



ISSUES IN OWNERSHIP OF REAL ESTATE

AUSTRALIA

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1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, although in the Australian Capital Territory most land is owned by long term leasehold from the Federal Government

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

For Torrens Title land transfers in registrable form are used. For Old System land (which is now quite rare) deeds of conveyance are used.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Ownership of real property is recorded in the registers of the relevant State Government department. The register can be searched electronically or manually. Searches are usually performed by lawyers or specialist search companies.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Title is State Government guaranteed. Assurance is rarely used and is expensive.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common form of investment vehicle is companies or trusts. Joint ventures are effected by unincorporated or incorporated joint ventures and partnerships are effected by unincorporated or incorporated joint ventures and partnerships are sometimes used. There is no one vehicle which is universally tax effective for any entity.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Yes, there is legislation permitting the creation of real estate investment trusts and such trusts are widely used.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

Goods and Services Tax of 10% is imposed by the Federal Government on vendors of real estate in relation to the supply of the real estate to the purchaser. The Goods and Services Tax is often passed on to the purchaser. There are exemptions depending on the use to which the land is being put. State Governments impose stamp duty on the purchasers of real estate at rates of up to 5.5% of the consideration under the sale contract.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In regard to goods and services tax, the position is as set out above. A sale of 100% of the shares of a company or units in a trust, which owns land of a certain value and where that land is a particular majority of the assets of the company or trust, stamp duty will be payable by the purchaser of the shares at the same rate as if the sale was a sale of land.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

The sale of real estate in Australia is highly regulated. Certain warranties are imposed by statute and cannot be contracted out. In some jurisdictions disclosures have to be made and in others certain documents like title searches, zoning certificates and drainage diagrams have to be annexed to the contract. Non compliance can lead to rescission rights for the purchaser. The position varies markedly from state to state.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Only the registered proprietor is required to be registered on the title. In some jurisdictions if the registered proprietor is a trustee its capacity as trustee in the name of the trust can be recorded on the title.