listed on the over-the-counter (OTC) market.

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 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% of the beneficial securities in a REIT or more than 50% of the preferred stock in a REAT.

4 | Asset Restrictions

- Over 75% of 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% of 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 bonds, bonds issued by financial institutions, treasury notes, negotiable certificates of time deposit, 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% of another fund.
- A fund cannot invest more than 10% 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:
- 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 100,000), 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).
- 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% on their dividend income from the trust; this income is not consolidated in their annual taxable income. A 15% 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	TWD/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 for commercial property
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	Consumer price index published by the government or a fixed rate agreed upon by the parties to the lease
Frequency of rent increase or rent review	Typically 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 unless otherwise provided in the lease
Responsibility for external/ structural repairs	Landlord
Responsibility for building insurance	Landlord
Disposal of leases	
Tenant subleasing & assignment rights	Case-by-case
Tenant early termination rights	Case-by-case
Tenant's building reinstatement responsibilities at lease-end	Case-by-case

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Thailand

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.

The Contract Committee of the Consumer Protection Board has issued a new notification under the Consumer Protection Act designating the lease of residential property as a "contract-controlled business." The Notification of the Contract Committee Re: The Stipulation of Residential Property Leasing as a Contract-Controlled Business B.E. 2562 (A.D. 2019) have a significant impact and impose restrictions on residential lease agreements in order to control the content of written contracts between certain businesses and their consumers in the course of sales and services. The notification applies to business operators that lease (or sublease) five or more units of property to individual lessees for residential purposes, regardless of whether the units are in the same building. It also requires specific terms and conditions, including details of the property's physical condition, the term of lease, payment due dates, and service fee rates.

Major Property Legislation

01 Bankruptcy Act

02 Act on the Establishment of and Procedure for Bankruptcy Court (or Bankruptcy Court Act)

03 Civil and Commercial Code

04 Commercial and Industrial Property Lease Act

05 Condominium Act

06 Consumer Protection Act

07 Exchange Control Act

08 Foreign Business Act

09 General Building Construction Act

10 General Building Control Act

11 Land and Building Tax Act

12 Investment Promotion Act

13 Industrial Estate Authority of Thailand Act

14 Land Code

15 Unfair Contract Terms Act

16 Revenue Code

17 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/ Licensing Requirements

According to the Foreign Business Act, a foreigner refers to:

- An individual of non-Thai nationality.
- An entity registered in another country (including all branches, representative offices, and regional offices of oversea companies operating in Thailand).
- An entity registered in Thailand with 50% or more if its shares held by non-Thai shareholders (individual or business entities).

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% of the average estimated operating expenses for the first three years, but not less than THB 3 million (USD 94,637.22).

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 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 and the Additional Amendment of the Announcement of the Board of Investment No. 8/2558 granting priority investment promotion to small and medium size enterprises (SMEs) that have a minimum level of investment capital of THB 500,000 (USD 14,662), excluding cost of land and working capital. Each project that applies for investment promotion must not have less than 51% of the shares in the SME be held by a Thai individual with the debt-to-equity ratio not exceeding 3:1 and the value of imported machinery may not exceed THB 10 million (USD 300,000) 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 6.30 million).

Further, the BOI criteria and privileges under the Announcement of the BOI No. 8/2565 which shall be effective for applications submitted from January 3, 2023 onward prescribe as follows:

1 | Criteria for Project Approval

- For a project with a minimum capital investment of THB 1 million (USD 31,545.74), excluding cost of land and working capital, the following criteria is used:
  - The value added is not less than 20% of the sales revenue, except for projects in agriculture and agricultural products, electronic products and parts, and coil centers, all of which must have value added of at least 10% of revenues.
  - Modern production processes must be used.
  - 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 300,000) 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.
- For a project with investment capital, excluding cost of land and working capital, exceeding THB 750 million (USD 23.65 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% 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 | Additional Incentives for Area-based Promotion

- The BOI specifies investment promotion zones as follows:
  - Twenty 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, , Surin, Nong Bua Lamphu, Ubon Ratchatani and Amnatcharoen.
  - 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 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 non-tax incentives.
  - Group B consists of activities that shall receive only machinery and raw materials import duty incentives and other non-tax 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:
  - Research and development in technology and innovation.
  - Donations to technology and human resources development funds, educational institutes.
  - IP acquisition/licensing fees for commercialising technology developed in Thailand.
  - Advanced technology training.
  - Development of local suppliers with at least 51% Thai shareholding in advanced technology training and technical assistance.
  - Product & packaging design.
  - Merit to be placed on decentralisation for a project located in the 20 provinces with low per capita income that 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 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%2020_3_58_23499.pdf.

Furthermore, in accordance with BOI Announcement No. 4/2563 on measures to promote investment for small and medium enterprises (SMEs), business operations under Group A and Group B1, as defined in Annex of BOI Announcement No. 2/2557 and its amendments, are eligible for promotion under the SME investment promotion measure, subject to specific conditions:

- Minimum investment required for each project not less than THB 500,000 (USD 14,662), excluding cost of land and working capital.
- Must have a natural person of Thai nationality holding shares of not less than 51 percent of the registered capital.
- Allowed to use domestically used machinery in projects applying for promotion not more than THB 10 million (approx. USD 300,000), the price of used machinery will be calculated in the country using book value and have to invest in the main machine for a small proportion more than 50% of the value of machinery used in the project.

- Allowed to use domestically used machinery in projects applying for promotion not more than THB 10 million (approx. USD 300,000), the price of used machinery will be calculated in the country using book value and have to invest in the main machine for a small proportion more than 50% of the value of machinery used in the project.
- Must have a total business income (promoted and non-promoted businesses) not exceeding THB 500 million (USD 14,662,756) per year during the first 3 years from the date of earning income from the business that has been promoted.
- This announcement allows business operations that meet the required conditions to be granted some privileges and benefits, including:
- Exempt from imported duty for machinery.
- Exemption from corporate income tax for the type of business in Group A in proportion 200% of the investment (excluding cost of land and working capital).
- Other rights and benefits shall be granted in accordance with the criteria announced by the Board of Promotion Investment No. 2/2557 i.e. tax incentive.

Retention and Expansion Program

BOI has introduced announcement no. 12/2565 on the Retention and Extension program, which aims to enable the established companies that have invested in Thailand to maintain their presence and operations on an ongoing basis.

1 | Criteria for Project Approval

- Having received BOI promotion for at least three investment projects valued at a minimum of THB 10,000 million (USD 293,255,131), excluding land costs and working capital, over the past 15 years (2008-2023) and having applied for new investment projects worth THB 500 million (USD 14,662,756) or more, excluding land cost and working capital.
- Must apply for the new program by the end of 2023.

2 | Benefits

- Companies categorised as A+ can enjoy up to 13 years of corporate income tax (CIT) exemption, with an additional 3 years of exemption available beyond the initial 10-13 year period.
- For A1 and A2 companies, the program offers 8 years of CIT exemption followed by a 50% reduction for the next 5 years.
- Companies in the A3, A4, and B categories may be eligible for up to 5 years of CIT exemption, with the potential for an additional 3 years of exemption.
- Approved projects can receive CIT exemption for a period of 0-13 years, with the length of the exemption period varying by category.

Relocation Program

BOI has introduced announcement no.13/2565 regarding a comprehensive relocation program for investors who wish to relocate their business operations to Thailand. This program includes two sub-programs: one for new investment promotion applications in production projects and the other for investment projects in existing products that are already receiving benefits under the A category.

1 | Eligibility Criteria

- For new investment applications in production projects
  - Companies must have applied for both a production project and an international Business Centre (IBC).
  - Companies must apply for the benefits by the end of 2023.
- For Investment applications in existing production projects
  - Companies must have applied for an International Business Centre (IBC).
  - Companies must apply for the benefits by the end of 2023.

2 | Benefits

- Projects that are approved under the program will receive a set of benefits, including non-tax benefits, specific to production projects.
- If a project involves both production and an International Business Centre (IBC), it will receive standard benefits under the production component as well as an additional 3 years of corporate income tax (CIT) exemption (with a total exemption period not exceeding 8 years) and other non-tax benefits.
- If a project, that includes production, an IBC, and a Research and Development Center will receive standard benefits under the production component and an additional 5 years of CIT exemption (with a total exemption period not exceeding 8 years) and other non-tax benefits.

