

# Condominium Foreign Purchase Guide



# Introduction

This guide has been created for Foreigners desirous of purchasing Condominium Units in Thailand, solely on the additional requirements applicable to foreign purchasers.

For more information on buying property in general, please visit our write-ups on Thailand Real Estate on **BANGKOK LEGAL BLOG (BLB)** @ [www.BangkokLegal.wordpress.com](http://www.BangkokLegal.wordpress.com) .

This guide has not been contemplated for Condominium Units falling **out** of their respective Foreign Ownership quotas with their Condominium Buildings, and similarly had not been contemplated for any form of land ownership, usufruct arrangements, superfic arrangements, Board of

Investment allowances, foreigner investment exceptions, and so forth.

Thai Condominium Laws are encompassed in the following statutes, in addition to the Land Code and the Civil & Commercial Code:

- \* Condominium Act B.E. 2522 (A.D. 1979)
- \* Condominium Act (No.2) B.E. 2534 (A.D. 1991)
- \* Condominium Act (No. 3) B.E. 2542 (A.D. 1999)
- \* Condominium Act (No. 4) B.E. 2551 (A.D. 2008)

Imperative: Foreigners may only hold **49%** of the total Condominium floor area - Section 19(2 *bis*) Condominium Act.

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## Foreign Exchange Transaction Forms / Certificates

Since the 1991 Act, the Land Office has required the production of Foreign Exchange Transaction Forms / Certificates (“**FET Certs**”) to evidence the monies having been brought in from the foreign bank as foreign currency – i.e. to fall within the ambit of the class of ‘foreign entity’ allowed to purchase Thai Condominium Units:

*“...aliens or juristic persons deemed by Thai law to be aliens, who have brought into the Kingdom **foreign exchange or withdrawn the money from the non-resident Baht account or withdrawn the money from the foreign currency deposit account**”*

Note that as banks do not issue FET Certs for amounts less than 20,001 USD, credit notes have to be obtained *in lieu*. It is crucial to remember certain salient points in order to obtain the appropriate FET Cert as acceptable by the Land Office and further to smoothen the transaction:

### Telex Transfer

Identification of Purchaser as transferor and/or transferee

### Transfer Instruction

Clearly indicating that the monies is for the Purchase of a Condominium Unit

### FET Cert

- Transferred Amount (In foreign currency & Baht)
- Names of Transferor – Transferee
- Purpose of Transfer



## Specific Business Tax

Specific Business Tax (“**SBT**”) is applicable where the target Condominium Unit has been held for a period **less than 5 years**. Imposition of the SBT is at the rate of **3.3%**.

Common exemption is when the Condominium Unit is held for a period less than 5 years but the Owner can

show proof of having resided in the Condominium Unit for more than 1 year – normally by furnishing a House Registration Book (*Tabien Baan* – in case of foreigners, a yellow *Tabien Baan*).

Conversely, in the case of new developments, only SBT is applicable.

## Property Income Tax

Only sales by individual Vendors will be considered as opposed to Corporate Vendors for which instead a Corporate Income Tax of 1% is levied. Property Personal Income Withholding Tax (“**PIT**”) is imposed during the registration of the Transfer unless any of the limited exemptions apply. Thailand’s PIT is based on progressive rates and holding period of ownership, method of calculation of which is detailed as follows:

Thailand’s Progressive Personal Income Tax Rates	
Taxable Income [Assessed Income – Deductions – Expenses]	Rate
0 – 150,000	Exempt
150,001 – 500,000	10%
500,001 – 1,000,000	20%
1,000,001 – 4,000,000	30%
> 4,000,000	37%

PIT rates (above) and applicable deductions based on holding period of ownership (below)

Holding Period (Years)	Deduction
1	92%
2	84%
3	77%
4	71%
5	65%
6	60%
7	55%
8 or more	50%



## Method of Calculation

This method of calculation is specifically for Condominium Unit transfers not by way of inheritance, gifts and not by non-individuals.

1. Ascertain Official Assessed Value (“**OAV**”)
2. Holding Period (Ownership Registered → Year of Transfer) (“**HP**”). A fraction of a year is considered a full year.
3.  $OAV - [(applicable\ deduction\ percentage) \times OAV] / HP = Annual\ Personal\ Income$
4. Apply Progressive Personal Income Tax (“**PIT**”) rates on Annual Personal Income to determine Annual PIT payable
5. Annual PIT x HP = Total PIT payable

## Calculation Illustration

Joel is desirous of selling a Condominium Unit of which Official Assessed Value is ₱10,000,000. He has held ownership of the said Condominium Unit for a period of 6 years and 2 months – fraction is rounded up = holding period of 7 years. The applicable deduction for OAV based on HP would be  $55\%(10,000,000) = 5,500,000$ .

