

## A GUIDE TO PURCHASING REAL ESTATE IN BRAZIL

This guide is brought to you by The Overseas Property People (TOP People), we hope you find it a useful contribution to your information search. We are not Lawyers and this section is for guide purposes only, you should seek formal legal advice before you complete any property purchase. We will be happy to recommend a local legal expert at your request.

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### The Purchase Process

Brazil is perhaps one of the few emerging real estate markets that permit foreign buyers to own both land and property in their own names on a 100 per cent freehold basis. The buying process is incredibly straight forward as you will discover below.

#### Due Diligence

A thorough due diligence process must be carried out to ensure that the land is registered and the Title of the land or property is clean of encumbrances. If this due diligence is not carried out properly, by professionals, there is a danger that the purchaser can become liable for any debts (liens) that are secured on the land. It is also vital that land has the appropriate licenses in place for construction (Planning Permission) as certain areas are protected and permission will not be granted for construction.

Prior to purchasing any land or stock in Brazil the developers carry out a robust in depth due diligence process and apply for the (SLP) - Solicitação de licença prévia; - this license is essentially outline planning permission. We make every effort to ensure that all land that the developer offers for sale has clean Title and preliminary licenses in place so you can purchase with peace of mind.

#### Formal Legal Advice

We advise you to instruct an attorney, it will give you peace of mind and the confidence to make the investment. Potentially you will be investing large sums of money so it is prudent to factor the attorney's costs into your investment strategy and budgets.

### Real Estate in Brazil - A Legal Guide

The following information is dealt with by your appointed attorney but is detailed here for your reference. Ownership of land and property by non-residents is permitted in Brazil, and all land and real property is owned on a freehold basis. Non-residents may invest in property through direct ownership from abroad, or through vehicles

[resident companies, partnerships or investment funds]. The only thing you must acquire before purchasing a property is a CPF number.

### **CPF Number (Cadastro das Pessoas Físicas)**

Before you can buy a property in Brazil, you must obtain a CPF (Cadastro das Pessoas Físicas) number, which can be acquired via the Brazilian embassy in your home country for a small fee or your appointed lawyer can acquire your CPF via a Power of Attorney in Brazil. This is the Brazilian equivalent of the U.S. social security number and is essential for operations like opening bank accounts, to get or renew a drivers license, buying or selling real estate, taking loans, applying for jobs, getting a passport or credit cards.

You can access the form here <http://www.receita.fazenda.gov.br/Aplicacoes/ATCTA/CpfEstrangeiro/defaulting.htm>

### **The Certidao de Onus Reais**

Once a buyer has found a suitable investment property, it is necessary to apply for a certificate known as Certidao de Onus Reais. [This is not required if you are buying an off-plan property]. This is an identification document for the property recounting its entire ownership history and is comparable to a title search in the United States. It will show up any liens or encumbrances placed on the property. This is issued from the Cartorio de Registro de Imoveis (Real Estate Registry Office). Once the purchaser receives this for the chosen property and has negotiated an agreed price with the vendor, a small non-refundable deposit is usually paid to the seller. A sales contract is then drawn up which details the full conditions of the sale and also acts as a receipt for the deposit paid.

### **Transferring Funds**

The capital cost of the purchase must be brought into Brazil through an international wire transfer to the Banco Central do Brazil, which allows the government to record all investment into the country from overseas. The Overseas Property People LLC can recommend a currency transfer company that can help you with this process and save you money on transfer fees.

### **Sales Deed Completion**

Finally, it is important to draw up the property's sales deed completion ('escritura') normally carried out at the notary. As in the USA, it should then be taken to the Real Estate Registry Office to effect registry.

## **Taxation**

Below is a brief overview of possible Tax liability, if you need further advice then please contact us and we will be happy to recommend a tax expert.

The purchase of property in Brazil, as either a resident or a non resident, involves a series of fiscal obligations which must be met. Most of these do not apply to the purchase of beach front property but are included to give you a complete picture.