Long-term Resident Program (LTR)

BOI has announced the criteria and privileges for the long-term resident visa (LTR Visa) as per the announcement of BOI No.2/2565, which came into force on March 16, 2023. This is in order to provide a range of tax and non-tax benefits to enhance the country's attractiveness as a regional hub for living and doing business for "high-potential" foreigners.

1 | Categories of Foreigners Offered LTR Visas in Thailand

- Wealthy Global Citizen – wealthy individual holding at least USD 1 million in assets.
- Wealthy Pensioner – retires aged 50 years and older who have an annual pension or stable income.
- Work-from Thailand Professional – remote workers working for well-established overseas companies.
- Highly-skilled Professional – professionals or experts in targeted industries working for business entities or higher education institutes or research centres or specialised training institutions in Thailand or Thai government agencies.
- Dependents – spouse and children under 20 years old of LTR visa holders (maximum 4 dependents in total per one LTR visa holder).

2 | Privileges

- 10-year renewable visa.
- Exemption from 4 Thais to 1 foreigner employment requirement ratio.
- Fast track services at international airports in Thailand.
- 90-day report extended to 1-year report.
- Permission to work in Thailand (Digital Work permit).
- 17% personal income tax for highly skilled professionals.
- Multiple re-entry permit.
- Immigration and work permit facilitation at One Stop Service Centre for Visa and Work Permit.

3 | Eligibility Criteria

- **Wealthy Global Citizen**
  - Have at least USD 1 million in assets.
  - Have a personal income of a minimum of USD 80,000 a year in the past two years.
  - Have an investment of at least USD 500,000 in Thai government bonds, foreign direct investment, or Thai property.
  - Wealthy Pensioner
  - Have a personal income of at least USD 80,000 a year at the time of application.
  - In case of personal income below USD 80,000 a year but no less than USD 40,000 a year, applicants must invest at least USD 250,000 in Thai government bonds, foreign direct investment, or Thai property offices. The processing fee is THB 3,000 (USD 88) per year to maintain a digital work permit.
- **Work- from Thailand Professional**
  - Have personal income of a minimum of USD 80,000 a year in the past two year.
  - In case of personal income below USD 80,000 a year but no less than USD 40,000 a year in the past two years, applicants must have a master's degree or above or own intellectual property or receives Serie A funding.
  - Current employer must be a public company on a stock exchange or private company in operation for at least three years with combined revenue at least USD 150 million in the last three years.
  - Have at least of 5 years work experience in the relevant fields of the current employment over the past 10 years.
- **Highly- skilled Professional**
  - Have personal income of a minimum of USD 80,000 a year in the past two year.
  - In case of personal income below USD 80,000 a year but no less than USD 40,000 a year in the past two years or before retirement. Applicants must have a master's degree or above in science and technology or special expertise relevant to the job assignment in Thailand. However, in the case of professionals working for Thai government agencies no minimum personal income are required.
  - Current employer must be business in any targeted industries or higher education institution, research institution, specialised training institution, or Thai government agency.
  - Have at least 5 years of work experienced in the targeted industries except for applicant with PhD or above in the relevant fields of the targeted industries or applicants working for Thai government agencies.

International Business Centre (IBC) Schemes

The IBC (former: Regional Operating Headquarters; ROH) is the new schemes stipulated by the Royal Decree (No. 674) issued under the Revenue Code in 2018. It provides the criteria and tax privileges for the foreign-held entity who conducts the business of providing management service, technical service, supporting service, or financial management service for affiliates (or associated enterprises) as follows:

1 | Eligibility Criteria

In 2018, the cabinet endorsed a package of tax incentives aimed at encouraging foreign companies to set up the potential business centre in Thailand. In order to be eligible, for the IBC, the foreign company must:

- Be a company incorporated under the laws of Thailand.
- Have at least THB 10 million (approx. USD 300,000) of paid-up registered capital.
- Have at least one offshore/onshore affiliate.
- Have at least 10 knowledgeable and skilled employees.
- Incur expenditure paid to recipients in Thailand of at least THB 60 million (approx. USD 1,750,000) per year.
- Strictly comply with other regulations prescribed by the Director-General of the Revenue Department.

2 | Tax Incentives

The IBC who meets the aforesaid requirements shall be awarded the following tax incentives for 15 accounting periods in accordance with the Royal Decree (No. 674):

- **Personal Income Tax (PIT)**
  - The reduction in PIT rate from the progressive rates (maximum 35%) to the constant rate of 15% for the expat who works for the IBC.
  - In the case where the assessable income is subject to withholding tax at the rate lower than 15% of income, the expat shall be exempted from having to include such income in computation of income tax if such expat allows the IBC to withhold income tax at the rate of 15% of such income.
  - In the case where the expat allows the IBC to withhold 15% of income tax, the expat has been exempted from having to include such income in computation of income tax.
  - The expat who be eligible for the PIT benefits must receive the salary approx. THB 200,000 (approx. USD 6,000) per month.
- **Corporate Income Tax (CIT)**
  - 8% if the IBC incurs expenditure paid to recipients in Thailand of THB 60 million (approx. USD 1,750,000) in the accounting period.
  - 5% if the IBC incurs expenditure paid to recipients in Thailand of THB 300 million (approx. USD 8,773,000) in the accounting period.
  - 3% if the IBC incurs expenditure paid to recipients in Thailand of THB 600 million (approx. USD 17,545,000) in the accounting period.
  - Exemption from CIT on dividends, fees and royalties received from affiliates in Thailand or overseas.
  - A prospective investor who wishes to qualify to obtain the IBC privileges may either seek the BOI's promotion or register with the Revenue Department.

3 | BOI Promotions

As above addressing, the IBC has been promoted by the BOI as the new business schemes in accordance with the BOI Committee Announcement No. Sor. 6/2561 since December 11, 2018. The criteria required for the IBC especially for non-tax privileges are that the paid-up capital of the company operating the IBC must be more than THB 10 million (approx. USD 300,000) at the end of each accounting period, the IBC's investment amount must be at least THB 1 million (approx. USD 30,000), and the IBC must provide services under the scope described by the Royal Decree (No. 674) to associated enterprises in Thailand and overseas. The government proposes the package of non-tax incentives for the applicant who meets the legal requirements as follows:

- Be majority or 100% foreign ownership of the company established under Thai laws.
- Have permission to bring in the expats.
- Have permission to own land and buildings.
- Allow repatriation of foreign currency back to the parent company.
- Exempt the import duties on machinery which only for Research and Development (R&D) and Training activities.

However, the IBC company must strictly follow conditions stipulated in the BOI certificate (e.g. own the land for the purpose of business only, notify to the BOI Committee in some important events). Moreover, foreign associated enterprises must have managements and employees working and have actual business operations, including training and encouraging Thai skilled staffs.

4 | Foreign Business Operation

The IBC company has been characterised as "foreigner" pursuant to the Foreign Business Act B.E. 2542 (1999) or the "FBA" which required prior approval from the Department of Business Development (DBD) before conducting any operation. The FBA stipulates that the IBC business falls within the scope of List Three (21) annexed to the FBA which is other service businesses, and there are two separated approaches in order to grant the permission from the DBD as follows:

- Request for approval to the Foreign Business Commission in order to obtain the Foreign Business Licence.
- Grant the BOI promotions and request for certifying to the Foreign Business Commission in order to obtain the Foreign Business Certificate.

However, after the completion of approval, the IBC company shall be required to submit the application to the Revenue Department for the mentioned tax incentives.

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% 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 one rai of land (0.4 acre) for residential purposes if granted permission by the Ministry of Interior, and must remit a total of at least THB 40 million (USD 1.26 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 of if it is not utilised for residence within two years as 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.

Moreover, on October 25, 2022, the Thai cabinet approved a draft of ministerial regulation, which allows foreigners, who meet the following requirements:

Investor Eligibility Requirement

- Foreign individual holding at least USD 1 million in assets.
- Retirees with a personal income of at least USD 80,000 a year.
- Workers from well-established overseas companies.
- Highly-skilled professionals in targeted industries.