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Illustration of Method of Calculation		
No.	Detail	Calculation
1.	OAV	₱ 10,000,000
2.	HP	7 years
3.	Annual Personal Income	$OAV - [(applicable\ deduction\ percentage) \times OAV] / HP$ $10,000,000 - 5,500,000 = 4,500,000$ $4,500,000 / 7 = ₱ 642,857$
4.	Annual PIT	642,857 breaks down into $150,000 + 350,000 + 142,857$ 1 <sup>st</sup> 150,000 = exempt 2 <sup>nd</sup> 350,000 = $10\% (350,000) = 35,000$ 3 <sup>rd</sup> 142,857 = $20\% (142,857) = 28,571$ $35,000 + 28,571 = ₱ 63,571$
5.	Total PIT	$Annual\ PIT \times HP$ $63,571 \times 7 = ₱ 444,997$

Based on the case sample, the PIT imposable on Joel’s sale is ₱ 444,997.



## Stamp Duty & Transfer Tax

<b>If SBT paid</b> 0.01% Stamp Duty	<b>If only PIT paid</b> 0.5% Stamp Duty	<b>Transfer Tax</b> 2%
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**or and**

## Documents Required for Registration of Transfer =

### Individual Purchaser

- \* Passport
- \* FET Cert (or other proof of eligibility under Section 19 Condominium act)
- \* Power of Attorney if applicable with Notarization Certificate
- \* Married Persons - Marriage Certificate (for co-ownership) or Letter of Consent (for married persons desirous of owning the property singularly)

## House Registration Book – Yellow *Tabien Baan* (To. Ro. 13) =

Issued *vide* Registration Act B.E. 2534 (A.D. 1991) and subsequent amendment of B.E. 2551 (A.D. 2008). The Yellow *Tabien Baan* is available for foreigners (not holding PRs) whereas the Blue *Tabien Baan* is for Thai nationals. A common misunderstanding is that House Registration Books are legal documents and have legal implications – this is inaccurate and misled – House Registration Books merely identify the Residents / Occupants & Holders of the house.

Nonetheless, a House Registration Book has its utility, such as, *inter alia* constituting proof of residence toward exemption of Specific Business Tax in the case of sale of the Condominium

Unit, obtaining a Thai driver's license, eligibility for certain health care subsidies, and so forth.

Applications for House Registration Books are made to respective district offices - *Amphurs* – and in the case of Bangkok – *Khets*. In addition to legislation, districts may have varying rules. Typically, all that is required is a letter from the respective embassy, proof of identity and occasionally the production of witnesses that may be required.

*In lieu* of a House Registration Book, a Police Report may be obtained to the same effect – certification of one's residence – where the need arises.



# Inheritance of Condominium Units by Foreigners =

The previous long-winded, cost incurring modus for the foreign inheritance of condominium units – particularly addressing inheritance by a foreign heir / inheritor / legatee from a foreign owner, the latter of which which had purchased the condominium unit, legally owning it by means of producing a Foreign Exchange Transaction Certificate (“FET Cert.”) showing that the said purchase monies were remitted into Thailand in foreign currency and thereafter inheritance the practice of ‘re-purchasing’ by the foreign heir / inheritor / legatee – **is no longer necessary.**

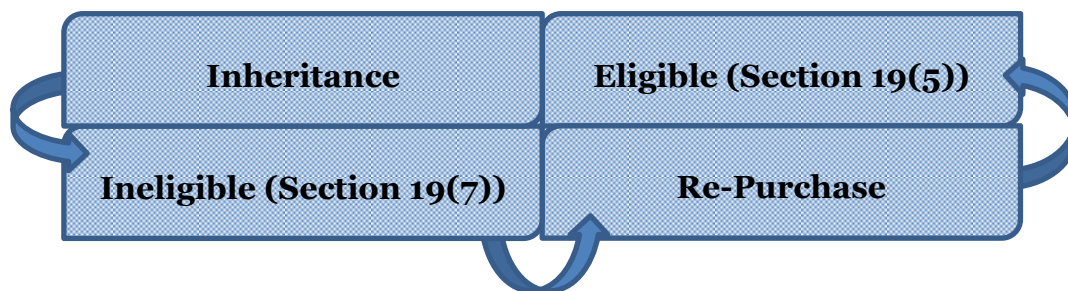
Previously, failure to ‘re-purchase’, thereby reproduction of a new FET Cert. and paying reimposed taxes was often deemed to attract application of Section 19(7) of the Condominium Act which in effect mandated the disposal of the inherited property within 1 year:

*“An alien or juristic person regarded by law as an alien other than those specified in Section 19 who acquires an apartment by inheritance as statutory heir or legatee or otherwise as such case may be, shall notify in writing the Competent Official within a period of sixty days from the date of acquisition of ownership of the apartment, and shall dispose of such apartment within a period of not exceeding one year from the date of acquisition of ownership of apartment. If disposition is not made within the said period, the provisions of the fourth paragraph of Section 19 shall apply mutatis mutandis.”*

