



## ISSUES IN OWNERSHIP OF REAL ESTATE

### CHILE

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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?**

Perpetual fee simple ownership of real property is permitted under Chilean law.

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

The purchase or any other agreement which purpose is to transfer fee simple ownership of the real property must be executed by means of a public deed. Note that any such agreement only grants the purchaser a right to acquire the ownership of the real property. Ownership is acquired pursuant to the recordation referred below.

The conveyance of the fee simple ownership of a real property is effected by the recordation of the abovementioned agreement in the Real Estate Property Registry of the respective Real Estate Registrar<sup>1</sup>.

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<sup>1</sup> Note that this recordation corresponds to the *traditio*, the most common mean of acquiring fee simple ownership in our legal system.

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

The ownership of real property is recorded in a public record named Real Estate Property Registry of the respective Real Estate Registrar. Such recordation must contain certain main aspects of the agreement, such as date of recordation; nature of the agreement, date and Notary Public's Office where the agreement was executed; individualization of the parties; name and boundaries of the real property; and the page and number of the preceding recordation of the property.

The title search is a task that is performed by legal counsel, who should study the legal documentation regarding the real property and its owner(s), for a term of at least 10 years (which is the maximum term for the statute of limitations), to verify the compliance of the applicable legislation and the existence of legal restrictions to acquire the ownership of the real property and the existence of possible liens, debts and any other contingencies affecting the real property.

**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?**

There is no title insurance or any other similar assurances available to purchasers of real property.

The only assurance of ownership to a purchaser is a title opinion from a legal counsel, based on the title search. The cost of such opinion and title search varies depending on factors such as the complexity of the search, the value of the real property and the legal counsel experience. The rates normally fluctuate between US\$2,000 and US\$10,000.

**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?**

In general, the most common forms of investment vehicles are corporations and limited liability companies. Such vehicles are customarily employed to own real estate in a tax efficient manner.

In this regard, public and private investment funds are also recommended vehicles to own investment real estate, as they are granted by the law with attractive tax benefits. However, please note that the Chilean Congress has recently passed a law which states the termination of the tax benefits associated to investment funds, which shall take place from year 2012.

Capital gains derived from the sale of real estate owned by individuals are regarded as non taxable income, provided that:

- (i) real estate property does not belong to the fixed asset of companies which are not required to declare effective income based on complete accounting;
- (ii) the sale is not made to a related entity, and
- (iii) the seller is not deemed as customarily engaged in the sale of the real estate property.

Another efficient manner of owning real estate property are the “low-cost houses”, commonly known as “DFL 2”, which in general terms are those housing constructions with a built area no greater than 140 square meters. The main tax benefits associated with this kind of properties are, among others, the following:

- (i) they are exempted from land-ownership taxes;
- (ii) income derived from these properties is generally exempted from income taxes;
- (iii) capital gain obtained in the transfer of these properties is exempted from income taxes, if the transfer is performed pursuant to a leasing agreement; and
- (iv) the inheritance donation of these properties are exempted from inheritance and gift taxes, provided the property has been built was or acquired by the donor or decedent from the DFL 2’s construction thereof.

In addition to the aforesaid benefits, dividends associated to mortgages employed to acquire low-cost houses may be deducted by the taxpayer from their individual taxable base.

Finally, individuals who have bought or built one or more housing constructions with loans guaranteed with mortgages, may deduct from their individual taxable income, subject to certain restrictions, the amount of the interests related to such loans. This same benefit applies to loans entered into by an individual to pay off another housing loan.

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

Note that Chile has no legislation on trusts as conceived and developed in common law countries.

Regarding the creation of real estate investment entities, as indicated in the previous question, the actual investment funds tax regime will expire in the year 2012.

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

Aside from registration and notaries fees, the transfer of real estate property is not levied with taxes, regardless of the taxes that would be applicable upon the transfer thereof, if any, as explained in Question 5 above.

**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?**

There are no specific taxes regarding the transfer of interests in entities which own real estate. The general rules on capital gains apply.

With respect to the transfer of an undivided share or quota of co-owned real estate property, the same rules described in Question 5 above apply.

**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?**

Local regulation is a significant issue for any real estate development project.

The zoning, urbanization, construction permits, authorized uses and authorized usage rate per site, among others, are specified by local regulations in accordance with the regional and municipal master regulatory maps.

There is no variation of real estate law among political subdivisions of this jurisdiction. There is only one applicable real estate law in Chile.

About taxation, please note that land ownership is generally taxed with a land ownership tax (*impuesto territorial*), which is levied onto the property's fiscal value with rates that generally range from 0% to 1.2%, depending on the property's tax value. Note also that property cannot be transferred if this territorial tax has not been paid.

Land ownership taxes may be deducted as a credit from certain income taxes, provided certain conditions are complied with.

For more information regarding land ownership taxes, please refer to Question 5 above.

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

There is obligation to disclose the ultimate beneficial owners of entities which own real estate.

On an ancillary matter, if the acquisition of a real estate involves a foreign investment performed under the Foreign Investment Statute of the Republic of Chile ("DL 600"), the Foreign Investment Committee --governmental agency in charge of foreign investments under DL 600-- is allowed to request information regarding the foreign investor, including, among others, the name of the ultimate beneficial owners of the investment.

In addition, if a transaction regarding a real estate is considered suspicious under the Money Laundering and Counter-Financing of Terrorism Act, the Financial Intelligence Unit --governmental agency in charge of the investigation of money laundering-- is allowed to request any information regarding the transaction, including, among others, the name of the ultimate beneficial owners of the investment.