



SELECTED ARTICLES FROM THE SERIES

THE INS AND OUTS OF REAL ESTATE IN ISRAEL

2024

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Important Tax Laws for Non-Israeli Investors in Israeli Residential Real Estate

Purchase Tax (Mas Rechisha)



You want to buy an apartment in Israel, in which to live or you want to purchase an apartment in Israel as a long-term investment to sell-on, down the line, for a profit. Before you make this dream come true, make sure you understand the tax liabilities.

Buyers be careful! In Israel, residential real estate transactions of non-residents and non-Citizens can result in significant tax charges!

In this article, we will outline the current tax law for non-Israeli residents buying residential real estate in Israel. We will explain how much they will be billed for residential property Purchase Tax.

We also recommend reading our article, "How Can Foreign Residents Invest in Real Estate in Israel without Paying Taxes?" This can be found on our website www.epsteinlaw.co.il.

Important note: This article outlines the tax law for individual buyers purchasing residential property. The tax laws for corporations and partnerships, and those purchasing commercial property or land, are different, and are not included in this article.

CITIZENSHIP AND RESIDENCY

The law relates differently to four different categories of buyers:

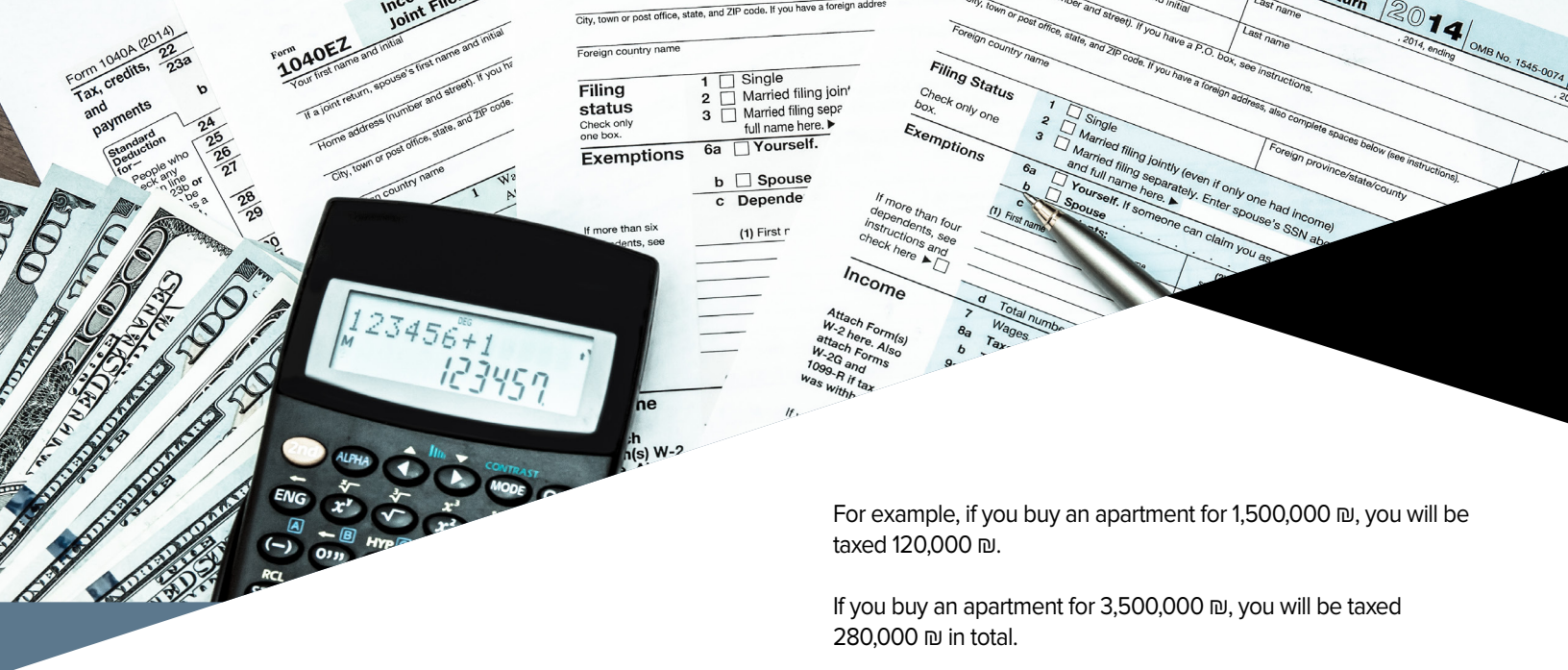
1. Israeli citizen. Israeli resident.
2. Israeli citizen. Foreign resident.
3. Foreign citizen. Israeli resident.
4. Foreign citizen. Foreign resident.

