

PURCHASE TAX ON ISRAELI REAL PROPERTY

By Elana H. Billig, Advocate

On the surface, the real estate purchase/acquisition tax, known as *Mas Rechisha*, appears to be the most straightforward aspect of a real estate transaction as the tax to be paid is calculated based on the purchase price of the asset. After the many hours of energy consumed in negotiating the purchase price and terms of the transaction, something straightforward should be quite welcome. However, knowledge, planning and strategizing will help you maximize any reductions or tax benefits you may have. This article will focus on the *purchase tax* applicable in purchases of *residential units* rather than commercial properties or land.

In order to qualify as a *residential unit*, the following two conditions must be met:

1. **Completion.** The construction of the unit must be complete and the unit has to be fit for use according to its nature. In a second hand apartment this requirement is easily met, but in the case of purchasing an apartment off plan from a construction company, known as a *Kablan*, the purchase agreement must set forth an obligation by the *Kablan* to complete the construction.
2. **Residential.** The unit must primarily be used for residential purposes, and a declaration of use is made on the report of the transaction to the tax authority.

Once it is established that the unit qualifies as a *residential unit*, the next step on the route to determine the amount of *purchase tax* due is to establish whether the unit will be considered the *sole residential unit* of the purchaser, or whether the purchaser will be taxed as the owner of *multiple residential units*.

If a purchaser has not yet sold his/her existing *residential unit* at the time of signing a purchase agreement to purchase a different *residential unit* for residential purposes, the law affords two situations where such a purchaser will still be treated as the owner of a *sole residential unit*, as follows:

1. **Second Hand.** If the purchaser obligates on the tax report of the transaction to sell his/her existing *residential unit* within 24 months from the date of signing the agreement to purchase a different *residential unit*, the purchaser will be permitted to pay the rate afforded to purchasers of a *sole residential unit*. In the event that 24 months elapse and the purchaser did not sell the initial apartment, he/she will then have to pay the difference owed to the tax authority for the tax that a *multiple residential unit owner* would have paid plus inflation, interest and a fine.
2. **Off Plan.** In order for a purchaser of a *residential unit* from a *Kablan* to benefit from the lower tax rates afforded to the owner of a *sole residential unit*, such a purchaser must obligate to sell his/her current apartment within 12 months

from the date set forth for the deliverance of the unit in the purchase agreement entered into with the *Kablan*. In the event of a delay in receiving deliverance of an apartment from a *Kablan* as a result of circumstances that are not in the purchaser's control, the purchaser must sell his/her current apartment within 12 months from the time that the *residential unit* was actually delivered to the purchaser. A purchaser which does not sell his/her current apartment by such a date will be required to pay any difference owed to the tax authority for the tax that a *multiple residential unit owner* would have paid plus inflation, interest and a fine.

It should be noted, however, that until the procedure relating to an existing *residential unit* is completed, a purchaser will be unable to obtain a certificate of tax clearance that the purchase tax has been paid from the tax authority, which must be presented to the relevant land registry demonstrating that the purchase tax has been fully paid, and the newly purchased unit will not be transferrable to the purchaser's name until after such confirmation is received. To avoid waiting until the sale of an existing *residential unit* to allow for the transfer of title, a purchaser can elect to pay the purchase tax due on the basis of being the owner of *multiple residential units* and can thereafter request a refund for the amount of overpayment if he/she sells the existing *residential unit* in the allotted time frame.

The tax to be paid is progressive, and the thresholds are adjusted quarterly on the 16th of January, April, July and October, according to the fluctuations of the relevant inflationary index.

Illustration - *Purchase Tax Rates* for the period of April 16, 2010 - July 15, 2010:

Purchase Price	<i>Sole Residential Unit</i> (no purchase tax is paid on the first NIS 1,084,935 of the purchase price, and tax is paid at a rate of 3.5% for sums from NIS 1,084,935 through NIS 1,524,770, and 5% for amounts above)	<i>Multiple Residential Unit</i> (purchase tax is paid at a rate of 3.5% on amounts up to NIS 923,070 and 5% for amounts above)	<i>Commercial property</i> (purchase tax is paid at a rate of 5%)
NIS 800,000	0	28,000	40,000
NIS 1,200,000	4,027	46,154	60,000
NIS 1,800,000	29,156	76,154	90,000

The link to the tax authority's purchase tax simulator is as follows (in Hebrew):
https://www.shaam.gov.il/simulator_mekarkein/.

