Savills World Research
Asia Pacific

# Asia Pacific Real Estate Investment Country Guides

2018

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Hong Kong | Indonesia | Japan
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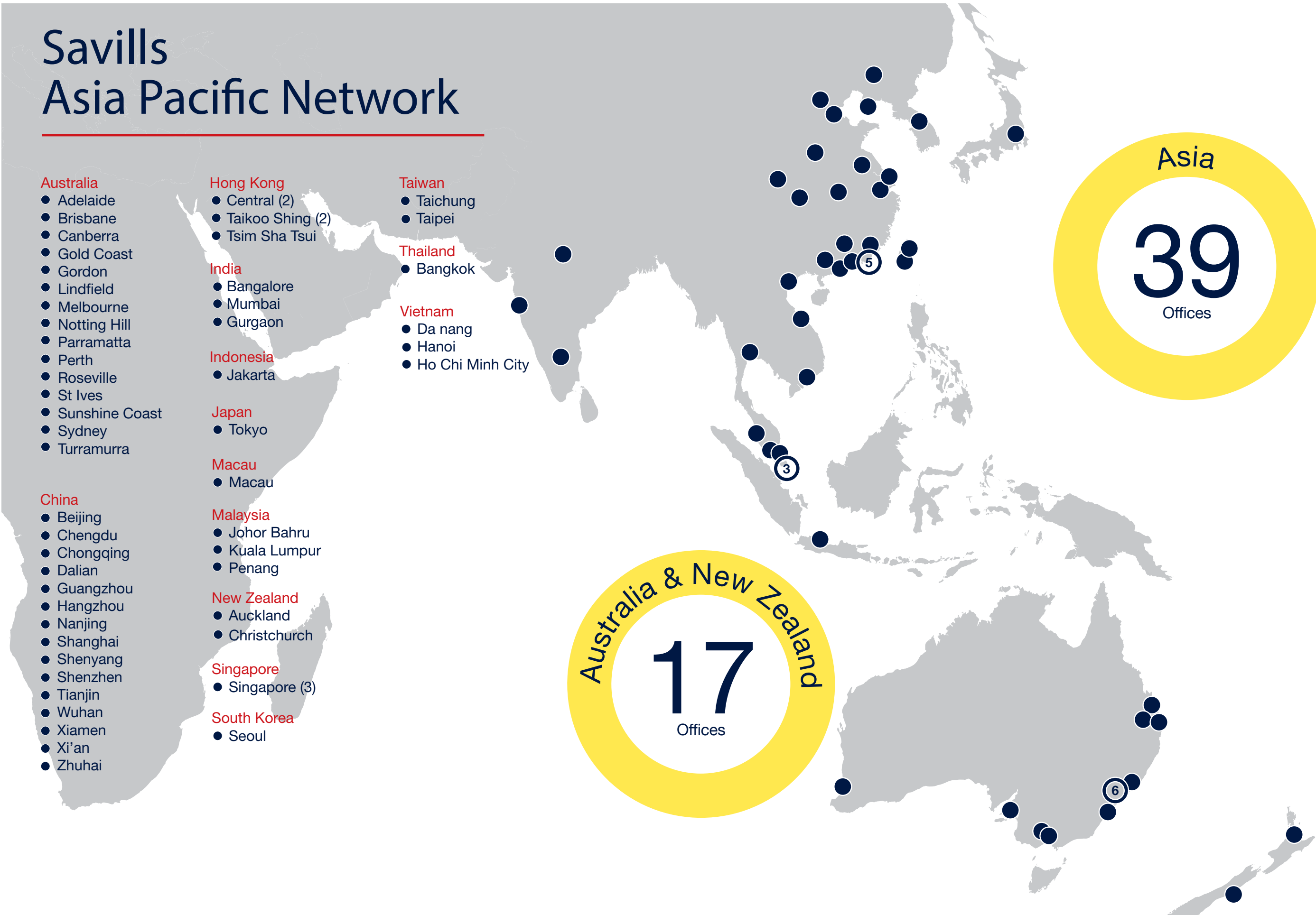
# An introduction to Savills




Source: Savills Research & Consultancy

Savills is a leading global real estate service provider listed on the London Stock Exchange. The company, established in 1855, has a rich heritage with unrivalled growth. The company now has over 600 offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East.

In Asia Pacific, Savills has 56 regional offices comprising over 25,000 staff. Asia Pacific markets include Australia, China, Hong Kong, India, Indonesia, Japan, Macau, Malaysia, New Zealand, Singapore, South Korea, Taiwan, Thailand and Viet Nam. Savills provides a comprehensive range of advisory and professional property services to developers, owners, tenants and investors. These include consultancy services, facilities management, space planning, corporate real estate services, property management, leasing, valuation and sales in all key segments of commercial, residential, industrial, retail, investment and hotel property.

A unique combination of sector knowledge and entrepreneurial flair gives clients access to real estate expertise of the highest calibre.

We are regarded as an innovative-thinking organisation supported by excellent negotiating skills. Savills chooses to focus on a defined set of clients, offering a premium service to organisations and individuals with whom we share a common goal. Savills is synonymous with a high-quality service offering and a premium brand, taking a long-term view of real estate and investing in strategic relationships.

# Contents

# Australia

## Overview

A Federal election in Australia returned a conservative Government in the middle of the year. This has given some continuity to economic policy and seen a return of business and consumer confidence. There has been very little change in fiscal policy, with most Federal Government policy settings remaining unchanged. Policy direction in areas of infrastructure spending, immigration and taxation continue to evolve, but changes to date have been limited.

Australia has employed a number of counter measures to offset the impact of a fall in trade. The floating currency has played a significant role in sheltering the economy as it moved from a high of around AU$1.10 against the US dollar to around AU$0.75 currently. At the same time, the Reserve Bank of Australia lowered the official cash rate to an historic low of 1.50%. Finally, the Federal Government continues to support historically high levels of skilled immigration.

The effect of these three strategies has been to assist the transition of economic growth in the Australian economy from mining to non-mining activities. Housing construction, consumption, tourism and education are now contributing to GDP growth, albeit at a below-trend rate. These engines of economic growth can be expected to continue into 2018, generating somewhat stronger GDP growth, although again slightly below trend. Record levels of housing construction, as well as strong price growth in both Melbourne and Sydney, have led to the introduction of controls to dampen both demand and supply. This is forecast to see a tempering in economic activity in the housing market in 2018.

TABLE 1

### Key statistics

| | |
|---|---|
| **Official name** | Australia |
| **Currency** | Australian dollar (100 cents), floating currency<br>US$1 = AU$1.25 (1 February 2018) |
| **Population** | 24.511 million (Q1/2017) |
| **Land area** | 7.69 million sq km |
| **Gross domestic product (GDP) per capita** | AU$74,100; US$50,718 |
| **GDP growth** | 2.6% per annum (financial year [FY] 2016)<br>2.1% per annum (FY 2017)<br>2.5-3.5% per annum (FY 2018E) |
| **Principal business centres** | Canberra, Sydney, Melbourne, Brisbane, Perth, Adelaide |

Source: Australian Bureau of Statistics

## Types of property ownership

Most Australian land is held under the Torrens title system, through land registries established in each state and territory. While the system is essentially the same in each Australian state and territory, the registration requirements vary. Under the Torrens title system, the relevant state or territory guarantees title to the person who is recorded on the register as the owner of the land (the exception being in the case of fraud). A transfer of ownership of Torrens title land is effected through a change of the record on the register. The registered owner holds their ownership interest subject to prior registered interests and, subject to the relevant legislation in each state and territory, free from most interests which are not registered. In other words, priority between interests is established by the order in which they are registered, not by the order in which they are executed (or signed).

As the state or territory guarantees the accuracy of the register, prospective purchasers can rely on the information on the register and act on the basis of it.

The most commonly recognised interests in Australian land are detailed as follows.

### Freehold estate in fee simple

This is the most common form of land ownership in Australia, and represents the most complete ownership interest available to persons other than the Crown. A fee simple estate is of unlimited duration.

### Leasehold interest

Leasehold interest is the interest which a tenant or lessee acquires from the owner of the land to use and occupy the land for a limited period. Most commercial leases are for a fixed period of time. Generally, where the land is owned by the Crown, a person may take a long-term (often 99 years) leasehold interest from the Crown. Leasehold interests are generally required to be registered. Options to extend the term of the lease may also be negotiated.

### Other interests

Other types of interest in land which may be registered include:

- mortgage interests – which generally secure repayment of a loan or other financing arrangements;
- options to acquire land;
- easements – which generally convey a right to use a particular part

of someone else's land for a specific purpose, but not to occupy the land;

- restrictive covenants – a covenant given by the owner of one parcel of land to the owner of another parcel of land, by which the first owner agrees not to use their land in a particular way, for the benefit of the second owner; for example, an agreement by one owner not to build any structures which would impede the neighbouring owner's views.

**Non-Torrens title land**
While most Australian property is now registered under the Torrens title system (including all land in Queensland and the Northern Territory), some areas of land have not been converted. Unconverted parcels of land typically fall into one of the following categories:

- Crown land – land owned by a state or territory of Australia or by the Commonwealth of Australia;

- Old system land – generally rural land. Most states and territories have procedures for converting old system land to Torrens title whenever a new dealing with the land is lodged with the land registry.

**Native title**
Native title was first recognised in Australia in 1992, when the High Court of Australia found that the traditional Aboriginal owners held native title over certain land. A national scheme, implemented through legislation in each state and territory, governs the validity of land dealings affecting native title and establishes a process to deal with native title claims. Native title rights can be compulsorily acquired or surrendered under law, but cannot be transferred. Although native title is most relevant to non-freehold land and Crown- or Commonwealth-owned land, a prudent buyer will take native title into account in relation to most land dealings.

## Overseas ownership restrictions

The Australian government reviews and evaluates certain overseas investment proposals. Investment proposals by overseas interests are regulated by the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA). FATA is administered by the Treasurer, who is assisted by the Foreign Investment Review Board (FIRB), a division of the Commonwealth Government Treasury. The Commonwealth government publishes policy guidelines for the administration of FATA.

Like most countries, Australia has rules and restrictions on the acquisition and ownership of property by foreign interests. The rules, restrictions and exemptions are complicated however foreign persons are normally given approval to buy:

- Vacant land for development, including house and land packages where construction has not commenced, subject to a condition imposed under the FATA that continuous construction commences within 24 months for residential developments, or five years for commercial developments not to be used for residential purposes (From 1 July 2017, land is not considered vacant if a wind or solar power station is located on the surface of the land); and

- New dwellings such as house and land packages, home units and townhouses purchased 'off the plan' that is, under construction or newly constructed, but never occupied or previously sold. 'Off the plan' sales to foreigners are only permitted for new development projects or extensively refurbished commercial structures, which have been converted to residential.

- Certain categories of foreign nationals, who hold a visa that permits them to reside in Australia continuously for at least the next 12 months (such as students), may be given approval to purchase only one established residential real estate (that is, second hand dwellings) for use as their principal place of residence (that is, not for rental purposes) while in Australia. Approved temporary residents with valid visas will normally be allowed to purchase only one established dwelling to live in as their residence (home) in Australia, subject to the conditions that they: use the property as their principal place of residence in Australia; do not rent any part of the property, including ensuring that it is vacant at settlement; and sell the property within three months from when it ceases to be their principal place of residence.

- Foreign companies, with an established substantial business in Australia, buying for named senior executives resident in Australia for periods longer than 12 months, may be eligible for approval provided the accommodation is sold when no longer required for this purpose. Whether a company is eligible, and the number of properties that may be acquired, will depend upon the extent of the foreign company's operations and assets in Australia. Unless there are special circumstances, foreign companies normally will not be permitted to buy more than two houses under this category. Foreign companies would not be eligible under this category where the property would represent a significant proportion of its assets in Australia.

- From 1 December 2015, applicants will pay a fee before their foreign investment application is processed. For a property valued under AU$1 million a fee of AU$5,000 is payable. For properties valued over AU$1 million a fee of AU$11,100 is payable then ~AU$11,100 incremental fee increase per additional AU$1 million in property value. Advanced off-the-plan certificates require a fee of AU$25,700 upfront.

- Property developers can apply for a New Dwelling Exemption Certificate for a specified development if the development: will consist of 50 or more dwellings (other than townhouses); has development approval from the relevant government authority; and if applicable, foreign investment approval was given to purchase the land and that conditions are being met. The Government will tighten the rules around the use of advanced off-the-plan certificates by limiting the value of all apartments that can be bought by a single foreign investor to AU$3 million in the one development. If foreign investors want to purchase apartments above this value, they will have to seek individual approval.

Proposals by foreign persons to acquire developed residential real estate that does not fall within the above categories are subject to the FATA, but are not normally approved.

**Meaning of 'foreign interests'**
The expression 'foreign interest' has a very technical meaning under FATA. There are complex tracing provisions, which have a broad reach. However, in general terms, a foreign interest is:

- a natural person who is not ordinarily resident in Australia;
- an overseas government or its agencies;
- any corporation, business or trust in which there is a 'substantial interest' held by an overseas person or corporation.

A substantial interest exists where there is an interest of 20% or more in ownership, voting power or potential voting power by a single person or corporation (together with associates) or 40% or more in aggregate ownership, voting power or potential voting power by two or more persons or corporations (together with their respective associates). Potential voting power refers in general terms to the number of votes that can be cast in a general meeting of a corporation.

**Proposals relating to urban land**
Overseas entities wanting to acquire urban land (including interests that arise via leases, financing and profit-sharing arrangements) must make a proposal to FATA. Proposals must be made in regard to the following:

- developed non-residential commercial real estate where the property is subject to heritage listing and valued at AU$5 million or more (in the case of both US and non-US investors);
- developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at AU$55 million or more in the case of non-FTA countries, with investors from FTA countries (US, Chilean, Japanese, Korean and New Zealand) allowed up to AU$1,094 million;
- accommodation facilities, valued at AU$55 million or more;
- vacant real estate irrespective of value;
- residential real estate irrespective of value (subject to certain exceptions as outlined below);
- shares or units in Australian urban land corporations or trust estates, irrespective of value, must be approved by the Treasurer before they can be implemented and should be presented to FIRB in advance. Failure to notify may result in an order for compulsory divestment.

You do not need prior approval to acquire residential real estate if you are:

- an Australian citizen living abroad;
- an overseas citizen purchasing, as a joint tenant, with your Australian citizen spouse;
- an overseas citizen who holds a permanent resident visa;
- a New Zealand citizen.

**Proposals relating to rural land**
The definition of rural land includes all land that is used wholly and exclusively for carrying on a substantial business of primary production. A substantial business of primary production must have a commercial purpose or character and be involved in activities relating to the cultivation of land, animal husbandry/ farming, horticulture, fishing, forest operations, viticulture or dairy farming, but does not include vacant land, hobby farms, land used for stock agristment or mining.

The Government has passed legislation which requires that, from 1 July 2015, foreign persons and foreign government investors holding interest in agricultural land must register those interests with the Australian Taxation Office (regardless of value).

All existing holdings must be registered by December 31 2015 and any new interests must be registered within 30 days of contract exchange

Proposed acquisitions of rural land valued at AU$15 million or more (or the relevant threshold for US, New Zealand, Chilean, Singaporean or Thai investors) must be approved by FIRB[1].

**Contracts**
All contracts which are being used by overseas investors for the purchase of Australian real estate for which FIRB approval is required must be made conditional upon FIRB approval (unless approval has already been granted). Contracts should provide for a minimum of 40 days from the date of lodgement for a decision from FIRB. For any properties being purchased at auction, prior FIRB approval must be obtained.

## Measurement of areas
Measurements generally used in the property industry are quoted as set out below by the Property Council of Australia:

- gross lettable area – retail: the aggregate floor space contained within a tenancy at each floor and used for calculation in shopping centres, commercial buildings and shops generally.
- gross lettable area: the floor space contained within a tenancy at each floor and used for calculation in warehouses, industrial buildings, freestanding supermarkets and showrooms.
- net lettable area: the sum of the whole-floor lettable areas, used in calculating area in office buildings and office parks.

## Lease terms
Lease terms vary, depending on the location and type of the property. The following summary outlines some common terms found in Australian retail and commercial leases:

**Lease period**[2]
- Retail: in most Australian states and territories, the relevant retail leasing legislation stipulates a minimum lease term (five years in most jurisdictions) unless this is waived by the tenant. Generally, lease terms from three to five years are the most common, although longer leases may be available.
- Commercial (including office and industrial): subject to any specific requirements under legislation in each state or territory, commercial leases can be for any length of time. In most cases, commercial leases are between five and ten years.

A tenant may also be able to negotiate options to extend the lease for a number of further terms.

1 Information current as of 1 December 2017.

2 The period or term of the lease.

**Rent reviews**[3]
The rent payable under the lease may be subject to periodic review using a predetermined method: for example, a fixed review to increase the rent by 5% per annum and/or by reference to the consumer price index (CPI).

**Sub-letting/assignment**[4]
A tenant might agree to sub-lease or to assign space which they are leasing to a third party. Normally, this cannot be done without the landlord's permission. If the landlord approves the sub-lease or assignment, they may require the sub-lessee or assignee to provide guarantees or other security, depending on the terms of the original lease.

**Repairs**
The party responsible for making repairs to the premises is generally set out in the lease. It is common for the landlord to be responsible for major structural and capital works, and for the tenant to be responsible for maintaining the premises (subject to fair wear and tear) and for repairing any damage caused by the tenant. Some leases also contain clauses dealing with the fit-out of the premises and "make-good" obligations, where each party is made responsible for specific maintenance/make-good obligations at the beginning and/or end of the lease.

3 A periodic review of rent under a lease using a predetermined method. For example, an increase in line with CPI, or in accordance with a market valuation.
4 A contract whereby the whole or part of the property is let to another person, the party letting being themselves a lessee. The obligations of the lessee to the lessor are not diminished. The length of the sub-lease must not be longer than the unexpired part of the lease.

**Security of tenure**[5]
Security of tenure only extends for the duration of the lease.

**Security of performance**
Generally, a landlord will require security for performance by the tenant of the tenant's obligations under a lease. This can be by way of a bank guarantee, cash deposit bond or company/personal guarantees.

**Termination of a lease**
Leases generally terminate upon their expiry date. Options to renew may be built into the lease by negotiation. Commercial (retail, office and industrial) leases do not normally contain provisions requiring either party to be compensated on termination of the lease, except where the termination is due to default. Retail tenancy legislation in most states and territories may also require compensation to be paid to retail tenants if the landlord exercises a right to terminate the lease pending demolition or redevelopment of the premises.

5 When the term is used in connection with renting, it means the certain term for which a tenant may remain in occupation.

TABLE 2
## Marginal rates of land tax for commercial property*

| State/territory | Threshold (AU$) | Rate | Department |
|---|---|---|---|
| Australian Capital Territory | Not payable | | |
| New South Wales | 3,357,000 | AU$ 53,812 + 2% of land value above AU$3,357,000 | Office of State Revenue |
| Northern Territory | Not payable | | |
| Queensland | 5,000,000 | AU$62,500 + 1.75¢ for each AU$1 more than AU$5,000,000 | Office of State Revenue |
| South Australia | 1,076,001 | AU$11,961 + AU$3.70 for every AU$100 or fractional part of AU$100 over AU$1,076,000 | Revenue South Australia |
| Tasmania | 350,000 | AU$1,837.50 + 1.5% of amount above AU$350,000 | State Revenue Office |
| Victoria | 3,000,000 | AU$24,975 + 2.25% of amount above AU$3,000,000 | State Revenue Office |
| Western Australia | 11,000,000 | AU$186,550 + 2.67¢ of each AU$1 in excess of AU$11,000,000 | Office of State Revenue |

Source: ATO / State Revenue Offices
*Information current as of 1 December 2017. Note that different marginal rates may apply, depending on property type and value. Please refer to the applicable State or Territory revenue office website for up-to-date information.

## Transaction costs

**Brokerage/agency fees**
Leasing fees are typically paid by the landlord and are negotiable prior to appointment and will be dependent on whether it is a conjunctional or sole-agent appointment. Typically, leasing fees amount to 15% of the first year's rent.

On transactions, typical fees are in the range of 0.75% to 1.5% of the agreed price for commercial, industrial and retail properties. Fees on residential transactions will be higher.

**Legal fees**
Transaction and statutory search fees will vary depending on the solicitor instructed, the complexity and size of the transaction, and on the nature and location of the property.

**Registration fees and levies**
The land registry in the relevant state or territory will charge registration fees for registering a purchaser's interest in the land (and for registering any mortgage or other dealing on the land). In some jurisdictions (for instance New South Wales), a levy is payable in addition to the registration fee prior to the land registry attending to registration of the purchaser's interest in the land. The amount of these levies is dependent on the purchase price of the land.

## Tax legislation

In Australia, power to levy tax exists at both commonwealth (i.e., federal) and state levels. The federal government levies taxes such as income tax, and goods and services tax (GST). Taxes levied by state governments include stamp duty, land tax and payroll tax as well as transaction duty, fees and charges on certain kinds of business transactions.

At the federal level, taxation is administered by the Australian Taxation Office (ATO). At the state and territory level, the relevant taxation authority is the State Revenue Office of the applicable state or territory.

**Stamp duty**
Stamp duty is a tax imposed at the state/territory level. As a result, the stamp duty payable on a purchase

of land will depend on where the land is situated. Stamp duty may also be payable on the purchase of shares in a company, particularly where the company is "land rich". Stamp duty is generally charged at an incremental rate, based on the higher of the market value of the property transferred and the GST-inclusive consideration. Certain exemptions and concessions may be available. Stamp duty on land acquisitions in New South Wales is currently charged at a rate of between 1.25% and 7.0%; however, for the latest rates please contact the State Revenue Office in the relevant state or territory. Stamp duty is generally payable by the purchaser, either by law or by commercial agreement, but in some jurisdictions the seller and purchaser are jointly and severally liable. The transfer of title to land cannot be registered until stamp duty has been paid. The state of South Australia is progressively abolishing stamp duty on commercial property transfers. The rate will reduce from 1 July 2016, halve again from 1 July 2017, and be zero from 1 July 2018. As at November 2016, foreign buyers of residential property shall be liable for additional duty at the rate of 4.00% in New South Wales, 7.00% in Victoria and 3.00% in Queensland.

**Land tax**
Land tax is also imposed at the state/territory level. As a result, the rate of land tax, the threshold at which it becomes payable and the date on which it is assessed and paid will depend on where the land is situated. Generally, land tax is payable by the current owner as of 31 December or 30 June of the current year, and is assessed on the unimproved land value. Certain exemptions may be available (for example, land tax is generally not payable on a principal place of residence). In Victoria, foreign persons are subjected to an additional 0.50% land tax surcharge on all land, rising to 1.50% from 1 January 2017. The current maximum marginal rates of land tax for commercial property are shown in Table 2.

**Corporation tax**
The tax rate for public and private companies, resident and non-resident, is currently 30%.

TABLE 3
## Income tax rates for Australian residents

| Taxation income (AU$) | Marginal tax rate (%) | Tax on this income |
|---|---|---|
| 0–18,200 | 0 | Nil |
| 18,201–37,000 | 19 | 19¢ for each AU$1 over AU$18,200 |
| 37,001–80,000 | 32.5 | AU$3,572 + 32.5¢ for each AU$1 over AU$37,000 |
| 87,001–180,000 | 37 | AU$19,822 + 37¢ for each AU$1 over AU$87,000 |
| 180,001 + over | 45 | AU$54,232 + 45¢ for each AU$1 over AU$180,000 |

Source: Savills Research & Consultancy

TABLE 4
## Income tax rates for non-Australian residents (foreign resident tax rates 2018-2019)

| Taxation income (AU$) | Marginal tax rate (%) | Tax on this income |
|---|---|---|
| 0–87,000 | 32.5 | 32.5¢ for each AU$1 |
| 87,001–180,000 | 37 | AU$28,275 + 37¢ for each AU$1 over AU$80,000 |
| 180,001 + over | 45 | AU$62,685 + 45¢ for each AU$1 over AU$180,000 |

Source: Savills Research & Consultancy

**Income tax**
Individuals, trustees, superannuation funds and companies deriving income from an Australian source must apply to the ATO for an Australian tax file number and must lodge an annual tax return with the ATO. Entities which carry on an enterprise in Australia also require an Australian business number.

Income tax is payable by individuals, trustees (in certain circumstances), superannuation funds and companies. Australian income tax is imposed on a single measurement of taxable income, which is calculated as the sum of assessable income derived by the taxpayer during the relevant year of income, less 'allowable deductions', i.e.,

Taxable Income = Assessable Income – Allowable Deductions

Australian tax residents are generally liable to pay income tax in respect of their worldwide assessable income, whereas non-Australian tax residents only pay tax on that part of their income which is derived from sources in Australia. However, this principle may be subject to the application of double taxation agreements (DTAs) which Australia has entered into with a number of other countries (please refer to the section 'Withholding tax' overleaf for a list of countries).

Taxation rates for individuals differ, depending on whether the individual is an Australian tax resident or not. The marginal rates of taxation applicable for Australian tax residents for the financial year from 1 July 2017 to 30 June 2018 are shown in Table 3.

In addition, individual Australian tax residents must pay a Medicare Levy of 2% of taxable income, subject to low-income thresholds, phase-in limits and surcharges for individuals without private health insurance. Further, a levy of 2% for taxpayers on AU$180,000+ to fund the Temporary Budget Repair Levy is payable from 1 July 2014. The marginal rates of taxation applicable for non-Australian tax residents for the financial year from 1 July 2017 to 30 June 2018 are shown in Table 4.

Non-Australian tax residents are not required to pay a Medicare Levy of 2% of taxable income. However, a levy of 2% for non-Australian taxpayers on AU$180,000+ to fund the Temporary Budget Repair Levy is payable from 1 July 2014.

**Goods and Services Tax (GST)**
GST is a broad-based consumption tax levied on the supply of most goods and services in Australia, and on goods imported into Australia. The transfer of real estate located in Australia is generally subject to GST, which is calculated as 10% of the GST-exclusive selling price of the real estate and is payable by the seller. However, in the purchase of non-residential property, the GST liability is generally passed to the buyer as they can claim the GST as an input tax credit, subject to satisfying certain requirements.

There are two methods of calculating GST in respect of the supply of certain types of real estate: 1) the ordinary method, and 2) the margin scheme. The ordinary method calculates GST as 10% of the GST-exclusive sale price of the property. The purchaser of a property under the ordinary method may be entitled to claim the GST paid as an input tax credit, subject to satisfying certain requirements. The margin scheme is generally applied to the sale of newly constructed residential premises. A number of conditions must be satisfied for the margin scheme to apply, including written agreement between the seller and purchaser. The margin scheme calculates GST as 10% of the margin, which is the difference between the GST-exclusive sale price and, generally, the price paid for the acquisition of the real estate (subject to certain exceptions). It is important to note that where the margin scheme is used to calculate GST, a purchaser of real estate is not entitled to claim input tax credit.

The sale of farm land, commercial real estate subject to lease, and grants of vacant land by the federal government may all be GST-free supplies, subject to satisfying a number of requirements.

**Managed investment trust (MIT)**
Australia has also recently implemented the following major reforms in relation to the taxation of MITs:

- the ability for MITs to make an election to treat gains and losses on the disposal of certain assets, including land, as subject to capital gains tax (CGT) treatment, thereby allowing certain investors in an MIT to access a CGT discount on the disposal of underlying assets;

- the extension of the definition of MIT so that a greater range of funds may take advantage of the 15% withholding tax rate which applies to certain distributions to overseas investors.

**Withholding tax and tax treaties**
Withholding tax is imposed in certain circumstances on dividends, interest and royalties.

For example, a borrower must withhold 10% of the gross amount of the interest paid to a non-resident creditor. Most of Australia's DTAs do not affect the rate of interest withholding tax imposed, as the DTA allows for a rate of 10% or higher.

Royalties paid by an Australian tax resident to a non-Australian tax resident are also subject to withholding tax at a rate of 30% of the gross royalty amount, generally reduced to 10% if paid to a resident of a country with which Australia has a DTA.

Dividends paid by an Australian tax resident company to a non-Australian tax resident which are unfranked (i.e., no Australian company tax has been paid in respect of the profits from which the dividend has been paid) are generally subject to 30% withholding tax. The rate of dividend withholding tax is generally reduced to 15% if paid to a resident of a country with which Australia has a DTA. Payment of a franked dividend by an Australian tax resident is exempt from withholding tax.

DTAs have been signed by Australia with the following countries:

Argentina, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Fiji, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan, Kiribati, Malaysia, Malta, Mexico, Netherlands, New Zealand, Norway, Papua New Guinea, People's Republic of China (PRC), Philippines, Poland, Romania, Russia, Singapore, Slovakia, South Africa, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Taipei, Thailand, Turkey, UK, US and Viet Nam.[6]

6 Information current as of 15 November 2016.

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# China

## Overview

China is the world's second largest economy after the US. It is also the world's fastest growing major economy, with average growth rates of 10% per annum over the past 30 years. The country is also the second largest trading nation in the world, being the largest exporter and second largest importer of goods.

## Types of property ownership

Under Chinese legislation, all land within urban areas is owned by the state while land within rural areas is owned by collectives for the exclusive purpose of agriculture. According to a landmark property law passed in 2007, all land, whether urban or rural, or containing existing privately owned structures, can be acquired by the state for public purposes providing fair compensation has been paid.

While land itself cannot be owned by private individuals, use of the land can be granted based on usufruct land rights. This essentially involves private entities or individuals being granted the use of land for a given period of time. The time for which land-use rights are given varies depending on the specific use of the site.

While land cannot be owned, property that is constructed on the land can, and private owners of that property are legally allowed to transfer ownership of that property to other private entities. The legal recognition of this right to transfer property, in the aforementioned legislation released in 2007, was a major milestone towards a more transparent property ownership system.

## Overseas ownership restrictions

In China, property ownership by overseas nationals is restricted to those who have been resident in the country for a period of more than one year and buyers are restricted to the purchase of one property for self use. In addition to individuals, there are a number of restrictions on ownership by overseas companies, of which the major legislative directives are detailed in the later section on key legislation.