All Israeli residents, whether they are Israeli or foreign citizens, may receive full or partial exemptions from Purchase Tax (Real Estate Tax Reform Law, 2014). The Residency Test (Mivchan haToshvut) is used to decide whether you have the status of an Israeli resident. The legal definition of residency is, "the country in which the person's life is centered".

A foreign citizen will have to prove that his/her center of life is in Israel, to benefit from these exemptions.

Anyone who has lived in Israel for more than half of the previous tax year (a minimum of 183 days) may be defined as an Israeli resident. The tax authorities may also request additional evidence (e.g., a proof of tax payments to the Israeli Tax Authority, a letter from your childrens' educational institutions to confirm where they are enrolled, a letter from your Israeli employer, etc.)

As each case is different, make sure that your specifics are examined by a competent real estate attorney.



For example, if you buy an apartment for 1,500,000 ₪, you will be taxed 120,000 ₪.

If you buy an apartment for 3,500,000 ₪, you will be taxed 280,000 ₪ in total.

PURCHASE TAX (MAS RECHISHA)

WHO PAYS IT?

Purchase Tax is paid exclusively by the buyer.

WHO IS EXEMPT?

An Israeli resident buying his/her first residential property in Israel is fully or at least partially, exempt from paying Purchase Tax. Whether the exemption is full or partial depends on the price of the property (see Table below). Once one already owns a residential property in Israel, there are no longer any standard exemptions when buying additional residential properties. However, careful tax-planning with a competent real-estate attorney can sometimes help you to invest safely and legally receive large reductions on these taxes. We have saved our clients millions of shekels over the years with our tax-planning services.

FOREIGN RESIDENTS

Foreign residents (whether Israeli or foreign citizens) do not receive exemptions, even when buying their first property in Israel.

Foreign residents (whether Israeli or foreign citizens) who immigrate to Israel within 1-2 years of buying an apartment are also eligible to receive this exemption. They will have to pay the Property Acquisition Tax in full at the time of purchasing the apartment but can apply to have the tax refunded once they have immigrated.

Tax rates for non-residents AND Israeli residents who already own a residential property in Israel

Purchase Tax is progressive. In other words, the rate of taxation increases when the price of the property exceeds a certain value, as follows:

PURCHASE PRICE	TAX RATE
0 NIS to 6,055,070 NIS	8%
6,055,070 NIS +	10%

TAX EXEMPTION RATES FOR ISRAELI RESIDENT FIRST-TIME BUYERS

An Israeli resident who does not own an apartment in Israel is exempt from Purchase Tax on his/her first residential purchase. He/she is fully exempt from tax unless the property exceeds a certain value, as follows:

PURCHASE PRICE	TAX RATE
0 NIS to 1,978,545 NIS	0%
1,978,545 NIS to 2,347,040 NIS	3.5%
2,347,040 NIS to 6,055,070 NIS	5%
6,055,070 NIS to 20,183,565 NIS	8%
20,183,565 NIS+	10%

CONSULT WITH AN ATTORNEY

Due to intricacies and continual revisions to tax legislation, before you agree to buy an apartment, you are advised to consult with a competent real-estate attorney. He/she who will inform you of any changes in real time and determine the actual tax charges you will pay. We have happily and successfully provided this service to our clients, saving them from unwelcome surprises.

NOTE: This information is not intended to constitute legal advice and should not be relied upon in lieu of consultation with the appropriate legal advisors.