Land Location Requirement

- Target land should be located in Bangkok, Pattaya City or municipal area, or a designated residential area.

Requirement on Amount and Term of Historical Investment

- Foreign investors should hold long-term resident (LTR) visas and have invested at least THB 40 million (USD 1.2 million) in Thailand in the form of government bonds, real estate investment trusts (REITs), infrastructure bonds, or investment in companies eligible for investment promotion incentives at least three years before applying to buy land.

These four groups are eligible to acquire up to 1 rai (1,600 square meters) of land for use as their own residence. These draft ministerial regulations are now expected to be submitted for consideration of Council of state and relevant authorities and will be effected for 5 years.

Condominiums

Foreigners can purchase any condominium project, up to 49% of the total space of all units in that condominium at the time of the application, for condominium registration without the need for permanent residence. Eligible foreigners include:

- Those with residence permits.
- Those who were granted permission to enter Thailand under the Investment Promotion Act.
- Limited companies with more than 49% 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 foreign company purchasing a condominium unit, is required to bring 100% of the amount of the purchase price from an overseas source into Thailand.

Prior to April 2004, foreigners could purchase up to 100% of a condominium project, provided it was located in Bangkok Metropolis, municipality area or other administrative area and the site area was less than five rai (two acres) as stipulated in the Condominium Act (No. 3), B.E. 2542 (A.D. 1999). This law was in effect between 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 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 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 20,561.51) or its equivalent must declare as such to a customs officer. Regarding Thai currency (THB), tourists may carry up to THB 500,000 (USD 14,662) to neighbouring countries and up to THB 50,000 (USD 1,577.28) 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:

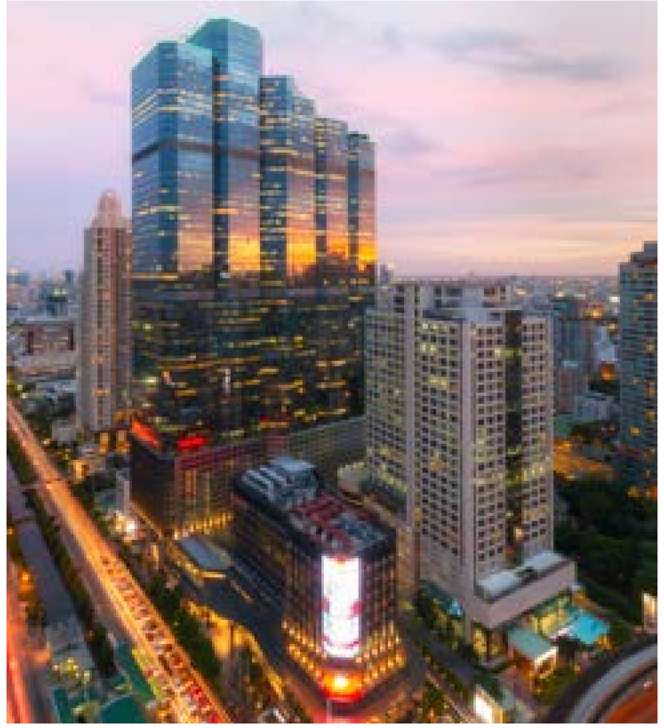
- Thai residents and companies, including companies registered with the Stock Exchange of Thailand, are allowed to invest in or lend to affiliated business entities abroad an aggregate amount not exceeding THB 3.27 billion (USD 103.15 million) per year.
- Thai individuals or corporate investors can invest in securities abroad, other than those under employee benefit plans, through private funds, or securities companies subject to the Securities and Exchange Commission's 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 1,032,176.65) per recipient per year for each purpose.
- Fund transferred to public for donation are allowed up to THB 32.72 million (USD 1,032,176.65) per person per year for each purpose
- Purchase of immovable properties abroad is allowed up to THB 327.20 million (USD 10.3 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%
Payment to employees	15%

* The withholding tax rates may be lower where a double taxation agreement exists.

A 10% 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, 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 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 9.46 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 landowner. The tax rate varies greatly, depending on the location and assessed value of the land. Typically, it ranges from THB 0.5 (USD 0.02) to THB 80 (USD 2.52) per rai (1 rai = 1,600 sqm).

House and Land Tax

This is a tax on assessed rental income and only applies to properties that are rented out for any commercial purposes.

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% of annual rental receipts or the annual assessed value by the local authorities, whichever is higher.
- Lease of furniture: subject to a 7% VAT.
- Service charge: subject to a 7% VAT.

Taxes on Acquisition and Transfer of Real Estate

Sale of freehold real estate:

Fees payable	Withholding tax rate*
Ownership Transfer Fee	2% of assessed value (2% of assessed value but not less than THB 20 (USD 0.63) for condo unit ownership transfer)
Additional Stamp Duty	THB 1 (USD 0.03) per THB 200 (USD 6.31) of declared amount, or assessed value 0.5% of declared value or assessed value, whichever is higher
Specific Business Tax	3.3% of declared amount or assessed value, whichever is higher
Municipal Tax	10% of specific business tax
Withholding Tax	For juristic person – 1% of declared amount or assessed value, whichever is higher. 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 agreement has been reduced to 0.01% from 2%.

Disposition of leasehold real estate	
Fees payable	Rates
Lease Registration Fee	1% of total lease consideration or assessed rental value, whichever is higher
Stamp Duty	0.1% of the total rental throughout the lease term
	For individual – 5-35% of assessed value

Mortgage of real estate	
Fees payable	Rates
Mortgage Registration Fee	1% of amount declared in the mortgage agreement, subject to a maximum of THB 200,000 (USD 6,309.15)
Loan Agreement Stamp Duty	0.05% of Mortgage Registration Fee but not more than THB 10,000 (USD 315.46)

For transactions under debt restructuring agreements, a mortgage registration fee of 1% will be applied from January 1, 2005 onwards.

In addition, mortgage interest payments are tax-deductible for personal income tax purposes, subject to a cap of THB 100,000 (USD 3,154.57). The tax allowance is part of a package of tax measures aimed at boosting demand for property.

New Land and Building Tax

As Thailand's new Land and Building Tax Act B.E. 2562 (A.D. 2019) came into effect on March 13, 2019, it revoked and replaced the previous Local Development Tax and House and Land Tax. The new Land Tax Act applies to both individuals and juristic persons who have ownership, possessory, or usage rights over land or buildings, including condominium units, as of January 1 of each year. They are required to pay land and building tax to the local administrative authorities, with payment due in April of each year. The official assessed price of the land, building, or condominium unit, as determined by the government authority for the purpose of collecting registration fees under the current Land Code, will be used as the basis for the calculation of the land and building tax. The actual land and building tax rate that authorities will collect will be announced by royal decree in due course, subject to the fixed maximum rates, exemptions, and transition period rates outlined below.

Use	Maximum Tax Rate
Agricultural	0.15%
Residential	0.30%
Other	1.20%
Vacant/unused	1.20%

For the first two years (2020-2022) of tax collection on land and buildings under this Land Tax Act, the following rates shall be applied instead.

Taxpayer	Use	Value of the property (THB)	Tax rate
Owner of land and/or building	Agricultural	less than or equal to 75 million 75-100 million| 100-500 million 500 million - 1 billion 1 billion	0.01% 0.03% 0.05% 0.07% 0.10%
Owner of land and building who is an individual and registration book whose name is on the house	Residential	less than or equal to 25 million 25-50 million 50 million	0.03% 0.05% 0.10%
Owner of building (but not land) who is an individual and registration book whose name is on the house	Residential	less than or equal to 40 million 40-65 million 65-90 million 90 million	0.02 0.03% 0.05% 0.10%
Owner of land or building other than categories 2 and 3 above	Residential	less than or equal to 50 million 50-75 million 75-100 million 100 million	0.02% 0.03% 0.05% 0.10%
Owner of land and/or building	Other	less than or equal to 50 million 50-200 million 200 million - 1 billion 1-5 billion 5 billion	0.30% 0.40% 0.50% 0.60% 0.70%
Owner of land and/or building	Unused	less than or equal to 50 million 50- 200 million 200 million - 1 billion 1-5 billion 5 billion	0.30% 0.40% 0.50% 0.60% 0.70%

In addition, individual owners who use the land or building for agricultural purposes will be exempt for the first three years of tax collection under the Land Tax Act.