## Measurement of areas

Measurements are typically quoted as gross floor area (GFA), with the exception of the retail market which quotes on a usable floor area basis, and are generally quoted in sq m by practitioners in the real estate industry.

## Transaction costs

### Brokerage/agency fees

Where a real estate broker has been used in the transaction of a property, either the buyer or seller is usually liable for payment of commission. Generally speaking, commission is around 1%, although this may vary according to the nature of the property. Major considerations for agreeing on the amount payable are the total value of the asset, the asset type and respective market conditions.

The party responsible for payment usually depends on who the broker is working on behalf of. For example, if the broker transacts the property on behalf of the seller, then the seller will usually be liable for payment and likewise for property transacted on behalf of the buyer. This can also vary according to prevailing market conditions. For example, where

TABLE 5

### Key statistics

| | |
|---|---|
| **Official name** | People's Republic of China |
| **Currency** | Renminbi<br>US$1 = RMB6.3294 (28 February 2018) |
| **Population** | 1.38 billion (2016) |
| **Land area** | 9.6 million sq km |
| **GDP per capita** | RMB53,974; US$8,126 (2016) |
| **GDP growth** | 6.7% per annum (2016) |
| **Principal business centres** | Shanghai, Beijing, Guangzhou, Shenzhen, Chengdu |

Source: FocusEconomics

TABLE 6

### Type of land use

| Land-use type | Lease period (years) |
|---|---|
| Residential | 70 |
| Education, science, culture, public health and physical education | 50 |
| Industrial | 50 |
| Commercial, tourism and recreation | 40 |
| Mixed-use or other | 50 |

Source: Savills Research

TABLE 7

### Office lease terms

| | |
|---|---|
| **Lease period** | Typically 3 years (often with a renewal option for a further 3 years), occasionally up to 5 years. |
| **Rent reviews** | Only for longer-term leases and lease renewals. |
| **Sub-letting/ assignment** | Usually only allowed to affiliated companies and only if allowed in the lease agreement. |
| **Termination** | Sometimes allowed after second year as long as 3 months' prior notice is given. |
| **Repairs** | Carried out by the property manager, who bears the cost, dependent on the circumstances/fault. |
| **Security of tenure** | Protected by law. |

Source: Savills Research

TABLE 8

## Real estate developers - sale of properties

| | | General taxpayer | Small-scale taxpayer |
|---|---|---|---|
| Old projects | General method | Applicable | Not applicable |
| | Simplified method | Applicable | Applicable |
| | Tax rate | General method: 11%; Simplified method: 5% | 5% |
| | Note on taxable income | General method: Land price deductible Simplified method: Land price not deductible | - |
| New projects | General method | Applicable | Not applicable |
| | Simplified method | Not applicable | Applicable |
| | Tax rate | 11% | 5% |
| | Note on taxable income | Land price deductible | - |

Source: State Administration of Taxation

TABLE 9

## Non-real estate developers - sale of properties

| | | General taxpayer | Small-scale taxpaer | General taxpayer | Small-scale taxpayer |
|---|---|---|---|---|---|
| | | Non self-built properties | | Self-built properties | |
| Old projects | General method | Applicable | Not applicable | Applicable | Not applicable |
| | Simplified method | Applicable | Applicable | Applicable | Applicable |
| | Tax rate | General method: 11%; Simplified method: 5% | 5% | General method: 11%; Simplified method: 5% | 5% |
| | Note on taxable income | General method and simplified method: The original purchase price deductible | The original purchase price deductible | - | - |
| New projects | General method | Applicable | Not applicable | Applicable | Not applicable |
| | Simplified method | Not applicable | Applicable | Not applicable | Applicable |
| | Tax rate | 11% | 5% | 11% | 5% |
| | Note on taxable income | The original purchase price deductible | The original purchase price deductible | - | - |

Source: State Administration of Taxation

TABLE 10

## Individual - sale of properties

| | Less than two years | More than two years (including two years) | |
|---|---|---|---|
| | | Non-primary residential property | Primary residential property |
| **City except Beijing, Shanghai, Guangzhou and Shenzhen** | 5% VAT on entire income | No VAT applicable | |
| **Beijing, Shanghai, Guangzhou and Shenzhen** | 5% VAT on entire income | 5% VAT on (entire income minus original purchase price) | No VAT applicable |

Source: State Administration of Taxation

TABLE 11

## Lease of properties

| | | General taxpayer | Small-scale taxpaer | Individual |
|---|---|---|---|---|
| Old projects | General method | Applicable | Not applicable | Not applicable |
| | Simplified method | Applicable | Applicable | Applicable |
| | Tax rate | General method: 11%; Simplified method: 5% | 5% | 1.5% |
| New projects | General method | Applicable | Not applicable | Not applicable |
| | Simplified method | Not applicable | Applicable | Applicable |
| | Tax rate | 11% | 5% | 1.5% |

Source: State Administration of Taxation

demand for an asset is low the seller may need to pay the commission as an incentive for brokers to pitch their project, and conversely where competition is fierce and buyers are lining up, the buyer may pay the commission as an incentive for the broker to push with negotiations.

## Tax legislation

### Stamp duty (payable by buyer and seller)

A stamp duty of 0.05% is levied on the contracted value of the property and is payable by both the buyer and seller of property in China.

### Value-added Tax

From 1 May 2016, all industries including the real estate and construction industry started to use Value Added Tax (VAT) transited from Business Tax (BT). Detailed summaries are shown in Table 8 to 11.

NB: Old projects refer to projects that include properties that landlords acquired on or before April 30, 2016. New projects include properties that landlords acquired after April 30, 2016.

NB: Small-scale taxpayers have taxable income of no more than RMB5 million per year; and general taxpayers have more than RMB5 million of taxable income per year.

### Urban real estate tax

Real estate tax can be levied in one of two ways which can be negotiated with local authorities:

- 12% of the rental income.
- 1.2% of the adjusted cost – set at 70% to 80% of the book value of the property. The book value of a property is set at the time of the asset's construction completion, and will not be reset unless the asset is sold through a direct asset transaction.

### Corporate income tax (CIT) (payable by seller, also as part of operating costs)

CIT is levied at 25% on the profits of rental income and gains from the Chinese real estate of foreign investment enterprises (FIEs) and overseas enterprises maintaining establishments in China.

**Land value appreciation tax (LVAT) (payable by the seller)**
LVAT, as set out by the central government, is applicable to the taxable gain based on the sales of proceeds after a number of deductions, including but not limited to the cost of land-use rights, construction costs and taxes incurred during the transfer of land and property. A detailed summary is shown in Table 12.

**Deed tax (payable by buyer)**
Deed tax is shouldered by the buyer and ranges from 3% to 5% of the total value of the land-use rights or real property transferred depending on the location.

According to Circular 137 issued by the State Administration of Taxation, for an individual buying their first residence which is smaller than 90 sq m, the deed tax is 1% of the total value of the property, effective from 1 November 2008.

**Land-use tax (operating costs)**
Effective from the start of 2007, overseas enterprises are subject to the same land-use tax that was previously borne only by domestic enterprises. The tax is applied to the project's total GFA and varies from region to region, with first-tier cities. A detailed summary is shown in Table 13.

**Property tax**
Chongqing and Shanghai announced, with the State Council's approval, details of the trial property tax which became effective on 28 January 2011.

**Shanghai trial property tax details**
Tax target
■ newly acquired second or more home units for local households.

■ newly acquired first or more home units for non-local households.

Valuation basis
■ 70% of the transaction price (eventually to be based on regular appraisal price).

Applicable tax rate (per annum)
■ 0.4% for units with prices equal to or lower than double the previous year's average first-hand price.

■ 0.6% for all other units.

TABLE 12
## LVAT

| Profits (%) | Tax rate (%) |
|---|---|
| Below 50 | 30 |
| 50–100 | 40 |
| 100–200 | 50 |
| Above 200 | 60 |

Source: Savills Research

TABLE 13
## Land-use tax

| City size | Tax rate (RMB per sq m) | |
|---|---|---|
| | 1988 | 2007 |
| Large city | 0.5-10 | 1.5-30 |
| Medium city | 0.4-8 | 1.2-24 |
| Small city | 0.3-6 | 0.9-18 |
| Towns and mining area | 0.2-4 | 0.6-12 |

Source: Savills Research

**Exemptions**
Local residents:
■ 60 sq m GFA exemptions will be granted on a per head basis.

■ for newly acquired first homes resold within one year, the paid tax amount will be refunded.

■ for independent children who acquire the first home for marriage, no tax will be levied.

Non-local residents:
■ first homes of qualified experts/ talent working in the city will be exempt.

■ first homes of those residing and working in Shanghai for more than three years will be exempt.

**Chongqing trial property tax details**
Reference price
■ the average transaction price in Chongqing's nine major districts (Yuzhong, Jiangbei, Sapingba, Jiulongpo, Dadukou, Nan'an, Beibei, Tubei and Banan) in the previous two years.

Tax target
Only applicable for the nine major districts:

■ all villas, both existing and newly acquired.

■ newly acquired high-end residential units priced more than double the reference price.

■ newly acquired second, ordinary units for non-local residents.

Valuation basis
■ transaction price (eventually to be based on regular appraisal price).

Applicable tax rate (per annum) – please refer to Table 14.

Exemptions (for locals)
■ for existing villa units, 180 sq m GFA will be exempt per household.

■ for newly acquired villas or high-end residential units, 100 sq m GFA will be exempt per household.

TABLE 14
## Applicable tax rate (per annum)

| Tax rate (%) | Local/ non-local | Pricing | Property type |
|---|---|---|---|
| 0.5 | All | <3 times reference price | Villa and high-end residential units |
| 1.0 | All | <3–4 times reference price | Villa and high-end residential units |
| 1.2 | All | >4 times reference price | Villa and high-end residential units |
| 0.5 | Non-locals | N/A | N/A |

Source: Savills Research

**Property tax summary**
Tables 15 to 20 provide a breakdown of the tax considerations related to different real estate activities (acquisition, disposal, leasing and development) of companies/ organizations and individuals.

**Personal income tax (PIT)**
PIT is based on monthly income, with the statutory monthly deduction allowance being RMB3,500. For expatriates the monthly deduction allowance is RMB4,800. Expatriates can also package up to 40% of their salary as housing budgets, education costs, etc, which is tax free as long as receipts to that value can be produced.

The tax of non-residents or resident expatriates is also calculated in accordance with their length of residency in China. For example, those who reside in China for less than one year will be taxed only on their China-sourced income. Residents of more than one year but less than five years will be subject to tax on both their China-sourced income and their overseas-sourced income. However, upon application to, and approval from, the tax authorities, the taxation of overseas-sourced income can be limited to that received from Chinese enterprises, Chinese establishments, Chinese economic organisations and Chinese individuals. Expatriates who reside in China for more than five consecutive years will be subject to tax on their worldwide income from the sixth year onwards. Those expatriates who travel in China and derive income from an overseas employer with no permanent establishment in China will be tax exempt if they do not physically stay in China, consecutively or cumulatively, for

TABLE 15
## Institutional buyers – acquisition taxes and fees

| Types of taxes | Tax rate |
|---|---|
| **Key costs** | |
| Deed tax (契税) | 3–5% of total value |
| **Ancillary costs** | |
| Stamp duty (印花税) | 0.05% of contract price |
| Notary fee (公证费) | Selective, 0.01–0.3% of contract price |

Source: Savills Research
Note: There are several other smaller fees and taxes involved in the acquisition of properties or development sites, they include but are not limited to: Legal fees (法律费用), title deed registration fees (转移登记费), land registration fees (土地登记费), survey fees (调查费), handling fees for property ownership certificate (房产证转移费), real estate ownership certificate (房产证收费), stamp duty for real estate ownership certificate (权证印花税).

TABLE 16
## Institutional sellers – disposal taxes and fees

| Types of taxes | Tax rate |
|---|---|
| **Key costs** | |
| LVAT (土地增值税)* | 30–60% of value appreciation on transfer of land or/and property |
| Value-added tax (增值税) | Either 5% VAT by Simplified Method or 11% by General Method subject to the acquired date of the project |
| Enterprise income tax (企业所得税) | ≤10% of taxable income if FIE has no establishments in China<br>25% of taxable income for others |
| **Ancillary costs** | |
| City construction and maintenance tax (城市建设税) | 7% of VAT for tax payers located in a city<br>5% of VAT for tax payers located in a county or township area<br>1% of VAT for tax payers located in other urban regions |
| Education surcharge (教育费附加) | 3% of VAT |
| Stamp duty (印花税) | 0.05% of contract price |

Source: Savills Research
*LVAT is applicable to the taxable gain (aka, value appreciation) based on sales proceeds after a number of deductions.

TABLE 17
## Institutional landlords – leasing taxes and fees

| Types of taxes | Tax rate |
|---|---|
| **Key costs** | |
| Real estate tax (房产税) | 12% of rental income |
| Value-added tax (增值税) | Either 5% VAT by Simplified Method or 11% by General Method subject to the acquired date of the project. |
| Income tax (所得税) | 25% of taxable income, taxed quarterly |
| **Ancillary costs** | |
| Urban and township land-use tax (城镇土地使用税) | RMB0.9–RMB30 per sq m at total site area |
| City construction and maintenance tax (城市建设税) | 7% of VAT for tax payers located in a city<br>5% of VAT for tax payers located in a county or township area<br>1% of VAT for tax payers located in other urban regions |
| Education surcharge (教育费附加) | 3% of VAT |
| Stamp duty (印花税) | 0.1% of total aggregate rental |

Source: Savills Research

TABLE 18

## Individual buyers – acquisition taxes and fees

| Types of taxes | Tax base | Tax rate | | | |
|---|---|---|---|---|---|
| Scenario | | Primary normal residence smaller than 90 sq m | Primary normal residence larger than 90 sq m | Non-primary residential property | Commercial property |
| **Key costs** | | | | | |
| Deed tax (契税) | Contract price | 1% | 1.5–2.5% | 3–5% | 3–5% |
| **Ancillary costs** | | | | | |
| Stamp duty (印花税) | Contract price | 0–0.05% | | | |

Source: Savills Research
Note: Other fees potentially include but are not limited to: title deed registration fees (转移登记费), real estate ownership certificate (房产证收费), stamp duty for real estate ownership certificate (权证印花税), handling fees for property ownership certificate (房产证转移费), transaction charges (交易手续费).

TABLE 19

## Individual sellers – disposal taxes and fees

| Types of taxes | Tax base | Tax rate | | | | | |
|---|---|---|---|---|---|---|---|
| Scenario | | Normal residential property held for more than 5 years | Non-normal residential property held for more than 5 years | Normal residential property held for 2-5 years | Non-normal residential property held for 2-5 years | Residential property held for less than 2 years | Commercial property |
| **Key costs** | | | | | | | |
| Value-added tax (增值税) | - | - | 5% | - | 5% | 5% | 5% |
| PIT (个人所得税) | Profit after deductions | 20% (primary residence exempted) OR | | 20% OR | | | |
| | Contract price** | 1–3% (primary residence exempted) | | 1–3% | | | |
| LVAT (土地增值税)# | Profit after deductions | 0% | | | | | 30–60% |
| Stamp duty (印花税) | Contract price | 0% | | | | | 0.05% |
| **Ancillary costs** | | | | | | | |
| City construction and maintenance tax (城市建设税) | VAT | 7% for tax payers located in a city<br>5% for tax payers located in a county or township area<br>1% for tax payers located in other urban regions | | | | | |
| Education surcharge (教育费附加) | VAT | 3% | | | | | |

Source: Savills Research
#LVAT is applicable to the taxable gain based on the proceeds of sales after a number of deductions. **Only applicable if purchase documents indicating the value at the time of purchase are unavailable. Note: Other fees potentially include but are not limited to: local education surcharges (地方教育附加费) and transaction charges (交易手续费). Please note: channel maintenance fees levy (河道工程维护费) stopped as of April 2017.

TABLE 20

## Individual landlords – leasing taxes and fees

| Types of taxes | Tax base | Tax rate | |
|---|---|---|---|
| Scenario | | Residential | Commercial |
| **Key costs** | | | |
| Value-added tax (增值税) | Rental income | 1.5% | |
| Real estate tax (房产税) | Rental income | 4% | 12% |
| PIT (个人所得税) | Taxable income | 10% | 20% |
| Stamp duty (印花税) | Contract price | Null | 0.1% |
| **Ancillary costs** | | | |
| City construction and maintenance tax (城市建设税) | VAT | 7% for tax payers located in a city<br>5% tax payers located in a county or township area<br>1% tax payers located in other urban regions | |
| Education surcharge (教育费附加) | VAT | 3% | |

Source: Savills Research
Note: Other fees potentially include but are not limited to: local education surcharges (地方教育附加费). Please note: channel maintenance fees levy (河道工程维护费) stopped as of April 2017. In practice individual landlords will pay a comprehensive tax which covers business, income and real estate tax for the leasing of a residential and non-residential property. This tax rate will vary depending upon the tax authority and total monthly rental income.

TABLE 21

### Detailed tax bands for PIT

| Monthly salary (RMB) | Tax rate (%) |
|---|---|
| Less than 1,500 | 3 |
| 1,500–4,500 | 10 |
| 4,500–9,000 | 20 |
| 9,000–35,000 | 25 |
| 35,000–55,000 | 30 |
| 55,000–80,000 | 35 |
| More than 80,000 | 45 |

Source: Savills Research

more than 90 days in a calendar year. The 90-day test is extended to 183 days if the individual is a tax resident of a country/region that has executed a taxation treaty/arrangement with China.

**Withholding tax and tax treaties**
International enterprises without establishments or places in China shall be subject to a unilateral concessionary rate of withholding tax at 10% on gross income from dividend, interest, lease of property, royalties and other China-sourced passive income unless reduced under a tax treaty.

The State Administration of Taxation released new tax regulations on indirect equity transfers by non-resident enterprises (Bulletin 7), providing a broader scope of indirect transfer, stricter provisions on scrutinizing indirect transfers of China's taxable assets, and new reporting obligations.

Foreign owners were previously required to report offshore equity transfers and pay a 10% withholding tax; however, a lot of the time these rules were not enforced. As result, investors were able to avoid paying capital gains taxes on offshore holding structures, leading to higher returns. This new regulation is expected to result in a noteworthy tax obligation increase for foreign sellers, together with an important impact on the investment market.

China is a signatory to a treaty for the prevention of double taxation with many countries all over the world. Draft agreements with additional countries are also in discussion. A Double Taxation Agreement (DTA), in principle, enables the offsetting of tax paid in one of two countries against the tax payable in the other, in this way preventing double taxation. Another important factor is the grant of an exemption or tax at a reduced rate on certain receipts such as interest, royalties, dividends, capital gains and others that are connected with a transaction carried out between parties associated with the DTA. When certain income is taxable under the Chinese Income Tax Ordinance but there is an exemption (reduced tax) under any taxation treaty, the income may be taxed, but only according to the provisions of the taxation treaty.

Countries include:
Albania, Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Brazil, Brunei, Bulgaria, Canada, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Morocco, Netherlands, New Zealand, Norway, Oman, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Romania, Russia, Saudi Arabia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunis, Turkey, UAE, UK, Ukraine, US, Uzbekistan, Venezuela, Viet Nam and Yugoslavia.

## Legal issues

The legal landscape pertaining to real estate in China has changed rapidly and continues to do so, with the regulatory environment considered to be significantly complex. Detailed below is recent key legislation pertaining to real estate.

**Asset managers banned from channelling funds to real estate investments in 16 cities (February 2017)**
The Asset Management Association of China issued a notice that banned asset managers in China from channelling funds into residential property investment, in 16 mainland cities, via private equity schemes. The ban applies to entrusted loans, trust schemes and other shadow banking products offered by asset managers affiliated with banks, securities and futures firms, and funds. It does not include standard products, such as bonds and stocks. Included among the 16 cities are Beijing, Shanghai, Guangzhou, Shenzhen, and second-tier cities Xiamen, Nanjing, Hefei and Fuzhou.

**China State Council circular on overseas investment (August 2017)**
China's State Council, the equivalent of the country's cabinet, issued new rules on overseas investment which restrict investment in real estate, hotels and other sectors. The top level central government body divides potential investment sectors and locates them into "encouraged", "limited" and "prohibited" categories, and directs ministries and local governments to scrutinize and control all outbound investments, in accordance with the guidelines.

**New restrictions on property purchases announced in nine cities (October 2016)**
In early October, Tianjin, Suzhou, Zhengzhou, Chengdu, Jinan, Wuxi, Hefei and Wuhan followed an announcement made in Beijing and introduced measures to cool the residential property market, such as raising down payment requirements for second homes or banning the purchase of second and third homes.

**Strengthen regulation on real estate agencies (August 2016)**
The Ministry of Housing and Urban-Rural Development and six other related government departments released guidelines ordering that housing information should be officially verified before being advertised by agencies. The guidelines also promised to improve credit information system in the sector and regulate cooperation between real estate agencies and financial institutions.

**China adopted law regulating asset appraisals (July 2016)**
The National People's Congress (NPC) Standing Committee adopted a law on asset appraisal, the first law governing the country's asset appraisal industry since it emerged three decades ago. The new law allows certified appraisers who have passed national exams, as well as those who have expertise and hands-on experience in asset evaluation, to practice asset appraisal. The law provides that appraisal agencies should supervise and take

responsibility for the professional conduct of their practitioners.

**China bans local government from borrowing for land reserve (February 2016)**
The Ministry of Finance, the Ministry of Land and Resources, the People's Bank of China and China Banking Regulatory Commission issued a statement that banned local governments from borrowing from banks to finance land purchases and preparations for property development. Local governments must reduce the number of institutions responsible for land reserve, whittling down the many departments to just one. Land reserve institutions should no longer have financing, construction or land development arms and these departments should be closed or turned into enterprises.

**Simplified registration procedure for foreign-invested real estate companies (November 2015)**
The Ministry of Commerce (MOFCOM), together with the State Administration of Foreign Exchange (SAFE), recently issued a simplified registration procedure for foreign-invested real estate companies. Foreign-invested real estate companies will no longer need to go through the filing procedure with MOFCOM or display their company's information on the official MOFCOM website.

**Foreign investment rules rolled back (November 2015)**
Six governing ministries, including People's Bank of China (PBoC) and MOFCOM, issued a statement on 27 August 2015 detailing the rolling back of restrictions put in place to curb foreign investment in the Chinese real estate sector. The two key points include: 1) the dropping of restrictions requiring individuals to have resided in China for more than one year before purchasing a property (as long as it is still for self-use); and 2) The lowering of registered capital requirements for foreign-investment real estate enterprises, while at the same time foreign investors will not need to pay their registered capital in full before borrowing loans locally.

**Loosened down-payment requirements (September 2015)**
The Ministry of Housing and Urban-Rural Development (MOHURD), Ministry of Finance and PBoC jointly announced in a circular to lower the minimum down payment requirement of housing provident fund loans. Buyers that already own a property but have no outstanding mortgage can also apply for use of the housing provident fund, with a minimum down payment of 20%, decreasing from 30%. Beijing, Shanghai, Guangzhou and Shenzhen can adopt their own policies, given the different market conditions.

The Central Bank has issued loosened down payment requirements on first-home buyers. The minimum down payment requirement was lowered to 25% for first-home buyers purchasing normal residential property when using mortgages. The new regulation is only applicable in cities without implementations of home purchase restrictions.

**Supportive policies for the residential sales market (March 2015)**
PBoC, MOHURD and China Banking Regulatory Commission (CBRC) jointly announced further supportive measures for the property market on 30 March 2015.

1) The holding period at which higher rates are applicable was shortened from five years to two years.

2) Down payment requirements for second-home buyers were reduced to a minimum of 40%, including those who have not fully repaid their first mortgage – down from the previous 60-70%. First-home buyers were also allowed to use a housing provident fund with a minimum of 20% down payment. Buyers that already own a property, but have no outstanding mortgage, can also apply for use of the housing provident fund, with a minimum down payment of 30%.

**Removal of all restrictive regulations on Foreign Investment Industrial Guidance Catalogue (March 2015)**
MOFCOM has released the 2015 Foreign Investment Industrial Guidance Catalogue, covering three main types of foreign-invested enterprises: wholly-foreign owned; equity joint venture; and cooperative joint ventures. All restrictive lists regarding real estate investment have been completely removed from the new guidance catalogue.

**Cancellation of Housing Purchasing Restrictions for 42 Cities (June–October 2014)**
A total of 42 cities have cancelled their policy of house purchase restrictions (HPRs) between June and October in 2014. The policies were originally introduced in early 2010. As a result, only five cities, Beijing, Shanghai, Guangzhou, Shenzhen and Sanya, continue to enforce their previous HPRs.

**State Council's Circular 17 (February 2013)**
The government, in response to rising house prices and red-hot transaction volumes, introduced yet another round of policy tightening. Policies focused on:

- average sales price targets for individual cities (no longer effective);
- 20% Capital Gains Tax;
- extension of the home purchase restrictions (no longer effective);
- tighter mortgage lending standards (no longer effective);
- increasing land supply;
- increasing social welfare housing.

**Land and property registration**
The Property Law proposes that China's real property registration system be unified nation-wide and property rights holders and interested parties may apply to retrieve the information filed with the registry. Currently, information on land-use rights, building ownership and mortgage rights may be separately filed with different local real estate or construction administration authorities. That information is usually not accessible except with the registrant's written consent. The new law therefore ought to facilitate searches on title and related property rights. However, it remains unclear whether just anybody will be entitled to search the registry or whether applicants must establish some relationship to the property at issue. Implementation of these provisions of the Property Law will need to be monitored closely.

**Foreign exchange controls**
In addition to the hurdles presented by legislation outlined previously,

there are also strict procedures that companies and individuals must abide by for conversion into local currency. Generally this applies to onshore purchasing of assets paid for with the use of overseas funds. Foreign exchange is overseen by SAFE. A general overview of foreign exchange regulations is as follows:

- individual purchases of no more than US$50,000 – this is essentially the same process as for the above, however, the purchase amount is lower for individuals.

- purchases of greater value – for purchases of greater value, the purchasing body is subject to the examination and approval of the foreign exchange authorities and hence may undergo a more rigorous evaluation on a case-by-case basis.

## Other real estate issues

**Sales approval**

In contrast to many markets overseas, where developers will achieve a certain sales target before being able to gain funding and start construction, developers in China usually construct property on a speculative basis, which brings an added risk to the development of real estate in China.

Prior to commencement of onshore strata-title sales for units within a project, the developer must first acquire sales approval from the Municipal Bureau of Land Resources and Real Estate. For onshore sales of residential, office or retail units, the following criteria must be met to be eligible for attaining sales approval:

- the full amount of the land-use rights transfer fee must have been paid and the land-use rights certificate must have been formally obtained.

- the project must have a project planning licence, construction licence, real estate development licence and land-use rights certificate.

- 25% of the project must have been completed, assessed on the basis of 25% of the total project cost having been invested, and construction progress, as well as completion and handover dates, must have been determined. For low-rise projects, properties must be topped out.

**Building completion**

For newly developed projects, developers must apply to the local government for issue of a building completion certificate. Depending on the scale and significance of a project, the pre-completion assessment may be delegated to one or more higher levels of government authority, such as in the case of projects involving public interest, national security or state funding. This certificate should be obtained prior to the formal handover and occupation of the building. The following tasks are generally involved in attaining a building completion certificate:

- assessment of compliance with all planning requirements, including zoning, GFA restrictions, height restrictions, etc.

- assessment of compliance with health, fire, safety, labour and environmental protection requirements.

- settlement of contracts for building materials and services carried out by contractors.

- formal acceptance by the project owner that they are satisfied with the work carried out by contractors.

## Major property legislation

The previous legal section provides a comprehensive review of recent legislation related to property. To summarize, these include:

- State Council's Circular 17 (February 2013) – suppressing investment demand while increasing supply

- Restrictions of land development (June 2012) – land for pure villa use is no longer allowed

- Property tax (January 2011) – Shanghai and Chongqing property tax

- Cooling measures (January 2011) – State Council announces further policies to control housing prices

- Circular 80 (October 2010) – domestic insurance companies allowed to invest in real estate

- Circular 151 (September 2010) – management of idle land banks

- Cooling measures (September 2010) – State Council announces further policies to control house prices

- Circular 53 (April 2010) – pre-sales restrictions

- Circular 10 (April 2010) – down-payment and mortgage-rate restrictions

- SASAC Announcement (March 2010) – SOEs required to withdraw from property business

- Circular 4 (January 2010) – notice on stabilising the development of the real estate market

- Circular 157 (December 2009) – property sales tax applicable timeframe extended to five years

- Circular 74 (November 2009) – notice of further regulations on land grant fee

- Circular 27 (May 2009) – minimum equity threshold for developers lowered

- Circular 23 (July 2008)

- China Property Law (October 2007)

- Circular 130 (June 2007)

- Circular 50 (May 2007)

- Circular 171 (July 2006)

# Key cities overview

## Beijing

TABLE 22

### Key statistics

| | |
|---|---|
| **Permanent population** | 21.73 million (2016) |
| **Land area** | 16,410.5 sq km (municipality)<br>1,368.3 sq km (urban area) |
| **GDP** | RMB2,489.9 billion (2016) |
| **GDP per capita** | RMB106,284; US$17,064 (2015) |
| **GDP growth** | 6.7% per annum (2016) |
| **Principal business centres** | CBD and its vicinity, Beijing Financial Street, Lufthansa, East Second Ring Road, East Chang'an Avenue, Zhongguancun |

Source: Savills Research

### Overview

Beijing is the capital city of China and is recognised as the nation's centre for a wide variety of functions, including politics, economics and cultural heritage, and as a transportation hub. As one of the four municipalities directly under the central government, Beijing leads economic and political reform, and has 21.73 million residents and the country's second largest GDP.