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Important Tax Laws for Non-Israeli Investors in Israeli Residential Real Estate

Capital Gains Tax (Mas Shevach)



You own an apartment in Israel and think that the time is ripe for selling. Before you make this dream come true, make sure you understand the tax liabilities.

Sellers beware! In Israel, residential real estate transactions of non-residents and non-Citizens can result in significant taxes!

In this article, we will outline the current tax law for non-Israeli residents selling residential real estate in Israel. We will explain how much they will be billed for residential property Capital Gains Tax.

We also recommend reading our article, "How Can Foreign Residents Invest in Real Estate in Israel without Paying Taxes?". This can be found on our website www.epsteinlaw.co.il.

Important note: This article outlines the tax law for individual sellers selling residential property. The tax laws for corporations and partnerships, and those selling commercial property or land, are different, and are not included in this article.

CITIZENSHIP AND RESIDENCY

The law relates differently to four different categories of sellers regarding Capital Gains Tax (Mas Shevach):

1. Israeli citizen
2. Foreign citizen

Who pays Mas Shevach?

Capital Gains tax is paid exclusively by the seller.

TAX RATES

The tax rate for Capital Gains tax is 25% of the real increase in the value of the apartment. The real increase is the difference between the value of the property when it was bought and when it was sold.

The real increase takes the inflation index into account. As inflation in Israel is almost always on the rise,

this works to your advantage and reduces the amount of tax you will pay.

The exact calculations are complicated, but the following rough example should give you a feeling for how it works. If you bought a property for 600,000 ₪ and sold it for 1,000,000 ₪, your property has increased in value by 400,000 ₪ and you will have to pay 100,000 ₪ in taxes. If inflation increased prices by 10% over that time, the real



TAX EXEMPTION

increase is only 340,000 ₪ and you will only have to pay 85,000 ₪ in taxes.

WHO IS EXEMPT?

Israeli citizens are usually exempt from Capital Gains tax if they fulfil three main conditions, listed below:

1. This is their only apartment.
2. The seller has owned the apartment for at least eighteen months. unless 50% or more of the funds for purchasing the property were gifted to the purchaser, this period increases to 3-4 years (consult with a real-estate attorney).
3. This exemption can only be used once every eighteen months.

EXEMPTIONS FOR FOREIGN CITIZENS

A foreign citizen can also benefit from this exemption if he/she does not possess any other residential property BOTH in Israel AND in his/her country of citizenship.

It can be difficult to obtain the necessary documentation from one's country of citizenship to prove this to the Israel Tax Authority.

Even if one obtains the required documentation and is exempted from Israeli Capital Gains tax, one may still be taxed in one's country of residence.

Linear Capital Gains Taxation for Sellers who Bought Residential Property Before 2014

WHAT IS A LINEAR TAX

and how is it calculated?

All residential property is exempt from Capital Gains tax for the period up to 1.1.2014. There are no limits to how many times this exemption can be used.

For illustration, consider someone who purchased an apartment in January 2010 for 1,000,000 ₪ and sold this apartment in January 2020 for 2,000,000 ₪. As he owned the apartment for 10 years, on average, the value of the apartment increased each year by 100,000 ₪ (Note: to keep things simple, in this example we are not controlling for the inflation index). As the apartment is considered to have already appreciated by 400,000 ₪ before 1.1.14, only the remaining 600,000 ₪ of the profits are subject to Capital Gains Tax ($25\% \times 600,000 \text{ ₪} = 125,000 \text{ ₪}$).

CONSULT WITH AN ATTORNEY

Due to intricacies and continual revisions of tax legislation, before you agree to sell an apartment, you are advised to consult with a competent real-estate attorney. He/she who will inform you of any changes in real time and determine the actual tax charges you will pay. We have happily and successfully provided this service to our clients over the years, saving them from unwelcome surprises.

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Nine Things You Should Know Before Purchasing a Second-Hand Residential Property

You've finally found the apartment of your dreams. You've negotiated the price and terms. Before signing a contract, please be aware of the following important information. It will save you money and spare you unwanted aggravation and legal headaches.

