

foreigners have right to own property by way of gifting, inheritance in China

Many foreigners are aware that China has enacted rules restricting their purchase of real estate/houses/apartments. Foreigners are not allowed to buy more than one residential property (for self-using purpose only).

Very often foreigners asked me about whether they are allowed to own property in China as a result of gifting, inheritance from their family members. It is understandable that foreigners are somehow confused by Chinese government real estate policies as these rules are sometimes vague and unclear.

In practice, it is always permissible for a foreigner to obtain ownership in real estate/houses/apartments through gifting, inheriting/succession. A foreigner can even get real estate title by way of gifting from another foreigner with whom he has no familial relations.

There have been a flurry of regulations governing property gifting, esp, in terms of taxation thereof.

Gifts between family members (between spouses, siblings parents and children, grandparents between grandchildren) will mainly trigger deed tax and stamp tax only. As it is not commercial transaction, business tax is exempted and as gift-giver gains no income, gift-giver is not subject to any income tax either. However, compared with normal sale transactions of real estate, deed tax on gift-receiver in gift is higher, 3% of property value, the highest rate applied in Shanghai. In some other cities in China, deed tax can be up to 5% of the property value. To enjoy such tax benefits, parties shall have to present notarized evidences to prove the familial relationships.

However gifting between non-family members is to be subject to heavy taxes. In particular, though it is also non-commercial transaction, business tax is levied, 5.55% of property value, a requirement designed to prevent tax escape. In addition, without familial relation, gift-receiver will be subject to an income tax equal to 20% of the property value. Deed tax on the gift-receiver is also the highest rate. Moreover, when the gift-receiver later sells the

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property, it will also subject to heavy personal income tax.

It shall be noted that under Chinese Contract Law, gifting can be conditional upon satisfaction of conditions by the gift-receiver. Also, gift-giver may revoke his or her gift under certain circumstances, including gift-receiver fails to satisfy the conditions set for the gifting, or fails to discharge his or her duty to support the gift-giver, or that gift-receiver seriously infringe on the rights and interests of the gift-giver or the giver's close relatives. The law requires that the gift-giver may only exercise this revocation right within one (1) year of being aware of the said circumstances.

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