According to the new timeline in the ministry's announcement, the official land and building tax assessment forms will be sent to taxpayers by the end of April 2024 (extended from February 2024) while the deadline for payment of land and building tax has been extended to June 30, 2024 (from April 30, 2024).

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%.

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 foreign individuals are currently not taxed. Foreign companies or other juristic persons doing business in Thailand are subject to pay 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% withholding tax, unless they are exempted under double tax treaties (DTT). Capital gains received by a Thai company and a foreign company carrying on business in Thailand from the sale of fund units in a fixed-income mutual fund are exempt from tax, subject to the condition that the cost of investment and expenses related to the exempt income is not claimed as tax-deductible expenses.

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 56,782.33 million).
- Leasing of immovable property.

There are two VAT rates:

- 0% persons or businesses who do not have to pay VAT are refunded the amount of VAT they had previously paid.

Those eligible for the 0% 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% this general rate applies to all other persons or companies that conduct business in Thailand. The normal rate is 10%, however, it has been reduced to 7%, effective until September 30, 2024.

Tax Depreciation

- Applicable depreciation rates are as follows:
- Building
  - Permanent: 5%
  - Temporary: 100%
- Cost of acquiring depletable natural resources: 5%
- Cost of acquiring lease rights
  - Indefinite: 10%
  - Definite: 100% (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%
  - Definite: 100% (divided by number of years used)
- Others, excluding land and stock-in-trade: 20%

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.

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% corporate income tax on net profits with effective as of 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 take into account all revenue arisen from or in consequence of the business carried on an accounting period and deducting with expenses as prescribed by the Revenue Code.

Small-to-medium enterprises [defined as those having a registered capital not exceeding THB 5 million (USD 157,728.71) and having revenue generated from sale of goods and services not exceeding THB 30 million (USD 946,372.24)] shall pay the tax based on the level of net profits as shown below:

Net profit	Tax rate
Not exceeding THB 300,000 (USD 9,463.72)	0%
THB 300,001-3,000,000 (USD 9,463.75-94,637.22)	15%
Over THB 3,000,000 (USD 94,637.22)	20%

Companies engaged in the business of international transportation of passengers or goods pay a 3% corporate income tax on gross receipts collected for services carried out in Thailand.

Foundations and associations pay corporate income tax of 2% and 10% of gross income, depending on the type of business activity.

Companies who operate a business in the Eastern Economic Corridor (EEC) area are exempted from corporate income tax for a minimum of 15 years.

Net losses may be carried forward 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% to 35%, 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 4,731.86). This means that individuals will only pay tax on income at or above THB 150,001 (USD 4,731.86). Please find the personal net income tax rates as shown below.

Net income	Tax rate
THB 1-150,000 (USD 0.03-4,731.86)	0%
THB 150,001-300,000 (USD 4,731.89-9,463.72)	5%
THB 300,001-500,000 (USD 9,463.75-15,772.87)	10%
THB 500,001-750,000 (USD 15,772.90-23,659.31)	15%
THB 750,001-1,000,000 (USD 23,659.34-31,545.74)	20%
THB 1,000,001-2,000,000 (USD 31,545.77-63,091.48)	25%
THB 2,000,001-5,000,000 (USD 63,091.51-157,728.71)	30%
Over THB 5,000,000 (USD 157,728.71)	35%

Tax Treaties: Avoidance of Double Taxation

Treaties in existence:

Armenia	Luxembourg	India	Tajikistan
Australia	Malaysia	Indonesia	The Netherlands
Austria	Mauritius	Ireland	Turkey
Bahrain	Myanmar	Israel	Ukraine
Bangladesh	Nepal	Italy	United Arab Emirates
Belgium	New Zealand	Japan	United States of America
Beralus	Northern Ireland	Korea	Uzbekistan
Bulgaria	Norway	Kuwait	Vietnam
Cambodia	Oman	Laos	
Canada	Pakistan		
Chile	Philippines		
China, P.R	Poland		
Chinese Taipei	Romania		
Cyprus	Russia		
Czech Republic	Seychelles		
Denmark	Singapore		
Estonia	Slovenia		
Finland	South Africa		
France	South Korea		
Germany	Spain		
Great Britain	Sri Lanka		
Hong Kong	Sweden		
Hungary	Switzerland		

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 trust (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 to any assets are as follows:

Types of Assets

- Any type of real property which can generate rental revenue.
- Real property located outside Thailand.
- Real property that can raise capital at and over 75% 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% of 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 that the contractual lease of property, the rental fee shall be relative to the profits of the tenant but will be at or less than 50% of all fixed rental charge

Leverage Limit

- 35% of total asset can be leveraged up to a maximum of 60% 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 https:// www.set.or.th/en/products/listing2/set_ pfundreits_ p1.html.

Common Terms of Lease for Tenancy Agreements	
Unit of measurement	
Unit of measurement	Square Metres
Rental payments	
Rents	THB/sqm/month (gross area)
Typical lease term	3 years; in case of lease agreement exceeding 3 years such lease must be in writing and registered with the local land office in order to be enforceable
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	1 month
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 other rate as per agreed upon by the parties
Frequency of rent increase 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 utilities	Usually quoted with rental charge and payable monthly in advance
Car parking	Electricity and telecommunications 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; any stipulation of electricity and water supply fees shall not exceed the rates specified by the relevant authorities
Responsibility for internal repairs	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
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Tenant
Responsibility for external/ structural repairs	Landlord
Responsibility for building insurance	Landlord
Disposal of leases	Landlord (charged back via service charge)
Tenant subleasing & assignment rights	Generally prohibited, subject to landlord approval
Tenant early termination rights	*The tenant has the right to terminate the lease agreement early provided that at least 30 days' advance written notice is given to the business operator or landlord
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition

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Vietnam

Major Legislation

Property law in Vietnam is governed by the:

01 Constitution

02 Law on Land[1]

03 Law on Residential Housing[2]

04 Law on Planning[3]

05 Law on Construction[4]

06 Law on Investment[5]

07 Law on Real Estate Business[6]

08 Law on Public Private Partnership Investment[7]

As well as numerous other implementing decrees, circulars and other legislative instruments issued under those laws. Such laws cover:

01 Investment, zoning, planning and building

02 Real estate business

03 Land use right and property titles

04 Leasing

05 Taxation

Under this legislation, the State agencies responsible for managing and monitoring land use, real estate business and construction in Vietnam include:

01 The Ministry of Natural Resources and Environment (MONRE)

02 The Ministry of Construction (MOC)

03 Provincial/City People's Committees (Local PC)

[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, as amended by Law No. 35/2018/QH14 dated November 20, 2018 of the National Assembly taking effect as from January 1, 2019 (Law on Land 2013).

[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, as amended by between 2019 and 2022 (Law on Residential Housing 2014).

[3]Law No. 30/2009/QH12, entitled the Law on Urban Planning, dated June 17, 2009 of the National Assembly, as amended between 2015 and 2020 (Law on Planning 2009).

[4]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, as amended by between 2016 and 2020 (Law on Construction 2014).

[5]Law No. 61/2020/QH14, entitled the Law on Investment, dated June 17, 2020 of the National Assembly, replacing Law No. 67/2014/QH13 dated November 26, 2014 of the National Assembly on Investment, which took effect on January 1, 2021, as amended between 2020 and 2022 (Law on Investment 2020).

[6]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, which took effect on July 1, 2015, as amended by the Law on Investment 2020 (Law on Real Estate Business 2014).

[7]Law No. 64/2020/QH14, entitled the Law on Public Private Partnership Investment, dated June 18, 2020 of the National Assembly took effect as from January 1, 2021, as amended by Law No. 03/2022/QH15 dated January 11, 2022 of the National Assembly taking effect on March 1, 2022 (Law on PPP 2020).

Operational Requirements for Foreign Corporations

Under the Law on Investment 2020, 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 investment policy approval (IPA) in accordance with the Law on Investment 2020 prior to issuance of an IRC. The Law on Investment 2020 classifies three types of projects subject to IPA comprising projects subject to IPA of the National Assembly (NA); projects subject to IPA of the Prime Minister (PM); and projects subject to IPA 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) and a tax code[8] with the relevant business registration office 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 the land sublease agreement with infrastructure developers of a special zone such as an industrial zone.