The capital city for five dynasties, Beijing's history stretches back 3,000 years, making it a preferred international tourist destination. Multinational companies and large SOEs have therefore established their regional and national headquarters in Beijing to benefit from preferential policies, supported by the government, and to have closer ties to the decision-making centre.

Beijing's GDP experienced consecutive double-digit growth from 1998 to 2007, but started to slow down since 2012, echoing the economic slowdown of the country. In 2016, the tertiary industry continued to be the largest contributor to the city's GDP, accounting for 80.3% of the total.

### Beijing-specific legislation

Detailed below are a number of property related legislations that are unique to Beijing.

**New rental housing policy (October 2017)**

Beijing authorities announced that a new house rental policy will be put into effect on 31 October 2017. The regulations aim to increase the rental housing supply to better satisfy end-user demand in the city. In addition, an online supervisory platform will be setup which will provide house rental information, electronic rental contracts and applications, and supervision of transactions, in order to protect the rights of tenants. Tenants will also be given more rights in terms of household registration and access to education. The move is an attempt to increase rental options and establish a housing system that is fair to both owners and tenants.

**Beijing introduces a joint ownership housing scheme (September 2017)**

Beijing unveiled a joint ownership housing scheme that came into effect on 30 September 2017. The program introduced homes with property rights to be shared by the government and buyers. It allows buyers to enjoy the same rights of household registration and school admission for children, equal to that of buyers of ordinary commodity housing. The joint ownership housing plan looks to replace the current owner-occupied commodity housing model, and will see a total supply of 250,000 homes over the next five years.

**Increased regulations for developers of self-hold commodity housing projects (June 2017)**

On 14 June 2017, the Beijing Municipal Commission of Housing and Urban-Rural Development and Beijing Municipal Bureau of Urban Planning and Land announced new guidelines to regulate developers of self-hold commodity housing projects, to promote the healthy development of the rental market. The new regulations stipulate that the leasing period of the land must match that of the developers' self-hold period of the project. Furthermore, leasing terms for tenancy agreements will not be able to exceed a 10-year period, in order to prevent developers leasing housing units under a quasi "rent-to-own" agreement. Developers who violate the conditions will be disqualified from participation in future land auctions in Beijing, and may also be subject to a downgrading or removal of their qualifications.

**Restrictions on commercial and office projects revised to permit leasing (May 2017)**

The Beijing Municipal Commission of Housing and Urban-Rural Development announced a further explanation on the recently imposed restrictions on commercial and office projects on 23 May. The new rules look to protect reasonable interests of buyers who purchased commercial properties prior to the regulations imposed on 26 March. The new revisions will see qualified buyers permitted to both sell and lease their commercial properties.

**Residential usage strictly prohibited on industrial-zoned land (April 2017)**

On 19 April, the Beijing Municipal Bureau of Urban Planning and Land Resources, along with four other government agencies, jointly announced a set of guidelines to further improve the management of industrial projects. Industrial projects will be required to stringently follow their development plans in terms of design, construction and usage. Projects will not be permitted to deviate from their development plans, be converted to another usage, or sold without receiving permission. Conversion from industrial to residential usage will be strictly prohibited. Speculative demand on investment in industrial land is expected to significantly cool.

**Stricter guidelines for management of commercial/ office development projects (March 2017)**
The Beijing Municipal Commission of Housing and Urban-Rural Development announced stricter guidelines relating to the management of commercial and office development projects on 26 March. The guidelines see new commercial and office projects that are currently under construction no longer eligible for sale to individuals. Further, projects on the second-hand market are also now only eligible for sale to qualified companies, public institutions, social organisations and individuals. Additionally, for individuals to be eligible to purchase commercial/ office projects, they must not own a home in Beijing, and must have paid personal income tax or social insurance in the city for five consecutive years. Loans for purchasing commercial housing have also been suspended and there have been extended warnings that real estate agencies who break the rules will be punished.

**Crackdown on school-area housing bubble (March 2017)**
The Municipal Education Commission announced fresh policies in March aimed at cooling demand for housing in Beijing's elite school districts. New policies include an increased number of districts that will see students randomly allocated to a school near their home. Additionally, collaboration between schools and real estate developers to set up campuses has been banned, except for projects which fall under the government's collaborative development plan for the Beijing-Tianjin-Hebei region.

**Increased tax payment requirements for non-local residents (March 2017)**
The Beijing Local Taxation Bureau and Beijing Municipal Commission of Housing and Urban-Rural Development announced a stricter personal income taxation policy on 22 March. The new guidelines state that non-local residents are now required to pay personal income tax for 60 consecutive months, in the city, before being eligible to purchase residential property.

**Beijing issues most stringent housing purchase restrictions to date (March 2017)**
Despite a general slowdown in housing price growth following the introduction of the "930 housing regulations" in 2016, transaction levels and prices increased in the second-hand market, after the Spring Festival period. Looking to quell speculative demand in the market, authorities have once again expanded housing purchasing restrictions. Major new restrictions are as follows:

- Toughened definition of "first-time buyers" – Individuals (including their spouses) should hold no house under their names and have no nation-wide record of a personal housing loan (including public housing fund loans), otherwise they will be deemed a second-time buyer.

- Increased down payment requirements for second-time buyers – Down payment requirements for second-time buyers of ordinary housing is now 60% (up from 50%) and 80% for non-ordinary housing (up from 70%).

- Reduction of loan term – Loan periods (including public housing fund loans) reduced from 30 years to 25 years.

- Restrictions on companies purchasing property – A minimum three-year holding period is required for companies who purchase commodity housing. Conditions also apply to individuals.

**Tightened policies in the residential sales market (September 2016)**
On 30 September, the Beijing Municipal Government announced a number of new regulations for the residential sales market. In addition to further tightening current restrictions on home purchasing requirements and mortgages, the new policies also aim to address the imbalanced supply and demand dynamic in the city. The details of the main regulations include:

- Adjustment in the planning of land supply

    - Increase the supply of land plots for residential development and those which intend to allocate at least 70% of total GFA for smaller residential units (under 90 sq m).

    - Increase the supply for land plots zoned for public housing in all districts (excluding the Dongcheng, Xicheng and Shijingshan districts).

- Control land prices to curb the excessive growth of housing prices

    - Control the transaction accommodation value of land plots for residential development.

    - Restrict the potential transaction price for residential units to be developed on the residential plots and set it as a condition for the land auction.

    - Encourage developers to allocate a portion of residential units for lease, in order to satisfy the increasing leasing demand.

- Further strengthen the housing mortgage policies

    - Raise the down payment requirement to 35% for the first mass-market home buyers and 40% for first luxury home buyers.

    - Raise the down payment requirement to 50% for the second mass-market home buyers and 70% for the second luxury home buyers.

**Restrictions on land supply (June 2016)**
The city will focus heavily on promoting the management of city planning. It will strictly control the scale of construction, by prohibiting the supply of any new land within the Fifth Ring Road.

**Increased restrictions for Tongzhou district (May 2016)**
The Tongzhou district, the capital's "subsidiary administrative centre", has issued two further restriction policies in May 2016 aimed at cooling the market:

■ Restrictions on purchasing commercial/residential properties: Individuals can no longer buy commercial or office buildings in the Tongzhou district. Only companies and public institutions are eligible buyers for new and resold commercial properties. Further, the city also restricted households with two apartments or a single person with one apartment from buying another in the Tongzhou district. The limit is applicable citywide, and home buyers should also be registered residents in Beijing or contributing to social security funds in the city for a minimum of five years.

■ Population controls: The Tongzhou district introduced new rules to control the number of residents. According to the municipal government, no more local hukou will be issued for non-residential properties. Further, those who own two or more homes in the city will be issued a local hukou only after confirmation that their Tongzhou home is their main residence.

**Restrictions for Tongzhou district (August 2015)**
On 15 August 2015, an announcement was made outlining guidelines for individuals purchasing housing units in the Tongzhou District of Beijing. Individuals must meet one of the following criteria:

■ Beijing Hukou holder with no current housing unit.

■ Tongzhou Hukou holders who already own one housing unit must hold the property for more than three years before buying a second.

■ Beijing Hukou holders (excluding Tongzhou) who already own one housing unit must have paid social insurance in the Tongzhou District for more than three years.

■ Non-Beijing Hukou holders with no housing units in Beijing must have paid their social insurance in the Tongzhou district for more than three years.

**Catalogue of prohibited and restricted Industries for new projects "Announcement [2015] 42" (August 2015)**
In August 2015, government authorities announced new restrictions on the development of new industries in six downtown districts in Beijing – Dongcheng, Xicheng, Chaoyang, Haidian, Fengtai and Shijingshan. These restrictions include:

■ Non-Beijing SOEs are prohibited from relocating their headquarters to any of the six downtown districts.

■ Residential, hotel and office projects are prohibited from being developed in the Dongcheng and Xicheng districts.
■ Hotel and office projects are prohibited from being developed in the section of Chaoyang, Haidian, Fengtai and Shijingshan districts that fall within the inside of Fifth East West and North Ring Roads and the Fourth South Ring Road.

■ Exhibition facilities are forbidden from being established in any of the six downtown districts.

■ Food & Beverage operators are forbidden from operating a business in a basement within any of the six downtown districts and additionally are restricted from establishing a business that is less than 60 sq m within any of the areas.

**Adjustment of deed tax standard (October 2014)**
The Beijing Municipal Housing and Urban-Rural Construction Commission announced on 8 October the criteria for ordinary housing classification. Values cannot exceed those listed in the below table:

| Ring roads | Total value (RMB mil) | Per sq m value (RMB per sq m) |
|---|---|---|
| Within fifth | 4.680 | 39,600 |
| Between fifth and sixth | 3.744 | 31,680 |
| Outside sixth | 2.808 | 23,760 |

**Self-use commodity residential property (October 2013)**
In addition to the municipality's restrictions set out in Circular 17, Beijing municipal MOHURD announced new regulations on self-use commodity residential property.

■ ensure self-use commodity residential supply of no less than 20,000 units by the end of 2013, and another 50,000 units by the end of 2014.

■ the majority of units are required to be no larger than 90 sq m, with the largest unit no bigger than 140 sq m.

■ sale prices are to be set at a 30% discount to other commodity residences with equivalent specifications in a similar location.

■ qualified purchasers (households) are allowed to buy self-use commodity residences, but the following applicants have priority:

- local residents without any properties, of which, single local households should be older than 25 years old

- Applicants on a waiting list for economical affordable housing and price-capped commodity houses.

■ qualified purchasers are allowed to buy only one self-use commodity residential property.

■ ownerships for such properties are registered as "self-use commodity residential property".

■ purchasers are prohibited from property transfers within five years in principal.

■ if self-use commodity residences are sold after five years, a 30% CGT will be charged and the seller will be prohibited from buying another self-use commodity property.

**Increased down-payment requirements for second homes (April 2013)**
The Beijing branch of the People's Bank of China office also announced changes to down-payment requirements for home purchasers:

- first home purchaser down-payments remained unchanged at 30%.
- second home purchaser down-payments are raised from 60% to 70%.
- third home purchasers are prohibited from having a mortgage.

**Circular 17 (March 2013) – municipal interpretation of State Council's Circular 17**
In addition to the State Council's restrictions set out in Circular 17, the Beijing municipal government also announced the following:

- keep first-hand commodity housing prices stable, along with a decline in end-use property prices during the remainder of 2013;
- single adults with Beijing hukou registration are allowed to purchase only one residential unit;
- down-payments for second-home purchases are increased to 70%;
- sellers of primary residences, after owning the property for five years, are exempt from the 20% CGT.

**Land supply plan between 2011 and 2015 (March 2012) – no residential land supply within the Third Ring Road**
Beijing Municipal Bureau of Land and Resources issued the "State-owned land supply plan during 2011 to 2015", declaring that no residential land plots are to be sold within the Third Ring Road during the 12th Five-year Plan period (2011–2015).

**Circular 192 (May 2011) – developers prohibited from developing residential properties on commercial-zoned land**
The Beijing government issued a circular forbidding developers from constructing residential buildings on land previously designated for commercial use. The regulation also states that developers of office or retail properties are prohibited from promising specific rates of return to investors purchasing premises.

**Circular 16 (March 2011) – Beijing sets price target for residential pricing in 2011**
Targets have been set to reduce housing prices or prevent prices in 2011 from exceeding those in 2010.

**Circular 5 (March 2011) – pre-levy LVAT rate raised**
Beijing's MOHURD announced that it would increase the pre-levy LVAT from 2% to 5% starting 26 March. Properties sold after more than five years of self use are exempt from income tax.

**Circular 8 (February 2011) – restrictions on home purchase and social housing**
The Beijing municipal government issued new restrictions on 16 February. According to the regulation the following are prohibited from buying residential properties:

- local residents (family units) who own two or more properties.
- non-local residents (family units) who own one or more properties.
- non-local residents (family units) who cannot provide five continuous years' worth of tax receipts or proof of social welfare payments in Beijing.

Additionally, the government will provide at least 100,000 affordable apartment units and provide housing subsidies to 20,000 low-income families this year. Low- to medium-income families can start applying for the next available 10,000 low-rent apartments by the end of the year.

**Circular 265 (May 2010) – sale of hotel-transformed apartments prohibited**
Beijing government issued a document on 14 May 2010 to ban the sale of residential properties whose original designation was for hotel use. After 31 May 2010, developers granted land-transferring contracts on hotel projects are prohibited from selling hotel rooms by floor or unit. They are not allowed to alter the land zoning or to transfer parcels of the land without permission. Those who already have permission to sell this kind of apartment should explain to buyers about issues such as length of ownership, tax and property fees, notify buyers about the original uses of the apartments, and cover these issues in purchase contracts.

**Circular 13 (April 2010) – municipal interpretation of State Council's Circular 10**
In addition to the State Council's restrictions put in place in Circular 10 in April 2010, the Beijing municipal government also announced the following:

- a single household is only allowed to purchase one property in the city.
- buyers without a Beijing hukou are required to provide one year's worth of tax receipts for mortgage approval.
- 70% or more of auctioned residential-zoned land is to be used for mid- to small-sized homes, of which 50% or more should be government-assisted properties.

# Key cities overview

## Shanghai

TABLE 23
### Key statistics

| | |
|---|---|
| **Permanent population** | 24.2 million (2016) |
| **Land area** | 6,340.5 sq km (municipality)<br>3,248.7 sq km (urban area) |
| **GDP** | RMB2,746.6 billion (2016) |
| **GDP per capita** | RMB113,600; US$17,136 (2016) |
| **GDP growth** | 9.3% per annum (2016) |
| **Principal business centres** | Huaihai Road (M), Nanjing Road (W) and 'Little' Lujiazui |

Source: Savills Research

## Overview

As one of the cities pioneering China's economic reforms, Shanghai is the powerhouse of the Chinese economy, and one of the largest cities in the country with more than 24 million residents and the country's largest GDP. Shanghai has benefited greatly from its strategic location on the East China Sea, acting as the window to the world for much of the Yangtze River Delta, one of China's largest production regions. Shanghai has also had immense support from the central government, with preferential policies and a greater degree of openness, allowing the city to lead the way in the country's economic reforms.

Manufacturing has traditionally been the core of Shanghai's economy; however, in 1999 the services industry overtook manufacturing as the largest contributor to GDP and at the end of 2015 accounted for 70.5% of the city's economy.

## Shanghai-specific legislation

Detailed below are a number of property related legislations that are unique to Shanghai.

**Shanghai opens up to further foreign investment (April 2017)**
Shanghai municipal government issued a guideline highlighting 33 measures, which includes widening market entry, expanding support policies, creating an equal business environment, and lifting standards of government services for foreign investment companies. Restrictions will be lifted in accounting and assurance, architectural design and rating services.

**New tendering policies for residential sale (April 2017)**
Shanghai government announced new tendering policies. The new policy selects the three most qualified bidders for potential land auction. Developers were rated by economic strength (30%) technical qualification (20%) and project experience (50%). The bidders are only allowed to submit online with a fixed bid price, aiming to increase the quality of bidders and transparency throughout the process, as well as temper land premiums.

**Shanghai launched campaign to clamp down on converted commercial properties (May 2017)**
Shanghai housing authorities released a document saying that any planned residential projects converted from offices and shops will not be granted sales approval, while the relevant departments will re-examine cases where the projects have won approval but have yet to be launched for sale, or where the units have been sold but the keys have not been handed over to the buyers.

**Ensure a more transparent process in trading second-hand residential properties (April 2017)**
The Shanghai Real Estate Trading Centre (SRETC) announced new regulations saying that the purchaser's identity for second-hand transactions must be verified, on the online transaction system, to ensure authentic transactions. Should there be any discrepancies in either seller's or the buyer's information, the sales contract will become invalid and the seller must go with a broker to SRETC to clarify relevant information.

**Public lottery for first-hand commodity (July 2017)**
Local government announced the implementation of first-hand commodity residential sales by public lottery. Before the sales opening date, it requires a clear number of all the saleable housing units, and a customer list to be provided to th e notary office. Developers of new commodity residential projects are also required to provide one, all-inclusive price, when selling units.

**Insurance funds allowed in Shanghai-HK stock connect (September 2016)**
The China Insurance Regulatory Commission (CIRC) said in an online statement allowing Chinese mainland insurance companies to invest in Hong Kong shares through Shanghai-HK stock connect. Insurers have to launch wealth management products to make portfolio investments via the Shanghai-Hong Kong Stock Connect. The new access to the Hong Kong market will help them improve asset structures, minimize risk and increase returns.

**Measures to cool the overheated residential market (March 2016)**
In order to cool the overheated residential market, the Shanghai government unveiled tightening measures on 25 March 2016.

**Key policies**

- Non primary residence down payment is set at 50% for ordinary housing, and 70% for non-ordinary units.

- Five consecutive years of social security payments for households without a Shanghai Hukou looking to buy a property, up from two years.

- Companies are forbidden from reselling commodity residential properties within three years of purchase.

**Further optimize the land and housing supply structure (February 2016)**
Shanghai municipal government published opinions to increase the small and medium-sized housing supply. The small and medium-sized housing will account for at least 70% and 60% of housing supply in downtown suburban areas respectively.

**Increase housing provident fund loan ceiling (April 2015)**
A household is allowed to use a housing provident fund in Shanghai for up to RMB1.2 million, increasing from RMB800,000.

**Ordinary housing standards changed (November 2014)**
Shanghai municipal government lowered ordinary housing standards. Residential units that satisfy the criteria below could be considered ordinary houses, with effect from 20 November 2014.

| Ring roads | Old criteria (RMB mil) | New criteria (RMB mil) |
|---|---|---|
| Within inner | 3.3 | 4.5 |
| Between inner and outer | 2.0 | 3.1 |
| Outside outer | 1.6 | 2.3 |

# Savills Beijing

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# Savills Shanghai

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# Hong Kong

## Overview
Hong Kong, a small city of seven million people, is conveniently located in a time zone between the US and Europe, and has the sixth largest stock market in the world. The city has been voted the world's freest economy for 23 consecutive years by the Heritage Foundation. The Hong Kong economy is highly influenced by the services industry, which dominates over 90% of its GDP. Finance and real estate are the main foundations of the economy, with 12% of the working population employed in these sectors.

TABLE 24
### Key statistics

| | |
|---|---|
| **Official name** | Hong Kong Special Administration Region (HKSAR)* |
| **Currency** | Hong Kong dollar (100 cents),<br>Pegged to the US dollar (US$1 = HK$7.8) |
| **Population** | 7.39 million (2017 mid-year)* |
| **Land area** | 1,104 sq km* |
| **GDP per capita** | HK$339,531; US$43,642 (2016)* |
| **Real GDP growth** | 2.0%* per annum (2016)<br>3.7%# per annum (2017E)<br>2.7%+ per annum (2018E) |
| **Principal business centres** | Central, Wanchai, Causeway Bay, Tsim Sha Tsui and Island East* |

*Source: Census and Statistics Department*, HKSAR Government#, IMF+

## Types of property ownership
All land in Hong Kong, with one exception, is held by the HKSAR Government. The government grants companies or individuals the right to occupy or develop land in return for the payment of government rent. Leases are often granted for a period of 50 years. Subject to government's sole discretion, leases due for renewal after July 1997 will be renewed for 50 years.

Strata-title ownership is commonly practised in Hong Kong. Owners are required to sign a deed of mutual covenant guaranteeing collective up-keep and maintenance of the building.

## Overseas ownership restrictions
Under the Basic Law there are no restrictions on overseas ownership of property.

## Measurement of areas
All areas are quoted in sq ft. There are various area measurements which are often quoted in agreements, as follows:

- net area: net usable area including columns.
- lettable area: net area plus washrooms and lobbies.
- gross area: all area contained within the outside of the external walls.
- net usable area: carpetable area excluding columns and service core.

Estate agents are required to provide information on the saleable area of a second-hand residential property to their clients in advertisements and in provision of the floor area information of the property effective from 1 January 2013.

- saleable area: a domestic unit is measured on the basis of 'saleable area' which is defined as the floor area exclusively allocated to the unit including balconies and verandahs but excluding common areas such as stairs, lift shafts, pipe ducts, lobbies and communal toilets. It is measured from the outside of the exterior enclosing walls of the unit and the middle of the party walls between two units. Bay windows, yards, gardens, terraces, flat roofs, carports and the like are excluded from the area.

## Transaction costs
**Brokerage/agency fees**
Leasing fees are typically one month's rent paid by the landlord, while purchase fees are usually 1% of the agreed price.

**Security deposit**
Commonly a non-interest-bearing returnable deposit of two or three months' gross rent plus service charges and rates.

TABLE 25
### Lease terms

| | |
|---|---|
| **Lease period** | In most cases 2- to 3-year leases are common although longer leases are available. |
| **Rent reviews** | Usually rent reviews are conducted every 3 years, while a price ceiling and price floor are typically set when the contract is signed to protect both parties. |
| **Sub-letting/ assignment** | Not an accepted market practice. |
| **Termination** | Usually prohibited, though break clauses can be included in a lease. |
| **Repairs** | The exterior and common areas of the building are the landlord's responsibility. Tenants should be expected to be responsible for internal repairs. |
| **Security of tenure** | Security of tenure is not guaranteed beyond the term of a lease. A right to renew can be included in the lease if required. |
| **Dilapidation** | Tenants are expected to reinstate a building to its original condition although allowances are made for fair wear and tear. |

Source: Savills Research & Consultancy

**Legal costs**
Legal costs are based on guidelines issued by the Law Society of Hong Kong. Notably, due to increasing competition among solicitors, most fees are now subject to negotiation.

## Tax legislation
**Stamp duty**
With effect from 1 April 2010, stamp duty on the sale of immovable property in Hong Kong is charged at rates

which vary with the amount or value of the consideration. For a property transaction taking place after 5 November 2016, the rates are shown in Table 26.

After 23 February 2013, stamp duty on a non-residential transaction is charged on a sale and purchase agreement instead of charging when a conveyance on the sale of the property is executed.

**Special stamp duty (SSD)**
Any residential property acquired on or after 20 November 2010, either by an individual or a company (regardless of where it is incorporated), and resold within 24 months (if the property was acquired between 20 November 2010 and 26 October 2012) or 36 months (if the property was acquired on or after 27 October 2012) will be subject to the proposed SSD:

SSD rate
The 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 for different holding periods by the seller before the transaction if the property was acquired between 20 November 2010 and 26 October 2012:

1) 15% if the vendor has held the property for six months or less;

2) 10% if the vendor has held the property for more than six months but for 12 months or less;

3) 5% if the vendor has held the property for more than 12 months but for 24 months or less.

For property acquired on or after 27 October 2012, SSD will be calculated at the following rates:

1) 20% if the vendor has held the property for six months or less;

2) 15% if the vendor has held the property for more than six months but for 12 months or less;

3) 10% if the vendor has held the property for more than 12 months but for 36 months or less.

**Buyers' stamp duty (BSD)**
Any residential property acquired on or after 27 October 2012, either by an individual who is not a permanent Hong Kong resident or a company will be subject to the proposed BSD:

BSD rate
The BSD is calculated as 15% of the stated consideration for the transaction or the market value of the property, whichever is higher.

**Property tax**
Government rent is payable quarterly in advance, namely in January, April, July and October. It is calculated as 3% of the rateable value of the property general and subject to lease condition, payable by the landlord.

Government rates are also payable quarterly in advance. They are currently calculated as 5% of the rateable value, payable by the tenant.

Land and buildings are generally taxed at 15% on actual rents received, less a maximum of 20% for repairs and maintenance.

Properties owned by enterprises doing business in Hong Kong are exempt from property tax, but profits derived from ownership are chargeable to profits tax

**Limitation on mortgages**
Banks have to comply with a 30% to 60% loan-to-value (LTV) guideline on residential mortgage lending. Banks can only approve mortgage loans for over 60% of the value of the property

TABLE 26
## Ad valorem stamp duty on sales and purchases

| Amount or value of the consideration | | HKPR residential property buyer who does not own any other residential property in Hong Kong | All non-residential property buyers | All HKPR who own other residential property in Hong Kong, corporate and, non-HKPR residential property buyers |
|---|---|---|---|---|
| Exceeds (HK$) | Does not exceed (HK$) | | | |
| | 2,000,000 | HK$100 | 1.5% | 15% |
| 2,000,000 | 2,351,760 | HK$100 + 10% of excess over HK$2,000,000 | HK$30,000 + 20% of excess over HK$2,000,000 | |
| 2,351,760 | 3,000,000 | 1.5% | 3% | |
| 3,000,000 | 3,290,320 | HK$45,000 + 10% of excess over HK$3,000,000 | HK$90,000 + 20% of excess over HK$3,000,000 | |
| 3,290,320 | 4,000,000 | 2.25% | 4.5% | |
| 4,000,000 | 4,428,570 | HK$90,000 + 10% of excess over HK$4,000,000 | HK$180,000 + 20% of excess over HK$4,000,000 | |
| 4,428,570 | 6,000,000 | 3% | 6% | |
| 6,000,000 | 6,720,000 | HK$180,000 + 10% of excess over HK$6,000,000 | HK$360,000 + 20% of excess over HK$6,000,000 | |
| 6,720,000 | 20,000,000 | 3.75% | 7.5% | |
| 20,000,000 | 21,739,120 | HK$750,000 + 10% of excess over HK$20,000,000 | HK$1,500,000 + 20% of excess over HK$20,000,000 | |
| 21,739,120 | | 4.25% | 8.5% | |

Source: Savills Research & Consultancy

TABLE 27
## Stamp duty on leases

| Term | | Rate |
|---|---|---|
| Exceeds | Does not exceed | |
| | 1 year | 0.25% × the total rent payable over the term of the lease* |
| 1 year | 3 years | 0.5% × the yearly or average yearly rent* |
| 3 years | | 1% × the yearly or average yearly rent* |
| Not defined or is uncertain | | 0.25% × the yearly or average yearly rent* |
| Key money, construction fees, etc mentioned in the lease | | 3.75% of the consideration if rent is also payable under the lease. Otherwise, same duty as for a sale of immovable property. |
| Duplicate or counterpart | | HK$5 each |

Source: Savills Research & Consultancy
Note: 1) *The yearly rent/average yearly rent total has to be rounded-up to the nearest HK$100;
2) Any deposit which may be mentioned in the lease will not be taken into account in assessing the stamp duty.

without incurring additional credit risk by joining a mortgage insurance plan. As long as an application meets the relevant eligibility criteria, the bank can approve a mortgage loan of up to an 80% LTV ratio under the mortgage insurance plan for property valued below six months.

Mortgage insurance plans are not available to applicants whose income is mainly derived from outside Hong Kong unless they can demonstrate that they have a close connection with Hong Kong.

- the maximum debt servicing ratio (DSR) of mortgage loans assessed based on the debt servicing ability of a mortgage applicant who has more than one property is 30% to 50%.

- the maximum LTV ratio for mortgage loans assessed based on the net worth of a mortgage applicant is limited to 30%.

- the maximum LTV ratio for mortgage applicants whose principal income is derived from outside Hong Kong is 10 percentage points lower than local buyers.

- the maximum loan tenor of all new property mortgage loans is 30 years.

The following are new requirements released by the Hong Kong Monetary Authority on mortgage lending for properties transacted after 23 February 2013:

- the assumed increase in mortgage rates when stress-testing mortgage applicants is raised from 200 basis points to 300 basis points.

- the maximum LTV ratio of mortgage loans for all commercial and industrial properties is further lowered by 10 percentage points (local buyers: 40%; others: 20%).

- the maximum LTV ratio of mortgage loans for standalone car park spaces and the maximum loan tenor will remain at 40% and 15 years respectively.

- other requirements on maximum LTV ratios and DSR which apply to commercial and industrial property mortgage loans are applicable to standalone car park space mortgage loans.

The following are new requirements released by the Hong Kong Monetary Authority on mortgage lending for properties transacted after 27 February 2015:

- the maximum loan-to-value (LTV) ratio for self-use residential properties with a value below HK$7 million will be lowered by a maximum of 10 percentage points. For example, the maximum LTV ratio applicable to properties with a value of HK$6 million or below and subject to the LTV cap of 70% will be lowered to 60%.

- the maximum debt-servicing ratio (DSR) for borrowers who buy a second residential property for self-use will be lowered to 40% from 50%, and the stressed-DSR cap will be lowered to 50% from 60%.

- the maximum DSR of mortgage loans for all non-self use properties, including residential properties, commercial and industrial properties and car park spaces, will be lowered to 40% from 50%, and the stressed-DSR cap will be lowered to 50% from 60%.

The following are new requirements released by the Hong Kong Monetary Authority on mortgage lending for properties transacted after 19 May 2017

- The risk-weight floor has been raised from 15% to 25% for new residential mortgage loans approved.

- The applicable LTV cap will be lowered by 10% for property mortgage loans involving borrowers and/or guarantors with one or more pre-existing mortgage loans, in addition to the existing requirement of lowering the applicable debt servicing ratio (DSR) limit by 10 percentage points for these loans.

- The applicable DSR limit will be lowered by 10% for property mortgage loans extended to borrowers whose income is mainly derived from outside of Hong Kong, on top of the existing requirement of lowering the applicable LTV cap by 10% for these loans.