Subject to official inquiries with regard to the matter – the Thai Department of Lands has now resolved this legal discrepancy by proper construction of the Civil & Commercial Code clarifying that the right to foreign legal ownership by

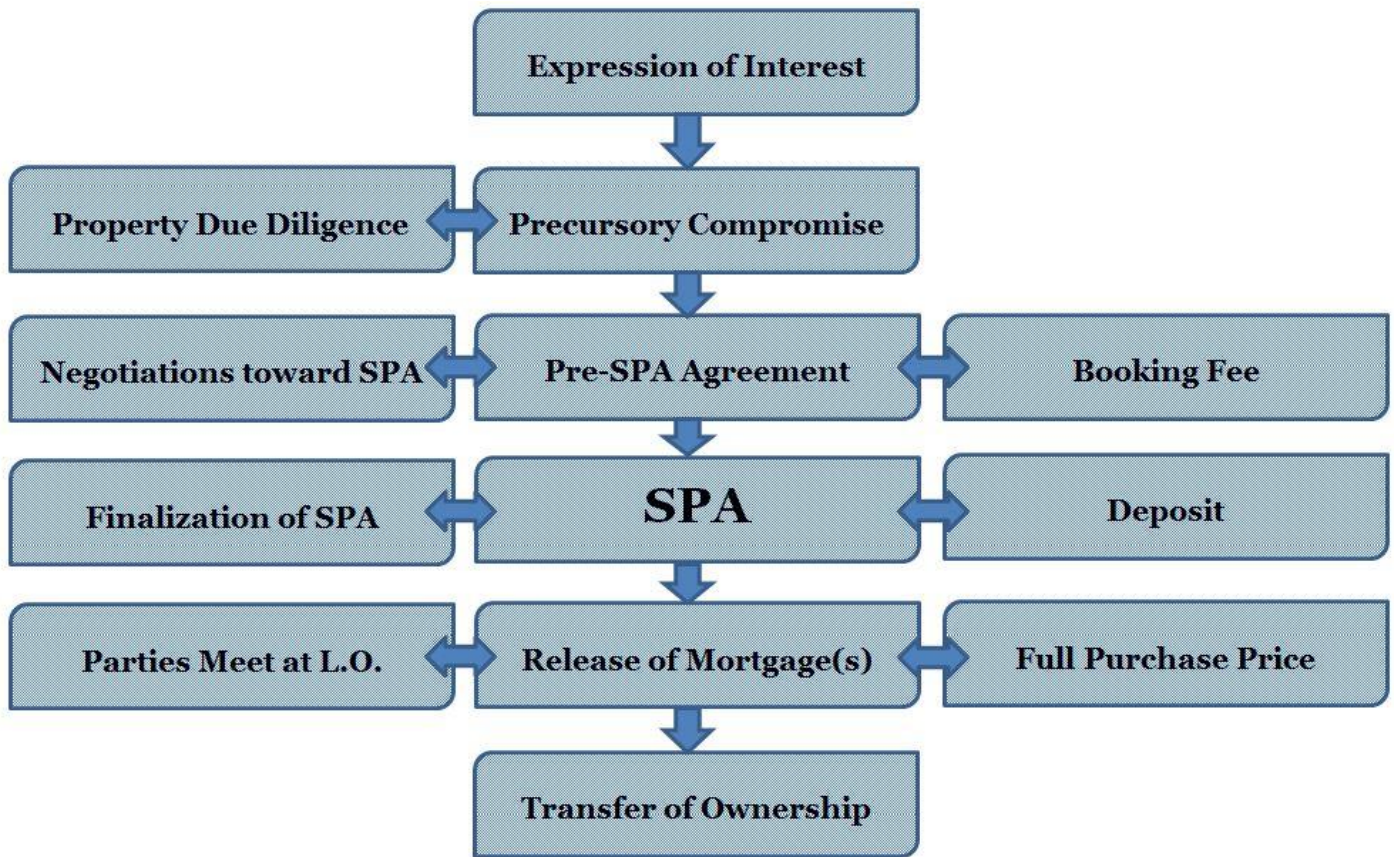
way of producing a FET Cert. is also inherited by the foreign heir / inheritor / legatee – a second FET Cert. from the foreign heir / inheritor / legatee is therefore not necessary nor does Section 19(7) apply.

This is good news to foreign owners and future foreign owners of Condominium Units in Thailand that own or are to own the same by the FET Cert. exemption – able to rest assured that their foreign heirs / inheritors / legatees of their property will not be subject to the duplicated taxes, exchange rate fluctuations and other costs that would otherwise be incurred.



**No longer necessary.**

# Sale & Purchase Transaction Overview



*Supplied by*



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