1 MEMORANDUM OF UNDERSTANDING (ZICHRON DEVARIM)

Often, after the buyer and seller have negotiated mutually agreeable terms, one or both of the parties may request that the terms are summarized in a Memorandum of Understanding. This document typically includes information such as the price, the payment schedule, along with some basic terms and conditions. In many cases, even when both parties have expressly stated that a contract will be prepared by an attorney, this seemingly informal document is considered a legally binding contract, enforceable in Israeli Courts.

★ Do not sign a Memorandum of Understanding. Insist on meeting with a competent real estate attorney. The attorney is trained to prepare a contract to protect your interests.

2 TAXES

– Before agreeing to buy a property make sure you fully understand the tax liabilities. Ensure that you are up to date with the latest changes in Israeli real estate tax laws. Purchase taxes are often steep, especially for non-residents. However, with advance planning and sound legal advice, you can walk away with significantly reduced taxes (often worth hundreds of thousands of shekels).

★ Obtain legal advice from a competent real estate attorney with expertise in tax planning.

3 IMPROVEMENT LEVY (HEYTEL HASHBACHA)

– This is a municipal tax payable by property owners when local planning permissions or zoning, have increased the value of their property. The payment is due either when the property is sold or once the planning permissions are implemented by the property owner. If you purchase a second-hand property, the seller will be required to pay the Improvement Levy. While this is technically the seller's obligation, there are many uninformed sellers who protest upon learning of this tax.

Obtaining a pre-ruling regarding the seller's obligation (if it exists) can help you negotiate the best price for buying the property while preventing problems down the line. Furthermore, with careful research and planning, the seller can sometimes receive a partial or even full exemption from the Improvement Levy.

★ A competent real estate attorney will be able to locate pre-rulings which can be used to insist that the seller fulfils his obligations. The attorney will also be able to research the possibility of obtaining an exemption.

4 MUNICIPAL DEBT

– When you apply to the Land Registry (Tabu) to record your property purchase on the deed and transfer title on to your name, you will be required to submit a certificate from your local municipality confirming that there are no outstanding debts related to the property (Ishur Siluk Chovot). Therefore, before you sign any agreement to buy a property, you must ensure that there is no outstanding municipal debt. This process can delay and even block the registration of your property.

★ A competent real estate attorney will check this for you in advance and spare you unwanted delays and distress.

5 MORTGAGE ELIGIBILITY

– In Israel, because of the banking system, people often sign a purchase contract before having a mortgage approved, assuming that this will be a formality. Be careful! Especially if you are not an Israeli resident, the mortgage approval process can be much more time-consuming and complicated than you imagine and you might not be approved for the full mortgage that you were expecting. You do not want to end up in a situation in which the bank partially or in fully rejects your mortgage application and you are unable to meet your payments. Non-payment and delayed payment can lead to a breach of contract and result in penalties. Currently, Israeli citizens are eligible for loans of up to 70% (or in unique cases up to 90%) of the property's actual value. Foreign citizens usually qualify for loans of up to 50%.

★ Working with the bank in advance of signing a contract improves your chances of getting a higher mortgage at a better rate and protects you from the unwelcome surprise of having your mortgage rejected when it is already too late. For further information, refer to our article on mortgages in our series: "The Ins and Outs of Real Estate in Israel for Non-Israelis" on www.epsteinlaw.co.il.

6 FORECLOSURES, DEBTS, Conflicting Transactions

– Before purchasing a property, request the seller's title deed to the property (Nesach Tabu). This should state if there are any foreclosures or caveat warnings (Heorot Azahara) on the property. In addition, the buyer attorney must carefully check the Nesach Tabu (or with the Land Registry) to determine that the property has been

properly registered. In some cases, the buyer's attorney will also check with The Registrar of Pledges (Rashsam haMashkonot) to verify that the seller's rights are in order.

★ A careful analysis of all aspects of the seller's rights to the property are an essential prerequisite to ensuring that you obtain full legal rights upon buying the property. A competent real estate attorney knows exactly what to look out for and will ensure that everything is in order before you commit to the purchase.

7 EXTENSIONS AND PLANNING PERMISSION – It is important to check whether any parts of the property were added illegally and/or were not included in the original construction permits. The buyers can bear criminal liability for illegal construction even when it was carried out many years before they appeared on the scene. Don't rely on unsubstantiated claims! The seller's assurances that they received the necessary permits cannot be relied upon.

