

Tax consequences of transferring Bahamian real property held by a company for estate planning purposes

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Introduction

Transfers which are zero rated

Transfers which are subject to payment of VAT

Complex ownership structures

Introduction

This article considers the tax consequences of transferring Bahamian real property held by a company for estate planning purposes. This article highlights only the most common tax issues associated with the sale or transfer of residential property in The Bahamas by a company.

Bahamian real property is commonly held by a company which is incorporated in The Bahamas or another jurisdiction whose shares may be held by an individual or their nominee. A 'beneficial owner' is any person who is beneficially interested in the real property, including a beneficiary under a trust. This type of land ownership is useful for estate planning as it provides the ultimate beneficial owner (UBO) with flexibility to change the ownership structure of the company with little or no tax consequences.

Prior to the enactment of the Stamp (Amendment) Act 2019 and the Value Added Tax (VAT) (Amendment) Act 2019, which came into force on 1 July 2019, the sale or transfer of Bahamian real property was subject to the payment of both stamp duty and VAT. As a result of these legislative amendments, stamp duty was replaced entirely by VAT (for further details please see "[New tax reforms in effect](#)").

The tax treatment of the sale or transfer of Bahamian real property is now entirely governed by the VAT Act 2014, subject to such conditions and restrictions as may be prescribed in the VAT rules and guidelines issued on occasion.

Transfers which are zero rated

Subject to the VAT rules, the following transfers of Bahamian real property are eligible to be zero rated:

- transfers where there is no change in beneficial ownership;
- *inter vivos* gifts of Bahamian real property that is held by the transferee for at least seven years from the date of the transfer where the transferor and the transferee fall within a limited category of persons;
- transfers from one company to another where the shares of both companies are beneficially owned by the same person and no other person owns or has the right to acquire an interest in any of the shares of either company; and
- transfers between members of a group of companies whose shares are beneficially owned by the same person.

Transfers which are subject to payment of VAT

A transaction entered into for the purpose of effecting a direct or indirect change in the beneficial ownership of Bahamian real property will be subject to the payment of VAT. This includes the transfer of an interest in a real property holding entity or the transfer of a controlling interest (more than 50%) in such entity which will be deemed to be a direct transfer of the Bahamian real property in the same proportion of the value of the interest acquired in such entity. For example, where 25% of the interest in the real property holding entity is transferred to another person, 25% of the value

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of the land will be subject to the payment of VAT.

A 'real property holding entity' includes the parent of any subsidiary that owns the real property.

A dividend-in-specie or other transfer or vesting of the beneficial interest in real property by a company (whether in the course of the company's winding up or otherwise) to or in any of its members will be deemed a change in the beneficial ownership of the real property and will therefore be subject to the payment of VAT.

Complex ownership structures

If the real property holding entity has a complex ownership structure with several layers, it must be clearly established through all relevant supporting documentation that the UBO at the end of the corporate chain is the same person in order for the transfer of the Bahamian real property to be zero rated for tax purposes.

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