**Capital allowances**
Tax depreciation allowances are given for capital expenditure incurred in the construction of industrial buildings and structures, the construction of commercial buildings, and the provision of plant and machinery for trade and business purposes.

- industrial buildings: an initial allowance of 20% is available in relation to the cost (excluding the cost of land) of an industrial building or structure occupied for the purposes of a qualifying trade. An annual allowance of 4% of the original capital expenditure is also given.

- commercial buildings: these are buildings or structures used for business purposes other than industrial buildings. An annual allowance of 4% of the capital expenditure incurred on construction has applied since 1 April 1998.

- refurbishment concession: capital expenditure on the renovation or refurbishment of a building or structure, other than a domestic building or structure, is deductible at the rate of 20% a year over a five-year period.

**CGT**
None. Equally, capital losses are inadmissible for profits tax purposes. Where gains are part of normal trading activities, they become taxable as profit at 16.5% for incorporated entities or 15% for unincorporated entities.

**Corporation tax**
Detailed below is the normal rate of corporate tax and the concessionary rate:

- normal rate: incorporated and unincorporated entities are taxed annually at a flat rate of 16.5% and 15% respectively.

- concessionary rate: a tax rate of 50% of the normal profits tax rate will be applied to trading profits and interest income received or derived from qualifying debt instruments issued in Hong Kong, and to the offshore businesses of professional reinsurance companies.

All taxpayers are subject to the same corporation or unincorporated business tax rate irrespective of their residential status.

Net losses may be carried forward indefinitely.

**PIT**
Individuals are taxed on income arising in or derived from Hong Kong, deducting any allowances applicable (the most common one being the basic allowance, which is HK$100,000 for the time being), on a rising scale subject to a limit of 15%. The actual calculation is shown in Table 28.

### Value-added tax (VAT)/GST
None.

### Withholding tax and tax treaties
There is no withholding tax on dividends, interest or royalties. However, the tax on royalties received by non-residents is in effect similar to a withholding tax. It requires resident consignees to provide quarterly returns to the Hong Kong Inland Revenue Department (HKIRD) showing the gross proceeds from sales on behalf of their non-resident consignors and to pay to the HKIRD Commissioner a sum equal to 0.5% of such proceeds.

Hong Kong has reached an understanding with the relevant tax authorities in the PRC government for avoidance of double taxation between the mainland and Hong Kong. The arrangement covers airline and shipping operations as well as other business activities. In addition, Hong Kong has concluded DTA for shipping and airline incomes with other countries.

To date, Hong Kong has entered into comprehensive DTAs with Austria, Belgium, Brunei, Hungary, Indonesia, Ireland, Kuwait, Liechtenstein, Luxembourg, Netherlands, PRC, Thailand, UK and Viet Nam. The agreements with Austria, Brunei, Hungary, Indonesia, Ireland, Kuwait, Liechtenstein, Netherlands and the UK have not yet come into force pending the completion of the ratification procedures of the governments concerned.

## Legal issues

### Land registration (Source: Land Registry)
The Land Registry maintains a public land register for recording interests in land and real property. This public register provides the means whereby the title to real and immovable property may be easily traced and ascertained, and secret or fraudulent conveyancing can be detected. The assurance that it gives about the ownership of property encourages investment and supports economic development.

The present land registration system has been in operation since 1844. It is a deeds registration system governed by the Land Registration Ordinance. Under the deeds registration system, instruments affecting real properties are lodged with the Land Registry for registration.

### Town planning
The Town Planning Board is responsible for guiding and controlling the development and use of land in order to promote the health, safety, convenience and general welfare of the community.

In accordance with town planning regulations, the Board may also require the Director of Planning to prepare plans or sketches for carrying out its functions as laid down in the Ordinance. Headed by the Director of Planning, the Planning Department is the executive arm of the Board which is responsible for formulating, monitoring and reviewing town plans, planning policies and associated programmes for the physical development of Hong Kong. It deals with all types of planning at the territorial and district/local levels and provides services to the Board.

Under the Town Planning (Amendment) (No. 2) Ordinance which came into operation in November 1991, the Town Planning Appeal Board has also been set up to hear appeals against the Board's decisions to reject planning applications upon review.

TABLE 28

### Actual calculation of PIT

| Income – sliding scale (HK$) | Tax rate (%) |
|---|---|
| First 40,000 (after deductions) | 2 |
| Next 40,000 | 7 |
| Next 40,000 | 12 |
| Remaining income | 17 |

Source: Savills Research & Consultancy

## Major property legislation
There are a number of key pieces of legislation pertaining to real estate, which are detailed below:

- Application of English Law Ordinance
- Building Ordinance
- Companies Ordinance
- Conveyancing & Property Ordinance
- Inland Revenue Ordinance
- Land Registration Ordinance
- Landlord and Tenant Ordinance
- Law of Property Amendment Ordinance
- Multi-storey Buildings Ordinance

# Savills Hong Kong

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# Indonesia

## Overview

Indonesia is the world's largest archipelagic country. With a total population of around 255 million, Indonesia is the fourth largest nation in the world after China, India and the United States.

For centuries, Indonesia has been famous for its abundance of natural resources, including agricultural commodities (such as rubber, coconut, coffee and spices), mining reserves (such as oil and gas) and maritime resources, including flora and fauna. In the energy sector, around 40% of the earth's geothermal energy is located underneath Indonesia's archipelago.

Indonesia is a young nation, with a large working-age population. Around 70% of Indonesia's total population is between 15 and 64 years of age, of which the majority are between 20 and 54 years old. This particular group is very important as they provide a vital contribution to the economy due to their above average incomes and strong expenditure.

The country's demography and abundant natural resources are two key factors which provide a strong boost for economic growth. Statistics show that over the past few decades, Indonesian economic growth has been consistently driven by domestic consumption growth as well as new investment.

Indonesia is the largest economy in Southeast Asia, and the only member of both ASEAN and the G20. BPS data shows that the size of the Indonesian economy in 2015, measured by GDP, was approximately US$873 billion. Based on that figure, the IMF ranked Indonesia as the world's 16th largest economy, measured by nominal GDP.

TABLE 29

## Key statistics

| | |
|---|---|
| **Official name** | Republic of Indonesia |
| **Currency** | Indonesian Rupiah (IDR)<br>US$1 = IDR13,793 (28 February 2018) |
| **Population** | 258.7 million (2016) |
| **Land area** | 1,904,569 sq km |
| **GDP per capita** | US$3,572 (2016) |
| **Real GDP growth** | 5.06% (Q3/2017) |
| **Principal business centres** | Jakarta CBD (Golden Triangle Zone) |

Source: World Bank, BPS (Indonesia's Central Statistics Bureau)

## Land and property ownership

In Indonesia, types of land rights are basically divided into two categories:

**Adat land (customary land)**
Indonesian law recognises customary land, defined as land that is not registered with the national land agency (Badan Pertanahan Nasional).

- Rights are generally transmitted by inheritance and these rights can be converted to a certified title issued by the 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.
- Customary land is generally not a consideration for developers.

**Certified land**
Certified land is land that is registered at the national land office. There are five forms of title recognised under UU No.5 Tahun 1960 (Basic Agrarian Law) that forms the foundation of modern day title law in Indonesia.

A. Right of Ownership (Hak Milik or HM)
This is an absolute or freehold form of ownership in common law jurisdictions. This form of title can only be held by Indonesian individuals and can be sold, transferred, bequeathed or hypothecated.

B. Right of Exploitation (Hak Guna Usaha or HGU)
This is a right to cultivate or exploit state-owned land for agricultural, fishery, or husbandry purposes. This form of title is valid for an initial period of 35 years, but can be extended for an additional 25 years with an option for further renewal.

This land right can be mortgaged, and can be held by Indonesian citizens or entities as well as foreign joint-venture companies.

C. Right to Build (Hak Guna Bangunan or HGB)
This is by far the most common form of title used by developers and this grants the holder the right to build on the land. This title is granted for an initial period of 30 years and may

be extended for 20 years, with the possibility of further extension.

This title is not held by private individuals but may be held by both Indonesian organisations and foreign joint-venture entities. Land developed with such a title can be sold, exchanged, transferred, bequeathed or mortgaged.

D. Right of Use (Hak Pakai or HP)
This form of title provides the right to use land, or a structure that sits upon the land, for a specific period of time for a specific purpose, such as habitation, social activities or work activities. This form of title is valid for a maximum of 25 years but extendable for another period of 20 years, or occasionally for an indefinite period as may be stated in the grant or agreement.

This form of title is the most accommodating in terms of who may hold it: Indonesian citizens, foreign citizens resident in Indonesia, foreign embassies, and representative offices of foreign entities. The Hak Pakai rights generally cannot be sold, exchanged, or transferred unless explicitly provided for in the grant or agreement.

E. Right to Operate (Hak Pengelolaan or HPL)
This form of title allows the holder the right to operate state-owned land for a specific purpose as approved by the authorities. This title is only granted to government institutions or state-owned companies for an unspecified period and can be transferred to a third party in the form of HGB or HP.

## Overseas property restrictions
Generally, foreign individuals or foreign companies residing in Indonesia enjoy only the Right of Use (Hak Pakai).

Under the Agrarian Law No. 5/1960, which is stipulated by Government Regulation No. 41/1996, individual foreigners are allowed to own a residential property.

Foreigners who provide benefits to the national development, reside permanently or temporarily in Indonesia, and have immigration documents or a visa, may purchase:

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

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

## Measurement of areas
In the Jakarta office market, the standard unit of measurement is square metres (sq m); the type of measurement adopted by landlords for calculating the rentable space (in the agreement) is semi gross area (SGA).

A semi gross measure includes a pro-rata apportionment of service areas and common passages in the lettable area. The precise definition of semi gross area varies from building to building, but one such definition is that semi gross is defined as being measured from the internal face of the dominant portion of the exterior wall of the building, from the centre line of any partition walls dividing adjoining lettable areas, and from the external face of any walls enclosing adjoining non-lettable areas.

Measurements shall be made at a height of 1.50 m above floor level and the lettable area shall include all structural columns either freestanding or protruding into the premises, together with a pro-rata apportionment of the total lettable common or service area of the floor, calculated in the same proportion that the net area of the premises represents as a part of the total net area contained on the floor concerned.

The common area shall include the lift lobby, common corridor, service corridor, toilet, pantry, wudhu, fire hose reel and other similar facilities, together with any stairwells, utility cupboards, lift shafts and other facilities intended for the exclusive use of a particular lessee and not provided as standard facilities in the building.

The non-lettable common area shall include the fire escape stairwells, lift shafts, other vertical service risers and plant rooms, including their enclosing walls where provided as standard facilities in the building.

## Lease terms
The lease terms typical to commercial (office) property in Indonesia are detailed in Table 30. However, there are a number of other terms and practices that are also worth highlighting, as detailed below:

- Office rent: prices are quoted as gross figures per sq m SGA per month. The gross rent is made up of base rent per sq m SGA per month, plus an amount for service charges and other outgoings per sq m SGA per month.
- Rent-free period: Usually intended as an allowance to cover the period required for fitting-out. Also used as an incentive to bring down the effective rent.
- Security deposits: The equivalent of three months' gross rent is required as a security deposit. Deposits may also be required for mailbox keys, car parking passes and employee security passes.

## Transaction costs
**Brokerage/agency fees**
The typical agency fee for leasing transactions is around 3-5% of total gross rent for the initial lease. Agency fee is payable by the landlord.

Standard brokerage fee for sales transactions is mostly between 2%-3% of total deal price and is payable by the seller.

**Legal costs**
Each party (buyer and seller) bears their own legal costs.

**Tax legislation**
Taxation in the property sector can be broadly divided into:

(1) taxes on acquisitions and transfer of real estate; and

(2) taxes on the possession and operation of real estate.

TABLE 30

## Typical lease terms

| | |
|---|---|
| **Lease period** | A typical tenancy is 3 years (5-10 years for larger tenants) |
| **Rent reviews** | Rent reviews are typically conducted at the expiry of the tenancy or every 3 years during a lease term |
| **Sub-letting/ assignment** | The landlord's consent to sub-let should not be unreasonably withheld |
| **Termination** | Not an accepted market practice but it can be agreed provided a tenant secures a new tenant that is acceptable to the landlord and that the tenant pays for any estate agency services |
| **Early Termination** | Only by break clause (negotiable, subject to penalty). Typical penalty imposed is security deposit being forfeited |
| **Repairs** | The exterior and common areas of the building are the landlord's responsibility. |
| **Security of tenure** | Security of tenure is not guaranteed beyond the tenancy/lease term. An option for a further term should be agreed in the first term. |
| **Dilapidation** | Tenants are required to reinstate a property to its original handover condition at the expiry of the term. |

Source: Savills Research & Consultancy

**Taxes on acquisition and transfer of real estate**

A. Building Transfer Duty
Individuals or companies obtaining rights to land or buildings are required to pay a Land and Building Transfer Duty (BPHTB) of 5% (in Jakarta, this only applies to property transactions above IDR2 billion since 2016).

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 maximum threshold currently is IDR60 million. For acquisitions by inheritance, the non-taxable property value is stipulated by the regional authorities, but may not exceed IDR300 million.

B. Value Added Tax
A Value Added Tax (VAT or PPN) of 10% applies to the delivery of most goods and services at import, manufacturing, wholesale and retail levels.

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

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 (PPNBM). 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. 'Luxury houses' are defined as condominiums with unit prices of more than IDR20 billion and landed houses with unit prices of above IDR10 billion.

**Taxes on possession and operation of real estate**

A. Property and Building Tax
The Property and Building Tax (PBB) rate on land and buildings is 0.5%, with the actual tax calculated against the taxable sale value (NJKP) of the property. The NJKP is a fixed proportion of the sale value of the property (NJOP), which is determined by the Directorate General of Tax (DGT) on behalf of the Ministry of Finance on average every one to three years.

NJKP is currently 20% for NJOP of up to IDR1 billion or 40% for NJOP above IDR1 billion. As a result, the effective PBB rates are 0.1% of the assessed value for land and buildings worth up to IDR1 billion, and 0.2% of the assessed value for land and buildings worth more than IDR1 billion.

The non-taxable thresholds of property are stipulated by each regional government. For example, in Jakarta, it is IDR60 million. 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 is payable annually following assessment by the DGT.

B. Withholding Tax on Property Income
Income derived from rental payments and service charges are subject to a final withholding tax (PPH) 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% themselves.

**Corporate taxation**
The income of resident and non-resident corporate entities is taxed at a flat rate of 25%. Small enterprises with a turnover of no more than IDR50 billion are entitled to a 50% discount off the standard rate, imposed proportionally on the taxable income of the part of gross turnover up to IDR4.8 billion. Public companies that have at least 40% of their shares listed are entitled to a tax discount of 5%, essentially giving them an effective tax rate of 20%.

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.

**Personal taxation**
Residents (i.e., 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 30%. 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 cost of the BIKs must be taxed in the hands of employees the same as cash remuneration).

## Legal issues

**Foreign exchange controls**
In general, there is very limited foreign exchange control in Indonesia. A person may freely hold, use and transfer funds in foreign currencies. However, the transfer of funds in foreign currencies to and from abroad is subject to a reporting obligation to Indonesia's central bank (Bank Indonesia).

Recently, Bank Indonesia introduced new measures to stabilise the value of the Rupiah and implement Indonesia's Currency Law. All companies operating in Indonesia need to be aware that this new regulatory obligation includes:

- A prohibition on the use of foreign currency for pricing goods and/or services.

- A requirement to use Indonesian Rupiah for a broad range of non-cash transactions, including transactions using electronic payments or bank transfers.

This has been done through a new regulation issued by Bank Indonesia (BI) on 31 March 2015 that imposes more stringent restrictions on the use of foreign currency than those currently provided under Indonesia's Currency Law.

**Town planning**
Public and privately-owned properties are governed by a structure or zoning plan provided by a local town planning office that designates a certain use for the site.

## Major property legislation

The following are major key legislations in the property sector that apply in Indonesia.

**Basic Agrarian Law**
**(UU Pertanahan)**
**UU. No. 5 Tahun 1960**
Agrarian law in Indonesia is regulated under Law (or UU, short for 'Undang-Undang') Number 5 Year 1960, concerning Agrarian Subjects ("UUPA") and its implementing regulations. The Law governs the rights over ownership of land in Indonesia, and this law covers land rights that apply to Indonesian citizens and foreigners.

The specific land title for foreigners is the hak pakai title. After the enactment of the Agrarian Law in 1960, there were several developments in the real estate sector in this regard; for example, in the late 1990s, a new government regulation was enacted allowing foreigners to purchase apartments and office space in Indonesia if the underlying land is hak pakai title.

The Government Regulation on Housing Ownership by Foreigners Domiciled in Indonesia, issued in 1996, states that foreigners who reside in Indonesia can purchase a home, apartment or condominium as long as it is not a part of a government-subsidised housing development; however, there are restrictions.

Foreigners can only hold land with hak pakai title and hak pakai title may only be granted for a maximum of 25 years, although it can extended for a further maximum of 20 years. In certain special cases (i.e. religious organisations etc.), such title may be granted for an indefinite period as long as the land is utilised for certain specified purposes.

While the government has hinted repeatedly that it will relax all restrictions on foreign ownership of land and property, we do not anticipate such regulatory changes in the near future.

**Residential Development Policy**
**(Kebijakan Rumah Berimbang)**
**Peraturan Menteri Perumahan No 10/2012**
According to this regulation from the housing ministry, developers are obliged to apply a "proportionate residential" concept to developments, which provides for lower, middle and luxury segments within the same land plot. In the case of insufficient land bank, then it can be built on another land plot somewhere in the same city/ region.

Based on the regulation, the proportionate ratio of lower, middle and luxury housing is 3:2:1, and the definition of each housing segment is as follows.

- Luxury housing: selling price of more than four times lower-segment housing.

- Middle segment: housing: between two to three times lower-segment housing.

- Lower segment housing: max. building size of 36 sq m and land size of 60-200 sq m.

For apartment projects, 20% of the total units must be allocated for public housing. These allocated units can be developed in a different building structure yet still be at the same project site.

**Industrial Estate Regulation**
**(Peraturan Kawasan Industri)**
**Peraturan Pemerintah No 24/2009**
As Indonesia has an abundant worker market, the growth of factory buildings is increasing significantly. However, there is no concentration of industrial activities – they are somewhat scattered and may impact surrounding residential areas. Therefore, in 2009, the government issued a regulation compelling industrialists to relocate their activities to industrial compounds, and expand therein.

**Regional Autonomy (Otonomi Daerah)**
**UU No. 22 Tahun 1999**
The law on regional autonomy (subsequently substituted by Law No. 32 of 2004 and its amendments) and Law No. 25 of 1999, as substituted

by Law No. 33 of 2004 on financial balancing between central and local government, was issued to implement the decentralisation of autonomy for all Indonesian provinces and regencies, effective from 1 January 2001.

This package of laws allows each regional government to issue new government regulations on taxes and retributions for their regions.

These laws, together with other government regulations, also give the regional government the authority to issue permits for investment in forestry, fishery, mining (except oil and gas), etc.

## Modes of entry

Many international developers and investment groups interested in pursuing opportunities in the Indonesian market are aware of specific opportunities, but at the outset often lack the requisite local knowledge in terms of the basic foundations of the regulatory environment and the common deal structures.

Foreign companies wishing to enter the property development market in Indonesia must first register their business entity under Indonesian law.

In terms of setting up a local corporate entity in Indonesia, there are generally two options:

- Representative office

A representative office can be created to conduct marketing, market research, or function as buying and/or selling agents. However, these offices are not allowed to conduct direct sales and cannot issue commercial invoices. Regional representative offices, which are classified as those offices serving two or more other ASEAN nations, can also be established in Indonesia. The regional representative office is limited to more of a liaison role and is restricted from participating in many business transactions.

- Limited liability company

Legally known as Perusahaan Terbatas (PT), this can be 100% foreign-owned or jointly-owned by foreign and local shareholders. Under Indonesian law, a foreign-owned company has the same treatment as a local company licensed to conduct the same business.

Foreign investors or companies registered in Indonesia as a PT (company) have the same rights and ability to conduct business like any other local companies.

A foreign-owned PT (company) is allowed to operate and execute all kinds of business transactions and activities, which are protected by the law.

According to the law, a foreign-owned PT (company) in the real estate business is allowed to do asset transactions (i.e. buying and selling), own or hold assets, develop and manage their own properties.

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# Japan

## Overview

The size of Japan's economy is approximately US$4.8 trillion in terms of nominal GDP at current exchange rates. Banking, insurance, real estate, retailing, transportation, telecommunications and construction are all major industries. Japan has a large industrial capacity and is home to some of the most technologically advanced corporations in the world. The service sector accounts for around 70% of the country's GDP.

## Types of property ownership

All land and buildings in Japan can be privately held. Since land and buildings are regarded as independent real estate, there are two types of real estate ownership: 'land ownership' and 'building ownership'. Ownership structure is commonly divided into the following categories: 1) fee simple; 2) strata title; 3) joint ownership; and 4) land lease.

## Overseas ownership restrictions

There are no restrictions on overseas ownership of land and buildings.

## Measurement of areas

All areas are quoted in either sq m or tsubo (1 tsubo = 3.306 sq m). There are various area measurements which are often quoted in agreements:

- net rentable area (NRA): net useable area including columns.
- gross floor area (GFA): total area contained within the outer surface of the external walls.

## Transaction costs

**Brokerage/agency fees**

Leasing fees typically aggregate to the value of the monthly rental amount, and are paid by the landlord and/or the tenant.

TABLE 31

### Key statistics

| | |
|---|---|
| **Official name** | Japan |
| **Currency** | Yen<br>US$1 = JPY107.96 (February 2018) |
| **Population** | 126.7 million (December 2017) |
| **Land area** | 377,962 sq km |
| **GDP per capita** | JPY4.2 million; US$47,600 (2010 base) |
| **Real GDP growth** | 1.1% per annum (2015)<br>1.0% per annum (2016)<br>1.5% per annum (2017F)*<br>0.7% per annum (2018F)* |
| **Principal business centres** | Marunouchi/Otemachi, Akasaka/Roppongi/Toranomon, Shinjuku |

Source: Bank of Japan, Ministry of Internal Affairs and Communications, Ministry of Land, Infrastructure, Transport and Trade, Cabinet Office, IMF, World Bank, Mitsubishi UFJ Financial Group
*GDP growth forecast from IMF World Economic Outlook October 2017.

TABLE 32

### Lease terms

| | |
|---|---|
| **Lease period** | Traditional standard leases are 2-year rolling contracts, automatically renewed upon expiry unless termination notice is given in advance. Fixed-term leases are also available, typically of 3- to 5-year tenors for offices and up to 20 years for retail and logistics facilities, depending on the agreement. |
| **Rent reviews** | Typically conducted at the end of the lease period. For standard leases, rent levels may be reviewed during the lease period if: 1) market conditions drastically change; or 2) tax amounts increase. Lease renewal rates are negotiable and usually fall somewhere between the contract and market rent with limited recourse in dispute. Fixed-term leases do not include rent reviews unless pre-agreed. |
| **Sub-letting/ assignment** | Not an accepted market practice, but is practiced at times. |
| **Termination** | Standard lease structures allow the tenant to terminate unilaterally on the provision that at least 6 months' notice is given. Fixed-term leases are subject to a break-up fee, although a termination provision can be pre-agreed, usually after an initial 3-year lock-in period. |
| **Repairs** | The exterior and common areas of the building are the landlord's responsibility. Tenants will be expected to be responsible for internal repairs. |
| **Security of tenure** | Security of tenure is protected by Japan's House and Land Lease Law, which makes it practically impossible for landlords to initiate lease termination. Fixed-term leases provide no statutory right to renewal and re-contracting terms are by negotiation. |
| **Dilapidation** | Tenants are expected to reinstate a building to its original condition; although allowances are made for fair wear and tear. |

Source: Savills Research & Consultancy

➔ Purchasing fees have the following structure: 1) up to 3% of the purchase price plus JPY60,000 if the purchase price is more than JPY4 million; 2) up to 4% of the purchase price plus JPY20,000 if the purchase price is between JPY2 million and JPY4 million; or 3) up to 5% of the purchase price if the purchase price is less than JPY2 million.

**Security deposit**
Typically a non-interest-bearing, returnable deposit of one or two months' net rent for residential properties. For office and retail properties, typically a non-interest-bearing, returnable deposit of ten to 12 months net rent.

**Legal costs**
Legal cost is based on guidelines issued by the Nihon Bengoshi Rengokai (Japan Federation of Bar Associations).

## Tax legislation

**Stamp duty**
Stamp duty is payable on purchase and sale agreements (PSA), conveyance agreements (CA) and land-lease agreements. For PSA and CA transactions, stamp duty costs up to JPY600,000 depending on the agreed transaction price. The stamp duty of sales and purchases is detailed in Table 33.

**Property tax**
A registered owner of real estate is subject to payment of a fixed-asset tax and city planning tax. The tax rate for fixed-asset tax is 1.4% of the tax assessed value while the tax rate for city planning tax is 0.3%. Payments are due quarterly and dates vary depending on the location of the property.

A purchaser of real estate is subject to payment of real estate acquisition tax of 4%. However, a tax relief policy is in place, reducing the applicable rate to 3% for land and residential buildings until the end of March 2018.

A purchaser of real estate is also subject to payment of real estate registration tax. Tax rates are based on the property value but vary widely depending on asset type and registration type (ie, registration of ownership is different from that of a lien). For example, initial registration of ownership after construction is 0.4% of the asset value, while registration of a transfer of ownership is 2% (1.5% until March 2018).

**Consumption tax**
An 8% consumption tax is charged for purchases and sales of buildings. Consumption tax is not imposed on the land portion of the purchase price.

It is usual for the seller to pass on the cost of the consumption tax to the buyer by adding it to the purchase price. For commercial properties, it is generally possible for the buyer to obtain a refund of consumption tax paid on the sale.

For lease agreements other than residential, an 8% consumption tax is charged.

Under the revised Consumption Tax Act, the consumption tax rate was scheduled to be raised to 10% on 1 October 2015, but the hike was postponed until October 2019.

**Tax depreciation**
There are two ways of conducting depreciation: 1) the fixed amount method, and 2) the fixed rate method. In principle, the fixed amount method is applied to individuals, and the fixed rate method is applied to corporates. Furthermore, since 1 April 2012, the fixed amount method should be applied if the value based on the fixed rate method falls below the guaranteed depreciation value (shokyaku hosho gaku).

1) The Fixed Amount Method
Depreciation Amount = Purchase Price x Depreciation Rate

2) The Fixed Rate Method
Depreciation Amount = (Purchased Price - Accumulated Depreciation) x Depreciation Rate

The depreciation rate is changeable depending on useful life of the building, and is provided by the National Taxation Agency.

If the building has no remaining years in its statutory useful life:

- Useful Life = Statutory Useful Life x 20%

If the building has remaining years in its statutory useful life:

- Useful Life = (Statutory Useful Life – Years in Operation) + (Years in Operation x 20%)

From a tax depreciation perspective, the 'useful life' of a building differs depending on the composition and use of the property. For example, useful lives of condominium buildings constructed with reinforced concrete and with heavyweight steel are 47 years and 34 years respectively, whereas a wooden detached house would have a useful life of 22 years for tax purposes.

**CGT**
When a capital gain is generated on the disposal of a fixed asset, the following capital gains tax is applied:

TABLE 33
### Stamp duty on sales and purchases

| Selling price (JPY) | Stamp duty (JPY) | Deduction until 31 March 2018 (JPY) |
|---|---|---|
| 10,000,000–50,000,000 | 20,000 | 10,000 |
| 50,000,000–100,000,000 | 60,000 | 30,000 |
| 100,000,000–500,000,000 | 100,000 | 60,000 |
| 500,000,000–1,000,000,000 | 200,000 | 160,000 |
| 1,000,000,000–5,000,000,000 | 400,000 | 320,000 |
| 5,000,000,000 or higher | 600,000 | 480,000 |

Source: National Taxation Agency, Savills Research & Consultancy

a) Short-term capital gains (for real estate held for five years or less): 39.63% (comprised of income tax and special reconstruction tax rates of 30.63%, and a resident's tax of 9.0% if the seller is domiciled in Japan).

b) Long-term capital gains (for real estate held more than five years): 20.315% (comprised of income tax and special reconstruction tax rates of 15.315%, and a resident's tax rate of 5.0% if the seller is domiciled in Japan).

Certain tax advantages are available in the case of the sale of the seller's primary residence, including special deductions, a loss carry-forward and a lower tax rate.

The holding period is calculated from the acquisition date through January 1 of the year in which disposition of the property takes place.

**Withholding tax and tax treaties**
Non-residents pay Gensen-kazei (withholding tax) at 10.21% of transaction value per transaction. Then, they declare Kakutei-shinkoku-shotoku (taxable income) at the aforementioned tax rate (but without resident's tax).

For non-residents, withholding taxes are applicable if they have accrued capital gains in Japan from selling assets, or income from any business activities including rental revenues, dividends, deposit interests and loan interests.

Japan has extensive tax treaties with many countries, typically following the OECD model, with rates typically varying between 0% and 20.42% depending on the type of dividend, country and other specific considerations.

**Corporate taxation**
Detailed below are the normal and concessionary corporate tax rates:

■ Normal Rate: Corporations are subject to a 23.4% (23.2% from fiscal year April 2018) corporate tax rate. Business tax and prefectural/ municipal inhabitant tax are also charged, typically increasing the effective tax rate to around 29.97% (29.74% from FY2018), which the government has been targeting at as part of Abenomics.

■ Concessionary Rate: Small- to medium-sized corporations with a capital of JPY100 million or less receive a concessionary rate of 15% on the first JPY8 million of annual income.

Overseas corporations without a permanent establishment in Japan are exempt from payment of normal corporate tax. However, income gained from interest and dividends is generally subject to withholding tax at a rate between 15.315% and 20.42%.

Net losses equivalent to 50% of income may be carried forward for ten years.

Corporate tax rates were recently revised in response to the Abe Administration's growth strategy.