★ A competent real estate attorney will thoroughly investigate the construction history of the property and inspect any issued permits.

8 CAREFULLY EXAMINE THE PHYSICAL CONDITION OF THE PROPERTY – It is recommended to thoroughly inspect a property before agreeing to purchase it. You should carefully examine the property yourself for any defects or damages and, ideally, you should hire an expert who knows what to look for. This simple and relatively inexpensive effort can both help you negotiate a better purchase price and will protect you from unpleasant and costly surprises.

★ A competent real estate attorney can refer you to a capable property surveyor and ensure that any legal implications of the findings are accounted for in your contract.

9 THE BOTTOM LINE: Always Consult with a Competent Real Estate Attorney, Especially During Negotiations! – It can be tempting to attempt to save money and handle the purchase on your own. While it is true that some transactions are problem free and can be independently managed, this is rarely the case.

Naturally, this is our position, but our many clients will attest to it too. We have assisted hundreds of our clients to safely navigate their way through all sorts of surprises and legal complications. Timely investment in professional assistance will save you much time, money, and legal complications down the line. Be smart and not cheap. Hire an experienced real estate attorney who will advise you and support you throughout your purchase process. At Epstein & Co., we take pride in our proven track records of legal success and customer satisfaction. We would be delighted to hear from you and assist you too.

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"LETTER OF INTENT"

Yitzchak M. sat nervously in court awaiting the final verdict. It was not long in coming. A few, short minutes later, Yitzchak broke into tears as he was ordered by the judge to pay 175,000 NIS.

Yitzchak was a successful businessman with a large portfolio of real estate investments. He was no fool and no criminal. How then, did he end up with a court order to pay 175,000 NIS? Sadly, he fell prey to a very serious mistake which is all too common.

Here is the full story, based on a true civil court case brought before the Petach Tiqva Magistrates Court (May, 2015):

After an agonizingly long search, Yitzchak finally found the apartment that met his needs. Sitting across from Moshe, the prospective seller, in the apartment's expansive living room, it dawned upon Yitzchak just how unique this apartment was. It was unusually large, artistic, and classy. No wonder Moshe had repeatedly told Yitzchak that there were many prospective buyers and he should make up his mind quickly. "How right he was! A property like this for a price like this sells in no time at all. But now it will be mine!", a contented Yitzchak thought to himself.

But then a distressing thought entered his mind, "What if Moshe quietly keeps the property on the market to try and exact a higher price from someone else? What will happen then?"

Ever the practical person, Yitzchak floated the idea that the two of them write a Letter of Intent (Zichron Devarim) and state their intentions to follow through with the sale. To his relief, Moshe readily agreed. The document looked something like this:

A LETTER OF INTENT TO PURCHASE REAL ESTATE

1. Mazel tov! At this auspicious time, Moshe and Yitzchak hereby come together and agree that Moshe will sell to Yitzchak, and Yitzchak will buy from Moshe, all of Moshe's rights to the apartment with the address 5 Lincoln St., Jerusalem.
2. Payment for this transaction is set at NIS 4,500,000.
3. Ownership of the property will be transferred to Yitzchak on October 15th, 2015. Four air conditioners will remain in the apartment.
4. Both sides agree that, if either side shall renege on this agreement, the reneging party must compensate the other party the amount of NIS 150,000.

Signed: Moshe and Yitzchak

Yitzchak was delighted. With the letter of intent safely tucked in his pocket, he climbed into his car and set out for home. For once, the heavy Jerusalem traffic barely disturbed him at all. His mind was elsewhere, in a fantasy filled future. The apartment of his dreams was now firmly in his grip.

Unfortunately, it did not take long for Yitzchak to come crashing back to reality. He discovered that he had been duped; the apartment had certain flaws that were unacceptable to him. Furthermore, the true value of the apartment was actually far lower than the price he had agreed to pay.

Disappointed, angry, but ever practical, Yitzchak wasted no time in informing Moshe that his offer for the apartment was withdrawn with immediate effect. And given that Moshe had dealt with him dishonestly, he saw nothing unethical in cancelling what he considered to be their non-binding agreement.

