



LEX MUNDI
PUBLICATION

ISSUES RELATING TO FOREIGN INVESTMENT

CHILE Claro y Cia.

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1) Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

In general, there is no governmental permission required for foreign investors to acquire real estate in Chile.

However, national of bordering countries are prevented from acquiring the ownership or other *in rem* rights or exercising the possession or simple tenancy of real estate located totally or partially in the zones of the national territory which are declared by the authority as frontier border land.

Such prohibition extends, in general, to companies or entities whose main offices are located in a bordering country, or in case 40% or more of their capital belongs to nationals of a bordering country or which effective control is in the hands of nationals of said countries.

The President of the Republic, on grounds of national interest, may release the nationals of bordering countries from the foregoing prohibition, on a case by case basis, authorizing them to acquire or transfer the ownership or other *in rem* rights or the possession or tenancy of one or more determined real estates which are located in frontier border zones.

Furthermore, the lands belonging to the State located up to 10 kilometers from the frontier border, may only be acquired, leased or received under any other title, by Chilean individuals or entities.

Same rule shall apply with respect to those lands belonging to the State located up to 5 kilometers from the seacoast, measured from the line of the highest tides. However, in the latter case, foreigners with domicile in Chile may acquire, receive in lease or obtain under any other title the aforementioned lands upon prior favorable report of the Navy Undersecretary of the National Defense Ministry (Subsecretaría de Marina del Ministerio de Defensa Nacional). Notwithstanding, beaches belonging to the State, up to 80 meters

measured from the line of the highest tides, cannot be transferred under any title, and may only be subject to administrative acts by the referred Undersecretary of the National Defense Ministry.

However, the ownership of beaches belonging to the State located in the X, XI, and XII Regions, may be transferred to Chilean individuals or “non-profit purpose entities”.

In addition, by means of a grounded supreme decree, and upon prior report from the Navy Chief Command, beaches belonging to the State, up to 80 meters measured from the line of the highest tides, can be transferred to Chilean “non-profit purposes entities” which legal purpose is the development and promotion of the arts and letters, being prevented, in any case, from creating liens or transferring the same, in whole or in part.

2) Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

There are no additional restrictions imposed on ownership of real estate by foreign investors.

Note, however, that foreign investment in real estate, as any other foreign investment in Chile, must be performed through one of the foreign investment alternatives available in Chile, that is, DL 600, which contains the Chilean Foreign Investment Statute (eligible only for investments representing US\$5,000,000 or more), or Chapter XIV of the Foreign Exchange Compendium Regulations of the Central Bank of Chile (eligible only for investments representing more than US\$10,000).

3) Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

It is not mandatory to perform the investment together with a local partner. There are no special reasons or advantages in associating with a local partner.

4) What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

A. The transfer of real estate by a foreign individual or entity is subject to the following taxation:

(a) If seller is a foreign individual or entity, any capital gains derived from the sale of real estates located in Chile may not be subject to taxes in Chile, provided that the following requirements are met: (i) the real estate is not an asset of a company whose income is subject to First Category Tax; (ii) seller is not customarily engaged in the purchase and sale of real estate, as described in the Chilean Income Tax Act; and (iii) the real estate is not sold to a related party. The parties to a transaction would be deemed related under the Chilean Income Tax Act when the purchaser is a company and the seller is a partner or shareholder in a close corporation, holds 10% or more of the stock in an open corporation, or has an economic interest in one of those companies.

(b) Gains resulting from the sale or contribution of real estates are fully taxable if such a sale fails to comply with any of the above-mentioned requirements. Therefore, gains derived from the sale of real estate located in Chile will be subject to a 17% First Category Tax that must be declared and paid by seller and, upon their distribution or remittance abroad to non-resident individuals or entities, a 35% Additional Withholding Tax will also be levied (a credit is granted for the First Category Tax already paid). A Chilean purchaser would be required to make a provisional withholding of 20% of the amounts remitted abroad to the foreign seller. The amount so withheld shall be declared and paid to the Chilean Treasury within the first 12 days of the month following the date on which payment is made, and may be used as a tax credit against the Additional Withholding Tax that may be actually due at the end of the fiscal year in which the transaction is executed.

(c) The real estate in Chile is subject to a “territorial tax” (impuesto territorial) calculated based on the valuation of the real estate. The territorial tax is paid annually in 4 installments.

B. The transfer of interests in entities which acquire real estate is subject to the following taxation:

The tax treatment applicable on capital gains obtained from the sale or disposition of ownership rights or shares of Chilean companies that acquire or hold real estate would largely depend on the nature of the entities whose ownership rights or shares are sold.

As a general rule, capital gains obtained from the sale of ownership rights in a limited liability company or shares issued by a Chilean corporation (sociedad anónima) would be subject to 17% First Category Tax, and upon their distribution or remittance abroad to non-resident individuals or entities, a 35% Additional Withholding Tax will be levied (a tax credit will be given for the First Category Tax already paid).

Please note that gains resulting from the sale of shares held in a Chilean corporation may be subject to a 17% First Category Tax, as a sole tax (i.e. the Sole Regime) on the amount of the capital gain, provided that the following requirements are met: (i) the shares are held for a period of one year or more; (ii) the sale of such shares is not made to related parties; and (iii) the seller is not customarily engaged in the trading of securities.

5) Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no special reporting requirements in connection with the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate, except for those reporting requirements, as applicable to any foreign investment in Chile, derived from the foreign investment regimes indicated above.