China

Contacts

Beijing

EY
Level 16, EY Tower
Oriental Plaza
1 East Changan Ave., Dongcheng District
Beijing
100738
China

Jason Mi
jason.mi@cn.ey.com
+86 10 5815 3990

Shanghai

EY
47th Floor, Shanghai World Financial Center
100 Century Avenue, Pudong New Area
Shanghai
200120
China

Shelley Tang
shelley.tang@cn.ey.com
+86 21 2228 2658

Shenzhen

EY
21/F, China Resources Building
No. 5001 Shennan Dong Road, Luohu District
Shenzhen
518001
China

Sam Pang
sam.pang@cn.ey.com
+86 755 2502 8160

1. Types of tax

1.1 Inheritance tax

The mainland of the People's Republic of China (China) issued a draft rule on inheritance tax in 2002 to solicit public opinion. However, as of today, no statute has been passed to provide guidance on inheritance tax.

1.2 Gift tax

No gift tax is levied in China.

1.3 Real estate transfer tax

From an estate and succession perspective, no real estate transfer tax is levied in China. However, an individual's transfer of real estate or land-use rights in China may be subject to individual income tax (IIT), business tax, deed tax, stamp duty and land appreciation tax.

1.3.1 Individual income tax

In accordance with the provisions of Caishui [2009] No. 78 (Circular 78), if a transfer of real estate or land use rights is made without consideration, the property received would be considered "other income" to the recipient and subject to IIT at a flat tax rate of 20%. However, according to Circular 78 and Guoshuifa [2009] No. 121, the transfer by virtue of inheritance or gift under the following circumstances will be exempted from the IIT:

- Gratuitous transfer of land-use rights or real estate to lineal relatives (i.e., spouse, children, parents, grandparents, grandchildren and siblings)
- Gratuitous transfer of land-use rights or real estate to dependents
- Gratuitous transfer of land-use rights or real estate to statutory heirs and legatees upon the death of the decedent
- Gratuitous transfer of land-use rights or real estate to a spouse by virtue of divorce

In order to claim IIT exemption on these transfers, transferees should fulfill the registration requirement with the local tax authority and obtain written approval.

If the transfer is subject to IIT, the taxable income would be determined based on the value of the real estate or land-use rights stated in the succession or gift contract, subtracting the relevant taxes and expenses paid by the transferee. However, if the value stated in the contract is obviously lower than the fair market value (FMV), or there is no price available in the contract, the relevant tax authority may deem the taxable income according to the market appraisal price or through other reasonable methods.

If the transferee later resells the land-use rights or real estate, such transfer will be subject to IIT. The tax base will be the proceeds from the sale of land-use rights or real estate, less the original purchase cost of the decedent or the donor, and the expenses and taxes paid by the heir or donee in the transfer.

IIT is required to be reported and paid upon transfer of legal title of the real estate at the real estate trading center.

1.3.2 Business tax

According to the implementation rule in the business tax regulations, if real estate or land-use rights are transferred to an entity or an individual as a result of a gift, the transfer would be considered a taxable transaction, and the transferor would be subject to the business tax and the relevant surtaxes at the time of transfer.

However, as provided in Caishui [2009] No. 111, individual gift transfers are temporarily exempted from business tax and the relevant surtaxes under the following circumstances:

- Gratuitous transfer of land-use rights or real estate to lineal relatives
- Gratuitous transfer of land-use rights or real estate to dependents
- Gratuitous transfer of land-use rights or real estate to statutory heirs and legatees upon the death of the decedent
- Transfer of land-use rights or real estate as a gift to a spouse by virtue of divorce

Individual transferors are required to comply with relevant registration formalities of the local tax authority so as to claim the business-tax exemption on the gift of the real estate or land-use rights.

In the event that the tax liabilities occur, the business tax would be assessed by the local tax bureau. The tax rate applicable to the transfer of real estate and land-use rights is 5%.

1.3.3 Value-added tax (VAT)

Following Premier Li Keqiang's announcement on 5 March 2016 at the National People's Congress that the VAT pilot reform would start nationwide from 1 May 2016, the Ministry of Finance (MOF) and State Administration of Taxation (SAT) jointly issued Caishui [2016] No. 36 (Circular 36). According to this new circular, the business tax on real estate transactions will be converted to VAT starting from 1 May 2016.

Under Circular 36, individuals selling property that is not self-developed will be subject to VAT at 5% on a net basis, i.e., total payment collected minus the purchasing cost of the property.