**PIT**
Income is calculated using methods established for each of a number of income classifications. The tax is calculated by subtracting the various income deductions from the total amount of income and then multiplying the difference, which is the amount of taxable income, by the progressive tax rates below. Any withholding income tax levied on the income beforehand will be deducted from the calculated tax. The bands are shown in Table 34.

From 1 January 2013 to 31 December 2037, Special Reconstruction Tax is applicable at the tax rate of 2.1%.

Total Tax Rate (%) = Personal Income Tax Rate (%) x 102.1%

TABLE 34

## Personal income tax rates

| Taxable income (JPY) | Tax rate (%) | Total tax rate, including Special Reconstruction Tax rate (%) |
|---|---|---|
| 1,950,000 or under | 5 | 5.105 |
| Between 1,950,000 and 3,300,000 | 10 | 10.21 |
| Between 3,300,000 and 6,950,000 | 20 | 20.42 |
| Between 6,950,000 and 9,000,000 | 23 | 23.483 |
| Between 9,000,000 and 18,000,000 | 33 | 33.693 |
| Between 18,000,000 and 40,000,000 | 40 | 40.84 |
| Higher than 40,000,000 | 45 | 45.945 |

Source: National Taxation Agency, Savills Research & Consultancy

## Legal issues

Planning areas are divided into urban promotion areas (UPA) and urban control areas (UCA). UPA are areas in which the local government is to promote urbanisation, and include existing urbanised areas and areas to be developed within ten years. UCA are areas where urbanisation/development is essentially prohibited except for special cases such as agriculture and forestry. There are also a number of areas, depending on their location, where zoning is not carried out. Development within such areas requires permission from the government. However, the demarcation of urbanised areas and UCA is occasionally reviewed

Japan has 12 different types of zones for commercial, industrial and residential uses, which are designated on the basis of existing land-use patterns and future orientation.

There are regulations on the types of facilities that can be built in specific areas or specific zones. Regulations also exist in relation to floor ratio and building-to-land ratio.

Any development that requires a change of building/land form or use is required to obtain development permission.

## Major property legislation

There are a number of key pieces of legislation pertaining to real estate, all of which are detailed below:

- Civil Law
- City Planning Law
- Building Regulation Law
- Land and Building Lease Law
- Apartment Law
- Real Estate Registration Law
- Real Estate Brokerage Law
- Strata-title Ownership Law
- Land Use Planning Law
- Land and Building Development Restriction Law
- Agricultural Land Law
- Land Readjustment Law
- Land Price Law

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# Malaysia

## Overview

Malaysia is rich in natural resources such as fossil fuels and tin, and is also a big producer of agricultural products such as palm oil, rubber and timber. Being a tropical country, there is also potential to exploit sunlight and other sustainable resources, and in 2011 the Renewable Energy Act was passed establishing a Feed-In Tariff for producers of sustainable energy.

Malaysia is a federal parliamentary democracy with a constitutional monarch. The United Malays National Organisation has held political power in coalition with other parties uninterrupted since independence from the UK in 1957.

Vision 2020 is an initiative to develop Malaysia into a fully developed industrialised nation by the year 2020. The latest Eleventh Malaysia Plan covers the period 2016 to 2020 with six strategic thrusts including: 1) enhancing inclusiveness towards an equitable society; 2) improving wellbeing for all; 3) accelerating human capital development for an advanced nation; 4) pursuing green growth for sustainability and resilience; 5) strengthening infrastructure to support economic expansion; 6) re-engineering economic growth for greater prosperity. Previously the Tenth Malaysia Plan covered the period 2011 to 2015 and the five main drivers are: 1) moving the economy up the value chain; 2) raising the capacity for knowledge and innovation, and nurturing a 'first-class mentality'; 3) addressing persistent socio-economic inequalities constructively and productively; 4) improving the standard and sustainability of quality of life, and; 5) strengthening institutional and implementation capacity.

To enhance development and sustainability of economic growth in Malaysia, the Federal Government introduced the 'Economic Transformation Programme' in 2010. The main objective is to ensure that local citizens (Malaysians) benefit from the country's development in various aspects such as social needs, cost of living and quality of life of the people as the country moves towards its goal of becoming a high-income nation.

TABLE 35

### Key statistics

| | |
|---|---|
| Official name | Malaysia |
| Currency | Ringgit Malaysia (RM1 = 100 sen)<br>US$1 = RM3.9255 (28 February 2018) |
| Population | 32.05 million (2017E) |
| Land area | 330,290 sq km |
| GDP per capita | US$9,815 (2017E) |
| GDP growth | 5.0% (2015)<br>4.2% (2016)<br>6.2% (Q3/2017) |
| Principal business centres | Kuala Lumpur, Selangor, Penang, Iskandar Malaysia/Johor Bahru |

Source: Fitch Ratings, Department of Statistics Malaysia; Ministry of Finance, Central Bank of Malaysia

Malaysia's economy expanded by 4.2% in 2016. GDP improved further in Q3/2017 by 6.2% compared to 4.3% in the same period last year. The overall economic performance was spearheaded by services, manufacturing and construction. Private consumption remained the key driver on the expenditure side. Going forward, Malaysia's GDP growth is estimated to be between 5.2% and 5.7% in 2017.

## Types of property ownership

The land registration system in all states of Malaysia is the Torrens system, administered by the State Land Offices and coordinated by the Department of Land and Mines. The Torrens system is a registration system on titles of land.

Properties can be either:

- freehold (held in perpetuity); or
- leasehold (land owned by the state and leased for a term of usually 30, 60 or 99 years).

Freehold or leasehold properties are either issued with:

- individual title (issued under the National Land Code 1965) for land, houses and commercial properties that are commonly not multi-storey; or
- strata title (issued under the Strata Titles Act 1985).

Property ownership is governed by the National Land Code and Strata Titles Act.

Strata-title ownership is common for apartments, condominiums and office suites. The land a building is situated on may be freehold or leasehold. Owners of strata-title property are required to sign a deed of mutual covenants governing the maintenance of the common areas, and use of the units and common facilities.

Many houses (landed property) rest on freehold land which grants absolute possession of the land to the owner.

## Overseas property restrictions

In general, the threshold for overseas purchasers is set at RM1 million and

TABLE 36

## Typical lease terms

| | |
|---|---|
| **Lease period** | A typical tenancy is 3 years with options for further periods of up to 3 years. A lease is for a period exceeding 3 years. |
| **Rent reviews** | Rent reviews are typically conducted at the expiry of the tenancy or every 3 years during a lease term, but can usually be predetermined in advance. |
| **Sub-letting/ assignment** | The landlord's consent to sub-let should not be unreasonably withheld subject to the quality of the sub-tenant. |
| **Termination** | Not an accepted market practice but it can be agreed provided a tenant secures a new tenant that is acceptable to the landlord and that the tenant pays for any estate agency services. |
| **Repairs** | The exterior and common areas of the building are the landlord's responsibility. |
| **Security of tenure** | Security of tenure is not guaranteed beyond the tenancy/lease term. An option for a further term should be agreed in the first term. |
| **Dilapidation** | Tenants are required to reinstate a property to its original handover condition at the expiry of the term. |

Source: Savills Research & Consultancy

TABLE 37

## Scale of fees chargeable by a registered estate agent

| Period | Scale of fees |
|---|---|
| Up to 3-year tenancy | 1.25 months' gross rent |
| 3–4-year lease | 1.50 months' gross rent |
| 4–5-year lease | 1.75 months' gross rent |
| Exceeding 5-year lease (without option for renewal) | 1.75 months' gross rent |
| Exceeding 5-year lease (with option for renewal) | 1.75 months' gross rent + 0.25 months' rent for every additional year |
| Rent reviews | 50% of the fees chargeable above |
| Sales of land or buildings | Maximum fee of 3% |

Source: Valuers, Appraisers & Estate Agents (Amendment) Rules 2000 & 2009

TABLE 38

## Scale of legal fees for preparing a tenancy or lease agreement

| Monthly rent (RM) | Scale of fees | |
|---|---|---|
| | Tenancy agreement | Lease agreement |
| The first 10,000 | 25% (subject to a minimum fee of RM300) | 50% (subject to a minimum fee of RM600) |
| The next 90,000 | 10% | 20% |
| Where the rent is in excess of 100,000 | Negotiable on the excess (but shall not exceed 10% of such excess) | Negotiable on the excess (but shall not exceed 20% of such excess) |

Source: Solicitors Remuneration Order 2005

above (varies according to state rules and guidelines). Foreign purchasers are allowed to purchase all types of residential property with a price tag of RM1 million and above in Kuala Lumpur while in Selangor, the threshold is RM2 million and above for stratified residential property.

Overseas purchasers are required to obtain state government approval by applying to the relevant land office for consent to purchase a property.

## Measurement of areas

All areas are quoted in sq ft. There are various area measurements that are often quoted in agreements, including:

- gross area: the total area of an office floor from the outside of the exterior walls including the columns, stairwells, lift lobby, service areas, common areas and toilets.
- lettable area: the total area of an office floor measured from the inside face of external walls including lift lobbies, toilets and structural columns.
- net lettable area: the carpet area used exclusively by the tenant measured from the inside face of the external walls excluding columns, toilets, common areas and service areas.

## Lease terms

The lease terms typical to commercial property in Malaysia are detailed in Table 36. However, there are a number of other terms/practices that are also worth highlighting, as detailed below:

- local incorporation: most landlords will only enter into a tenancy or lease agreement with a locally incorporated company with adequate paid-up capital. In addition, a board resolution may be required noting the decision to enter a tenancy or lease and authorising one director to sign the agreement on the company's behalf.
- rent-free period: usually intended as an allowance to attract tenants and it is occasionally extended to include a separate fitting-out period. Also used as incentive(s) to bring down the effective rent.
- rent: prices are quoted as gross figures per sq ft per month on NLA. The gross rent is made up of net rent per sq ft per month, plus an amount for service charge per sq ft per month.
- deposits: the equivalent of one month's gross rent is required to secure premises and this becomes the first month's rent due after the execution of a tenancy or lease. The equivalent of three months' gross rent is required as a security deposit. Deposits may also be required for mailbox keys, car parking passes and employee security passes.

## Transaction costs

Brokerage/agency fees
The Board of Valuers, Appraisers and Estate Agents Malaysia – Malaysian Estate Agency Standards defines the various types of estate agency instructions and dictates a set scale of fees chargeable by registered estate agents as shown in Table 37.

**Legal fees**
This is governed by the Solicitors Remuneration Order 2005 and the scale of fees for preparing a tenancy or lease agreement is shown in Table 38.

## Tax legislation

**Stamp duty on tenancy or lease agreements**
((Gross rent × 12) – 2,400) ÷ 250 (round-up to the nearest figure) × 1 (for a tenancy of two years or more × 2).

**Stamp duty on property conveyance, assignment or transfer**
Details are shown in Table 39.

**Tax incentive for new hotel**
Companies in the hotel and tourism industry and investing in 4-star and 5-star hotels in Malaysia are entitled to tax exemption of 70% to 100% of statutory income for each year of assessment.

**Real Property Gains Tax (RPGT)**
Effective from 1 January 2014, RPGT rates are shown in Table 40.

From 1 January 2015, one of the cooling measures in the real estate sector is the increase in the sum withheld by the purchaser to 3% (previously 2%) of total value of consideration, which will be remitted to the Inland Revenue Board for purposes of RPGT. There will also be an extension of stamp duty exemption of up to 50% for the purchase of a buyer's first

TABLE 39

## Stamp duty on property conveyance, assignment or transfer

| | Value (RM) | Rate | Duty payable (RM) |
|---|---|---|---|
| On the first | 100,000 | RM1 per RM100 or part thereof | 1,000 |
| On the next | 400,000 | RM2 per RM100 or part thereof | 8,000 |
| On the next | 500,000 | RM3 per RM100 or part thereof | 15,000 |
| | | | 24,000 |
| in excess of* | 1,000,000 | RM4 per RM100 or part thereof | |

Source: Savills Research & Consultancy
*Effective 1 January 2018, the rate of duty for value in excess of RM1,000,000 shall be RM4 per RM100 or part thereof

TABLE 40

## RPGT rates

| Year of property disposal | Personal (Citizen and PR) | Tax rate (%) | |
|---|---|---|---|
| | | Company | Non-citizen |
| Disposed within 3 years | 30 | 30 | 30 |
| Disposed in 4th year | 20 | 20 | 30 |
| Disposed in 5th year | 15 | 15 | 30 |
| Disposed after 5 years | 0 | 5 | 5 |

Source: Savills Research & Consultancy

residential property up to RM500,000 (previously RM400,000). Such a purchase will need to be made between 1 January 2015 and 31 December 2016 (i.e. signing of sale and purchase agreement).

There is also an implementation of a self-assessment system for RPGT which will take effect from 2016. The system is expected to mirror the self-assessment system that is currently in place for the assessments of corporate and personal income tax.

**Goods and Services Tax (GST)**
GST is a consumption tax based on the value-added concept. GST is imposed on goods and services at every production and distribution stage in the supply chain including importation of goods and services. The current imposed rate is 6%.

**Corporate Tax**
For companies with paid-up capital of not more than RM2.5 million:

- On the first RM500,000: 19% (will be reduced to 18% effective for year of assessment 2017)
- Subsequent balance: 24% [will be reduced to 20% to 24% (subject to % of increase in chargeable income) effective for year of assessment 2017]

Companies with paid-up capital of more than RM2.5 million:

- 24% [will be revised to 20% to 24% (subject to % of increase in chargeable income) effective for year of assessment 2017]

**PIT**
The maximum rate is currently up to 28% (for year of assessment 2017/2018).

**Excise duty**
Excise duty is levied on imported and locally manufactured goods under the Excise Act 1976. The goods are listed under the Excise Duties Order 2004. Goods include motor cars, for which the duty rate varies between 75% and 105%.

**Multimedia Super Corridor (MSC) Status**
The MSC status is administered by the Multimedia Development Corporation and can be awarded to both local and overseas companies that develop or use multimedia technologies to produce or enhance their products and services. MSC Malaysia status companies benefit from generous tax and employment benefits if they also locate themselves in an MSC Malaysia status building. MSC status buildings are also considered better quality in terms of their technical specifications.

**Green Buildings**
The Green Building Index (GBI) was established in 2009 and is Malaysia's own rating system for new and existing buildings. It is a voluntary rating system but it is increasingly in demand, mainly from office occupiers. The top GBI-rated office building in Malaysia is the Energy Commission building in the government district of Putrajaya. Developers and owners of new and existing office buildings have generous tax incentives if they have obtained a rating before 2014.

**Withholding tax and tax treaties**
Corporations making payments in relation to interest, royalties and certain rents to non-residents and corporations are required to withhold tax. The rate of withholding tax is dependent on the country in which the corporation/individual is based but ranges between 5% and 25%. Dividends are not subject to withholding tax.

## Legal issues

Foreign exchange controls
Malaysia continues to maintain liberal Foreign Exchange Administration rules, which are mainly prudential measures to support the overall macroeconomic objective of maintaining monetary and financial stability. There rules are applicable for residents and non-residents.

**Town planning**
City or town properties are governed by a structure or zoning plan that designates a certain use for the site.

## Major property legislation

There are a number of key pieces of legislation pertaining to real estate as detailed below:

- National Land Code 1965
- State Land Rules
- Strata-titles Act 1985
- Real Property Gains Tax Act 1976
- Solicitors Remuneration Order 2005
- Housing Development (Control & Licensing) Act 1966
- Land Development Act 1956
- Land Acquisition Act 1960
- Local Government Act 1976
- Town & Country Planning Act 1976
- Strata Management Act 2013
- Strata Titles (Amendment) Act 2013
- Housing Development (Control and Licensing) (Amendment) Act 2012

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# New Zealand

## Overview

New Zealand is located in the southwestern Pacific Ocean, some 2,000 km east of Australia. It has a population of 4.749 million as of June 2017.

Auckland is the country's largest city with a population of 1.5 million people and Wellington is the capital (population of 0.4 million). Other main centres are Christchurch, Dunedin and Hamilton.

Political power is held by a democratically elected government with general elections held every three years.

TABLE 41

### Key statistics

| | |
|---|---|
| **Official name** | New Zealand |
| **Currency** | New Zealand dollar<br>US$1 = NZ$1.38 (March 2018) |
| **Population** | 4.749 million (June 2017) |
| **Land area** | 268,021 sq km |
| **GDP per capita** | US$39,426 (June 2017) |
| **GDP growth** | 2.7% (June 2017) |
| **Principal business centres** | Auckland, Wellington, Christchurch |

Source: Savills Research

## Types of property ownership

Land ownership is "title by registration". Registers are kept by the government and copies of titles are available online. The majority of transfers and other dealings in property are registered and upon registration of a transfer the buyer is said to have a title to the property which is "indefeasible".

Different types of land title that can be acquired are:

- freehold title to individual parcels of land, including improvements on the land.
- leasehold title, a right to exclusive possession and use of the land for the term of the lease.
- strata and unit titles that relate to commercial units and mid- to high-density residential developments, ie, home units, condominiums, flats and townhouses.

## Overseas property restrictions

Overseas ownership restrictions include the requirement for Overseas Investment Commission approval for an overseas person to acquire or take more than a 25% stake in:

- properties or businesses worth more than NZ$100 million.
- land over 5 hectares and/or worth more than NZ$10 million.
- land is deemed sensitive. [NB NZ's new Government is proposing existing residential buildings will be deemed "sensitive"]
- land on most offshore islands.

## Measurement of areas

Areas are typically quoted in sq m.

## Leasing

Principle terms

Leases of land in excess of 35 years are deemed to be "subdivision", for which planning permission is required.

### Security of tenure

There is no statutory right to renew a tenancy but an option for renewal is usually given, similar to the tenancy term or multiple of strata terms.

### Basis of rent payment

Rents are quoted as NZ$ per sq m per annum, which generally excludes operating expenses. Gross rents are typically quoted in Wellington, and net rents in Auckland and elsewhere in New Zealand.

### Rent payment

Rents are typically paid monthly in advance.

### Rent reviews

These are typically every two to three years to market, ratcheted to commencement of rental or adjusted to CPI. Some leases contain predetermined set rental increases.

### Security deposits

Deposits are generally two months' gross rent.

### Car parking fee

Car parking lots are allocated to proprietors/tenants in non-residential developments, usually at a fee and charged in the monthly rental payment.

### Property rates

Rates are levied on the landlord but are payable by the tenant as an operating expense.

**Service and maintenance charges**
These are payable by the tenant for the provision of services to common areas such as air-conditioning during office hours, security, building maintenance, including water and electricity, insurance for public and fire risk, building repairs and management fees.

**Repairs and maintenance, utilities and insurance coverage**
Tenants are responsible for all repairs and maintenance, utilities and insurance coverage pertaining to the tenanted premises, while the landlord is responsible for the common areas.

**Lease disposal**
Generally, subletting and assignment are allowed but the landlord's permission must be granted.

## Sale and purchase

**Principle terms**
Standard sale and purchase agreements have been approved by the Auckland District Law Society.

The option to purchase is agreed between parties with the payment of a non-refundable deposit.

The typical settlement period for residential properties is three to five weeks and for non-residential properties about one to three months.

**Basis of sale**
The sale of the property is based on the rights as defined on the certificate of title and the sale and purchase agreement.

**Financing**
Loans can be obtained from banks and financial institutions at up to 80% of the valuation or sale price, whichever is lower, for residential properties, and typically 50% to 75% for non-residential properties.

## Transaction costs

**Legal fees**
Fees typically range between 0.8% and 1.2% of the value and are negotiable.

**Stamp duty**
There is no stamp duty.

**Agency fees**
Agency fees vary with the size of the assignment. Typically, agent fees range from 2% to 4% for residential properties, and 1% to 2.5% for commercial/industrial properties depending on the size of the transaction. Agency fees are typically paid by the vendor, however, in certain circumstances the agent is paid by the purchaser.

## Establishing an investment vehicle

**Modes of entry**
Government approval is not required for overseas nationals to do business in New Zealand and 100% overseas ownership is freely permitted.

The common vehicles are:

- sole proprietorship
- partnership
- joint venture
- incorporated company
- subsidiary or branch company
- foreign representative offices

**Registration and licensing requirements**
Generally, there are no fixed requirements for local equity participation and no restrictions as to the type of business organisation.

All companies must be registered with the Registrar of Companies.

**Timescale and cost**
The time required to incorporate a company is usually one to two weeks. Typical costs involved are the minimum authorised and paid-up capital of NZ$1 and NZ$1 respectively, incorporation forms, Memorandum and Articles of Association, professional fees and other expenses.

## Tax legislation

**Corporate tax**
Resident entities are taxed annually on adjusted net profits less capital allowances. Profits include changes in value on properties held as investments. The corporate income tax rate is 28%.

The non-resident withholding tax rate ranges from 15% to 30% depending on the type of income earned. The withholding tax rates are reduced when the non-resident is a taxpayer in a country with which New Zealand has a DTA.

**Personal tax**
Personal income tax for residents is levied on a graduated scale shown in Table 42.

A person is deemed to be a resident for tax purposes if they are in the country for 183 days in any 12-month period of the tax year.

**CGT**
There is no CGT in New Zealand for the sale of any real property, except for individuals or other entities who are traders in property. The capital gains, if applicable, are taxed as income in the year the sale occurs.

**VAT/GST**
The GST is a tax levied on the sale of goods and services in New Zealand and on goods imported into New Zealand.

TABLE 42
### Personal tax rates

| Income (NZ$) | Tax rate (%) |
|---|---|
| Income up to 14,000 is taxed at | 10.5 |
| Income over 14,000 and up to 48,000 | 17.5 |
| Income over 48,000 and up to 70,000 | 30 |
| Remaining income over 70,000 taxed at | 33 |

Source: Savills Research

GST is charged at 15% on the supply of most goods and services in New Zealand.

The sale of land between registered persons is zero rated.

GST is not payable for going concern investments.

The sale or lease of a residential property in New Zealand and certain financial activities are exempt from GST.

**Estate duty**
There is no estate duty.

**Property tax**
The local authorities (city, district, and regional councils) levy property taxes on all property. The taxes are levied using capital value or land value systems. The system used varies between local authorities.

The rate in the dollar levied on the property also varies with each local authority.

Capital value and land value rating systems use the value of each individual property as set by the valuers contracted by the local authority to assess the rating value for all properties in their area.

## Legal issues

**Foreign exchange controls and repatriation of funds**
There are no exchange controls on the movement of capital and profits in and out of New Zealand. There is also no restriction on the repatriation of profits.

Overseas investors require Overseas Investment Office approval for investments above NZ$100 million or if the investment is in 'sensitive land' or 'special land'.

## Regulatory framework

**Development and buildings controls**
The local authorities (city, district, and regional councils) control planning and development within New Zealand.

The appropriate authority issues a District Plan which provides detailed construction, development and subdivision regulations.

Resource consent must be obtained prior to any construction, development or subdivision work commencing (Resource Management Act). Planning regulations vary between local authorities and are subject to revision every five years.

Building consent must be obtained prior to the commencement of any construction work.

**Development charges**
Local authorities charge for each resource consent issued. The charge varies with each council. In addition, developers may have to pay the council a contribution for infrastructure costs associated with the subdivision of any title. This is likely to be a percentage of value and/or a fixed charge per title created.

# Savills New Zealand

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# Philippines

## Overview

The Philippines is a constitutional republic with a democratic presidential system. Its incumbent president, Rodrigo Duterte, whose term is limited to six years, will remain as the head of state and government until the presidential elections in May 2022.

Since Duterte's initial months in office, the country enjoyed substantial economic growth and has been dubbed one of the fastest-growing economies in the region. The Duterte administration is committed to sustaining the country's growth trajectory, focusing on implementing a massive infrastructure spending program.

In 2017 the government allocated PHP847.2 billion for infrastructure projects – equivalent to 5.3% of GDP. Furthermore, the government is planning to pass a comprehensive tax reform package in Congress, given its expansionary fiscal strategy. Higher tax revenues should be able to control the fiscal deficit to just 2% to 3% of GDP during Duterte's entire term.

The current administration has already succeeded in passing its first tranche of reforms in December 2017. The amendments to the tax code substantially cuts personal income taxes while adding excise taxes on fuel, automobiles and sugar. The government is slating another round of tax amendments in 2018.

TABLE 43

### Key statistics

| | |
|---|---|
| **Official name** | Republic of the Philippines |
| **Currency** | Philippine peso (PHP)<br>US$1 = PHP52.034 (28 February 2018) |
| **Population** | 104.5 million (2017) |
| **Land area** | 300,000 sq km |
| **GDP per capita** | PHP151,072; US$3,008 (Q3/2017) |
| **GDP growth** | 6.9% (Q3/2017) |
| **Principal business centres** | Makati Central Business District, Bonifacio Global City, Ortigas Center |

Source: National Statistical Coordination Board, Banko Sentral ng Pilipinas

## Types of property ownership

Ownership is declared by the Transfer Certificate of Title in the case of single houses and raw land. The Land Registration Act obliges the owners of property to register titles with the Registry of Deeds. The titles must be registered in the same province as the property. Title registration also requires completion of an eight-step procedure, which may take around 33 days.

There are two main types of property ownership in the Philippines:

- freehold land: private freehold land is exclusively available to Philippine nationals. Those that count as Philippine nationals include Filipino citizens, and corporations, partnerships, or other juridical persons that are at least 60% Filipino-owned.

- leasehold land: leasehold corresponds to properties that may only be held for a given length of time. All public land may be owned by Filipino citizens on a leasehold tenure; however, private land may be leased by international corporations with certain restrictions.

## Restrictions on overseas ownership of lands

Although there are some restrictions, owning real estate or land in the Philippines is not impossible. The 1987 Constitution generally reserves ownership of private land for Filipino citizens. To some extent however, overseas nationals and former Filipino citizens are allowed to own properties. However, there are legal exemptions to the general rule and these are:

- properties acquired by non-Filipino citizens before the ratification of the 1935 constitution;

- property acquisition by a foreigner through hereditary succession;

- foreigners are allowed to acquire not more than 40% of the total units in a condominium project;

- property acquisition of those with dual citizenships under RA 9225;

- Filipino citizens who marry foreigners but have not renounced their citizenship; and

- former natural born Filipinos acquiring properties for residential or business purposes subject to the following limitations:

Residential use: not more than 1,000 sq m for urban areas, and not more than 1 hectare for rural areas.

Business use: a maximum of two lots located in different cities/

municipalities with a combined area not exceeding 5,000 sq m for urban areas and 3 hectares for rural areas.

## Condominium ownership

Overseas nationals can own condominiums under the principle of the 60%/40% rule. Condominium developers are allowed to sell a maximum of 40% of the condominium stock to non-Filipino citizens. Once the purchase is complete, the shares of the non-Filipino citizens can entitle them to be a stockholder of the condominium corporation. Most condominiums in the country are usually vertical developments and high-rise buildings.

Holders of a Special Resident Retirement Visa (SRRV) can also gain additional benefits aside from being allowed to buy a condominium property and lease a parcel of land or a house and lot. SRRV is offered by the government to overseas nationals who wish to stay permanently or those who would like to frequently visit or stay for long periods in the country. Information regarding other benefits of the SRRV is available on the Philippine Retirement Authority Website.

## Leasing

Article 1643 of the Civil Code of the Philippines defines the lease of things as one party binding himself "to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite." Under the same article it is also stipulated that no lease for more than 99 years shall be valid. For lease transactions of more than one year, it is required that the lease contract be in writing to be enforceable (Article 1403, Civil Code of the Philippines). While the ownership of private lands is exclusive to Filipino citizens, land can be leased to overseas nationals or international corporations on a long-term contract. While Filipino citizens are allowed a maximum lease term of 99 years, non-Filipino citizens are allowed to lease land only for a maximum of 25 years renewable for another 25 years. However, if the lease is made under the terms and conditions of the Philippine Investors' Lease Act, the lessee is allowed a maximum lease term of 50 years renewable for another 25 years. Escalation rates are usually stipulated in the contract of lease.

## Measurement of areas

All measurement of areas is done in sq m. Within agreements, the most commonly used measurement terms include:

- gross floor area (GFA): total area contained within the outside of the external walls.

- gross leasable area (GLA): the aggregate floor space contained within a tenancy at each floor.

## Lease terms

- rent: rental levels are quoted as net figures per sq m (GLA) per month.

- Common Use Service Area (CUSA): CUSA fees are paid on top of the net rent and shared among all the building tenants to cover maintenance of open and common spaces. Utility rates are paid for by the lessee.

- escalation: rent escalation is fixed and usually pegged at 5%-10% per annum. Rent reviews are typically done annually.

- deposits: deposits are usually the equivalent of three months' rent with advance payments for three months.

- rent-free period: this constitutes the period wherein the lessee is allowed to occupy the space and also provides a period for fit-out. The usual rent-free period in the Philippines ranges from one to two months.

TABLE 44

### Income tax rates for Philippine residents

| Amount of net taxable income (PHP) | Tax rate |
|---|---|
| >0–<250,000 | 0% |
| >250,000–<400,000 | 20% of the excess over PHP250,000 |
| >400,000–<800,000 | PHP30,000 + 25% of the excess over PHP400,000 |
| >800,000–<2,000,000 | PHP130,000 + 30% of excess over PHP800,000 |
| >2,000,000–<8,000,000 | PHP490,000 + 32% of excess over PHP2,000,000 |
| >8,000,000 | PHP2,410,000 + 35% of the excess over PHP8,000,000 |

Source: KMC Savills Research, BIR

TABLE 45

### Income tax rates for non-Philippine residents

| | Tax rate |
|---|---|
| Non-resident aliens engaged in trade or business | Table 44 applies |
| Non-resident aliens not engaged in trade or business | 25%* |
| Aliens employed by regional or area headquarters and regional headquarters of multinational companies | Table 44 applies |

Source: KMC Savills Research, BIR
*of gross income tax

The usual length of a lease for residential space ranges from one to three years, while for commercial space, it ranges from three to five years. For industrial space, the length of a lease can range from anywhere between one and 15 years.

