



ISSUES RELATING TO FOREIGN INVESTMENT

BULGARIA

PENKOV, MARKOV AND PARTNERS

CONTACT INFORMATION

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- 1. Is state governmental permission required for foreign investors to acquire real estate? If so, please identify.**

No state governmental permission is required for foreign investors and/or Bulgarian companies established by foreign investors to acquire rights over real estate.

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

Before the accession of Bulgaria to the EU ownership of land could only be acquired by Bulgarian citizens and companies duly registered in Bulgaria. Bulgarian companies 100% owned by foreign entities or individuals were entitled to acquire land as Bulgarian entities. Foreigners and foreign entities had limited real property rights (right of construction, right of use) and could obtain ownership over buildings. In fulfilment of Bulgaria's obligations under the EU Accession Agreement and the Protocol for the transitional measures, respective amendments were made to the Bulgarian Constitution.¹

¹ Article 22 of the Bulgarian Constitution.

Since 1st January 2007, foreigners and foreign entities are entitled to acquire ownership rights over land in the following cases:

1. under the terms and conditions related to the EU accession;
2. on the grounds of international agreements and treaties, duly ratified, promulgated and entered into force; and
3. in cases provided by the law of inheritance.

Bulgaria, however, is entitled to restrict the acquisition of land for second homes of EU citizens and EU entities for a 5-year period from the date of the accession; that is until 1st January 2012. This restriction is not applicable with respect to EU citizens with a duly issued resident permit. An EU citizen with a duly issued resident permit is entitled to freely acquire ownership over land.

Bulgaria has restricted the acquisition of an agricultural and forest land for a 7-year period after the accession; that is until 2014. This reservation shall not be applied with respect to independent agricultural producers who wish to stay permanently in Bulgaria.

Usually, investments in real property and development projects are made through local companies established in Bulgaria. A Bulgarian company is free to acquire real property in Bulgaria regardless of the nationality of its shareholders.

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

Foreign investors are not required to invest with a local partner. Depending on the particular project and the experience of the foreign investor on the local market the involvement of local partner may be advisable.

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

Transfer tax

There are no state taxes being levied solely on foreign individuals acquiring or transferring real estate properties.

The sale of real property is generally subject to transfer tax applicable to both foreign and local persons. Transfer tax, depending on the specific resolution of the competent municipal council at the local of the property, is levied at a rate from 0,1 to 3% of the purchase price agreed between the parties or estimate according to the tax evaluation of the property, whichever is higher.

Generally, the transferee has the legal obligation to pay the tax, unless the parties have agreed to share the tax. The tax should be paid on the day of execution of the notary deed. The payment is condition precedent for the registration of the transaction with the recordation office.

The following sales of real property are exempt from transfer tax:

- the real property is contributed to the share capital of a company by means of contribution in-kind. In such a case the specific procedure provided for in the Bulgarian Commercial Act has to be observed and a notary deed should not be drafted; or
- the real property is transferred between two companies pursuant to a merger, a de-merger or a partial business transfer.

VAT

The VAT rate is 20%.

According to the VAT Act transactions involving development land² are VAT taxable except when the transaction concerns land adjacent to used buildings.

In general, land transactions and limited real property rights over land transactions are supplies free from VAT. For the purposes of VAT Act “land” is defined as agricultural land, farming land, woodland and forest. However, the seller is free to elect such transaction as VAT assessable.³ The establishment of right of construction is considered VAT exempted until the completion of the basic construction. Transactions involving used buildings or their parts are VAT exempt.

Taxation of capital gains

Capital gains arising from the sale of land and buildings are taxed at the usual corporate tax rate of 10%. If the capital gain is realised by a foreign legal entity and/or individual the respective double taxation treaty should be checked.

Real property tax

The owners or the users of real property have to pay:

- local real property tax determined by specific resolution of the competent municipal council at the local of the property is levied at a rate from 0,1 to 2,5%o of the tax evaluation of the real property; and
- local household waste fee, the rate of which is determined on an annual base by the respective town / municipal council.

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.

² The precise definition is provided by the Spatial Development Act.

³ Article 45(7) of the VAT Act.

There are no special reporting requirements for reporting acquisition, ownership or disposition of real estate property applicable solely to foreign owners of real estate. Foreign investors shall comply with the same reporting requirements applicable to the local ones.

Real property in private ownership is acquired through an acquisition agreement in form of a notary deed. The deed is signed between the parties before a notary public. State or municipal real property is acquired by virtue of a written contract. The respective title documents (being a notary deed or written contract) are subject to registration with the recordation office at the recordation agency.

The acquisition of real estate property shall be reported before the competent Bulgarian tax authorities within 2-month term as of the date of acquisition.