

LEX MUNDI  
PUBLICATION



**ISSUES RELATING TO FOREIGN INVESTMENT**

**CHILE**  
**Claro y Cia.**

**CONTACT INFORMATION:**

**José María Eyzaguirre B., Esquire**

Claro y Cia.

Apoquindo 3721, piso 13,

Santiago - Chile

Tel: (562) 367-3000

[jmeyzaguirre@claro.cl](mailto:jmeyzaguirre@claro.cl)

[www.claro.cl](http://www.claro.cl)

**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, nationals of bordering countries (including entities whose main offices are located in a bordering country, or which 40 percent or more of their capital belongs to nationals of a bordering country, or which effective control is in the hands of nationals of any such country) are prevented from acquiring the ownership of, or other *in rem* rights in, or holding in possession or tenancy, real estate totally or partially located in the zones of the national territory which the authority has declared as "national border land".

In the event of a national of a bordering country acquiring *mortis causa* any national border land, such individual or entity must transfer the relevant real estate to an eligible acquirer within one year from the death of the original owner. If the affected person or entity does not comply with the referred obligation, the State will be entitled to expropriate the relevant real estate.

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

Furthermore, the lands belonging to the State located up to ten kilometers from the national 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 five kilometers from the sea coast, 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 Under-Secretariat of the National Defense Ministry (*Subsecretaría de Marina del Ministerio de Defensa Nacional*). Notwithstanding, beaches belonging to the State, within an 80-meter wide strip of land measured from the line of the highest tides, may not be transferred under any title, and may only be subject to administrative acts by the referred Navy Under-Secretariat of the National Defense Ministry.

However, the ownership of beaches belonging to the State located in the X, XI, and XII Regions (i.e. the southernmost Regions of the country) may be transferred to Chilean individuals or non-profit entities, with the prior approval of the Office of the Commander-in-Chief of the Chilean Navy and provided that the acquirer settles in the relevant region. For a period of ten years after any such acquisition, the respective property may not be transferred *inter vivos*, except in qualified cases with the acquiescence of the Ministry of National Properties and the Office of the Commander-in-Chief of the Chilean Navy.

In addition, by means of a supreme decree based on reasoned grounds, and upon prior report from the Office of the Commander-in-Chief of the Chilean Navy, beaches belonging to the State, within the above-referenced 80-meter strip, may be transferred to Chilean non-profit entities which legal purpose is the development and promotion of the arts and letters, being prevented, with the prohibition of creating liens over, 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 (including in Chilean entities that own or hold real estate), must be performed

through one of the foreign investment mechanisms available in Chile, that is, either Decree Law 600, which contains the Chilean Foreign Investment Statute (eligible, as of the time of this report, only for investments representing US\$5,000,000 or more), or Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile (eligible, as of the time of this report, 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, except where the investment is related to certain regulated activities, such as telecommunications or fishing, which require specific levels of Chilean presence for the grant of concessions and authorizations.

**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 the seller is a foreign individual or entity, any capital gains derived from the sale of real estate 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 income tax ("First Category Tax"), (ii) the 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 seller is a partner or shareholder in the purchaser when the latter is a closely held corporation, or holds ten percent or more of the stock in the purchaser when the latter is a publicly held corporation, or has an economic interest in the purchaser whichever its legal nature.

(b) Gains resulting from the sale or contribution of real estate 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 (i) a 17<sup>1</sup> percent First Category Tax that must be declared and paid by the seller, and (ii) a 35 percent additional tax ("Additional Withholding Tax") at the moment of their distribution or remittance abroad to non-resident individuals or entities (a credit is granted for the First Category Tax already paid).

A Chilean purchaser would also be required to make a provisional withholding of 20

percent of the total amounts remitted abroad to the foreign seller. The amount so withheld must 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 actually be due at the end of the fiscal year in which the transaction is executed.

(c) Real estate in Chile is subject to a “real estate property tax” (*impuesto territorial*) calculated on the basis of the fiscal valuation of the real estate. The real estate property tax is paid annually in four installments.

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

The tax treatment applicable on capital gains obtained from the sale or disposal of ownership rights or shares in 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 (*sociedad de responsabilidad limitada*) or shares issued by a Chilean corporation or stock company (*sociedad anónima* or *sociedad por acciones*) would be subject to 17 percent First Category Tax and, upon their distribution or remittance abroad to non-resident individuals or entities, a 35 percent Additional Withholding Tax (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 or stock company may be subject to a 17 percent First Category Tax, as a sole tax, 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 (see above), 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 disposal 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 in 2 above.

---

<sup>i</sup> Please note that the President of the Republic of Chile recently sent a bill to Congress that would increase the corporate tax rate from 17% to 20% for year 2011 and to 18.5% for year 2012. The tax rate would be reduced again to 17% as of year 2013. The final terms and conditions of the increase of the corporate tax rate will be discussed in Congress.