## Tax legislation

### Income tax

With the ratification of the first tranche of tax reforms, individual tax rates for Philippine residents have been reduced. The new income tax rates are effective beginning 2018 and are shown in Table 44.

## Transaction costs

### Brokerage/agency fees

For both commercial and residential sales, the brokerage or agency fees usually range from 3% to 5% of the total price, but for leases it may depend on the lease period, as shown in Table 46. Usually, the fee for a one-year lease is the amount equivalent to one month's rent. For a lease period exceeding one year, the concomitant increase in broker's fees is usually subject to negotiation.

### Taxes

Real Property Tax (RPT) is paid every year by the owner and it varies from one local government unit to the next. RPT ranges from 2-3% of assessed value which is derived from the market value or the zonal value whichever is higher.

Apart from the purchase price, there are other fees and taxes associated with every real estate transaction and these are listed in Table 47. The amount of tax to be paid on the sale of real estate depends on the classification of the real estate asset. It can either be tagged as a capital asset or an ordinary asset. Capital assets are subject to a capital gains tax (CGT) equivalent to 6% of the gross selling price or the zonal value of the property, whichever is higher. Capital gain is always presumed and the tax is thus applied to the fair market value instead of actual capital gains. An ordinary asset, on the other hand, is subject to withholding tax and value-added tax equivalent to 12% of the gross selling price or fair market value, whichever is higher. Other fees include documentary stamp tax (1.5% of purchase price), local government tax (around 0.5% of purchase price) and new title issuance registration fee (around 0.25% of purchase price).

The usual fees associated with such transactions are customarily assigned to the seller and the buyer depending on the mutual agreement of the parties. These stipulations must be expressly stated in the Deed of Absolute Sale to delineate the rights and responsibilities of each party and avoid any future problems that may arise.

## PEZA

Companies can also opt to register with the Philippine Economic Zone Authority (PEZA), a government agency that specialises in providing investment assistance to foreign investors inside the country. Registering with PEZA has several advantages, such as income tax holidays of a specific duration during which the company is not liable to 30% income tax, no value added tax on purchased goods and services, exemption from withholding and local government taxes, and visa-processing assistance for expatriate employees. However, PEZA-registered companies are required to relocate to a PEZA IT Park or building and only certain businesses are allowed to register that are involved in the following activities:

- export manufacturing
- information technology service export
- tourism
- agro-industrial export manufacturing

TABLE 46

### Residential and commercial lease terms

| Lease term (years) | Broker's fees |
|---|---|
| **Residential** | |
| 1 | 1 month's rent |
| 2–3 | 1.5 months' rent |
| **Commercial** | |
| 1–3 | 1 month's rent |
| 4–5 | 2 months' rent |
| 5 and above | 3–4 months' rent (negotiable) |

Source: KMC Savills Research

TABLE 47

### Commercial and residential transaction costs

| Cost | Percentage of transaction | Payer |
|---|---|---|
| Legal fees | 0.5–1.0 | Buyer |
| Local transfer tax | 0.25–0.75 | Buyer |
| Deed of sale | 0.225–0.5 | Buyer |
| Documentary stamp tax | 1.5 | Buyer |
| CGT | 6 | Seller |
| Real estate agent's fee | 3–5 | Seller |

Source: KMC Savills Research

- agro-industrial bio-fuel manufacturing
- logistics and warehousing services
- facilities providing
- utilities

## Major property legislation

- 1987 Philippine Constitution
- Condominium Act (RA 4726) and the law amending it (RA 7899)
- Dual Citizenship Law (RA 9225)
- Property Registration Decree (PD 1529)
- National Building Code (PD 1096)
- The Subdivision Development Act (PD1216)
- Urban Land Reform (PD 1517)
- Rent Control Act of 2009 (RA 9653)
- Foreign Investments Act (RA 7042)
- Realty Instalment Buyer Protection Act (RA 6552)
- Public Land Act (CA 141)
- Urban Development and Housing Act (RA 7279)
- Investors' Lease Act (RA 7652)
- Special Economic Zone Act (RA 7916)
- Rental Reform Act (RA 9161)
- Land Use Ordinance
- Zoning Ordinance
- Real Estate Investment Trust (REIT) Act of 2009 (RA 9856)
- Real Estate Service Act of 2009 (RA 9646)

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# Singapore

## Overview
As a developed and successful free-market economy, Singapore enjoys an open and corruption-free environment. The city-state's economy depends heavily on exports, particularly of consumer electronics and information technology products. As a result of the government's reform policies aimed at sharpening economic competitiveness, the economy has grown robustly since 2004. Singapore now serves as regional headquarters for thousands of multinational companies, has world-class financial and service sectors and above all, a highly efficient physical infrastructure.

TABLE 48

### Key statistics

| | |
|---|---|
| **Official name** | Republic of Singapore |
| **Capital** | Singapore |
| **Currency** | Singapore dollar (100 cents),<br>US$1 = S$1.3258 (28 February 2018) |
| **Population** | 5.61 million (June 2017) |
| **Land area** | 719.9 sq km (2017) |
| **GDP per capita** | S$79,697 (2017) |
| **Real GDP growth** | 2.2% (2015)<br>2.4% (2016)<br>3.6% (2017) |
| **Principal business centres** | Raffles Place, Marina Bay, Shenton Way, Tanjong Pagar, City Hall/Marina and Orchard Road |

Source: Singapore Department of Statistics, Monetary Authority of Singapore (MAS)

## Types of property ownership
There are two types of property ownership in existence in Singapore:

- freehold estate ownership which includes fee simple (grant in fee simple) and estate in perpetuity (statutory land grant).
- leasehold estate ownership which may be for a period of 15, 30, 60, 99 or 999 years.

## Overseas ownership restrictions
The only restrictions on ownership apply to residential properties, covering:

**Landed properties or non-strata-titled properties**
Non-Singaporeans are not allowed to buy detached, semi-detached, terraced and cluster houses. They can, however, apply to the Minister of Law through the Land Dealings Unit (LDU) for approval to purchase such properties. The criteria for approval are generally based on the likely economic contribution the expatriate can make to the country. If the expatriate is allowed to purchase the property, he/she must use the house strictly for owner occupation.

Overseas ownership of landed properties in Sentosa Cove is permitted under a special arrangement. Overseas individuals or companies, as stipulated under the Residential Property Act, have to obtain in-principle approval from the LDU prior to tendering and submission, and upon success in their tender bids must seek formal approval from the LDU. Under the special arrangement, housing developers need not obtain in-principle approval from the LDU. They are only required to obtain formal approval, or a Qualifying Certificate (QC), from the Controller of Residential Property (CRP) upon successful tender.

**En-bloc apartments and condominiums**
An expatriate is not allowed to acquire all units in a residential development without the Minister of Law's approval.

**Vacant land zoned 'residential'**
Overseas developers are required to obtain a QC from the CRP before they are allowed to purchase residential land. A banker's guarantee in the amount equivalent to 10% of the land price is needed to obtain the QC.

The developer is prohibited from reselling land, and with effect from 12 January 2013, for residential sites released under the Government Land Sales Programme, the developer will be levied an extra 15% stamp duty on the land portion of the unsold units five years after the award of the land.

## Measurement of areas
Measurements are typically quoted as GFA, strata floor area or lettable floor area and are generally given in sq ft by practitioners in the industry. However, the government has adopted the metric system and official government statistics, including those for real estate, are given in sq m.

## Transaction costs
**Brokerage/agency fees**
Typical agency fees are equivalent to one month's gross effective rent and are payable by the landlord. Brokerage fees on investment

transactions are normally 1% of the transaction price and are payable by the vendor.

**Legal costs**
Conveyancing fees for all types of property transactions, including leases and reassignment of mortgaged properties, are negotiable.

## Tax legislation

**Stamp duty: sales**
There are two stamp duties payable on private residential real estate transactions. These are the buyer's stamp duty (BSD) and the seller's stamp duty (SSD).

**BSD**
Effective from 8 December 2011, an additional buyer's stamp duty (ABSD) on private residential purchases is payable by overseas nationals, companies and Singapore Permanent Residents (SPRs). This is over and above the usual BSD payable. The ABSD was subsequently revised upwards with effect from 12 January 2013.

With effect from 20 February 2018, the top marginal BSD rate for residential properties was raised from 3% to 4%, applying to the portion of residential property value in excess of S$1 million.

The details of the BSD/ABSD are shown in Table 50.

Stamp duty is payable by the buyer within 14 days of agreeing to buy if the PSA is signed in Singapore.

TABLE 49
### Lease terms

| | |
|---|---|
| **Lease period** | Typically 3 years, with an option to renew for a further term of 3 years, to be mutually agreed by landlord and tenant. |
| **Rent reviews** | Upon lease renewal. |
| **Sub-letting/assignment** | Most leases do not allow the tenant to sub-let or assign the lease. |
| **Termination** | Early termination of the lease is prohibited. In practice, the landlord may allow the outgoing tenant to source a replacement tenant at terms and conditions to be agreed by the landlord. |
| **Repairs** | The tenant will usually be directly responsible for all repairs within the demised premises. General building repairs and maintenance of building services will be carried out by the landlord, or management corporation, and recovered through the service charge. |
| **Security of tenure** | Protected by law. |
| **Dilapidation** | Not relevant. |

Source: Savills Research & Consultancy

**Stamp duty: Additional Conveyance Duties (ACD)**
Effective from 11 March 2017, an ACD will apply on qualifying acquisition and disposal of equity interest in residential property-holding entities (PHEs) that hold at least 50% of the total tangible assets (owned directly/indirectly) in Singapore residential properties. Under the ACD provision, a qualifying acquisition/disposal of equity interest in a residential PHE will be treated as a transfer of interest in the underlying properties. Therefore, this will attract ACD, in addition to share transfer duty, which may apply on the acquisition/disposal of equity interest in a company.

ACD for buyers (ACDB) and ACD for sellers (ACDS) are payable on qualifying acquisitions and disposals based on the market value of the residential property of the PHE. For buyers, on top of the 0.2% share duty tax, they must pay ACD comprising 1% to 3% on the value of the underlying residential properties and a flat 15% on the entire value of those assets. Sellers, who are significant owners, disposing of their equity stake within three years of acquisition will have to pay a flat 12% levy.

**SSD**
Effective from 11 March 2017, an SSD will be imposed if residential properties are sold within three years of purchase. The SSD levied on residential properties bought on or after 11 March 2017 will be as follows:

- sold within the first year of purchase, ie, where the property

TABLE 50
### BSD/ABSD

| Transaction | On or after 20 February 2018 | |
|---|---|---|
| | BSD rates on the total purchase price or market value (whichever is higher) | ABSD rates on the total purchase price or market value (whichever is higher) |
| **Foreigners and non-individuals (corporate entities) buying any residential property** | 1% on first S$180,000<br>2% on next S$180,000<br>3% on next S$640,000<br>4% for the remainder | 15% |
| **SPRs buying the first residential property** | | 5% |
| **SPRs buying the second and subsequent residential property** | | 10% |
| **Singapore Citizens (SCs) buying second residential property** | | 7% |
| **SCs buying third and subsequent residential property** | | 10% |

Source: Inland Revenue Authority of Singapore (IRAS) is held for one year or less from its purchase date, the SSD is 12% of the full consideration.

- sold within the second year of purchase, ie, where the property is held for more than one year and up to two years, the SSD is 8% of the full consideration.

- sold within the third year of purchase, ie, where the property is held for more than two years and up to three years, the SSD is 4% of the full consideration.

- sold within the fourth year of purchase, ie, the property is held for more than three years and up to four years, the SSD is 4% of the full consideration.

No SSD will be payable by the seller if the property is sold more than three years after it was bought.

**Stamp duty: mortgages**
Stamp duty payable is S$4 for every S$1,000 of the loan or part thereof, subject to a maximum of S$500.

**Stamp duty: leases**
Leases with annual rents not exceeding S$1,000 are exempt from stamp duty. For those with annual rents of more than S$1,000, stamp duty is levied as a percentage of the average gross annual rent:

- up to a one-year lease period, S$1 for every S$250 or part thereof.

- more than one year and up to a three-year lease period, S$2 for every S$250 or part thereof.

- more than a three-year lease period or for an indefinite term, S$4 for every S$250 or part thereof.

**Estate duty**
As of 15 February 2008, the government has removed estate duty.

**Corporation tax**
A company is taxed at a flat rate on its chargeable income. The CIT rate from the year of assessment (YA) 2010 onwards is 17%. CIT for the YA is levied on the taxable income of the previous year, which is the profit shown in the company's audited accounts after qualified allowances and deductions have been taken into account.

Effective from the YA 2008, a partial tax exemption (PTE) is granted to all companies including companies limited by guarantee, unless they have already claimed the Tax Exemption Scheme for New Start-Up Companies This allows for a 75% tax exemption on the first S$10,000 of normal chargeable income and a further 50% tax exemption on the next S$290,000 of normal chargeable income.

For new companies, full tax exemption may be granted on normal chargeable income of up to S$100,000 for each of its first three consecutive YAs. A further 50% exemption will be granted for the next S$200,000. In order to qualify for tax exemption, the new start-up company must:

- be incorporated in Singapore;

- be a tax resident in Singapore for that YA;

- have no more than 20 shareholders throughout the basis period for that YA where:

1) all of the shareholders are individuals "beneficially and directly" holding the shares in their own names; or

2) at least one shareholder is an individual "beneficially and directly" holding at least 10% of the issued ordinary shares of the company.

The CIT Rebate is given to all companies[7] to help them deal with rising business costs. The CIT rebate cap for YA 2017 will be raised from S$20,000 to S$25,000 to help companies cope with economic uncertainty and continued restructuring. The rebate percentage will remained unchanged at 50% of the corporate tax payable. In addition, the CIT rebate will be extended to YA 2018 at a reduced rate of 20% of the corporate tax payable, subject to a cap of S$10,000. The rebate will not apply to income derived by a non-resident company that is subject to final withholding tax.

7 Includes Registered Business Trusts, non-resident companies that is not subject to a final withholding tax and companies that receive income taxed at a concessionary tax rate.

Companies may carry-back unutilised capital allowances (CAs) and trade losses arising in a YA to reduce the amount of taxes payable in an immediately preceding YA. Current year unutilised CAs and trade losses (collectively referred to as "Qualifying Deductions" or "QD") can be carried back for one YA immediately preceding that YA in which the CAs are granted or the trade losses incurred. The maximum amount of QD that can be carried back is S$100,000.

**PIT**
Tax residents for a particular YA Tax include:

- Singapore Citizen or Singapore Permanent Resident who resides in Singapore except for temporary absences, or

- Foreigner who has stayed / worked in Singapore (excludes director of a company) for 183 days or more in the previous year, ie the year before the YA.

Tax residents are taxed on income derived in Singapore, and any overseas income received in Singapore, after provisions of certain tax deductions and personal relief. All overseas-sourced income and specified Singapore-sourced investment income from financial instruments received in Singapore by individuals are exempt from income tax.

From the YA 2017, tax rates are on a graduated scale ranging from 0% to 22%. In addition, for YA 2017, all tax residents will receive a Personal Tax Rebate of 20% of tax payable, up to maximum of S$500.

**Property tax**
The amount of tax payable by owners is calculated based on a percentage of the annual value of the property, which is the estimated gross annual rent of the property if it were to be rented out, regardless of whether the property is vacant, occupied by the owner or leased out. Exceptions to the standard definition of annual value include:

- vacant land or land under development – 5% of the estimated freehold market value of the land, assuming the land plot is vacant with no buildings erected on site.

- licensed hotels – 25% of the gross hotel room receipts for the preceding year, while the other assessable areas in the hotel, such as F&B outlets, function rooms, retail shops and car parks, will be assessed based on estimated market rents.

Property tax rates on owner-occupied and non-owner occupied residential properties are applied on a progressive scale, while all other properties continue to be taxed at 10% of the annual value. Details for owner-occupied and non-owner occupied residential properties are shown in Tables 51 and 52.

The tax is payable regardless of whether the property is vacant or occupied.

TABLE 51

### New progressive tax scale For non-owner–occupied residential buildings

| Annual value (S$) | Tax rate (%) (effective 1 January 2015) |
|---|---|
| First 30,000 | 10 |
| Next 15,000 | 12 |
| Next 15,000 | 14 |
| Next 15,000 | 16 |
| Next 15,000 | 18 |
| AV in excess of 90,000 | 20 |

Source: Savills Research & Consultancy

TABLE 52

### New progressive tax scale For owner-occupied residential buildings

| Annual value (S$) | Tax rate (%) (effective 1 January 2015) |
|---|---|
| First 8,000 | 0 |
| Next 47,000 | 4 |
| Next 15,000 | 6 |
| Next 15,000 | 8 |
| Next 15,000 | 10 |
| Next 15,000 | 12 |
| Next 15,000 | 14 |
| AV in excess of 130,000 | 16 |

Source: Savills Research & Consultancy

Tax exemptions are granted for buildings that are entirely used for public religious worship, charitable purposes, public schools which receive grant-in-aid from the government, and for purposes conducive to social development in Singapore. Partial exemption may be granted if only parts of the building qualify for exemption.

**GST**

GST is charged on supplies of most goods and services by businesses, and on imports made by taxable persons in Singapore.

It is a final consumption tax but collected at each stage of production. There are four bands of tax: the standard rate of 7% (applicable to standard-rated supplies comprising goods and services not considered zero rated and exempt supplies), zero rated (applicable only to international services and exported goods), exempt (sales and rental of unfurnished residential property and certain other financial transactions/services) and out-of-scope (goods which are sold but never enter Singapore).

All businesses with a turnover of taxable supplies in excess of S$1 million must register with the Controller of GST, whereas businesses with turnover of less than S$1 million may do so voluntarily.

The sale of residential properties and land are exempt from GST. Hence a developer cannot charge GST on the sale of a housing unit even if he is GST-registered with the Controller. Neither can he claim for a refund of the GST he has incurred in developing the building.

**Withholding tax and tax treaties**

Domestic corporations paying certain types of income are required to withhold tax to non-resident corporations/individuals on interests and royalties. The rate of withholding tax is dependent on the country in which the corporation/individual is based but ranges between 0% and 15%. Dividends are not subject to withholding tax.

There are two types of avoidance of DTAs (tax treaties) that the Singapore government has signed with other countries, which are:

- comprehensive treaties, which cover all types of income and are applicable to the following countries: Albania, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Brunei, Bulgaria, Canada, China, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Fiji, Finland, France, Georgia, Germany, Guernsey, Hungary, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Kuwait, Laos, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Mongolia, Morocco, Myanmar, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, San Marino, Saudi Arabia, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Turkey, Ukraine, UAE, UK, Uruguay, Uzbekistan, and Viet Nam.

- limited treaties, covering only income from shipping and/or air transport, and which are applicable to the following countries: Bahrain (air transport), Brazil (air transport and shipping), Chile (shipping), Hong Kong SAR (air transport and shipping), Oman (air transport), Saudi Arabia (air transport), UAE (air transport), and the United States of America (air transport and shipping).

Other treaties that have been signed but not ratified, and thus do not have any force in law, are with Cambodia, Ethiopia, Ghana, Latvia, Nigeria, Sri Lanka.

## Legal issues

**Land registration**

The Land Titles Registry, which comes under the Singapore Land Authority's umbrella, handles the registration of property transactions in Singapore.

Two land registers exist, namely:

- the Register of Deeds for Common Law land under the Registration of Deeds Act;

- the Land Titles Register for land under the Land Titles Act.

**Planning controls**
Section 12 of the Planning Act 1998 stipulates that no person shall develop any land without the written permission of the competent authority.

'Competent authority' refers to the Urban Redevelopment Authority and 'written permission' may refer to the planning permission, subdivision permission or conservation permission.

'Development' is defined in Section 3 of the Act as either the execution of any building, mining, engineering, earthworks or other operations on, over or under land, or to making any material changes to the use of any land and buildings.

**Master Plan 2014**
The current Master Plan 2014, is a detailed statutory land use plan for each of the planning regions (north, northeast, east, west and central regions). The Plan, which is revised every five years, guides the physical development of Singapore over the medium term of ten to 15 years.

Other legislation which controls real estate development in Singapore includes:

- Housing Developers (Control and Licensing) Act
- Sale of Commercial Properties Act
- Land Titles (Strata) Act
- Land Titles Act
- Land Acquisition Act

**Foreign exchange controls**
All Singapore residents, both corporations and individuals are allowed complete freedom from exchange control on any form of investment and payment. Nonetheless, loans to non-residents may be subject to a 'non-internationalisation of Singapore currency' policy. Also, all syndicated loans in Singapore dollars require the approval of the MAS.

## Major property legislation

There are a number of key items of legislation related to property, all of which are detailed below:

- Buildings and Common Property (Maintenance and Management) Act
- Building Control Act
- Building Maintenance and Strata Management Act
- Conveyancing and Law of Property Act
- Goods and Services Tax Act
- Housing Developers (Control and Licensing) Act
- Housing Developers (Control and Licensing) Rules
- Income Tax Act
- Land Acquisition Act
- Land Titles Act
- Land Titles (Strata) Act
- Planning Act
- Property Tax Act
- Registration of Deeds Act
- Residential Property Act
- Sale of Commercial Properties Act
- Stamp Duties Act
- State Lands Act
- Street Works Act

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# South Korea

## Overview

Korea ranked 9th among 35 OECD countries in terms of GDP as of 2016. With a GDP per capita of US$29,330, the country has posted moderate economic growth in both quantitative and qualitative terms in 2017. The rate of Korean GDP growth in 2016 was 2.8%, with 3.0% projected for 2017.

In recent years the key drivers of economic growth have shifted from low-cost manufacturing to the production of high-technology products including electronics, semiconductors, IT products/services and petro-chemicals.

## Types of property ownership

Freehold title ownership and strata-title ownership are all commonly practiced and long-term ground leasehold (for government-owned land) is exceptionally rare.

## Overseas ownership restrictions

Following substantial deregulation in 1998, overseas buyers are generally free to acquire land in Korea, apart from areas where approval is required, such as military areas, cultural assets and ecological protected areas, as detailed in the Foreigners Land Acquisition Act.

## Measurement of areas

The most commonly used unit of area measurement remains the pyeong (1 py = 3.3058 sq m = 35.58 sq ft), although the government is encouraging the adoption of sq m, with a 2007 passed law requiring the use of sq m in official documents.

There are three area measurements which are often quoted in legal agreements:

TABLE 53

### Key statistics

| | |
|---|---|
| **Official name** | The Republic of Korea |
| **Currency** | Korean won<br>US$1 = KRW1,071 (28 February 2018)* |
| **Population** | 51.5 million* |
| **Land area** | 100,339 sq km |
| **GDP per capita** | KRW31.84 million; US$29,330 (2017)* |
| **GDP growth** | 3.1% per annum (2017)# |
| **Principal business areas** | Seoul (CBD, Gangnam, Yeouido), Pangyo, Busan, Incheon |

Source: FocusEconomics*, Bank of Korea#

- GFA (Gross Floor Area): all area contained within the centre line of the external walls, excluding vertical penetration and void areas.
- GLA (Gross Leasable Area): usually GFA or GFA less underground parking areas.
- NLA (Net Leasable Area): GFA less common floor areas, building common areas and parking.

Note that variations in these definitions are common for e.g. with regard to what constitutes "common areas".

Typical rent structure comprises:

1) monthly rent; 2) monthly maintenance fee; and 3) refundable security deposit

## Transaction costs

**Brokerage/agency fees**

Brokerage fees on transactions are normally between 0.5% and 1% depending on the deal. Fees on leasing are usually 1-2 months rent for the entire leased space with the nature of the deal dictating who is liable to pay the fee.

## Tax legislation

**Tax depreciation**

Only the straight-line method of depreciation is permitted for buildings. Generally, the standard practice useful life of a building is 40 years (2.5% depreciation rate).

**Corporation tax**

Details are shown in Table 58.

TABLE 54

### Lease terms

| | |
|---|---|
| **Lease period** | 3-5 years |
| **Rents** | KRW/month/GLA |
| **Rent deposit** | 10 months rent |
| **Rent increases** | Market rates or CPI indexing are common practice. |
| **Sub-letting/ assignment** | Generally not an accepted market practice, consent required from landlord. |
| **Termination** | Pre-termination clauses are usually included in leases and require notification periods of 3- 6 months. Longer term leases typically prohibit pre-termination in the early period of the lease. |
| **Repairs** | The exterior and common areas of the building are the landlord's responsibility. Tenants are responsible for internal repairs. |
| **Security of tenure** | Security of tenure is not guaranteed beyond the term of a lease. A right to renew can be included in the lease if required. |
| **Dilapidations** | Tenants are expected to reinstate a building to its original condition. |

Source: Savills Research & Consultancy

TABLE 55

## Acquisition taxes

| Tax | Tax rate |
|---|---|
| Acquisition tax | 4.00% of acquisition price |
| Special tax for farming and fishing villages | 0.20% of acquisition price |
| Local education tax | 0.40% of acquisition price |
| VAT | 10% of building acquisition price (corporations will be reimbursed) |

Savills Research & Consultancy, National Tax Service

**VAT**
A standard 10% VAT is levied on all goods and services (including property), with the exception of those specified as exempt or zero rated. Businesses are exempt or refunded.

**Personal Income Tax (PIT)**
For tax-paying purposes, individuals are classified as either resident or non-resident. Residents are essentially defined as those who have resided in Korea for one year or more, or those who have an occupation that would require them to reside in Korea for one year or more. A resident is subject to income tax on all income derived from sources both within and outside of Korea. A non-resident is subject to income tax only on income derived from sources within Korea. Details are shown in Table 59.

**Withholding tax and tax treaties**
International corporations with no domestic place of business in Korea will be subject to tax on their Korean-sourced income (dividends, royalties, interest) on a withholding basis. Any income attributable to an overseas corporation which has a fixed place of business in Korea will be subject to Korean income tax. The rate of withholding tax is dependent on the country of origin of the corporation in question and the source of income (dividends, royalties, interest), this generally ranges between 10% and 15%.

Withholding taxes are also applicable to non-residents. However, there are limitations on

TABLE 56

## Real estate taxes during holding period

| Category | | | Tax rate |
|---|---|---|---|
| Buildings | Buildings | | 0.25% of tax assessment value |
| | Industrial buildings located in residential districts | | 0.5% of tax assessment value |
| | Golf clubs, luxury entertainment facilities | | 4.0% of tax assessment value |
| Land | Farmland | | 0.07% of tax assessment value |
| | Land for business purpose | Less than KRW 200 million | 0.2% of tax assessment value |
| | | Less than KRW 1,000 million | KRW 400,000 + 0.3% of excess over 200 million |
| | | Over KRW 1,000 million | KRW 2.8 million + 0.4% of excess over 1,000 million |
| | Golf club, luxury entertainment facilities | | 4.0% of tax assessment value |
| Surtax | Local education tax | | 20% of property tax |
| | Special tax for farming and fishing villages | | 20% of property tax |
| | Special Property Tax (Previously City Planning tax) | | 0.14% of tax assessment value |
| | Public facility tax* | | 0.04-0.12% of tax assessment value |
| Comprehensive real estate tax | | | 0.5 – 0.7% of tax assessment value |

Source: Savills Research & Consultancy, National Tax Service
*Buildings deemed to have high fire risks will be susceptible to double ordinary tax rate

TABLE 57

## Disposition taxes

| Tax | Special cases |
|---|---|
| Corporate – income tax<br>10–25% of capital gain* | Capital gain is levied as corporation tax. |
| Local income surtax (formerly inhabitant tax)<br>10% of transfer income tax or corporate tax | N/A |
| VAT<br>10% of building's transfer price (collected from transferee) | Corporations will be reimbursed VAT. |

Source: Savills Research & Consultancy

TABLE 58

## Corporation tax

| Taxable income (KRW) | Marginal tax rate (%) |
|---|---|
| Below 200 million | 10 |
| 200 million–20 billion | 20 |
| 20 billion-300 billion | 22 |
| Above 300 billion | 25 |
| Regional tax | 10% of corporate tax |

Source: Savills Research & Consultancy

TABLE 59

## PIT rates

| Income (KRW million) | Marginal tax rate (%) | Local income surtax |
|---|---|---|
| 0–12 | 6 | 10% of the personal income tax liability |
| 12–46 | 15 | |
| 46–88 | 24 | |
| 88–150 | 35 | |
| 150-300 | 38 | |
| 300-500 | 40 | |
| Over 500 | 42 | |

Source: Savills Research & Consultancy

TABLE 60

## Tax treaty countries

| Countries | Countries | Countries |
|---|---|---|
| Albania | India | Philippines |
| Algeria | Indonesia | Poland |
| Australia | Iran | Portugal |
| Austria | Ireland | Qatar |
| Azerbaijan | Israel | Republic of South Africa |
| Bahrain | Italy | Romania |
| Bangladesh | Japan | Russia |
| Belarus | Jordan | Saudi Arabia |
| Belgium | Kazakhstan | Singapore |
| Brazil | Kenya | Slovakia |
| Bulgaria | Kuwait | Slovenia |
| Canada | Kyrgyz | Spain |
| Chile | Laos | Sri Lanka |
| China | Latvia | Sweden |
| Colombia | Lithuania | Switzerland |
| Croatia | Luxembourg | Tajikistan |
| Czech Republic | Malaysia | Thailand |
| Denmark | Malta | The Netherlands |
| Ecuador | Mexico | Tunisia |
| Egypt | Mongolia | Turkey |
| Estonia | Morocco | UAE |
| Fiji | Myanmar | UK |
| Finland | Nepal | Ukraine |
| France | New Zealand | USA |
| Gabon | Norway | Uruguay |
| Germany | Oman | Uzbekistan |
| Greece | Pakistan | Venezuela |
| Hong Kong | Panama | Viet Nam |
| Hungary | Papua New Guinea | |
| Iceland | Peru | |

Source: Savills Research & Consultancy

these depending on the existence and nature of a tax treaty with Korea. Table 60 lists those countries with whom tax treaties exist in order to avoid double taxation of international residents.

