tax

Foreign investors selling property are often unaware of the capital gains exemptions – here's how it works

BY NARIT DIREKWATTANACHAI

Getting away with it…

When it comes to tax planning and investment in Thailand's residential market, an important aspect to consider is how to minimise the tax payable on capital gains when selling your property.

Far too many real estate owners involved in property disposal simply pay the capital gains tax because they are unaware of the provisions in the Thai tax code that allow for exemption.

Since early 2003, the Thai government has been granting a tax break to homeowners and residential condo owners who sell off their property and then purchase another to be used as their primary residence. The tax break ultimately allows the individual tax payer a tax-free property exchange in which he or she walks away with the profits of the sale without owing any capital gains tax to the Thai Revenue Department.

The policy behind this tax-free exchange aims to encourage expansion of the real estate business in Thailand as well as provide tax relief for residential property owners who wish to move on to a new property commensurate with their standard of living. Unlike US Section 1031 tax exchange (like-kind exchange or starker deferred exchange), the tax free exchange under Thai law does not require the use of an intermediary professional.

Pay attention to certain conditions

How a tax fee property exchange is accomplished can be complex as there are a number of conditions the real estate owner should be aware of before committing to any sale-purchase transaction.

First, the seller must live in the existing property as the primary residence and have registered the household in his/her name for a period of at least one year from the date of acquisition. The tax break does not apply to properties held solely for business or investment purposes, where the regular capital gains rule applies.

Second, such sellers must purchase a new property within one year prior to, or one year after, the sale of the existing property. In addition, the new property must be used only for residential purposes.

The amount of exemption is calculated by reference to the official estimated price of the property at the time of sale, which may be lower or higher than the market value, but must not exceed the price of the new property. The types of property that qualify for capital gains tax exemptions are house structures, houses with land, structures with land and residential condos. The exemption does not apply to vacant land.

Therefore with some prudent planning, it is possible to make some gains from the property exchange tax exemption.

THE POLICY BEHIND THIS TAX-FREE EXCHANGE AIMS TO ENCOURAGE EXPANSION OF THE REAL ESTATE BUSINESS IN THAILAND.

Our examples below cover some typical situations that illustrate just how the exemption applies in practice.

Case 1

Mr. Smith, a western expatriate, arrived in Thailand two years ago and has been living in a Bt7m condominium unit he purchased in the Sukhumvit Road area of Bangkok. Immediately after buying the condominium, he managed to register the unit in his name.

Two years have now passed since he first settled in Thailand and Mr. Smith is keen to make a move to a new luxury low-rise condo recently completed in the prime Sathorn-Silom business district.

Taking advantage of the tax-free exchange scheme, Mr. Smith can now sell his Sukhumvit condominium and purchase the new condominium in Sathorn-Silom without the need to pay any personal income tax on the capital gains derived from the sale of his first condo.

Given the official estimated price of the Sukhumvit condo of Bt8m, under the tax break, Mr. Smith can save up to Bt146,000 of his personal income tax liability, which under normal circumstances he would otherwise need to pay in the form of income tax.

Mr. Smith enjoys not only the tax-exemption on his condo sale, but the increase in value of his property, because his Sukhumvit condo is being snapped up for Bt10m – thanks to the strong demand for condos in the Sukhumvit area.

The questions is then raised, whether it is possible or not for a non-permanent resident alien to register his name in the household registration when purchasing a condominium unit in Thailand.

The answer largely depends on the type of immigration visa the person holds and the discretion of the officials of the District Office. Therefore, even for foreigners who do not hold permanent residence in Thailand, it is still possible to register a household in their name.

Case 2

When Mr. Ryan came to Thailand he decided life outside the city suited him better and consequently moved to Pattaya where he purchased a long-stay villa near Mabprachan lake, east of the resort town.

Due to restrictions on foreign ownership of land, Mr. Ryan needed to enter into a land-lease deal offered by a local developer who owns the land, which features a 30-year initial leasehold with the option of renewal for another 30 years. Under this lease agreement, Mr. Ryan has the right to sell the lease for the remaining years of the leasehold whenever he wishes to do so.

Mr. Ryan then went on to hire a contractor to build a Thai-Bali style four-bedroom, two-storey pool-villa complete with a tropical landscaped garden and an automatic gate. Upon obtaining the household registration – a yellow book – Mr. Ryan registered his name in the book, and so he has now been the registered owner for almost 5 years.

One day while strolling along Pattaya beach, a new luxury beach-front condominium caught his eye, and he decided to reserve one unit facing the beach as his future primary residence.

With the help of a real estate broker, Mr. Ryan managed to sell his remaining 25 year leasehold (plus options to renew for another 30 years inclusive of the house) to another expatriate for Bt14m. When the official estimators priced the property at a mere Bt10 Million, Mr. Ryan was told by his tax advisor that he would be required to pay a personal income tax of Bt355,000, unless he opted to follow the tax-free exchange under the Thai Revenue Code – which he promptly did.

Within a year of selling his old property and the leasehold, Mr. Ryan reinvested all the proceeds into the new condo and managed to transfer the ownership of the new condo. All this was done without incurring any tax liability on the capital gains of his property sale. Making use of this tax-free exchange can lead to some very significant yet lawful tax savings. Of course, careful attention must be paid to all the terms and conditions of these rules. Failure to follow them can result in your tax- free exchange being challenged or even disallowed by the Revenue Department. Your tax advisor should therefore work with you to try and capitalise on the potential gains of this truly beneficial text exemption.

This article was written by Narit Direkwattanachai, a corporate tax attorney for Narit & Associates. He can be reached at: narit@naritlaw.com