There are three main methods, among others, in which a foreign corporation can participate in real estate business activities and/or acquire land use rights in Vietnam:

- 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;
  - Be allocated with land by the State authority in the case of implementation of investment projects for the construction of residential houses for sale or for a combination of sale and lease.
- 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.
- Acquiring shares or capital contribution in a Vietnam domiciled company which 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 disclose certain details including its name, its head office address, name of its legal representative, information of the real estate being traded and any mortgage over the real estate. The disclosure must be conducted on the enterprise's website. In addition, the investors' ownership capital must account for at least:

- 20% of their total invested capital for real estate projects with an area of less than 20 ha
- 50% of their total invested capital for real estate projects with an area of greater than or equal to 20 ha

The Law on Real Estate Business 2014 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, with certain limited exceptions. 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 over 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[9] ; in the case of a breach during implementation of the project, the investor must implement the penalty decision.
- The existing investor already has the land use right certificate in respect of the part of or the entire project to be transferred.
- The investor being the transferee of the entire or partial real estate project must be an enterprise licensed for real estate business, have adequate financial capability, and undertake to continue to implement investment, construction and business in accordance with the law, ensuring compliance with the schedule and the contents of the project.

[8]The enterprise code recorded under the ERC is also the tax code.

[9]Resumption of the project and resumption of land respectively refer to the State's revocation of a project's IRC and the State's reassuming possession of land use rights relating to the project. Accordingly, the investor must cease the operation of the project and its business on the resumed land.

In addition, investors, not only in real estate projects but also in other investment projects using land leased from or allocated by the State, or land of which the land use purpose is permitted by the State to be converted, are now required to provide a security for the investment project implementation in the form of a bank guarantee or a deposit equal to 1% to 3% of the total investment capital to the account of the licensing authority, except in the following cases:

- An investor winning an auction of a land use right for implementation of an investment project for which the land use fee/rental will be paid as a lump sum payment.
- An investor winning a tender for the implementation of an investment project using land.
- An investor obtaining land allocated or leased by the State as a result of the transfer of an investment project, and (i) the escrow deposit applicable to such project has been fully paid; or (ii) the capital contribution and/or calling of capital has been completed in accordance with the schedule set out in the IPA or the IRC in relation to such project.
- An investor obtaining land allocated or leased by the State as a result of a transfer of the land use right and assets attached to the land from another land user.
- The ratio of the security on each portion of investment capital shall apply on a progressive basis as follows:

Portion of Investment Capital	Deposit Ratio
Up to VND 300 billion (approximately equivalent to USD 13.2 million)	3%
Over VND 300 billion up to VND 1 trillion (approximately equivalent to over USD 13.2 million up to USD 44 million)	2%
Over VND 1 trillion (approximately equivalent to USD 44 million)	1%

The investment capital of a project for the purpose of calculating the investment deposit does not include land use fees or land rental payable to the State or costs of construction of public works belonging to the investment project. If the land allocation/lease of an investment project comprises numerous phases, the security ratio will be calculated on the basis of the investment capital for each phase. In the circumstance where an investor has made an advance payment for site clearance and resettlement, the investor shall be entitled to postpone a portion of the security equivalent to the amount of such advance payment.

In addition, investors of real estate projects for commercial residential houses or urban development with a total land area of at least 2 ha (in urban areas of special class or class I) or 5 ha (in urban areas of class II or III) are required to reserve 20% of the total residential land under the approved detailed master plans of projects for construction of social houses[10]

[10]Article 5 of Decree 100/2015/ND-CP as amended in 2021 and 2022.

Foreign Investment Incentives

A newly established company that satisfies certain conditions may qualify for corporate income tax incentives which, includes preferential CIT rates; CIT exemption and reduction as follows:

Conditions	Preferential Tax Rate	Tax Exemption	50% Reduction of CIT Payables
1. Income from new investment projects situated in localities deemed to face extreme difficulties and socio-economic living conditions and those located in economic zones and high-technology zones established under the Decisions of the Prime Minister.	10% for 15 years from the year of operating income generation	Four years from the first profitable year	Nine subsequent years following the tax exemption period
2. Income from new investment projects engaging in the following sectors: • Scientific research and technological development; • Application of high technologies in the list of prioritised high technologies according to the Law on High Technologies; creation of high technologies and high-technology enterprises; high-risk investment in the development of high technologies in the list of prioritised high technologies according to the Law on High Technologies; • Investment and development of water-supplied plant, electricity plant, water drainage system, bridge, road, rail transportation, aviation port, seaport, river port, airport, station and the other importantly special infrastructure works under Prime Minister's decisions; • Software production; and • Production of composite materials, light building materials, rare materials, renewable energy, clean energy, energy from waste destruction; development of biological technology, and environment protection.			
3. Income from new investment projects engaging environmental protection, including manufacturing devices for environmental pollution treatment; manufacturing, environmental monitoring and analysis devices; treatment of environmental pollution and protection of environment; collection and treatment of waste water, waste exhaust, solid wastes; recycling or reusing wastes.			
4. Income generated by high-technology enterprises and by agricultural enterprises applying high-technologies.			
5. Income from new manufacturing investment projects that satisfy one of the following conditions: • The minimum investment capital of the project is VND 6,000 billion (approximately USD 266.6 million) which is disbursed within three years from the date of licensing and the annual revenues from the fourth year are at least VND 10,000 billion (approximately USD 444.4 million); or • The minimum investment capital of the project is at least VND 6,000 billion (approximately USD 266.6 million) which is disbursed within three years from the date of licensing and employs more than 3,000 employees (average number).			
6. Income from new manufacturing investment projects (except manufacturing products subject to special sale tax and mining projects) that satisfy the following conditions: (i) the minimum investment capital of the project is VND 12,000 billion (approximately USD 533.3 million) which is disbursed within five years from the date of licensing; and (ii) using high technology.			
7. Income from new investment projects engaging in the following sectors: • Manufacturing industrial supporting products for high technology; • Manufacturing industrial supporting products for textiles, garment, footwear, electronic/information technology, automobile assembly, mechanics sectors provided that such products are not produced domestically by January 1, 2015, or if produced domestically, the products' quality must qualify EU standards (or equivalent standard)			
8. Income from new investment projects engaging in socialisation sectors, including education, vocational training, health care, culture, sport, environment and judicial examination.	10% for entire life of projects	Four years from the first profitable year	Nine subsequent years following the tax exemption period

9. Income from projects on housing/accommodations for sale/lease to low-income people (as part of social welfare schemes). 10. Income from publishing and printing newspapers 11. Income of enterprises from planting, cultivating, and protecting forests; agriculture, forestry, and aquaculture in localities facing socio-economic difficulties; from the production, multiplication, and crossbreeding plants and animals; from the production, extraction, and refinement of salt; from post-harvest preservation of agriculture products, aquaculture products, and food; 12. Incomes of cooperatives engaging in agriculture, forestry, fisheries, and salt production that are not in localities facing socio-economic difficulties or localities facing extreme socio-economic difficulties.	10% for entire life of the projects	N/A	N/A
13. Incomes of enterprises engaging in cultivating, breeding animals; processing agricultural and aquaculture products	15%	Two years from the first profitable year	Four subsequent years following the tax exemption period
14. Income from new investment projects located in localities deemed to face difficulties in socio-economic conditions. 15. Income from new investment projects engaging in manufacturing high-quality steel, power-saving products, machinery and equipment for utilisation in agriculture, forestry, aquaculture, production of irrigation equipment; production and refinement of feed for livestock, poultry, and aquatic organism; development of traditional trades	17% for ten years from the year of operating income generation	Two years from the first profitable year	Four subsequent years following the tax exemption period
16. Incomes of people's credit funds and microfinance institutions	17% for entire life of the projects	N/A	N/A
17. Income from activities of prospecting and exploration of rare and precious natural resources having 70% of the mines field located in localities deemed to face extreme difficulties	40% for entire operation of business	N/A	N/A
18. Income from new investment projects located in industrial parks, except for industrial parks located in localities deemed to have favourable socio-economic conditions[11]	N/A	Two years from the first profitable year	Four subsequent years following the tax exemption period

[11]Including special cities, cities classified at level I or central cities, down-town districts of level I cities/town, etc.