## Investment structures

Due to favourable tax treatment, many real estate investors choose to employ indirect investment structures for real estate acquisitions. Previously reduced acquisition tax rate for REIT and Trust REF structure is no longer be applicable as of 2015. The principle tax benefits and regulations associated with these structures are outlined in Table 61.

TABLE 61

## Tax summary for Outright, REIT, REF (Real Estate Fund) investment structures

<table>
<tr><th>Structure</th><th colspan="2">Acquisition</th><th colspan="3">Holding period</th><th>Disposal</th></tr>
<tr><th></th><th>Capital registration tax</th><th>Acquisition and registration tax</th><th>Property tax</th><th>General real estate tax</th><th>Corporate tax</th><th>Corporate tax</th></tr>
<tr><td>Outright</td><td rowspan="3">0.48% of paid-in capital (1.44% in SMA)</td><td rowspan="3">4.6%</td><td>Buildings: 0.25%<br>Land: 0.2–0.5%</td><td>Land: 0.5%–0.7% of separate sum tax base (note: property tax credit provided when property taxes paid exceed specified threshold)</td><td>10~25% and local surtax</td><td>10~25% and local surtax</td></tr>
<tr><td>REIT</td><td>Buildings: 0.25%<br>Land: 0.2%</td><td>Exempt</td><td rowspan="2">Exempt on corporation tax when over 90% of profit is returned to shareholders</td><td rowspan="2">Exempt on corporation tax when over 90% of profit is returned to shareholders</td></tr>
<tr><td>REF</td><td>Buildings: 0.25%<br>Land: 0.2%</td><td>Exempt</td></tr>
</table>

Source: Savills Research & Consultancy

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# Taiwan

## Overview

Taiwan's economy is best described as an emerging market and is one of Asia's newly industrialised growth engines. Although growing at a slower pace than in the past, the economy has transformed itself from one that produced plastic toys and textiles, to one that dominates some electronics sectors. Today, 80% of the world's laptops and 40% of its LCD screens come from Taiwan as the nation's SMEs have successfully climbed further up the value chain.

According to the Directorate-General of Budget, Accounting and Statistics in 2012, 75% of gross domestic output is derived from exports, which leaves the open economy vulnerable to downswings in global demand for its goods. This reliance on the production of tech exports has also contributed to the manner in which the property market has evolved. Science and technology parks represent a large portion of investment-grade assets, and in some instances, are government-owned, leaving few opportunities for investors.

The high quality of human resources and relatively inexpensive wages are complimented by sound regulatory and legal systems, and a competent central bank. These factors make Taiwan an excellent location for regional operation or R&D centres, and as a logistics hub and production base to serve the Asia Pacific region.

## Types of property ownership

Most property on the island is freehold, although long-term leasehold, also called superficies right, is becoming more popular, particularly in Taipei City or on government build-operate-transfer infrastructure projects. Typical leasehold titles have 35-, 50- or 70-year terms. Renewal options are dependent on specific contract agreements.

TABLE 62

### Key statistics

| | |
|---|---|
| **Official name** | Republic of China (ROC) |
| **Currency** | New Taiwan dollar,<br>US$1 = NT$29.230 (27 February 2018) |
| **Population** | 23 million (2017) |
| **Land area** | 3,600 sq km |
| **GDP per capita** | US$23,122 (2016)<br>US$24,120 (2017F) |
| **GDP growth** | 1.48% per annum* (2016)<br>2.11% per annum* (2017F) |
| **Principal business centres** | Taipei City, New Taipei City, Taichung City, Tainan City, Kaohsiung City |

Source: National Statistics, ROC*

Strata-title buildings are common throughout the island and regulations have been passed to create consensus on building maintenance and management. Ownership structures are commonly divided into the following categories: 1) fee simple; 2) strata title; and 3) superficies right.

## Overseas ownership restrictions

Overseas investors and individuals are allowed to own most types of property in Taiwan with a reciprocal agreement that allows Taiwanese nationals to enjoy the same rights in those countries. The only exception to this applies to individuals or entities from mainland China, who are restricted from owning property unless it is for self use. The type of owner-occupied commercial property that mainland enterprises and individuals can acquire includes retail, factory and office property, as well as employee dormitories.

White-collar Chinese workers who are legally permitted to work in Taiwan and hold a Taiwan work certificate (Alien Resident Certificate) are allowed to buy homes to fulfil their individual housing needs. However, the purchase is subject to a stipulation that restricts the sale of the property for a period of three years following the title transfer. These same individuals are no longer required to state the source of their funds as they were in the past, and are entitled to the same mortgage terms that Taiwanese nationals can secure.

Overseas investors acquiring or leasing land for a particular purpose are required to obtain approval from the relevant government authority.

Overseas investors who have established a company in Taiwan are permitted to buy or lease property for their operations provided they have obtained overseas investment approval status.

**Restrictions on overseas ownership**

Overseas entities are prohibited from owning the following: military areas, cultural assets, forestry land, fisheries, hunting grounds, salt fields and ecologically protected areas.

## Measurement of areas

The standard unit of measure is the 'ping' (1 ping = 3.305 sq m = 35.58 sq ft). This was adopted from Japanese tatami mats and is the same size as the Japanese 'tsubo' and Korean 'pyung'. As a rule of thumb, 1 ping has the same dimensions as a king-size bed.

There are two measurements for area that are commonly used in legal agreements:

- GFA: all covered areas contained within the external walls including common areas such as amenities, balconies and parking. In practice, GFA is used to calculate the property's rent and sales price, although parking and retail space will often be excluded.

- net floor area: the useable area exclusively occupied by the tenant, or the GFA less common areas (including lifts), balconies and walls. In Taiwan, the average efficiency ratio for Grade A office buildings is between 60% and 70% of the GFA.

TABLE 63
## Lease terms

| | |
|---|---|
| **Lease period** | Typically from 3 to 5 years, although longer leases can be negotiated particularly for retail or industrial space. |
| **Rent reviews** | Generally uncommon for commercial properties, often as a reflection of a slower moving market. |
| **Sub-letting/ assignment** | Subject to specific terms in the contract and signed by all affected parties. |
| **Termination** | Usually specified within lease agreements and require notification in advance. The security deposit will be forfeited if the tenant chooses to terminate the contract early. |
| **Rental deposit** | The commercial leasing deposit is 2 to 3 months' rent regardless of lease duration. |
| **Dilapidations** | Tenants are expected to cover the costs of returning the building to its original handover condition. |

Source: Savills Research & Consultancy

TABLE 64
## Capital gain tax

| Transaction | Taxable income | Tax rate (%) |
|---|---|---|
| Taiwanese residents | Taxable Income = selling price-buying price-deductions-assessed land increment value | Holding period:<br>Less than 1 year: 45%<br>1 to 2 years: 35%<br>2 to 10 years: 20%<br>Over 10 years: 15% |
| Non-Taiwanese residents | | Holding period:<br>Less than 1 year: 45%<br>Over 1 year: 35% |
| Taiwanese company | | 17% |
| Overseas company | | Holding period:<br>Less than 1 year: 45%<br>Over 1 year: 35% |

Source: Savills Research & Consultancy

TABLE 65
## Corporate tax

| Taxable income (NT$) | Tax rates (%) |
|---|---|
| 120,000 or less | None |
| Over 120,000 | 17 |

Source: Savills Research & Consultancy

## Transaction costs
### Brokerage/agency fees
Typically, leasing fees are equivalent to one month's rent from the tenant and one month's rent from the landlord.

Agency fees are charged to both the vendor and buyer at the conclusion of a transaction. The buyer is typically charged 1% to 2% of the transaction amount while the vendor is charged 3% to 4% of the transaction amount. Both of these fees may vary if the relevant parties have consented.

### Valuation fees
The valuation fee is approximately 0.05% to 0.2% of the property value.

### Notarisation costs
According to the charging standards for notarisation costs issued by the Judicial Yuan, the notarisation cost varies from 0.5% to 0.01% of the total amount of the contract. It is standard practice in Taiwan for each party to bear their own legal costs.

## Tax legislation
### Land stamp duty
Land stamp duty is charged at 0.1% of the government-assessed land value on the sale or transfer of deeds of property. Building stamp duty is also charged at 0.1% of the government-assessed value of the building. The stamp duty is to be paid by the purchaser.

### Stamp duty tax
The Selective Goods and Services Sales Tax Act came into effect on 1 June 2011. The tax was introduced as a means to curb property speculation in the housing market. The tax is applicable to property owned by an individual or entity which is not for self use and has been subsequently sold within two years of purchase.

Any deed transfer or property disposal that does not fulfill the required two-year holding period is subject to a 15% levy if sold within the first year. The rate drops to 10% for property sold between the first and second year of the owner purchasing it. Furthermore, the tax base is the transacted price, not the government-assessed land value. The tax applies to the disposal of both residential and commercial property, as well as land.

Stamp duty tax will become invalid in 2016, and the new capital gains tax takes effect.

**Deed tax**
Deed tax is charged at 6% of the government-assessed building value and is paid by the purchaser.

**Land value increment tax**
Land value increment tax is applicable to taxable gains based on proceeds from a sale after a number of deductions, including land improvement costs, construction benefit fees, land rezoning fees and land premiums, have been made. The vendor will be charged at a progressive rate of 20%, 30% and 40%.

**Land value tax**
Land value tax will be paid on an annual basis by the owners and is commonly levied at regular progressive rates ranging from 1% to 5.5%. The tax base is the gap between the land value and the starting value evaluated by the government.

**Buildings tax**
The taxpayer is the building owner and buildings tax is levied on the government-assessed value of the building. The tax rates vary by city. In Taipei City, the annual tax rates are 3% for commercial buildings and 1.2% to 3.6% for multiple-residence owners.

**CGT**
Effective from 2016, capital gains generated from property will face an extra tax levy. For individuals it will range between 15% and 45%, depending on the length of the holding period. Furthermore, the tax rate for overseas nationals or overseas companies will be lifted much higher, to between 35% and 45%.

**VAT**
A standard 5% VAT is paid by the tenant. Real estate transactions will be taxed 5% VAT on the building's value, which is paid by the purchaser.

**Corporation tax**
In June 2010, the Income Tax Act was amended to lower the CIT rate from 20% to 17%. Corporate taxes are applicable to any company operating within the borders of Taiwan (ROC) including overseas entities whose head office is situated outside of Taiwan. Corporate taxes will be applied to any income generated in Taiwan at the rates shown in Table 65.

**PIT**
Tax residents are those who have been in Taiwan for a minimum of 183 days in a calendar year. Individuals are taxed on income arising in or derived from Taiwan and the progressive tax scale ranges from 5% to 45%.

Non-residents who stay in Taiwan for less than 183 days in a calendar year are not entitled to any deductions, with income tax being computed on gross income and taxes collected through withholding. The withholding tax rate is generally 20%. Details of PIT are shown in Table 66.

**Withholding tax and tax treaties**
Any enterprise in Taiwan, including subsidiaries and branch or representative offices of an overseas company, must withhold tax on payments, as shown in Table 67.

Taiwan's general tax treaty policy is to avoid double taxation, prevent fiscal evasion and strengthen economic relations. Taiwan's treaties follow the Organisation for Economic Cooperation and Development model treaty and take into consideration matters relating to political and fiscal status, the economy and bilateral trade. As of 30 April 2012, Taiwan had concluded 25 comprehensive income tax treaties and 13 international transportation income tax treaties as follows:

- comprehensive treaties – covering all types of income:

Australia, Austria, Belgium, Canada, Denmark, France, Gambia, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Kiribati, Luxembourg, Macedonia, Malaysia, New Zealand, Netherlands, Paraguay, Poland, Senegal, Singapore, Slovakia, South Africa, Swaziland, Sweden, Switzerland, Thailand, UK and Viet Nam.

- limited treaties – covering only income from shipping or air transport:

Canada, EU, Germany, Japan, Korea, Luxembourg, Macau, Netherlands, Norway, Sweden, Thailand and US.

TABLE 66

## PIT

| Net taxable income (NT$) | Tax rates (%) | Progressive difference (NT$) |
|---|---|---|
| 0–540,000 | 5 | 0 |
| 540,001–1,210,000 | 12 | 37,800 |
| 1,210,001–2,420,000 | 20 | 134,600 |
| 2,420,001–4,530,000 | 30 | 376,600 |
| 4,530,001-10,310,000 | 40 | 829,600 |
| 10,310,000 and above | 45 | 1,345,100 |

Source: Savills Research & Consultancy

TABLE 67

## Payment of withholding tax

| Type of income | Non-resident enterprises* (%) |
|---|---|
| Dividends | 20 |
| Professional fees | 20 |
| Rental income (royalties) | 20 |
| Commissions | 20 |

Source: Savills Research & Consultancy
*A non-resident enterprise is an enterprise that does not have a fixed place of business in Taiwan but has received Taiwan-sourced income.

## Legal issues

**Foreign exchange controls**

None.

## Major property legislation

There are a number of key pieces of legislation pertaining to real estate, which are detailed below:

- Income Tax Act
- Value-added and Non-value-added Business Tax Act
- Land Tax Act
- House Tax Act
- Deed Tax Act
- Company Act
- Urban Planning
- The Land Act
- Building Act
- The Land Registration Regulation
- Real Estate Broking Management Act
- Construction Industry Act
- Statute for Investment by Foreign Nationals

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# Thailand

## Overview

Thailand is Southeast Asia's second largest economy and third most populous state. The country benefits from broadly well-developed infrastructure, a liberal market economy and pro-investment policies.

While the economy has been sluggish over the past four years, the latter half of 2017 witnessed a notable rise in gross domestic product (GDP), with Q3 recording the highest quarterly growth in over a decade. GDP growth is forecast to surpass 4% over 2018, underpinned by rising exports and increasing tourist arrivals.

Thailand has been under military rule since May 2014, however, a new constitution was promulgated on 6 April 2017, paving the way for a return to democracy post the 2018 general election.

Thailand has set out its long-term economic goals in its 20-Year National Strategy (2017-2036), aimed at moving Thailand towards developed country status. Main components focus on enhancing economic stability, human capital, economic opportunities, environmental sustainability and government efficiency. Recent government initiatives further include the funding of significant infrastructure projects and regulatory reforms aimed at improving the ease of undertaking commercial activities. The latter was reflected in Thailand's ease of doing business ranking which, as measured by the World Bank, climbed by 20 places over 2017.

The government has also committed to developing new growth hubs, starting with the Eastern Economic Corridor (EEC), a 13,000 square kilometre (sq km) area spanning Rayong, Chonburi, and Chachoengsao provinces. A series of polices have been outlined by the government to foster the EEC as a key area for trade, investment and transportation, as well as to position it as a strategic gateway to wider Asia.

TABLE 68

### Key statistics

| | |
|---|---|
| **Official name** | Kingdom of Thailand |
| **Currency** | Thai baht (THB1 = 100 satang)<br>US$1 = THB31.30 (1 February 2018) |
| **Population** | 69,037,513 (2017E) |
| **Land area** | 513,120 sq km |
| **GDP per capita** | USD5,907.91 (2016) |
| **GDP growth** | 3.2% (2016)<br>3.5% (2017E) |
| **Principal business centres** | Bangkok |

Source: Savills Research & Consultancy

## Types of ownership

### Land

The majority of land in Thailand is privately owned through freehold tenure. For residential use, the longest lease length is 30 years, with an option to renew for a further 30 years upon expiry.

## Developed property

Strata-title tenure is common for high-rise residential developments, permitting foreign property ownership subject to quota restrictions.

The majority of modern Bangkok office stock (80%+) is centrally owned, with the remainder held through strata-title tenure.

TABLE 69

### Land title types

| | |
|---|---|
| **Nor Sor 4 (NSJ4) or 'Chanote'** | The highest land title used in Thailand, providing full freehold ownership and denoting that the land has been accurately measured and recorded by the land department. |
| **Nor Sor 3 Gor** | Land 'awaiting' a full title deed is granted Nor Sor 3 Gor. The land will have been measured by the land department and can be transferred or mortgaged while conversion to full Chanote is pending. |
| **Nor Sor 3** | A title issued to land that has yet to be measured by the land department and, therefore, will not have exact boundaries registered. The title may be converted into Nor Sor 3 Gor and then into a full Chanote. |
| **Possessory right** | Land with a possessory right has yet to be substantiated by the land department and is only recognised for tax payments at the Local Administrative Office. |

Source: Savills Research & Consultancy

High-grade retail properties are typically centrally owned.

## Overseas property restrictions

Foreign individuals and corporations are not permitted to hold freehold land titles, although freehold land interests can be acquired through the following methods:

- A joint venture structure where the foreign party controls not more than 49% of total shares
- The Board of Investment (BOI) may grant the right to own land for manufacturing purposes
- The purchase of land located within industrial estates for manufacturing or logistics purposes

Foreign individuals and corporations are able to own condominiums provided that a minimum of 51% of the total floor area of a condominium project is owned by Thai nationals.

## Measurement of areas

Land area is generally expressed in terms of 'Wah', 'Ngan' or 'Rai'. Details are shown in Table 70.

## Commercial property

All areas are quoted in square metres (sq m). There are various area measurements that are often quoted in agreements, including:

- gross area: the total floor area from the outside of the exterior walls including the columns, stairwells, lift lobby, service areas, common areas and toilets.
- leasable area: the total floor area floor measured from the inside face of external walls including lift lobbies, toilets and structural columns.
- net leasable area: the area used exclusively by the tenant measured from the inside face of the external walls excluding columns, toilets, common areas and service areas.

## Lease terms

The lease terms typical to commercial property in Thailand are detailed in Table 71. However, there are a number of terms/practices that are also worth highlighting, as outlined below:

- Lease periods: while it is possible to have a lease period for longer than three years, the lease would then need to be registered and the payment of a registration fee and stamp duty equivalent to 1.1% of the rent payable over the lease term would be due.
- Rent-free period: usually provided simply as an allowance to cover the period required for fitting-out. Also used as an incentive to bring down the effective rent.
- Rent: prices are quoted as gross figures, per square metre per month. The gross rent is made up of the net rent plus an allowance for service charges and taxes.
- Termination: not an accepted market practice but may be agreed provided a tenant secures an alternative tenant, agreeable to the landlord, and that the existing tenant covers any agency fees.

## Transaction costs

Details are shown in Table 72.

TABLE 70
### Thai to metric conversion

| | |
|---|---|
| 1 Square Wah | 4 square metres |
| 1 Ngan | 400 square metres |
| 1 Rai | 1,600 square metres |

Source: Savills Research & Consultancy

TABLE 71
### Typical commercial lease terms

| | |
|---|---|
| Lease period | A typical tenancy is 3 years with options for further periods of up to 3 years |
| Deposit | 3 months' gross rental (non-interest bearing) refundable upon expiry of the lease |
| Rent free/fit-out period | Typically 1 month although this may increase for larger floor areas |
| Rent reviews | Typically no rise within three year lease term |
| Repairs | The exterior and common areas of the building are the landlord's responsibility |
| Security of tenure | Security of tenure is not guaranteed beyond the tenancy/lease term. An option for a further term should be agreed in the first term |
| Dilapidation | Tenants are required to reinstate a property to its original handover condition at the expiry of the term |

Source: Savills Research & Consultancy

TABLE 72
### Typical transaction fees

| Period | Scale of fees |
|---|---|
| Leasing fee | 1 months' gross rent payable by lessor |
| Leasing fee (exceeding 3 years) | 1.5 months' gross rent payable by lessor |
| Lease renewals | 50% of the fees chargeable above |
| Sales fee (individual units) | 3% of transacted price payable by seller |
| Sale of land or buildings | 2% of transacted price payable by seller |

Source: Savills Research & Consultancy

## Taxation

### Household tax

Household tax is imposed on owners of a house, building or land which is rented out. The tax rate is 12.5% based on the annual passing rent or assessed market rent, whichever is higher.

Commercial buildings are subject to Household tax at the same rate.

### Local development tax

Local development tax is calculated based on the value of the land, excluding improvements, ranging from 0.25% to 0.95%, due annually. Owner occupied land is typically exempt from local development tax.

## Taxation on transfer

### Transfer fee

Ownership transfer fee is levied at 2% of the property value as assessed by the government and is typically divided equally between the seller and the buyer.

### Specific business tax

Specific business tax will be imposed only in the transaction of properties listed below:

- Property for which the land allocation is permitted
- Condominiums
- Property developed for sale
- Property used for corporate purposes
- Property re-sold within five years of its purchase

The specific business tax rate for real estate is 3.3% of the government's assessed value or transaction price (whichever is higher).

### Stamp duty

Stamp duty is assessed based on the official appraised value or the contracted sale price, whichever is higher.

If the property has been owned for more than five years then stamp duty is levied at 0.5% of the property value assessed by the government or based on the contracted price, whichever is greater. Stamp duty is the seller's liability. Where leasehold land is being transferred stamp duty is payable on the remaining value of the lease.

### Withholding Tax

Withholding Tax (WHT) is remitted by the buyer (on behalf of the seller) from the proceeds of sale. Where the seller is a company, WHT is calculated at 1% of the contracted sale price. The WHT can be used as a credit against final income tax payable upon lodgement of an annual tax return. For individual sellers, WHT is calculated based on the individual's marginal tax rate ranging from 0-37% (except the first THB100,000 which is taxed at 5% instead of allowing the tax-free threshold) after deductions based on the number of years of ownership.

### Capital Gains Tax

Capital gains for corporations are treated as business income and taxed at the corporate tax rate (20% as of December 2017). The calculation of tax for sales by individuals is based on total proceeds subject to certain allowances.

TABLE 73

### Sales/transfer taxes on land and property

| Charge | Freehold sale | Leasehold transfer | Building sale | Tax liability |
|---|---|---|---|---|
| Transfer Fee | 2% | N/A | 2% | Seller/Buyer |
| Lease Registration Fee | N/A | 1% | N/A | Lessor/Lessee |
| Specific Business Tax | 3.3% or N/A | N/A | 3.3% or N/A | Seller |
| Stamp Duty | 0.5% or N/A | 0.1% | 0.5% or N/A | Seller |
| Withholding Tax | 1% or 5-37% | N/A | 1% or 5-37% | Seller |

All of the taxes outlined in Table 73 are payable to the Land Department.
Stamp duty is only applicable in cases where specific business tax is not applied.
Source: Savills Research & Consultancy

TABLE 74

### Leasehold transaction taxes

| Charge | Scale of fees |
|---|---|
| Lease Registration Fee | 1% of the total rent receipts throughout the lease period |
| Stamp Duty | 0.1% of the total rent receipts for the entire lease period |
| Municipal Tax | Typically 0.1% of the lease registration fee (subject to the municipality) |

Source: Savills Research & Consultancy

## Legal issues

### Foreign exchange controls

Foreign currency can be transferred or brought into Thailand without limitation. All foreign exchange transactions are required to be conducted through commercial banks or through authorised money changers or money transfer agents, unless permission is granted by the Bank of Thailand.

Inward remittance of foreign currencies for direct investment in Thailand is permitted and must be deposited in an authorised bank within 360 days.

Repatriation of investment funds is permitted provided that supporting evidence is submitted to an authorised bank.

### Town planning

Town planning policy across Thailand fall under the authority of the National Economic and Social Development Board (NESDB) and the Department of Public Works and Town & Country Planning, Ministry of Interior (DPT), with certain competencies devolved to local administrations.

## Major property legislation

There are a number of key pieces of legislation pertaining to real estate as detailed below:

- Bankruptcy Act
- Civil and Commercial Code
- Commercial and Industrial Property Lease Act
- Condominium Act
- Exchange Control Act
- Foreign Business Act
- General Building Construction Code
- General Building Control Act
- House and Land Tax Act
- Investment Promotion Act
- Industrial Estate Authority of Thailand Act
- Land Code
- Land Readjustment Act
- Local Development Tax Act
- Revenue Code

# Savills Thailand

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# Viet Nam

## Overview

Viet Nam is now one of the leading emerging markets in Southeast Asia. From 2014 to 2016, strong GDP growth of 5.98%, 6.68% and 6.21% saw the economy recover with the implementation of effective monetary policies and strong performance from the tourism, manufacturing and construction sectors. In 2017, GDP growth of 6.81% year-on-year (YoY) was even higher than the target of 6.7%. With over 95 million people, Viet Nam is the 14th most populous country in the world and nearly 70%, of the population, are of working age.

Viet Nam participates in the ASEAN Economic Community and has Free Trade Agreements (FTA) with the EU, Russia, Korea, Chile and the upcoming Regional Comprehensive Economic Partnership (RCEP). 2017 saw the successful Asia-Pacific Economic Cooperation (APEC) Economic Leaders' Meeting hosted in Da Nang.

TABLE 75

### Key statistics

| | |
|---|---|
| **Official name** | The Socialist Republic of Viet Nam |
| **Currency** | Vietnamese dong,<br>US$1 = VND22,463 (28 February 2018)* |
| **Population** | 95.97 million (December 2017) |
| **Land area** | 331,231 sq km (2016)** |
| **GDP per capita** | US$2,306 (2017)*** |
| **Real GDP growth** | 6.81% (2017E)** |
| **Principal business areas** | Ha Noi, Ho Chi Minh City |

* Based on the average inter-bank exchange rate published September 2017 by The State Bank of Vietnam.
** Source: General Statistics Office of Viet Nam
*** Source: IMF

## Types of property ownership

The Land Law was updated in 2013 and has been effective since 1 July 2014. Organisations and individuals may acquire land-use rights (LURs) via land lease or allocations requiring a land-use fee (LUF). Land allocation is also referred to as a land grant. The differences between lease and allocation under LUFs are:

1) For land allocation, the land user pays a one-off fee. For a land lease, the user may either pay the land rental on an annual basis or by a one-off sum covering the entire lease term.

2) A land allocation term of agreement may be for a definite or indefinite timeframe, whereas a land lease is a fixed term. A land-use plan is annually approved by local authorities and allows users to know which LURs are possible.

According to the revised law, foreign enterprises are now eligible to allocate land requiring LUFs for the development of residential projects for sale, or for sale & lease. This is to promote greater fairness between local and foreign investors. Foreign investors involved in residential projects for lease may also acquire LURs via land lease, under which they pay the land rental annually or by lump-sum. The land lease term and land allocation for foreign enterprises may not exceed 50 years, although for certain major projects under more unique circumstances, it is possible to increase the term to 70 years. However, eligible buyers will require obtaining freehold LURs. For those sites used for diplomatic purposes, lease terms may be up to 99 years and extendable.

The new law also states foreign entities eligible for land allocation and land lease with a one-off lease payment are entitled to transfer, sub-lease, gift, mortgage and, contribute LURs within the term.

## Overseas ownership restrictions

The amended Housing Law granting greater property rights to overseas nationals has been effective since 1 July 2015, with an implementation guide recently issued under Decree No. 99/2015/ND-CP. There are two groups of overseas nationals allowed to own properties: legal entities, such as foreign investment funds and banks, Vietnamese branches and representative offices of overseas companies established in Viet Nam; and overseas nationals with an appropriate entry visa.

The Ministry of Construction issued Circular No.19/2016/TT-BXD to guide implementation of the Housing Law, and Decree No. 99/2015/ND-CP stipulating the number of units that foreigners may own.

The aim is to tighten resale procedures and increase transparency as well as streamline administrative procedures.

The new law limits overseas ownership to 30% of all units within an apartment complex, and to a maximum 250 houses in a Ward. Overseas nationals are allowed to own properties as stated in commercial contracts, but are limited to a 50-year tenure, with optional renewal three months before expiry. An overseas national married to a Vietnamese citizen or a Vietnamese expat is entitled to freehold tenure.

The decree also allows foreigners to pay for property via a financial organisation operating in Viet Nam. The retail banking sector is highly competitive and this will help promote property mortgage access for overseas nationals.

## Measurement of areas

All are quoted in sq m. There is often a variety of area measurements quoted in agreements:

- Net floor area (NFA): usable area within a building from the internal face of perimeter walls on each level, excluding columns.

- Gross floor area (GFA): all areas as measured from the outside of external walls.

To better protect apartment buyer rights, The Ministry of Construction issued a new regulation on apartment unit areas, which came into effect 8 April 2014. The area of an apartment is the net area applied in S&P contracts and titles issued to buyers. This area is used to calculate the management fee chargeable to apartment owners. The net area is the usable area including the separated walls within the unit, attached balcony and loggia, but excluding external walls, interior columns and technical box.

## Transaction costs

**Agency fees**

Leasing fees are equivalent to one month rent and are paid by the property owner. Purchase fees are usually 2% of the agreed price and paid by the seller.

**Security deposit**

This is commonly a non-interest bearing, returnable deposit of three months gross rent that includes service charge and rates.

**Legal costs**

Legal costs vary on a case-by-case basis. Most are negotiable.

## Tax legislation

**Stamp duty**

Levied at 0.5% of the total land value and paid by the purchaser.

**Property tax**

From 1 January 2015, sellers will pay 2% tax against the selling price upon transference.

**VAT**

Since the implementation of the amended VAT Law in 2014, a 5% rate has been applied to just a few groups of goods and services, while the standard 10% rate applies across almost all categories including real estate. A proposal by the Ministry of Finance to increase the general rate to 12% by 2019 is currently being considered.

**Tax depreciation**

The straight-line method is used for buildings.

**Corporation tax**

From 1 January 2014, the Corporate Income Tax (CIT) rate was 22%, except for those eligible for preferential rates. From 1 January 2016, almost all enterprises will be charged 20% CIT. Enterprises engaged in leasing and purchasing social housing will have a 10% rate.

**PIT**

Resolution No. 26/2012/QH13 on the Law on Personal Income Tax (LPIT), issued 22 November 2012 and effective 1 July 2013. Progressive tax tariffs on each portion of income applied to business and salaries are shown in Table 77. This applies to residential individuals with a taxable income from a business and/or from salary after deductions for dependents, insurance premiums and contributions to charitable funds.