There are exceptions to the standard purchase tax rates, and there are certain categories of individuals who are entitled to pay a reduced purchase tax even if the apartment purchased will not be the purchaser's *sole apartment*. Some examples of those entitled to the reduced rate are:

- A. The Disabled – The law is very technical as to the level and type and cause of eligible disability. A married couple purchasing the home together to live in will entitle the family unit to the reduced tax, even if only one of the couple qualifies as disabled. There is a limit of two instances to benefit from the reduced purchase tax.
- B. Bereaved Families and those Injured by Hostile Acts – Again, the law is specific as to who is included in this category and includes certain surviving relatives, and as with the disabled, the benefit can only be used twice.
- C. Olim Chadashim (new immigrants)– for a full discussion on Olim Chadashim, please see my article entitled "*FACTS AND TIPS CONCERNING PURCHASE TAX FOR RECENT AND PROSPECTIVE OLIM*" (http://www.gkl.co.il/articles_35_1128022135.pdf).

There are reductions for those who receive a *residential unit* by way of a *gift* (or for no consideration) from a relative of the first degree (defined as a spouse, parent, descendent, spouse of descendent, and sibling), and the recipient of the *gift* will pay 1/3 of the regular purchase tax due.

Additionally, there is a special exemption granted when the ownership of a *residential unit* is transferred between spouses that are living together in the same apartment by way of a *gift* and this transfer would be entirely exempt from purchase tax. However, if the spouses are not living in the same apartment, such a transfer will be taxable at the 1/3 rate like other relatives.

When a portion of an apartment is transferred to a relative, the calculation is performed as to the entire apartment and the one who receives the *gift* will pay 1/3 of the tax due on the proportionate share received from the relative.

If no consideration is paid, the value is determined according to the fair market value and therefore an individual can determine the value of the *residential unit* according to his/her best knowledge and can calculate the tax rate accordingly by preparing a self assessment and paying the tax due accordingly. While the tax authority will approve the self assessment if it is determined that the value established is reasonable and the tax calculation was performed as required, it should be noted that the tax authority may decide to issue a different assessment in which case the law provides for an appeal process. The tax authority may even visit the unit to determine the value of the unit.

A declaration must be made to the tax authority within 30 days of the purchase, and

the tax shall be paid within 14 days from receipt of the assessment. Alternatively, in the event the purchaser of the *residential unit* prepares a self assessment, the tax is due within 50 days from the date of purchase. A delay in reporting a land transaction constitutes a criminal act. Any delay in payment triggers payment of linkage differentials according to the consumer price index, interest and a fine.

The tax can be paid at local banks with a payment stub, which can be obtained from the tax authority. Payments can also be made on the internet or by wire transfer, but there are limitations of amounts. In certain situations, the payments can be paid in installments (*tashlumin*) upon coordination with the tax authority.

Also noteworthy is that the purchase date is determined by the day of signing on a memorandum of understanding (*zicharon devarim*) or the day of the first payment towards the purchase price if these preceded the signing of the purchase agreement, according to the earliest of the above.

Even if the unit you purchase is well below the minimum threshold necessitating payment of *purchase tax*, the transaction will still need to be reported to the tax authority and a certificate of tax clearance is required in order to transfer title to the new owner.

There are additional purchase tax scenarios which are beyond the scope of this article and consultation with an expert is prudent prior to entering into any transaction.

This article is for informative purposes only and in no way is to be construed as legal advice or a legal opinion.

Elana H. Billig, Adv. is an Associate at Gideon Koren & Co., Law Offices and Notary.

Should you have any questions or comments regarding this article, feel free to contact Adv. Billig by email at elana@gkl.co.il.