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 residential houses and other 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 three main categories of LURs that may be held in Vietnam, being:

- Land allocated by the State (allocated 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).
- Land leased by the State (State leased land).
- Land subleased by the infrastructure developer of a special zone such as an industrial zone.
- 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 (LURC) may evidence that its holder enjoys:
- LURs in respect of the land specified in the unified certificate
- Ownership of the residential house(s) (either separate 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) or perennial crops 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 maximum term of 50 (or 70 years in certain special cases), with such lease terms renewable only at the discretion of the Department of Natural Resources and Environment or other relevant government authority and on the condition that the renewed term shall not exceed the statutory maximum term mentioned above. As a general rule, fully or partially foreign-owned companies are not granted LURs in the form of allocated land, but re-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 residential 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 certain special cases. In the case of implementation of investment projects for the construction of residential 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 special zones such as the industrial zones or export processing zones.

While the land price framework shall be determined by the government every five years, the provincial people's councils shall have the authority to set out the land price list applicable to their province or city every five years and the provincial people's committees shall have the authority to determine the specific land price.

It should also be noted that the LUR of a FIE 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 which 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 fulfillment of specific requirements.
- To lease residential houses if they are permitted to invest in the construction of and trading in residential 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 and paying land use fees (in the case of implementation of investment projects for the construction of residential 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 land use rights and land-attached assets under their ownership during the land use term
- To lease and sublease land use rights and land-attached assets under their ownership during the land use term.
- To mortgage land use rights and land-attached assets under their ownership at credit institutions which are licensed to operate in Vietnam during the land use term.
- To contribute land use rights and land-attached assets under their ownership as capital for cooperation in production and business during the land use term.

An FIE that is the investor of an investment project for the construction of residential houses for sale or for a combination of sale and lease in certain areas announced by the provincial people's committees is allowed to assign the LUR, with respect to independent houses and/or villas and without the need to construct such houses 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 investment 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, an FIE that is the investor of an investment project for the construction of (i) residential houses for sale or for a combination of sale and lease, (ii) other works which are not residential houses, or (iii) infrastructure for assignment or lease is allowed to assign the LUR together with a part or the entirety of such project to an eligible assignee, after the FIE has obtained a LURC, completed the land related financial obligations and satisfied certain other conditions.

An FIE can sublease land from the licensed infrastructure developers in the industrial zones, 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 relevant method of rental payment by the developers to the State. 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 the 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

As from March 3, 2017, an FIE which (1) leases land from the State under the annual payment method; leases or subleases land in certain special zones such as an industrial zone/export processing zone under the annual payment method and (2) have been granted with the LURC will be entitled to lease its assets attached to such land upon the satisfaction of the requirements under the laws on real estate business. The lessee must use such assets for the purposes which have been specified in the relevant land lease decision of the Government or signed lease/sublease contract entered into by the lessor.

In a public private partnership (PPP) project, the State allocates or leases land to the investor to implement such project. In this case, the investor is entitled to incentives covering taxes, land use fees, land rentals and other incentives pursuant to the relevant laws.

It is important to note that there are seven entities which are not eligible to receive a LURC:

- 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 zones, industrial clusters, export processing zones, hi-tech zones 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 LURC;
- Land users that fully meet the conditions for the granting of LURC 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 fee 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 centers; cemeteries and graveyards for non-commercial purposes.

The Law on Residential 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 foreign organisations and individuals shall not exceed 30% of the total number of apartments in one building, and not exceed 30% of the total number of apartments in all buildings located in an area with the population equivalent to a ward level (Ward Area).
- In the case of a separate residential house, the number of houses to be purchased and owned by foreign organisations and individuals shall not exceed 250 houses in the Ward Area. In particular:
  - If there is only one project with less than 2,500 separate houses in a Ward Area, then the foreign buyers are only permitted to own up to 10% of the total number of separate houses of such project.
  - If there is only one project with the number of separate houses equivalent to 2,500 houses in a Ward Area, then the foreign buyers are only permitted to own up to 250 houses.
  - If there are two or more projects with a total of 2,500 or fewer separate houses in a Ward Area, then the foreign buyers are only permitted to own up to 10% of the number of houses in each project.

However, a foreign individual will only be permitted to own such residential housing units for a period of up to 50 years from the date of issuance of the LURC; the actual duration is set out in the sale and purchase contract and may be extended subject to a written approval by the provincial people's committee. 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.

Trading of Real Estate to be Formed in the Future

Under the Law on Real Estate Business 2014, the investors of real estate projects are permitted to sell, lease, or grant a hire purchase of houses and construction works to be formed in the future (Future Real Estate) subject to satisfaction of the following conditions for Future Real Estate, among others:

- have a qualified LURC, project files, and design plans approved by the relevant State authorities;
- have a qualified construction permit (if legally required);
- have documents on acceptance of the completion of the construction of the technical infrastructure in accordance with the approved project schedules; minutes on acceptance of the completion of the construction of the foundations of the building with respect to Future Real Estate being an apartment building or mixed-use building with a residential function.

In addition, prior to selling or granting a hire purchase of Future Real Estate being residential housing:

- the investors must send a notice to the provincial residential housing State management authorities on the satisfaction of conditions for selling/granting a hire purchase of such residential housing;
- the sale and hire purchase must be guaranteed by a qualified commercial bank as provided by the State Bank of Vietnam (Guarantee Bank), noting that the term of a guarantee contract must extend up to the time when the residential housing is handed over to the purchaser/the hire purchaser.

Accordingly, where the investor fails to hand over the Future Real Estate to the purchaser/the hire purchaser in accordance with its committed schedule, the Guarantee Bank shall, as requested by such purchaser/the hire purchaser, refund the advance payment and other payments made by the purchaser/the hire purchaser to the investor in accordance with the sale contract and guarantee contract.

Furthermore, in terms of execution of contracts on raising capital for the development of commercial houses, the capital contributors, cooperators, partners mentioned are only entitled to profits (in monetary payments or shares) according to their contribution ratio in the contract, and not (i) the houses of the projects, or priority for purchasing, paying deposits or the rights to purchase such houses, or (ii) the allocation of land use right for the projects, except for the contribution of capital for establishment of a new legal entity to be appointed by the State as investors in the residential house projects.

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 credit institution or branch of foreign 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 (noting that an offshore loan with the term of more than 1 year must be 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 notably through certain registered accounts opened at authorised credit institutions or branches of foreign 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 central exchange rate between Vietnam dong and US dollars, meaning the average trading exchange rate between Vietnam dong and US dollars on the inter-bank foreign currency market, daily on the basis of reference to changes in the average weighted exchange rate on the inter-bank foreign currency market; to changes in exchange rates on the international market of a number of foreign currencies of countries with a large significant commercial, lending and borrowing, and an investment relationship with Vietnam; and on the basis of macro-economic and monetary balancing and Vietnam's monetary policy targets.

Taxes on Possession and Operation of Real Estate

Land users, including FIEs, have to pay annual non-agriculture land use tax at an aggregate tariff of 0.03%– 0.2% of the land price decided by the State every five years. In Vietnam, there is no tax levied on the ownership of a house although such tax has been recently under discussion by the Government and may be introduced in the near future.

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. 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 corporate income tax (CIT) payable in any tax assessment period for activities relating to the assignment of real property shall be equal to assessable income (net profit) from such activities multiplied by the tax rate of 20% (as from January 1, 2016).

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 can be offset against other income relating to production and business activities, and these losses may be carried forward to taxable income 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 70 million (approximately USD 3,000) 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 a land use right and property is 0.5% of the value of the sales. The duty is however capped at VND 500 million per asset per transfer.

Capital Gains Tax

Capital gains are treated as "other income" and are subject to 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). A foreign corporate entity is subject to capital gains tax of 20% on the gains from transfer capital in a limited liability company or a non-public joint stock company incorporated in Vietnam. The tax rate however is 0.1% on the sale proceeds in case of transfer of shares of a public or listed company.