### **Transfer Tax**

ITIV – [IMPOSTO SOBRE TRANSMISSAO INTERVIVOS DE BENS IMOVEIS] – Transfer Tax of Immovable Property

This is a Tax assessed by the municipalities which is due when real estate is transferred. The normal rate would be between 2% and 6% of the real value or the appraised value of the real estate whichever is higher. The average tax rate would be 3% but varies from one municipality to another. This cost is usually incorporated within the legal fees.

### **Income Tax**

IRPF - [IMPOSTO DE RENDA PESSOA FISICA] – Income Tax

Non residents are subject to Brazilian income tax in regard to the income earned from Brazilian Sources. Incomes obtained in Brazil by non residents are subject to a standard withholding tax of 25%. Once you have a CPF number [Brazilian Tax code] in place, you are obliged to submit an Income Tax declaration at the Receita Federal, even if it is a negative declaration.

### **Capital Gains Tax**

Non-residents - Capital gains realized by non-residents are generally determined as being the difference between

the sales price and the cost basis of the asset or right sold, which must be substantiated by the corresponding document usually issued when the acquisition takes place. If the cost cannot be substantiated in this manner the acquisition amount will be determined, in some instances based on the capital amount registered with the Brazilian Central Bank related to the purchase of the asset or right. In all other instances; the cost will be deemed to be zero.

Brazilian non-residents are generally subject to withholding tax at a rate of 15% [unless payments are made as a result of an employment relationship or a service contract, in which case the rate is 25%] levied on the payment or credit of Brazilian-source income, except when tax relief is provided by treaties to avoid double taxation.

### **Tax Havens**

It should be noted that income paid, credited, remitted etc to a beneficiary domiciled in a tax haven country/territory will be subject to a 25% withholding tax. For Brazilian tax purposes, a tax haven is considered to be a country that taxes income at a rate lower than 20%.

### **Resolution BACEN 2689**

Foreign investors who are not domiciled in a tax haven can receive tax benefits by applying for 'Resolution BACEN 2689'. Benefits are as follows: (i) Withholding Income Tax (WHT) rates could vary from 10% to 25% rate, depending on the nature of the revenue and origin of the resources (tax havens are exposed to the higher rates); (ii) Capital gains could be exempted; and (iii) Earnings from Investment Participation Funds (FIP) could be exempted under certain circumstances (source: Price Waterhouse Coopers).

### **Individuals**

Individuals - Capital gains on the sale of a property by individuals will be subject to Brazilian tax at a rate of 15%. The tax is determined by the difference between the sale price and the acquisition cost duly reported on the annual income tax return. The tax is payable up to the last business day of the month following the month in which the gain occurred, since it is a definitive taxation [i.e. not subject to adjustments on the annual income tax return].

Gains derived from sales of real estate acquired by the seller before 1970 are tax exempt for Brazilian residents. Proceeds from the sales of real estate acquired by the seller between 1970 and 1988 have a progressive reduction on the capital gains levied on them.

### **Corporations**

Corporations Corporate capital gains arising from the sale of or exchange of fixed assets are treated as ordinary income and taxed at the regular rates. Due to the fact that Brazil no longer monetarily restates fixed assets for purposes of inflation, the amount of the capital gains will be determined as being equal to the positive difference between the sale price and the disposed assets original investment value less the accumulated depreciation/amortization.

### **Inheritance and Donation Tax**

ITCMD – [IMPOSTO SOBRE A TRANSMISSAO 'CAUSA MORTIS' E DOAGAO DE BENS E DIREITO] – Inheritance and donation tax

This is a tax levied by the state on the transmission of real estate by way of donation or inheritance. This tax may vary per state but an average rate would be 4% of the appraised value. [The maximum in the whole country is 8% of the appraised value].

### **Consult an Expert**

To know your true tax liability The Overseas Property People LLC will always recommend you consult a tax expert.