Real Estate Transaction and Tax in Thailand

January 2015
This newsletter provides information regarding real estate transactions in Thailand.

The Department of Lands (hereafter “DOL”), under the responsibility of the Ministry of Interior, is the competent administrative body for every real estate transaction. DOL can be found in every province of Thailand. The below transaction shall be made at the nearest office where the land is located.

I. Scope of the Transaction

The DOL is the only competent agency for the following transactions:

1. Registration of land ownership
2. Registration of condominium
3. Registration of juristic act
   a. Sale and purchase of lands and buildings
   b. Transfer of lands and buildings
   c. Inheritance
   d. Mortgage
   e. Lease
4. Land Survey

II. Foreigner’s Rights

1. General Overview

Subject to the ratified treaties and the Land Code B.E. 2497, foreigners (including companies where more than 49% of the shares are held by foreigner shareholders) may acquire land after they applied for and obtained a special approval by the Minister of Interior (Sec.86 Land Code). The size of the land which may be permitted depends on the purpose of use as shown below (1 Rai equals 1600 sqm):

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residence (per family)</td>
<td>1 Rai</td>
</tr>
<tr>
<td>Commercial Use</td>
<td>1 Rai</td>
</tr>
<tr>
<td>Industrial Use</td>
<td>10 Rai</td>
</tr>
<tr>
<td>Agricultural Use (per family)</td>
<td>10 Rai</td>
</tr>
<tr>
<td>Religious Use</td>
<td>1 Rai</td>
</tr>
<tr>
<td>Public Charity</td>
<td>5 Rai</td>
</tr>
<tr>
<td>Cemetery (per family)</td>
<td>½ Rai</td>
</tr>
</tbody>
</table>

However, the use of the land is limited to the specified purpose. Should the foreigner wish to change the purpose of the land use, such foreigner shall re-register the land. Upon such change, the proportion of land may have to be reduced; the owner must distribute the excessive land within 1 year. There are other cases in which the land has to be distribute within 1 year (e.g. unlawful acquisition, change of nationality, inheritance).

2. Incentives

Despite requesting for a special approval, foreigners may acquire land for residence purposes when investing in Thailand:

1. Purchase of bond issued by the Thai government, Bank of Thailand or state enterprises
2. Investment in a mutual fund for immovable property
3. Investment in shares of a company promoted by the Board of Investment
4. Investment in a business promoted by the Board of Investment

However, the investment capital must be at least THB 40,000,000 and must be maintained for 3 consecutive years. The residence area must be located in Bangkok, Pattaya or in a municipality specified for residence purposes under the law of Town and Country Planning.

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III. Fee

1. Government Fee
The registration of the following transactions is subject to 2% of the appraised value ("AV": value appraised by the DOL):
- Sale
- Trade
- Gift
- Transfer for debt/share payment, court order
- Inheritance

The registration that is subject to 1 % of the AV is as follows:
- Lease
- Inheritance of leasing right
- Servitudes
- Usufruct
- Superficies
- Habitation right
- Any other encumbrance
- Mortgage

2. Withholding Tax
   a) Natural Person
The calculation of the withholding tax due by a natural person can be divided in three different steps.

First: To calculate the yearly net assessable income derived from the sale of property by using the following formula:

\[
\text{Income} = \frac{(AV - \text{Lump-Sum deduction})}{\text{years of ownership}}
\]

The lump-sum deduction depends on the years of ownership as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Deducible rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>92%</td>
</tr>
<tr>
<td>2</td>
<td>84%</td>
</tr>
<tr>
<td>3</td>
<td>77%</td>
</tr>
<tr>
<td>4</td>
<td>71%</td>
</tr>
<tr>
<td>5</td>
<td>65%</td>
</tr>
<tr>
<td>6</td>
<td>60%</td>
</tr>
</tbody>
</table>

Nevertheless, in case of inheritance or gift, the transferor may deduct the expenses in the flat amount of 50%.

Second: To determine the rate of the yearly tax to be withheld as shown in the table below:

<table>
<thead>
<tr>
<th>Income</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-300,000</td>
<td>5%</td>
</tr>
<tr>
<td>300,001-500,000</td>
<td>10%</td>
</tr>
<tr>
<td>500,001-750,000</td>
<td>15%</td>
</tr>
<tr>
<td>750,001-1,000,000</td>
<td>20%</td>
</tr>
<tr>
<td>1,000,001-2,000,000</td>
<td>25%</td>
</tr>
<tr>
<td>2,000,001-4,000,000</td>
<td>30%</td>
</tr>
<tr>
<td>More than 4,000,000</td>
<td>35%</td>
</tr>
</tbody>
</table>

Third: To calculate the tax to be withheld for the whole period of ownership by multiplying the yearly tax to be withheld by the number of years of ownership.

Example:
The transferor of the land (neither acquired by inheritance nor gift) held this land for 5 years and agrees to sell the land in the amount of THB 2,800,000. The AV is THB 2,500,000.

Calculation:

1. The yearly net assessable income is \((2,500,000 - 1,625,000)/5 = 175,000\) \((2,500,000 \times 65\%)

2. Income tax per year is THB 8,750 \((175,000 \times 5\%)

3. The total tax to be withheld is THB 43,750 \((8,750 \times 5\))

b) Juristic entity
The withholding tax will be calculated at the rate of 1% of the AV or the actual selling price, whichever is higher.
Note: The capital gain (if any) incurred from the transfer of the land is subject to the corporate income tax at the rate of 20%.

c) Withholding tax exemption
The following types of registration are exempted from the withholding tax:

1. Lease, amendment of lease agreement which increases the lease value
2. Transfer of the inheritance in respect of the leasing right
3. Servitudes
4. Usufruct
5. Superficies
6. Habitation right
7. Any other encumbrance
8. Mortgage

3. Stamp Duty
Any registration regarding immovable property is subject to stamp duty amounting to 0.5% of the AV or of the actual selling price, whichever is higher.

Nevertheless, in case the transferor is subject to any specific business tax, the stamp duty shall not apply. Please note that the registration regarding the mortgage is also not subject to stamp duty.

4. Specific Business Tax
The Specific Business Tax (SBT) is collected at the rate of 3.3% of the AV or the actual selling price, whichever is higher, for the sale of the land which includes trading, gift, hire-purchase or distribution.

The SBT is due in the following cases:

1. immovable property sold by the authorised persons of the land arrangement laws
We hope that the information provided in this newsletter was helpful for you.

If you have any further questions please do not hesitate to contact us.

LORENZ & PARTNERS Co., Ltd.
27th Floor Bangkok City Tower
179 South Sathorn Road, Bangkok 10120, Thailand
Tel.: +66 (0) 2-287 1882
E-Mail: info@lorenz-partners.com