Value Added Tax/Goods and Services Tax

A consumption tax called the value added tax is levied at 10% on a wide range of goods and services[12]

[12]This rate may be adjusted from time to time subject to the policy of Vietnam's State. For instance, pursuant to Resolution No. 101/2023/QH151 of Vietnam's National Assembly and Decree No. 44/2023/ND-CP of Vietnam's Government, from July 1, 2023 to December 31, 2023, this rate is reduced to 8% for most 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 20% except enterprise income tax on the exploration and extraction of oil and other rare resources in Vietnam.

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 withhold 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

As at July 3, 2023, the following 80 jurisdictions have entered into double taxation treaties with Vietnam

No.	Country	Effective Date
01	Australia	30/12/1992
02	France	01/07/1994
03	Thailand	29/12/1992
04	Russian Federation	21/03/1996
05	Sweden	08/08/1994
06	Republic of Korea	11/09/1994
07	United Kingdom	15/12/1994
08	Singapore	09/09/1994 Amendment: 11/01/2013
09	India	02/02/1995 Amendment: 21/02/2017
10	Hungary	30/06/1995
11	Poland	28/01/1995
12	Netherlands	22/10/1995
13	People's Republic of China	18/10/1996
14	Denmark	24/04/1996
15	Norway	14/04/1996
16	Japan	31/12/1995
17	Germany	27/12/1996
18	Romania	24/04/1996
19	Malaysia	13/08/1996
20	Lao People's Democratic	30/09/1996
21	Belgium	25/06/1999 Amendment: not yet effective
22	Luxemburg	19/05/1998
23	Uzbekistan	16/08/1996
24	Ukraine	22/11/1996
25	Switzerland	12/10/1997
26	Mongolia	11/10/1996
27	Bulgaria	04/10/1996
28	Italy	20/02/1999
29	Belarus	26/12/1997
30	Czech Republic	03/02/1998
31	Canada	16/12/1998
32	Indonesia	10/02/1999
33	Taiwan	06/05/1998
34	Algeria	not yet effective
35	Myanmar	12/08/2003
36	Poland	26/12/2002
37	Philippines	29/09/2003
38	Iceland	27/12/2002
39	North Korea	12/08/2007
40	Cuba	26/06/2003
41	Pakistan	04/02/2005
42	Bangladesh	19/08/2005
43	Spain	22/12/2005
44	Republic of Seychelles	07/07/2006
45	Sri Lanka	28/09/2006
46	Egypt	not yet effective
47	Brunei	01/01/2009
48	Ireland	01/01/2009
49	Sultanate of Oman	01/01/2009
50	Austria	01/01/2010
51	Slovakia	29/07/2009
52	Venezuela	26/05/2009
53	Morocco	12/09/2012
54	Hong Kong	12/08/2009 Amendment: 08/01/2015
55	United Arab Emirates	12/04/2010
56	State of Qatar	16/03/2011
57	State of Kuwait	11/02/2011
58	Israel	24/12/2009
59	Kingdom of Saudi Arabia	01/02/2011
60	Tunisia	06/03/2013
61	Mozambique	07/03/2011
62	Kazakhstan	18/06/2015
63	Republic of San Marino	13/01/2016
64	Republic of Serbia	18/10/2013
65	New Zealand	05/05/2014
66	State of Palestine	02/04/2014
67	Eastern Republic of Uruguay	26/07/2016
68	Azerbaijan	11/11/2014
69	Turkey	09/06/2017
70	Iran	26/06/2015
71	Macedonia	not yet effective
72	Portugal	09/11/2016
73	The United States of America	not yet effective
74	Estonia	14/11/2016
75	Malta	25/11/2016
76	Panama	14/02/2017
77	Latvia	06/08/2018
78	Cambodia	20/02/2019
79	Macau	03/10/2018
80	Croatia	not yet effective

[13]Source: the website of the General Department of Taxation of Vietnam, accessed as of July 3, 2023 at the following hyperlink: https://gdt.gov.vn/wps/portal/!ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8ziDUwsPX0swoL9g0KNzAw8Q72CvbwczY08Q8z1wwkpiAJJ4wCOBkD9UWAlzu6OHibmPgYGFibuBgaeJk7-fh7OgYYGnsZQBXjMKMiNMMh0VFQEACw9e4o!/dz/d5/L2dBISEvZ0FBIS9nQSEh/

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. The current key legal document regulating REIF is Circular No. 98/2020/TT-BTC of Vietnam's Ministry of Finance dated November 16, 2020 taking effect as from January 1, 2021.

A REIF must maintain at least 65% of its net assets for investments in real estate in Vietnam for profitable purposes provided that such real estate investment shall satisfy certain statutory conditions, and in securities of issuers being real estate business organisations which have turnover from ownership and trading of real estate as a minimum of 65% of its total turnover. The remaining portion of the asset value can be invested into certain assets including notably valuable papers, listed shares, listed corporate bonds and government bonds with applicable limitations on capital. In addition, REIFs are not allowed to directly undertake the construction, implementation or development of any real estate development projects, use the fund's assets to settle or guarantee the financial obligations of the fund management company, the supervisory bank, the depository bank or any other organisations or individuals. A REIF must hold its real estate for a minimum of 2 years from the date of purchase, except for certain cases prescribed by law.

Contacts

Australia

JLL
Level 27, 180 George Street
Sydney, Australia NSW 2000
tel +61 2 9220 8500
www.jll.com.au

Ashurst
Pauline Tan – Partner & Practice Group Head, Australia, Real Estate
E: pauline.tan@ashurst.com
5 Martin Place, Sydney NSW 2000
www.ashurst.com

Brunei

JLL
1 Paya Lebar Link
#10-08 PLQ2 Singapore
Singapore 408533
tel +65 6220 3888
www.jll.com.sg

Pengiran Izad & Lee Advocates & Solicitors
E: pial@brunet.bn
No.38-39, 6th Floor, Bangunan Laksamana Othman, Jalan Sultan Omar Ali Saifuddien, BSB BS8811, Brunei Darussalam

Cambodia

JLL
26/F Saigon Trade Center
37 Ton Duc Thang Str. District 1
Ho Chi Minh City, Vietnam
tel +848 3911 9399

DFDL
Paul D. Volodarsky – Partner, Head of Regional Real Estate Practice, Head of Hospitality Sector
E: paul.volodarsky@dfdl.com
Guillaume Massin – Partner
E: Guillaume.Massin@dfdl.com
#30, Norodom Boulevard, 4th Floor BRED Bank Building, Sangkat Phsar Thmey 3, Khan Duan Penh (P.O. Box 7), 120203, Phnom Penh, Cambodia
https://www.dfdl.com/

China

JLL
22/F, HKRI Centre One, HKRI Taikoo Hui
No. 288 Shimen Yi Road, Jingan District, Shanghai 200041, China
tel +86 21 6393 3333
www.joneslanglasalle.com.cn

Ashurst Guantao (Shanghai Free Trade Zone) Joint Operation Office
Michael Sheng – Office Managing Partner, Shanghai
E: michael.sheng@ashurst.com
Unit 2301, Jin Mao Tower
88 Century Boulevard, Pudong New District
Shanghai 200121, China
www.ashurst.com

Hong Kong

JLL
7/F One Taikoo Place
979 King's Road
Hong Kong SAR, China
tel +852 2846 5000
www.jll.com.hk

Howse Williams
Alan Yip – Partner, Head of Property Development
E: alan.yip@howsewilliams.com
Sammi Yeung – Associate of Property Development
E: sammi.yeung@howsewilliams.com
27/F Alexandra House
No. 18 Charter Road Central, Hong Kong
www.howsewilliams.com

India

JLL
One BKC, A Wing, Level 15,
Bandra Kurla Complex,
Mumbai, India 400 051
tel +91 22 7149 5900
www.joneslanglasalle.co.in

Indian Law Partners
Gopika Pant - Managing Partner
E: gopika.pant@ilps.in
New Delhi Office 46 Aradhana, Chanakyapuri, New Delhi – 110066
www.ilps.in
Kanika Premnarayen Partner
E: kanika.premnarayen@ilps.in
Mumbai Office A-802, Crescenzo, Bandra Kurla Complex, Mumbai - 400 051
www.ilps.in

