Save your tax when you sell your real property in China

Description

This morning, on behalf of my client from Singapore who sells her apartment, I went to local tax bureau to pay the related taxes.

It was finally confirmed that my client will not need to pay the personal income tax as prescribed in a regulation in which it is required seller shall pay the personal income tax equal to 20% of the difference of sale price and the original purchase price if the property being sold is acquired by way of gifting, or inheriting.

Here is the story: client inherited the property from her husband who deceased in 2010, and client has done all the things to effect the title deed under her name. This apartment was bought during their marriage and was deemed as community property for the couple which is generally understood as each spouse holing 59% of the ownership interests of the community property. After inheritance, the client acquired the interests in the property of her husband.

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Legally speaking, client has inherited half value of property. Under the mentioned regulation, when selling real estate acquired by way of gifting or inheritance, seller shall pay personal income tax equal to 20% of the difference of sale price and the original purchase price, unless the seller has held the gifted and inherited property which must be the only property in his or her name, for more than five years. Leterally, client shall pay an income tax of 20% of half the difference of sale price and the original purchase price which was acquired by inheritance.

As a real estate lawyer practicing law here in Shanghai for years, I was aware that there is always leeway or room to take advantage of loopholes in law. Knowing that there is a clear rule for many years saying that when one sells his only residential property which has been held for more than fives years, he is exempted from paying any personal income tax. With that in mind, I see a possibility to save client a lot of tax burden if we can convince the tax bureau that though the client has held the property in her name for only around one year, considering that this house is community marital property bought fifteen years ago by the husband, it can be argued that the client has owned the property for more than fifteen years. I then talked to several people with the tax bureau and then finally reached out to the head of the bureau from who I get a nod for my understanding of the situation.

Finally, we saved the client hundreds of thousand RMB in tax.

It shall be noted that this same tactic may not be applicable where the seller sells a house he acquires from by way of gifting or inheritance but the house is not a community marital property.

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