Family exemption is deducted from taxable income before income tax is levied on business activities, salaries and wages. Family exemptions include the following:

- US$432 per month (US$5,185 per year);

- A deduction for each dependent of US$173 per month. If CPI was over 20% when the law came into effect, or there is a recent adjustment to family exemption, the government will request the National Assembly Standing Committee to adjust the exemption based on price volatility. This exemption will then be carried forward to the next tax period.

With regard to assessing tax on other items of income, rates are shown in Table 78.

**Withholding tax and tax treaties**

Viet Nam has tax treaties with more than 50 nations and territories, which include:

Australia, Austria, Bangladesh, Belarus, Belgium, Brunei, Bulgaria, Canada, China, Cuba, Czech Republic, Denmark, Finland, France,

TABLE 76

### Lease terms

| | |
|---|---|
| **Lease period** | Typically a 3-year fixed term. Longer leases are possible. |
| **Rent reviews** | Rent reviews are typically conducted based on the inflation ratio and market rents applied at the time. |
| **Sub-letting/assignment** | Not an accepted market practice. Possible to assign to subsidiaries or branches. |
| **Termination** | No early termination is the norm. In special cases, 4 to 6 months' written notice in advance is required. |
| **Deposit** | 3 months. |
| **Payments** | Quarterly in advance. Payments made longer in advance may reduce rental rates. |
| **Rent-free period** | During fit-out. This is usually within a month to 45 days. |
| **Repairs** | The landlord is responsible for the building exterior and common areas. Tenants are expected to be responsible for internal repairs. |
| **Security of tenure** | Option for a further term is best agreed in the first term contract. |
| **Dilapidations** | Tenants are normally expected to reinstate a property to its original condition at term expiry. |

Source: Savills Research & Consultancy

Germany, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Republic of Korea, Democratic People's Republic of Korea, Laos, Luxembourg, Malaysia, Mongolia, Morocco, Myanmar, Netherlands, New Zealand, Norway, Oman, Pakistan, Philippines, Poland, Qatar, Romania, Russia, Saudi Arabia, Serbia, Seychelles, Singapore, Slovakia, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Tunisia, UAE, UK, Ukraine, Uzbekistan and Venezuela.

## Legal issues

**Foreign currency control**
Decree No. 70/2014/ND-CP allows foreign investors to use the Vietnamese Dong (VND) to buy foreign currencies from authorised banks and transfer them abroad within 30 days of the exchange date. Any transfer must first be requested and subsequently approved.

**Land price framework**
According to the Revised Land Law of 2013, a local People's Committee will no longer establish a yearly land prices framework. Instead, the government regulates the general land prices framework on a five-year basis. The local People's Committee will consider decisions on a yearly framework and case-by-case. Authorities may refer to land prices surveyed by different valuation institutions for decisions, and to compensate values not based on government frameworks. This policy will support investors hiring valuation consultants during their project selection stage.

**Land-use taxation**
Under the Law on Land Use Taxation as of 17 June 2010, the following kinds of LURs are subject to tax: 1) urban and rural residential land; 2) land used for non-agricultural production, such as industrial parks, production facilities and mines; 3) other non-agricultural land uses for business or religious purposes, including cemeteries.

The law specifies tax calculation methods and provides progressive tax rates from a minimum 0.03% up to a maximum 0.15%.

**Apartment-as-offices banned**
The use of apartments for office or trading space is now forbidden under Article 6, Clause 11 of the Residential Housing Law 2014. This activity is considered to cause disruption to other residents and diminish the safety of the building.

**Land plots sales without raw buildings**
Decree No. 11/2013/ND-CP allows investors to sell land plots without any raw buildings. Investors must fulfil all necessary infrastructure requirements before handing over the title to buyers. This regulation will only be applied to projects in specified areas.

**Development projects payment restriction**
The implementation of the Revised Housing Law has been effective since 1 July 2015. Residential developers may only accept payment upon completion of a project foundation. The first payment cannot exceed 30% of the unit value and the sum of all payments is not to exceed 70% before handover. The threshold is limited to 50% for overseas developers.

**Trading floor**
The revised Law on Real Estate Business (LREB) was passed 25 November 2014, and came into effect 1 July 2015. The new law does not require individuals and enterprises to lease, sell or purchase properties through a real estate trading floor. Any enterprise engaging in real estate trading floor activities must have at least two certified real estate brokers as employees.

**Contract templates**
Decree No. 76/2015/ND-CP regulating implementation of the LREB was issued 10 September 2015 and became effective 1 November 2015. It provides contract templates for certain real estate transactions, such as sale and purchase agreements, pre-sales contracts and hire-purchase contracts.

**Foreign ownership**
Following Decree 12/2015/ND-CP adopted July 2017 on the sublease, mortgage, trade and inheritance of ➔

TABLE 77
### PIT

| Tax bracket | Portion of annual assessable income (VND million) | Portion of monthly assessable income (VND million) | Tax rate (%) |
|---|---|---|---|
| 1 | Up to 60 (US$2,881) | Up to 5 (US$240) | 5 |
| 2 | Over 60–120 (US$2,881–US$5,761) | Over 5–10 (US$240–US$480) | 10 |
| 3 | Over 120–216 (US$5,761–US$10,371) | Over 10–18 (US$480–US$864) | 15 |
| 4 | Over 216–384 (US$10,371–US$18,437) | Over 18–32 (US$864–US$1,536) | 20 |
| 5 | Over 384–624 (US$18,437–US$29,960) | Over 32–52 (US$1,536–US$2,497) | 25 |
| 6 | Over 624–960 (US$29,960–US$46,092) | Over 52–80 (US$2,497–US$3,841) | 30 |
| 7 | Over 960 (US$46,092) | Over 80 (US$3,841) | 35 |

Source: Savills Research & Consultancy

TABLE 78
### Other income taxes

| Taxable income | Tax rate (%) |
|---|---|
| Capital investments (including interest from loan and dividend) | 5 |
| Royalties and income from franchises | 5 |
| Winnings or prizes valued more than VND10 million for each reward | 10 |
| Inheritances and/or gifts valued more than VND10 million each | 10 |
| Capital transfers pursuant to Clause 1 Article 13 of LPIT | 20 |
| Transfers of securities regulated in Clause 2 Article 14 of LPIT | 0.1 |
| Property transfers regulated in Clause 2 Article 14 of LPIT | 2 |

Source: Savills Research & Consultancy

a 50 year leasehold title. Foreigners will now have the same rights as Vietnamese. Decree 99/2015/ND-CP provides the required documents foreigners will require to prove house ownership eligibility.

## Major property legislation

Legislation affecting real estate is detailed below:

- Revised Law on Real Estate Business 2014
- Revised Law on Residential Housing 2014
- Revised Land Law 2013
- Revised VAT Law 2013
- Decree 11/2013/ND-CP
- Decree 70/2014/ND-CP
- Decree 76/2015/ND-CP
- Decree 12/2015/ND-CP
- Decree 99/2015/ND-CP
- Circular No. 19/2016/TT-BXD
- Circular No. 06/2016/TT-NHNN

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# UK

## Overview

The UK is the fifth largest national economy in the world measured by GDP as at year end 2016 (source: World Bank). The service sector dominates the UK economy, contributing 80.2% of GDP (2016), with the financial services industry being particularly important, along with the UK aerospace, pharmaceutical and automotive industries. The capital of the UK is London, which is the world's largest financial centre, generates approximately 22% of the UK's GDP, despite accounting for only 12.5% of the population.

## Types of property ownership

The two most common ownership types in land are:

- Freehold, where land is held in perpetuity; and
- Leasehold, where land is held for a specific duration.

There are also a number of legal interests in land, including:

- Easements, such as a right of way; and
- Mortgages.

## Measurement of areas

There are two main quoted bases of measurement:

- Gross internal area (GIA), which is typically used for residential properties, industrial warehousing and retail warehousing.
- Net internal area (NIA), which is typically used for office and retail space.

Eventually, these will be replaced by the International Property Measurement Standards (IPMS), which are being drafted and rolled out by the RICS. The aim of these is to ensure a consistent standard of measurement across the world.

In the UK, it is market practice to have a measured survey carried out during the purchase or sale of a building.

TABLE 79

### Key statistics

| | |
|---|---|
| **Official name** | United Kingdom |
| **Currency** | British pound sterling (100 pence)<br>US$1 = GBP0.72 (February 2018) |
| **Population** | 65.64 million (2016) |
| **Land area** | 243,610 sq km |
| **GDP per capita** | USD39,899.39 (2016) |
| **GDP growth** | 1.8% per annum (2016) |
| **Principal business centres** | London, Manchester, Birmingham, Leeds, Glasgow, Edinburgh, Bristol |

Source: Savills Research & Consultancy

## Transaction costs

In a real estate transaction, typically both the buyer and seller will have an adviser, and advisory fees are paid to both. This fee is typically 1% of the purchase or sale price, although this may vary depending on the exact nature and size of the property.

For an acquisition of a commercial property, market practice is to typically allow for the following purchaser's costs, as set out in Table 80.

Stamp duty is a tax charged on the transfer of property. This is a progressive tax with the bandings for commercial property being:

- Under £150,000 – 0%
- £150,001 - £250,000 – 2%
- £250,000 and above – 5%

Many UK assets are held in special purpose vehicles and often offshore

TABLE 80

### Commercial transaction costs

| Item | Comment | % of purchase price |
|---|---|---|
| Stamp duty land tax (SDLT) | Up to 5% (see content) | 5.0 |
| Advisory fees | - | 1.0 |
| Legal fees | - | 0.5 |
| VAT on advisory and legal fees | VAT @ 20% | 0.3 |
| **Total acquisition fees** | | **6.8** |

Source: Savills Research & Consultancy

(the Channel Islands – Guernsey or Jersey).

Such a structure could potentially lower the stamp duty liability to 0.5% or 0%. We recommend that investors seek legal advice with regards to setting up the most tax efficient investment structure.

For residential property, stamp duty tax is charged at different levels in the same way as commercial property up to a maximum of 12%, with the bandings being as follow:

- Up to £125,000 – 0%
- £125,001 - £250,000 – 2%
- £250,001 - £925,000 – 5%
- £925,000 - £1,500,000 – 10%
- Above £1,500,000 – 12%

There is an additional 3% levy on residential property if the property is a purchaser's second residence. In the November 2017 budget, new rules were announced regarding the purchase of a first home if the purchase price is £500,000 or less. The first time purchaser can claim a discount (relief), allowing them to pay 0% on the first £300,000 and 5% on the portion from £300,001 to £500,000.

SDLT is also payable by the lessee on the grant of a lease. The charge is calculated in two parts. The premium is taxed at the rates set out above for freeholds and assignments of leases. In addition, there is a charge on the net present value of the rent payable.

There are a number of types of transactions that are exempt from SDLT, including:

- Transfers of land within groups of companies.
- The leaseback element of a sale and leaseback.

All available reliefs are subject to detailed conditions, and certain reliefs can be subject to claw back provisions.

TABLE 81
## Planning use classes

| Use | Property type |
|---|---|
| A1 | Shops |
| A2 | Financial services |
| A3 | Restaurants and cafes |
| A4 | Drinking establishments |
| A5 | Takeaways |
| B1 | Business |
| B2 | General industrial |
| B8 | Storage and distribution |
| C1 | Hotels |
| C2 | Residential institutions |
| C2A | Secure residential institution |
| C3 | Residential dwellings |
| C4 | Houses In multiple occupation |
| D1 | Non-residential institutions |
| D2 | Assembly and leisure |
| Sui Generis | Other |

Source: Savills Research & Consultancy

## Types of land use
In the UK there is a system of planning use classes (Table 81).

## Tax legislation
Business rates are a tax charged on occupation of a property by a business occupier and the cost will be placed on the tenant under standard lease terms. Importantly, business rates become the owner's liability when the premises are vacant.

The payment of income from the UK to an overseas investor is subject to withholding tax which is currently charged at 20%. There are a number of ways an investor can structure his investment to reduce the withholding tax liability. There are certain depreciating elements of the investments, such as plant and machinery, which can be offset against the annual tax liability. These are known as capital allowances. An investor's tax and legal adviser will be able to advise on other ways to mitigate tax liability on income.

The issues which will commonly need to be addressed are the following:

- If the activity is investment (buy or develop and hold long term), an offshore holding structure is suitable as any gain on sale is outside the UK tax net. Rental income from the investment is subject to VAT, currently at 20%, although the effective rate of tax can be reduced through the use of shareholder debt (see below).
- If the activity is a trading activity (buy or develop and sell), a UK vehicle may be suitable (offshore structures for trading activity in UK land, with a view to eliminating UK tax, may be possible but are far more aggressive) as sale profits are taxable in the UK.
- Where the acquisition is leveraged by shareholder/related-party debt, maximising the amount of tax deductible debt (subject to the amount of that debt and its coupon being similar to that available in the market) and locating the asset-owning vehicle in a suitable jurisdiction for repatriation of interest without UK withholding tax (which would otherwise be levied at 20%).
- Acquiring UK property in a vehicle which permits an onward sale without UK real estate transfer tax.
- Planning for distribution of profits or repatriation of rent in the form of dividends or interest without withholding tax.

### CGT
Capital Gains made by an investor are taxed in the UK depending on the nature of the asset and the status of the individual. UK resident individuals are usually entitled to an annual tax-free allowance before being subject to CGT. For the tax year 2018/2019, this is set at GBP11,700, after which gains are taxed at rates between 10% and 28% depending upon the individual's total taxable income and the nature of the asset.

CGT is payable on gains made on residential property. However, there is a relief from CGT on the disposal of an individual's main residence where it was not acquired for the purpose of realising a gain or where it is under 53,820 sq ft / 5,000 sq m. Where a residential property is owned by a company, it will be subject to an additional charge.

Gains on sales of commercial properties are also subject to CGT as above, though are not subject to the additional charge payable by companies. Gains realised by companies resident in the UK for corporation tax purposes form part of their profits chargeable to corporation tax, which are currently taxed at the rate of 20%.

Tax on capital gains for overseas investors came into force in April 2015 for residential properties and will assume the same rate that is imposed on UK companies. At this moment in time, Non-UK residents do not pay capital gains tax on the sale of commercial properties held as an investment, however the Government have recently announced that they are reviewing this and the changes will come into force from April 2019 onwards. Upon changes being announced, we strongly recommend seeking advice from the relevant professionals.

**VAT**

Where VAT is due on the sale of real estate, the seller is liable to account for the VAT to HM Revenue & Customs (HMRC) with the seller seeking to pass that cost to the buyer under the sale contract. VAT will usually apply at 20%.

The sale of a non-residential freehold or leasehold interest in UK land does not generally attract VAT unless the seller has "opted to tax". Where a property has been opted for VAT and is income producing, or is intended to be so, then the asset can be treated as an acquisition of a property rental business and termed a 'transfer of a going concern', in which case VAT is not chargeable.

If the landlord exercises the option to tax, VAT is charged on the rent at the standard rate, which is currently 20%. The main advantage for a landlord in opting to tax is that they can recover any input tax which has been incurred relating to the property (such as VAT on repair works, property letting fees, legal fees and management expenses).

A tenant who makes exempt supplies, for example, banks or other financial institutions, will suffer irrecoverable VAT on their rent where the landlord has opted to tax.

**Tax Depreciation**

Any depreciation charge which is made in the accounts for property is not permitted for the purposes of calculating taxable profits. Instead, capital allowances may be available which reflect a percentage of depreciation on certain qualifying expenditure and form a deduction from taxable profits.

In the context of a property investment business, capital allowances may be available for qualifying expenditure on plant and machinery. Plant and machinery is a term widely defined which requires that for allowances to be available, the plant and machinery must not form part of the property itself and must perform a function in the business. Allowances should be available where the capital expenditure is incurred for the purposes of a qualifying activity, the definition of which includes carrying on a property business. Where available, capital allowances for plant and machinery apply rates of 18% per annum for items of plant and machinery, and 8% per annum for items which are stipulated to be integral features.

**Corporate taxation**

Corporate tax is chargeable on the profits of a property business of a UK resident company, and this includes where the business generates income from property in the UK and from outside the UK. A property investment company that buys properties for the purpose of generating a rental yield will be taxed on this income, and as set out above, will also pay corporation tax where it makes a gain from the sale of one of its properties as a capital asset.

While a UK resident company will be charged corporation tax on income from both its UK property business and any overseas property business, companies resident outside the →

TABLE 82

## Common lease terms

| | |
|---|---|
| **Repairing liabilities** | Where a commercial property is let to a single tenant, leases are usually drafted on a full repairing and insuring basis (FRI). This puts the main responsibility for maintenance of the property on to the tenant.<br><br>Alternatively, leases can be drafted on an internal repairing and insuring basis (IRI). This typically means that landlords will administer the repair and maintenance of the property and recover the cost from the tenants. This is usually the case when a property is let to multiple tenants. |
| **Lease period** | Average lease lengths in London are around 8 years for offices and around 5 years for retail. The Landlord and Tenant Act 1954 states that if a tenant occupies premises to run a business, the tenancy will not automatically come to an end upon expiry of the lease.<br><br>Unless otherwise specified in the contract, the tenant has a right to remain on the premises and to be granted a new lease of up to a maximum of 15 years.<br><br>If the landlord terminates the lease, in many cases the tenant is entitled to compensation, unless there has been a breach of the lease. |
| **Rent reviews** | Leases are normally subject to upward-only rent reviews every 5 years, at which point rents are adjusted to open market rents.<br><br>Index-linked rents and fixed rent increases are becoming more frequent in certain segments of the real estate market. |
| **Alienation** | There are two main types of alienation – sub lettings and assignments. Sub lettings create an interest in the property below the original tenant's lease. Assignments allow a tenant to replace themselves completely with another tenant.<br><br>Tenants will usually be able to assign or sub let their lease subject to the landlord's consent, which is not to be unreasonably withheld. The normal caveat to this is that the incoming tenant should have a financial strength at least as good as the existing tenant. The rent payable by assigned tenants will typically be guaranteed by the assignor. |
| **Termination** | Leases are typically subject to a mutual break clause in the 5th year of the term, subject to 6 months' notice. |
| **Dilapidations** | When a lease expires the tenant is typically obliged to reinstate the premises to the condition it was in when the lease commenced. |

Source: Savills Research & Consultancy

UK generating income from a UK property business are charged income tax at the rate of 19%. This will further reduce to 17% as of April 2020. Tenants and agents making payments to non-resident landlords are required to withhold from rental payments and account to HMRC for the withheld tax amount. Non-resident landlords can apply to HMRC for clearance under the non-resident landlord scheme to receive rental payments gross.

Property rental income is exempted from the revised Controlled Foreign Company (CFC) regime introduced by the Finance Act 2012. The CFC regime taxes the undistributed profits of overseas companies which are subject to a lower level of taxation and which are controlled by UK persons.

**Personal taxation**
Tax rates are based upon the amount of income earned by an individual. For the tax year 2018-2019, the bands are as follow:

- Up to £11,850 – 0%
- £11,851 - £46,350 – 20%
- £46,351 - £150,000 – 40%
- Above £150,000 – 45%

NB the personal allowance will reduce by £1 for every £2 earnt over £100,000. Therefore, once earnings reach £123,700, tax will be paid on all earnings and there will be no personal tax-free allowance.

We always advise individuals and corporations take specialist advice on their tax liabilities.

## Key legal legislation

- Estate Agents Act 1979
- Arbitration act 1996
- Health & Safety Act 1974
- Town and Country Planning Act 1990
- Party Wall Act 1996
- Landlord & Tenant Act 1927
- Landlord & Tenant Act 1988
- Landlord & Tenant Act 1954
- Landlord & Tenant Act 1995
- Law of Property Act 1925
- Civil Procedure Rules 1998
- Consumer and Business Protection Regulations
- Land Registration Act 2002
- Money Laundering Regulations 2007
- Data Protection Act 1998

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# US

## Overview

The US is a developed country and has the world's largest national economy, with an estimated GDP of US$19,386 trillion in 2017, which contributed to 25% of global nominal GDP. The economy is fueled by an abundance of natural resources, various diversified industry and the world's highest worker productivity, with the seventh highest GDP per capita in the world in 2017. While the US economy is considered post-industrial, it continues to be one of the world's largest manufacturers.

The country accounts for 36% of global military spending, being the world's foremost economic and military power, a prominent political and cultural force, and a leader in scientific research and technological innovation.

## Types of property ownership

There are three types of property ownership in the US:

■ freehold estate ownership: includes fee simple (the most common), life estate (an estate limited to the duration of a person's life) and tail estate (estate of inheritance). Fee simple is the most common and complete form of property ownership and has an unlimited duration.

■ leasehold estate ownership: the temporary right to occupy or use the land for a fixed period of time, which may be measured in decades or centuries.

■ non-possessory interest (i.e. an easement or restrictive covenants) is the right to use or restrict the use or another person's land.

## Overseas ownership restrictions

There are no restrictions on non-residents owning property in the US.

TABLE 83

## Key statistics

| | |
|---|---|
| **Official name** | United States of America |
| **Capital** | Washington DC |
| **Currency** | US dollar |
| **Population** | 324 million (2017 est) |
| **Land area** | 9.8 million sq km |
| **GDP per capita** | US$59,482 (2017) |
| **GDP growth** | 2.3% (2017) |
| **Principal business centres** | New York City, Los Angeles, Chicago, Washington DC, Atlanta, Houston, Dallas, Seattle, Boston, San Francisco |

Source: US Census, World Bank, Bureau of Economic Analysis

## Measurement of areas

The generally accepted standard for measuring office space in most cities is per the Building Owners and Managers Association International's Standard Method for Measuring Area in Office Buildings. It is accepted and approved by the American National Standards Institute.

■ rentable sq ft: in the lease, the landlord quotes the tenant's space on a rentable sq ft basis which equals the useable sq ft plus the tenant's pro-rata share of the building's common areas, such as lobbies, public corridors and washrooms.

■ useable sq ft: the area contained within the walls of the tenant's space.

In New York City, Connecticut and New Jersey, the Real Estate Board of New York measurement standard is used.

■ net useable sq ft: the actual space within the walls of the premises. Vertical penetrations, such as lift shafts, are deducted from useable area but common areas and mechanical rooms are included, and there are no deductions made for necessary columns and projections of the building.

■ loss factor: the percentage difference between the useable area and the rentable area.

Loss factor = (Rentable Area – Useable Area) ÷ Rentable Area

■ add-on/load area: the tenant's proportionate share of common areas. It is a percentage that describes the difference between the rentable and useable sq ft for the building.

Add-on or Load Factor = (Loss Factor × Rentable Area) ÷ Useable Area

Typical lease terms are laid out in Table 84.

## Transaction costs

**Brokerage/agency fees**

The broker's fee is usually linked to the size or complexity of the transaction. Fees can be a set US dollar amount or a percentage of the US dollar value of the transaction

TABLE 84

## Lease terms

| | |
|---|---|
| **Lease period** | Typical lease terms are 3, 5 and 10 years. Larger tenants can negotiate lease terms up to 15 years, with options to renew at market rent. It is not uncommon to see lease terms of 20 years and above for sale-leaseback transactions in suburban markets. |
| **Rent reviews** | None, but leases often call for an increase in base rent based on a fixed percentage, US dollar amount or percentage of the change in CPI. |
| **Sub-letting/ assignment** | Yes, but often with landlord approval. |
| **Termination** | Usually prohibited, though termination/break clauses can be included in a lease or early termination can be negotiated but subject to a termination fee. |
| **Repairs** | Unless it is a triple net lease, the exterior and common areas of the building are the landlord's responsibility. Tenants are responsible for repairs within their space. |
| **Statutory renewal right** | Does not exist, but leases typically include a clause permitting the tenant to extend the lease for one or more fixed periods that typically range between three and ten years. Stature protects tenants from unlawful eviction. |
| **Reinstatement** | Tenants are expected to reinstate a building to its original condition although allowances are made for fair wear and tear. |

Source: Savills Research & Consultancy

being negotiated. Further guidance on fees can be provided on request.

**Security deposit**
Negotiable but typically ranges between 2% and 10% depending on market practice/demand.

**Legal costs**
Each party typically carries their own costs (unless otherwise stated in the legal contract).

## Leasing

**Rents**
In most markets, rent is quoted in US dollars per sq ft per year, but in California, rent is quoted in US dollars per sq ft per month. In a full service gross lease, the landlord is responsible for operating costs but the tenant pays their proportionate share. In a triple net lease, the tenant is responsible for all operating costs.

**Base year**
In a full service gross lease, the base year is the first year under the lease term. The landlord pays the operating costs in the first year, and in the following years the tenant reimburses the landlord for a pro-rata share of increased operating expenses over a base year. It is utilised in multi-tenant buildings to determine the base cost for operating expenses for the space. A base year is typically calculated on a calendar year or the first 12 months of the tenant's occupancy.

**Operating expenses**
Tenant costs often include repairs and maintenance, insurance, management fees, supplies, utilities, property tax, and so on. For utilities, tenants either pay their proportionate share or their space is metered and they pay the utility company directly. Property tax is the landlord's responsibility but tenants pay their proportional share. The following are not operating expenses: principal and interest, capital expenditures, depreciation, income taxes and amortisation of loan points.

**Rent adjustments**
Landlords often negotiate fixed rent adjustments (also known as rent bumps) either annually or at fixed intervals (i.e. years three and five or annual) or as a percentage of CPI.

**Concessions**
Depending upon market conditions, landlords may offer free rent and/or tenant improvement allowances as a concession. Other concessions may include signage or reduced rent for a fixed period of time.

**Renewal options**
Tenants do not have a statutory right to renew but landlords often negotiate a renewal option when the lease term ends at market rent.

**Option to expand**
It is common to negotiate an option to expand.

## Tax legislation

Tax legislation in the US is complicated. In addition to standard taxes raised on all investors, there are several unique rules applicable to overseas companies and non-residents that own real estate in the US. There are certain investment structures that potentially provide significant reductions in overall taxes, as well as treaties that typically reduce tax rates on certain types of investment income, such as dividends and interest. Below is a summary of the main tax considerations.

**Transfer tax**
Each state typically imposes a tax when the transfer of a controlling interest in an equity that owns property occurs. The tax rate varies from state to state and guidance for different states can be provided on request.

**Mortgage recording tax and recording fees**
Mortgage recording taxes exist in some states (most notably New York at around 2.8% on new debt over US$500,000) which are covered by the buyer. Mortgage and deed recording fees exist in most states, with fees for recording deeds and new mortgages paid by the buyer, and document recording fees (including removing encumbrances) paid by the seller.

**Property tax**
Property taxes are charged periodically (typically annually, biannually, or quarterly) on property owners by the local municipality in order to cover the cost of providing local services, such as street cleaning, administration and policing. There are no national laws regarding property taxes, and tax rates vary by state and sometimes by local jurisdiction.

**Income tax**
Income tax is charged on non-resident investors in a similar manner to that of a US citizen. For property investors, income tax is charged on the net operating income after all expenses and operating costs have been deducted. The maximum rate is 37%. However, non-resident investors are also allowed to depreciate the cost of their US rental real estate and other fixed assets used in the US business for US income tax purposes.

**CGT**
Gains from the sale of a property by a non-resident investor qualify as capital gains, with rates typically varying between 15% and 23.8% for individuals.

Foreign partners will be subject to United States net income tax on gains to the extent that the partner or member would have been subject to tax had the partnership sold all of its assets at fair market value as of the date of the sale or exchange. The new tax law further requires the acquirer of the partnership interest to withhold 10 percent of the amount realized on the sale unless the selling partner certifies that it is not a nonresident alien individual or foreign corporation. If the acquirer fails to withhold the correct amount, the partnership will be required to deduct and withhold from distributions to the acquirer partner an amount equal to the amount the acquirer failed to withhold.

**Withholding tax and treaties**
There are withholding taxes on interest income (potentially subjected to a 30% withholding tax for a non-treaty investor). Investors from countries with more favourable treaties may be able to reduce or eliminate the 30% tax.

In most cases, the sale of a non-resident's interest in a US property is subject to the Foreign Investment in Real Property Tax Act (FIRPTA) of 1980 income tax withholding charge. This is typically an additional 10% on the amount realised upon disposition of the US real property. However, advanced tax structuring can considerably reduce or eliminate FIRPTA liability.

Double tax treaties exist with the following countries (partial list): Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, PRC, Russia, South Africa, South Korea, Spain, Sweden, Switzerland, Thailand, Turkey, UK, Ukraine.

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# Disposals

Savills cross-border investment team works closely with all the Savills investment teams around the region on high-profile sales instructions of single assets and portfolios across sectors and often in multiple countries.

> **"Savills offers fresh, challenging marketing concepts with an innovative approach."**

For each instruction, an investment sales team will be formed to ensure all parts of the sales process are run effectively and delivered on time, and that the desired objective has the maximum chance of success.

- Recommendation of the most effective marketing process and target market.
- Real-time market intelligence through tracking global capital flows.
- Ability to systematically and comprehensively market an instruction in Asia Pacific, Europe, the Americas and the Middle East.
- Senior level contacts and relationships with all major investor groups.
- Ability to manage and run Asia Pacific portfolio sales with a proven track record.
- Ensuring a standardised approach to investment transactions through quality documentation and financial appraisals.

# Acquisitions

Savills has an excellent track record of acting for cross-border investment clients on regional investment acquisitions.

Across countries and sectors, Savills has successfully acquired a wide range of single assets, portfolios and landmark properties. Our investment clients cover a broad spectrum from institutional Asia Pacific funds, private and public property companies, investment and private banks, open- and closed-ended and opportunity funds, as well as high net worth individuals.

- Ensuring that an investor's buying requirements are properly understood by our regional investment teams.
- Sourcing suitable investment opportunities, both on and off market to enable regular deal flow.
- Providing a full or tailor-made acquisition due-diligence service.
- Coordination of regional Asia Pacific (multi-country) acquisitions and advice.
- Educating investors on new markets and sectors.
- Leveraging a range of niche in-house expertise such as leisure, hotels, development and residential.
- Providing a full after service including agency, valuation and asset management.
- Liaising with regional valuation teams on loan valuations.

**"Personal relationships through existing clients and contacts are our most powerful marketing tools."**

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