Indonesia

JLL
Indonesia Stock Exchange Building Tower 2
22nd floor Jl. Jenderal Sudirman Kav. 52-53
Jakarta, Indonesia 12190
tel +62 21 2922 3888
www.jll.co.id

Oentoeng Suria & Partners (in association with Ashurst)
Ratih (Ipop) Nawangsari – Partner
E: ratih.nawangsari@ashurst.com
Adhika Aditya– Senior Associate
E: rizaldy.tauhid@ashurst.com
Level 37, Equity Tower,
Sudirman Central Business District,
Jl. Jend. Sudirman Kav. 52-53,
Jakarta Selatan, 12190,
Indonesia
www.oentoengsuria.com

Japan

JLL
15th, Kioi Tower, Tokyo Garden Terrace
Kioicho, 1-3 Kioi-cho
Chiyoda-ku,
Tokyo, Japan 102-0094
tel +81-3-4361-1800
www.joneslanglasalle.co.jp

Nagashima Ohno & Tsunematsu
Haseru Roku – Partner
E: haseru_roku@noandt.com
JP Tower, 2-7-2 Marunouchi,
Chiyoda-ku, Tokyo 100-7036, Japan
https://www.noandt.com/en/

Laos

JLL
26/F Saigon Trade Center
37 Ton Duc Thang Str. District 1
Ho Chi Minh City, Vietnam
tel +848 3911 9399
www.joneslanglasalle.com.vn

DFDL
Paul D. Volodarsky – Partner, Head of Regional Real Estate Practice, Head of Hospitality Sector
E: paul.volodarsky@dfdl.com
Guillaume Massin – Partner
E: Guillaume.Massin@dfdl.com
Visaya Office Building, 4th Floor,
249 Lao-Thai Road,
Vatnak Village, Sisattanak District,
Vientiane, Lao PDR
https://www.dfdl.com/

Malaysia

JLL
No. 160-4-8 & 9, Kompleks Maluri Business Centre
Jalan Jejaka, 55100 Kuala Lumpur, Malaysia
Kuala Lumpur
tel +60 3 9285 3988
www.jll.com.my

DFDL
Paul D. Volodarsky – Partner, Head of Regional Real Estate Practice , Head of Hospitality Sector
E: paul.volodarsky@dfdl.com
Guillaume Massin – Partner
E: Guillaume.Massin@dfdl.com
B23-8, Level 23, Tower B, Vertical Business Suite, Avenue 3, Bangsar South, No. 8 Jalan Kerinchi, 59200 Kuala Lumpur, Malaysia
https://www.dfdl.com/

Myanmar

JLL
10/F, The PARQ, 88
Ratchadaphisek Road, Khlong
Toei,
Bangkok, Thailand 10110
tel +66(0)2 624 6400
www.jll.in.th

DFDL
Paul D. Volodarsky – Partner, Head of Regional Real Estate Practice , Head of Hospitality Sector
E: paul.volodarsky@dfdl.com
Guillaume Massin – Partner
E: Guillaume.Massin@dfdl.com
№ 134/A, Than Lwin Road, Golden Valley Ward (1), Bahan Township (GPO Box 729), Yangon, Myanmar
No. 7465, Nay Kyar (6) Street, Between Ka Thar (1) Street and Ka Thar Street, Zawana Thiekdi Quarter,
Ottarathiri Township, Nay Pyi Taw, Myanmar
https://www.dfdl.com/

New Zealand

JLL
Level 16, 188 Quay Street
Auckland, New Zealand
tel +64 9 366 1666
www.jll.co.nz

Bell Gully
Karl Anderson – Partner and
Head of Projects and Real Estate
Department
E: karl.anderson@bellgully.com
Auckland Office - Vero Centre, 48
Shortland Street, Auckland, New
Zealand
www.bellgully.com

Philippine

JLL
19th floor, NEX Tower
6786 Ayala Avenue,
Makati City
Philippines
tel +632 902 0888
www.jll.com.ph

DFDL
Paul D. Volodarsky – Partner, Head of
Regional Real Estate Practice , Head of
Hospitality Sector
E: paul.volodarsky@dfdl.com
Guillaume Massin – Partner
E: Guillaume.Massin@dfdl.com
Ocampo & Suralvo Law Offices, 6th
Floor, Liberty Center,
104 HV dela Costa St., Salcedo Village,
Makati City, Philippines
https://www.dfdl.com/

Singapore

JLL
1 Paya Lebar Link
#10-08 PLQ2
Singapore
Singapore 408533
tel +65 6220 3888
www.jll.com.sg

Ashurst
Choo Yi Ming – Director
E: YiMing.Choo@ashurst-adtlaw.com
Chok Zheng Kai – Associate Director
E: ZhengKai.Chok@ashurst-adtlaw.com
12 Marina Boulevard, #24-01
Marina Bay Financial Centre Tower 3
Singapore 018982
www.ashurst.com

South Korea

JLL
32F One IFC
10 Gukjegeumyung-ro,
Yeongdeungpo-gu
tel +82 2 3704 8888
www.jll.co.kr

HwaHyun
Heejoong Kim- Senior Counsel
E: hakim@hwahyunlaw.com
3rd-10th Floors, Mountain View Bldg.,
Banpodae-ro 30 gil-29, Seocho-gu,
Seoul 06646 Korea
www.hwahyunlaw.com

Sri Lanka

JLL
Unit 3, Level 4 West Tower,
World Trade Centre Echelon
Square
Sri Lanka Colombo 01
tel +94 (0)112 324124/5 +94
772554405
www.jll.com.lk

Julius & Creasy
Rajika Louis – Partner
E: rajika@juliusandcreasy.com
Julius & Creasy Building
No. 371, R.A. de Mel Mawatha
Colombo 3
Republic of Sri Lanka
http://www.juliusandcreasy.com

Taiwan

JLL
20/F-1, Taipei 101 Tower
No 7 Xinyi Road Section
5, Taipei 11049, Taiwan
tel +886 2 8758 9898
www.jll.com.tw

LeeandLi
Lily Kuo – Associate Partner
E: lilykuo@leeandli.com
Yi-Jiun Su – Partner
E: yijiunsu@leeandli.com
8F, No. 555, Sec. 4, Zhongxiao E. Rd.,
Taipei 11072, Taiwan, R.O.C
http://www.leeandli.com

Thailand

JLL
10/F, The PARQ, 88
Ratchadaphisek Road,
Khlong Toei,
Bangkok, Thailand 10110
tel +66(0)2 624 6400
www.jll.in.th

Seri Manop & Doyle Ltd
Michael Doyle - Senior Partner
E: michael@serimanop.com
Sathima Chintanaseri – Partner
E: sathima@serimanop.com
Pannasit Jomsri – Partner
E: pannasit@serimanop.com
21 Soi Amnuaywat, Suthisarn
Road, Samsen Nok, Huay
Kwang, Bangkok 10310, Thailand
https://www.serimanop.com/

Vietnam

JLL
26/F Saigon Trade
Center
37 Ton Duc Thang Str.
District 1
Ho Chi Minh City,
Vietnam
tel +848 3911 9399
www.joneslanglasalle.
com.vn

DFDL
Paul D. Volodarsky – Partner, Head of
Regional Real Estate Practice , Head of
Hospitality Sector
E: paul.volodarsky@dfdl.com
Guillaume Massin – Partner
E: Guillaume.Massin@dfdl.com
9th floor, BIDV Tower 194 Tran,
Quang Khai Street Hanoi, Vietnam
Floor 12A, Opal Office Tower, 92
Nguyen Huu Canh Street,
Ward 22, Binh Thanh District, Ho Chi
Minh City, Vietnam
https://www.dfdl.com/

JLL SEE A BRIGHTER WAY

Joint foreword to the Asia Pacific Property Investment Guide 2024

Published jointly by Jones Lang LaSalle and Ashurst, the eighth edition of the Asia Pacific Property Investment Guide provides practical information on the laws in each of the jurisdictions in the region relevant to real estate investors, together with an overview of the principal issues that investors need to consider when investing in real estate.

The guide includes the most up to date information available for investors, covering issues from property tenure to foreign investment incentives, transactional tax costs to real estate investment trusts.

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PropertyConcierge@jll.com
UK: +44 20 7399 5015
HK: +852 3844 5830

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