

The use of real estate trust for holding of and management of property in Israel

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Abstract

Real estate trust in Israel is a useful legal structure for families who wish to register real property in the name of a corporate body acting as a ‘transparent entity’ and keep tax advantages granted to individual persons. This structure may be found particularly useful and efficient for non-Israeli families that decide to invest in real estate in Israel or have a second home for the family compound.

Introduction

Real estate trusts (RETs) have been used in Israel for many years and for various purposes, including legitimate tax planning, asset protection, and commercial transactions.

For instance, the RET was used in the 19th century by Jewish people living in Jerusalem in order to purchase land and protect their property from confiscation by the Ottoman rulers. This was achieved by placing the property in a Moslem trust known as a *Waqf*, thus ensuring that the Moslem government would not interfere with the ownership rights of the land.¹

Another old example of the historical use of a RET can be found in the establishment of Tel Aviv in 1909. At that time, it was prohibited for Jewish residents to purchase land, thus the land was purchased by a non-resident investor, who acted as trustee for the new settlers.²

Trusts in Israel are governed by the Trust Law.³ In addition, other laws contribute to the enhancement of the various uses of trusts, such as the Agency Law⁴ and the Real Property Taxation Law.⁵ This framework is augmented by court cases and rulings of the Israeli Tax Authority.

RETs in Israel

The RET in Israel is a legal structure under which real estate is purchased by a trustee, or is transferred to a trustee, and the trustee acts as a nominee or bare trustee for an identifiable beneficiary. Israeli law, namely the Real Property Taxation Law and the Trust Law, provide the legal structure for such an RET.

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1. Ron Shaham, ‘Christian and Jewish ‘Waqf’ in Palestine during the Late Ottoman Period’ (1991) 54(3) *Bulletin of the School of Oriental and African Studies* 460.

2. Shimon Rubinstein, *Constraints and Hope in the Matter of Land Purchases by Jews in the Land of Israel at the End of the Ottoman Period* (Hebrew) <http://www.kkl.org.il/files/HEBREW_FILES/machon-mediniut-karkait/karka-41/karka-41-1996-10.pdf>.

3. (1966–1967) 5739–1979, 33 LSI 41 (Isr).

4. (1964–1965) 5725–1965, 19 LSI 231 (Isr).

5. (1963) (Capital Gains and Purchase) 5723–1963, 17 LSI 193 (Isr).

as a nominee or bare trustee for an identifiable beneficiary

Under such a structure, the trustee is registered as the legal owner of the real estate but under Israeli Tax laws, namely the Income Tax Ordinance⁶ and the Real Property Taxation Law, the beneficiary of the real estate is considered as the real owner, similar to a beneficiary of a bare trust in the common law.⁷

The trustee may be registered directly in its name in the Land Registry, but it may also hold the real estate indirectly via an underlying company registered for this purpose—a special purpose vehicle (SPV), whose shares are wholly held by the trustee.

An example of how this presumption works can be gleaned from a recently published case where a father purchased an apartment in Israel and invested most of the funds required to purchase the property.⁸ The apartment was registered in the name of his daughter. The apartment was used alternatively for the parents and the daughter upon her visits to Israel. After the demise of the mother, the daughter filed a claim against the father demanding the eviction of the father from the apartment, claiming that she had the ownership of the apartment. The court dismissed the claim recognizing the ownership rights of the father who provided evidence that the apartment was his property held by the daughter as a trustee for the father.

Another interesting case was ruled upon by the Supreme Court.⁹ In that matter, a trustee was registered in the Land Registry as the owner of a real estate property. The registration did not reference the fact that the property was held in trust.¹⁰ The trustee was declared bankrupt and a creditor tried to attach the property for the satisfaction of his claim against the trustee. The court was presented with evidence that the property was held in trust for beneficiaries, and,

upon accepting this evidence, ruled that the creditor had no right against the real estate property even though the Land Registry did not have any reference to the rights of the beneficiaries.

This was an important precedent reconfirming the concept of holding real estate in trust for a beneficiary and ensuring beneficiaries' rights against third parties.

Taxation of real estate in Israel

A sale for the purposes of the Real Property Taxation Law is considered as such whether it was made for consideration, or not. However, it should be noted, that the transfer of real estate under inheritance procedure is not considered as a sale, and therefore does not trigger the imposition of any of the taxes mentioned above. In fact, Israeli law does not provide for any estate tax, thus the transfer of any property upon death, including real estate, is not subject to any tax in Israel.

Under the Real Property Taxation Law, two main taxes are imposed upon a sale of real estate: Capital Gains Tax on the seller and a Purchase Tax on the purchaser. The Capital Gains Tax is calculated in accordance with the increase in the value of the property since its purchase; the time period during which the seller owned the property; and the existence of other real properties owned by the seller. The Purchase Tax represents a certain percentage of the purchase price. This percentage is set in accordance with other real properties owned by the purchaser.

Tax exemption for an RET

A pre-ruling published in 2012 by the Israeli Tax Authority¹¹ dealt with the transfer of real estate properties into a private trust. In this case, an elderly

6. [New Version] (1961) 5721-1961, 6 LSI [NV] 120 (Isr).

7. *Trusts and Taxes*, see <<https://www.gov.uk/trusts-taxes/types-of-trust>>.

8. Family Case (TA) 19831-04-10 *RG v MP* (7 July 2013) Nevo Legal Database (by subscription) (Isr).

9. CA 5955/09 *Amster (Receiver) v Tauber Tov* (19 July 2011) Nevo Legal Database (by subscription) (Isr).

10. Such a reference is possible under a procedure named 'caveat' under s 4 of the Trust Law, and Land Law (1968-1969) 5729-1969, 23 LSI 293, 127 (Isr).

11. Tax Ruling no 3324/12, *The Establishment of a Hekdesh – Tax Ruling in Agreement* <<https://www.misim.gov.il/tmmisuyweb/frmShowLinkedAbs.aspx?num=20120030>> accessed 10 December 2018 (Hebrew).

person created a trust in his favour and in favour of other beneficiaries. The Israeli Tax Authority recognized the establishment of a trust regulated under section 17 of the Trust Law known as *Hekdesh*. The Israeli Tax Authority confirmed that the transfer of the real estate property to the trust was exempt from tax, thus recognizing in this case an RET.

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The importance of the ruling is in the clarification given, for the first time, regarding the existence of tax exemption for the transfer of real property by a beneficiary into an RET.

Until this ruling there had been no orderly source showing that when an owner of real property transfers the property to a trustee and becomes a beneficiary of the RET, the transfer is tax exempt. The ruling stated as follows:

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If the creation of a trust (by the settlor/beneficiary) and the vesting of the trust's properties to the trustee, designated until the end of his days to benefit the beneficiary, his welfare and quality of life, while still alive, and after his death, in favor of specific beneficiaries, which the beneficiary determined in the trust document and in the aforementioned will, will not be deemed to be a 'sale of a right in land' in the sense of the law.

Conclusion

Real estate investments in Israel are in great demand by both Israeli and foreign investors. Some investors choose to hold properties they purchase in the name of a trustee.

However, if an investor is considering using this structure to invest in real estate in Israel, he should note that there are some issues of trust, inheritance, and tax laws, which require proper consultations and consideration. Therefore, expert advice is recommended.