But things went from bad to worse. Shortly thereafter, Yitzchak received a letter from Moshe's attorney demanding NIS 150,000 in compensation for breach of contract. "There is absolutely no way that I am going to pay this", said a disgusted Yitzchak to himself as he discarded the letter in the nearest trashcan. Upon receiving no response, Moshe was unperturbed. He sued Yitzchak and summoned him to court.

In court, Yitzchak argued that the Letter of Intent was not legally binding. He had only signed after being pressured into the sale. He had also received assurances that the agreement was not legally binding.

Moshe had a different take. He questioned how such an agreement could not be binding. After all, it was signed by both parties after they had mutually expressed their interest in completing the transaction. The document outlined all the substantial conditions of the sale: the identification of the property, the price, the possession date, and so on.

The court ruled in favor of Moshe. They were of the opinion that there was no valid reason not to consider the Letter of Intent a legally binding document. They agreed with Moshe's argument that all substantial elements of the transaction had been outlined in the document: the names of both parties, the property descriptors, the nature of the transaction, the price, the possession date, and a compensation clause for breach of contract. Moreover, the letter of intent went so far as to detail those items that would remain in the apartment ("Four air conditioners will remain in the apartment"). Hence they concluded that the Letter of Intent was a contract in every sense of the word. Yitzchak was ordered to compensate the seller in full and in addition to cover Moshe's NIS 25,000 legal fees.

- Many of our clients could have found themselves in a similar situation to Yitzchak M. had we not guided them through the process of purchasing their properties. In fact, some of our clients have been faced with far worse problems.

Often, while arranging the final details of a property transaction, one of the parties (e.g., buyer, seller or realtor) will suggest that the buyer and seller just sign on a harmless Zichron Devarim in order to secure the deal. Often, it is suggested that the Letter of Intent does not constitute a contract in any way. They will suggest to emphasize on the Letter of Intent that the actual contract will be prepared and signed within 14 days by a real estate attorney.

In theory, a "Letter of Intent" sounds like a good idea. It can guarantee a good purchase price for the buyer and guarantee a sale for the seller. Unfortunately, in reality, this course of action can have considerable, unforetold negative consequences. It can be a dreadfully expensive mistake. It is important to know that it is better to pass up the opportunity to buy a specific apartment than to enter unprotected into sizeable contractual obligations.

In light of countless court decisions similar to that faced by Yitzchak M., all of which determined that a Letter of Intent is a legally binding contract, we recommend to all of our clients, without exception, that they not sign a Letter of Intent before obtaining a legal review. A Letter of Intent is a contract; no contract should be signed without consulting a competent attorney who will carefully examine the terms and conditions with your best interests in mind.

At Epstein & Co., we have happily and successfully provided this service to our clients over the years and have spared them from catastrophic mistakes. For more information, and to get in touch, please visit our website at www.epsteinlaw.co.il.

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Epstein & Co.

is one of the leading boutique law firms on the Israeli real estate scene. We specialize in the investments and purchase of Israeli real estate. Our extensive experience in this field ranges from single home purchases to land transactions and large scale projects. The firms' professional staff provide a dependable and comprehensive legal service for its international clients such as representations for contracts, wills and inheritance matters, and labor law.

We take pride in our client centered approach and our many past successes in solving complex legal issues related to property transactions. Firmly committed to the honest, timely and courteous practice of law, we are transparent and accountable from the top to the bottom of our organization.

We are fully aware of the legal and financial hurdles when wiring international funds, especially in light of Israel's strict laws to counter money laundering. To this end, we have extensive specific experience in navigating both the legal and practical aspects of transferring funds into and out of Israel.

Our staff are professional and dependable, providing comprehensive legal services to a respectable community of international clients. Alongside real estate transactions, our team also excels in handling representations for contracts, wills inheritance and labor law.

Our founder and senior partner, Mr. Yaacov Epstein, attorney at law, is a popular international lecturer on real estate topics and is the author of the upcoming book "The Ins and Outs of Real Estate in Israel". Mr. Epstein is fluent in both Hebrew and English.

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