

Through The Open Window - Leveraging Cross-Jurisdictional Opportunities For BVI Property Transfers

By Willa Tavernier

A rare congruence of exemptions under the US and BVI tax codes has prompted United States ("U.S.") citizens holding British Virgin Island ("BVI") property to undertake inter vivos transfers to their heirs during 2012.

The U.S. lifetime gift tax exclusion up to \$5 million, which is set to expire at the end of 2012, has provided an opportunity for estate planning for high net worth individuals as holds the potential to reduce the value of their taxable estate upon death. With current estate tax rates at 35% this is an exclusion of substantial value.

This dovetails with the BVI's existing exemptions under the Non-Belonger's Landholding Regulation Amendment Act 1994 which exempts transfers to spouses, children, or grandchildren, or to trusts whose beneficiaries are spouses, children, or grandchildren, of the property owner ("close transfers").

The usual rate of stamp duty payable on transfers is 5-12% of the market value of the property, and with the value of BVI properties having remained steady throughout the economic downturn, these exemptions are likewise valuable.

An understanding of the BVI Property Market is helpful in presenting a complete view of the tax advantages mentioned above, as well as general tax advantages in BVI property ownership.

An overview of the BVI Property Market

The BVI has a robust high end property market; Land sales can start in the \$100,000's and in the mid \$500,000's for developed property however, both raw land and developed properties can run into the tens of millions. However, there are a vast array of options glittered throughout these islands surrounded by turquoise Caribbean seas and white sandy beaches.



There are seaside properties with marina facilities, a thriving residential resort industry offering condominiums and stand alone villas with good potential for rental income when the owners are not in residence, as well as unique properties in a variety of reputable and/or exclusive neighborhoods. The variety of islands, islets and cays offer as much or as little seclusion as might be desired. Some properties remain accessible only by sea, but this has not presented an inconvenience, since property owners and visitors are often yachters. New super-yacht and mega-yacht facilities have lent a new dimension to the islands, with 2 new annual regattas causing stay-over visitors to pour into the available accommodations, a boon for second-home owners who make their properties available for rent when not in use.

Ownership

A landholding license is required for all persons who are not BVI citizens or belongers. This is called a Non-Belonger's Landholding Licence. While you'll hear the term "non-belonger" a lot, do not be intimidated. This simply refers to anyone who is not a citizen or permanent resident of the BVI. The prospective purchaser must provide evidence of identity, means, and character along with an appraisal and the Agreement for Sale, and certain other property details. If it is the owner's intention to rent the property while it is not in use, this will have to be specifically stated in the licence, and a trade licence for property rental obtained. The landholding licence is personal to the holder, and applies only to the specific property mentioned within it. A separate licence is needed for each property.

All land is registered in a central Land Registry, which reflects the details and history of ownership, and other interests in the land such as mortgages (called charges) leases, and easements. Evidence of title is the land register for each property. Title is government guaranteed, with a fund to compensate for any loss caused by fraud or manifest error. Title insurance is therefore not used. An instrument of transfer in the standard form must be registered to effect ownership changes. Documentary proof of ownership is the Land Register for the particular parcel in respect of the property purchased. The original is held in a Register Book at the Land Registry, but a certified copy can be obtained. An owner should also have a registry stamped original or certified copy of the Transfer Instrument passing title from Vendor to Purchaser.

The BVI provides a break from a life too taxing

There is no capital gains tax, income tax or inheritance tax. There is a single tax on acquisition of the property which is a stamp duty 12% of its market value (5% for transfers otherwise than on sale), or 1.5% stamp duty on acquisition of a lease of the property. However, there are several stamp duty exemptions for close transfers, as set out in the introduction. There is an annual property tax comprised of 2 elements – land tax (\$50 for the first half-acre or \$150.00 for the first acre or part thereof in excess of half an acre, and \$50.00 for each additional acre or part thereof), and house tax 1.5% of the value of the buildings, assessed based on size and use. There are no other property taxes.

With the addition of the current U.S. gift tax exclusion complementing the BVI stamp duty exemptions for close transfers, this makes 2012 an ideal time for property owners to transfer properties to their spouse, children or grandchildren, or into trust for those persons.

At O'Neal Webster our clients benefit from our extensive experience in acting for both buyers and sellers which gives us an unmatched perspective of the key factors involved in each transaction. As a full service law firm, and a market leader in BVI real estate transactions, we advise clients on all aspects of property sales and acquisitions including due diligence, planning and design approval, protection of beneficial ownership, resolving defects in title, and the non-belonger licensing process. We also advise on BVI options for structuring, such as corporate purchases, and trust arrangements. O'Neal Webster is a firm of lawyers qualified to practice and practicing in the British Virgin Islands.



The firm does not advise on US tax law and the references herein are by way of commentary only and not legal advice. This article is not intended to provide specific legal advice on US or British Virgin Islands law and persons to whom any of the foregoing may be applicable should seek specific US tax law advice and BVI law advice before contemplating or embarking on property transfers.

Willa Tavernier specialises in transactional and contentious real estate matters. She has extensive experience, particularly in developments, licensing and planning appeals, and has acted for all of the BVI's five-star resort developments. She regularly advises lenders, developers, government corporations, hoteliers, and individuals.

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