For individuals selling self-developed property (i.e., residential property for self-use), the relevant VAT implications include:

(a) 5% VAT rate for residential property acquired within two years and the sales amount would be the total payment collected

(b) VAT exempted for residential property acquired more than two years ago in cities other than Beijing, Shanghai, Shenzhen and Guangzhou

(c) Special rules apply to Beijing, Shanghai, Shenzhen and Guangzhou for the sales of residential property, i.e., exemption applies only to "ordinary residential property" acquired more than two years ago, while 5% VAT will be imposed on a net basis (sales amount minus purchasing cost) for "non-ordinary residential property" acquired more than two years ago

In addition, the following transfers of real properties between individuals are exempted from VAT, which is consistent with the provision of business tax-exempt scenarios under Circular Caishui [2009] No. 111:

- Gratuitous transfer of land-use rights or real estate to lineal relatives
- Gratuitous transfer of land-use rights or real estate to dependents
- Gratuitous transfer of land-use rights or real estate to statutory heirs and legatees upon the death of the decedent
- Transfer of land-use rights or real estate as a gift to a spouse by virtue of divorce

Individual transferors are required to comply with the relevant registration formalities of the local tax authority in order to claim the VAT exemption on the gift of real estate or land-use rights.

1.3.4 Deed tax

China levies deed tax on non-statutory successors who acquire real estate or land-use rights by virtue of inheritance or gift. However, inheritance by statutory successors is exempt from deed tax. Statutory successors include spouse, children, parents, siblings, paternal grandparents and maternal grandparents.

Deed tax rates range from 3% to 5%, depending on the location of the cities in different provinces. Effective 22 February 2016, the tax rate applicable to residential properties was reduced to 1%, 1.5% or 2%, depending on the size and utility of the housing. The tax base for deed tax calculation is deemed by the tax authority with reference to the market value of the real estate or the land-use rights.

The deed tax is required to be reported and paid upon transfer of legal title of the real estate at the real estate trading office.

1.3.5 Stamp duty

The stamp duty is imposed when a contract of property transfer is concluded. Both parties who sign the contract are liable for the stamp duty.

The tax base for the stamp duty is calculated based on the value of the property specified in the contract.

The tax rate applicable to the contract concluded for transferring property rights is 0.05%.

1.3.6 Land appreciation tax

According to the China Temporary Regulation of Land Appreciation Tax (LAT), sale or compensated transfer of real estate or land-use rights is subject to LAT. A transferor who benefits from the transfer is liable for LAT. However, transfer of real estate or land-use rights without consideration — such as inheritance by statutory successors or gratuitous transfer of LAT to lineal family members — will not realize a charge.

1.4 Endowment tax

No endowment taxes are levied in China.

1.5 Transfer duty

No transfer duty is levied in China.

1.6 Net wealth tax

No net wealth tax is levied in China.

2. Who is liable?

2.1 Real estate located in China

In general, China exercises tax jurisdiction over the transfer of real estate or land-use rights located in the territory of mainland China regardless of the holder’s domicile or residency status. Please refer to the preceding paragraphs regarding the relevant taxes that may be imposed on the transfer of real estate or land-use rights.

2.2 Real estate outside China

In the event of transfer of real estate outside China, no specific tax regulation is available to guide the taxation on such transfers, except the provisions of IIT law.

IIT law and regulations stipulate that individuals who are domiciled in China are subject to IIT on their worldwide income. Individuals domiciled in China means those who by reason of permanent household registration (i.e., Hukou), family ties and economic interest habitually reside in China. Individuals who have Chinese nationality, but do not reside in China, are still considered domiciled in China and subject to IIT on their worldwide income. Foreign nationals who physically stay in China for more than five years are also considered domiciled in China for tax purposes and are liable for IIT on their worldwide income, starting from the sixth year when they are considered a full-year resident in China.

Given the above, individuals who are domiciled in China may be liable for IIT on the gain arising from the transfer of real estate located outside China.

3. Rates

Different tax rates are applicable to different types of taxes. Please refer to Section 1 for details.

4. Exemptions and reliefs

See Section 1 for details.

5. Filing procedures

See Section 1 for details.

6. Assessments and valuations

The tax base of properties that are acquired by virtue of inheritance or gift is the FMV of the property at the time of the transfer. The specific method of valuation may vary depending on the type of property.

Land-use rights and real estate

The value of land-use rights and real estate is generally determined based on the value specified in the transfer contract. The value in the transfer contract should be assessed and approved by the administration offices of land or real estate before the contract comes into effect. In most cases, the tax authority would rely on the value assessed by the administration offices of land or real estate. However, if the tax authority considers the assessed value to be far from the FMV, the tax may be levied on a deemed basis.

7. Trusts, foundations and private purpose funds

For purposes of succession and estate planning, no specific tax regulation has been issued by China for taxes on the income from trusts or foundations.

8. Grants

There is no inheritance tax in respect of death grants in China.

9. Life insurance

According to China's IIT law, life insurance proceeds are exempted from IIT.

10. Civil law on succession

This is not applicable in China.

11. Estate tax treaties

No estate tax is levied in China. Therefore, no terms regarding estate tax are available in China's double-taxation treaties.