Foreign Corporate Owners of China Properties: How to Sell Property and Take Money Out of China

Description

Image result for corporate property owner in china

There has been quite a few inquiries in the past from foreign companies that own properties in China (either residential or commercial) on how they can sell their China properties and then convert the sale proceeds into foreign hard currencies such as USD or Euros and take the same out of China.

I wrote a post regarding foreign corporate owners intending to sell their China properties: Issues related to sale of Chinese properties by foreign corporate owners.

I. The Current Plight for Foreign Corporate Owners

I know those companies hate China a lot. They were somehow lured into purchasing China properties when China started real estate reforms and sold properties to foreigners, and they paid money to China developers (mostly state-owned companies) without knowing they would now end up with a big fortune and trouble. But when they want to cash in on those properties, they find themselves in a very difficult situation where they don't have a RMB bank account to receive sale proceeds which renders it impossible for them to sell their properties, and even if they can manage to receive the sale proceeds in RMB through a personal bank account, then they cannot convert the RMB money into USD or Euro and wire the money out of China. The reason is that no bank will have the guts to help to wire the money in a personal bank account to a corporate account because of possible repercussions from China foreign exchange authority, despite that there is a clear authorization from the foreign company to the individual to receive, convert and transfer the sale proceeds to overseas account in the foreign company's name and that the officials at China foreign exchange authority have indicated this route through personal bank account is ok.

The only good and simple way out of the predicament is to find a foreign buyer to buy the property, and this foreign buyer can pay foreign currency directly to the foreign company owner. But given the current property market condition in China, nobody but Chinese people only will be willing to spend millions of dollars to purchase properties in Shanghai, Shenzhen and Beijing, so this is good but virtually impossible solution indeed.

Feel cheated indeed? But sorry, you will have to figure out a way to get out of the trap yourselves.

II. Tax Burden of Direct Sale

So the foreign corporate owners have such problems as mentioned above, it seems that the only way out of the plight is to transfer the title to an individual who will then sell it and transfer the money out of China, as this route of receiving and taking money out of China by foreign individuals is so far smooth and without barriers.

This will entail two consecutive title transfers in a row:(1) from the foreign company to a nominated foreign individual, and (2) from the nominee foreign individual to the real buyer. However the possible tax burden is daunting and many foreign corporate owners may not be willing to accept the huge economic loss of paying dual taxes.

To make readers clear about the tax burden, let me give you an illustration here. Assuming the foreign corporate owner bought the property at a price of RMB two million ten years ago, and now can sell it at a price of RMB 10 million.

1. Taxes in a Direct Sale by the Foreign Company Owner

(1) Enterprise Income Tax: basically, the tax base is the difference of the sale and purchase prices, it is RMB 8 million in our hypo case. Tax rate applicable to foreign company (as opposite to companies incorporated within China) is 10%, which will lead to an income tax RMB 800,000;

(2) VAT Tax: basically, the tax base is the still the difference of the sale and purchase prices, and tax rate is 5.38%, so the VAT tax amount is RMB 430,400 (including VAT-affiliated taxes);

(3) Land VAT Tax: this is the most formidable tax burden that will snap up a substantial portion of the capital gain. The computing of the land VAT is complicated, and ***this is where leeway or manipulation can be made to help clients in reducing their tax burden***.

Land VAT=Value Added Amount* LVAT rate

Value Added Amount is the difference of the sale price and the deduction items. Deduction items include:

- Costs and expenses for land development;
- Costs and expenses for construction of new buildings or the appraised price for old buildings;
- Taxes related to the assignment of the real property;
- Other deductions as determined by the Ministry of Finance.

An alternative way of calculating the deduction amount is the following formula: original purchase price

(1+5%*N)+deed tax paid at the time of purchase, in which N stands for the number of years from purchase to the sale now.

LVAT rates are four progressive rates, which are determined by reference to the ratio of Value-added Amount against the Deduction Amount.

No.	Value Added Rate=Added Amount/Deduction Amount	LVAT Rate
1	not more than 50%	30%
2	more than 50%, not more than 100%	40%
3	more than 100%, not more than 200%	50%
4	more than 200%	60%

(4) Property Tax: unlike the taxes listed above which are only levied upon transaction or title transfer, property tax is levied annually for holding property.

In Shanghai, the annual property tax = purchase price*80%*1.2%. I believe many of the foreign corporate owners have been delinquent in paying this tax. After all, they don't have any person to take care of this tax.

(5) Urban Land Use Tax: as in the case of property tax, this is a tax levied on holding properties in China.

Annual urban land use tax = area (sqm)*(1.5~30).

The area of land is generally indicated on the title deed of the property. For purpose of collection of this tax, land in a city is usually classified into different grades according to location, for example in Shanghai, land is divided into six classes. For first grade area, the urban land use right per square meter is RMB 30, and RMB 20 for grade two area……

(6) Stamp Duty: this is a simple tax calculated as sale price multiplied by 0.05%.

2. Taxes For Sale from One Individual to Real Buyer

Assuming the nominated foreign individual owner sells the property immediately after the property title is transferred from the foreign company to him, then the seller will be subject to the following tax levies:

(1) Personal Income Tax: 2% of the sale price; this income tax may be calculated differently in other cities such as Beijing where this income is always calculated as 20% of the difference of sale and purchase prices.

(2) VAT Tax: 5.38% of the sale price

There are no other taxes involved in the sale of properties by individual owners. Given the taxes equal to 7.38% of the sale price, a 10 million sale price will result in the payment of RMB 738,000, which can be otherwise avoided in the direct sale.

III. Way out of the Dilemma

Given the bank account problem faced by foreign corporate property owners, the two-transfer approach seems to be the inevitable way out of the dilemma despite the loss of the additional payment of taxes. Now if there is a way to reduce the tax burdens at either stages (first transfer or the second one), that will be definitely a big benefit.

That is not impossible. As mentioned, the land VAT arising in connection with the sale by the foreign corporate owner can be manipulated a bit to decrease the tax burden, which could well outnumber the amount of additional taxes arising from the second transfer from nominee.

Updated on January 28, 2019

We are approached by another foreign corporate owner of their property in Shanghai Lujiazui CBD area who wished to sell its property and take their money out of China.

Good news is that we have found a bank in Shanghai that is willing to help foreign corporate owner with the sale and money repatriation. It works like the follows:

(1) foreign corporate owner shall authorize one of its director to receive the sale proceeds in the director's personal bank account;

(2) the director comes to China to open a bank account. At present, it could be a difficult task to open such a personal account with a travel visa. But finding the right bank may help this out.

(3) the bank we are cooperating with can also offer mortgage loan to the buyer in such an arrangement. This could mean a lot to the seller as the seller doesn't have to lower the sale price to accommodate cash buyer. In practice, most banks will refuse to grant such a mortgage loan if the receiving bank account is not owned by the seller.

(4) upon receipt of full contract price, the bank will also facilitate the repatriation of the sale proceeds.

Legally speaking, the bank has done nothing wrong at all, it has a big in-house team of compliance. China SAFE has permitted buyers of properties owned by foreign entities to purchase foreign exchange to pay seller, but somehow in practice this rule has rarely been applied. By that spirit stemming from the SAFE notice, the repatriation of such property sale proceeds is legal and compliant with SAFE rules.

Update on March 4, 2022

I have been told by the bank mentioned in the update above that their bank is no longer helping corporate property owners to sell China properties and take money out of China that way. Sad! It seems that there is no way at all for foreign company owner to sell their China properties.

Date Created
March 2017
Author
admin