
Estonia

International Estate Planning Guide

Individual Tax and Private Client Committee

Contact:

Kärt Kelder

Sorainen, Tallinn

kart.kelder@sorainen.com

Updated 6/2021

I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills

1. ESTONIAN WILLS

In Estonia, a testator may freely transfer his or her property (movable and immovable things or non-material objects, eg, securities and trademarks), claims of patrimonial character and property obligations by executing a will that can be altered, supplemented or revoked at any time by drawing up a new will, or not making a will. An estate does not include the rights and obligations of the testator that pursuant to law or by their nature are inseparably bound to the person of the testator. In cases provided for by law, property subject to succession may include intellectual property (authors' property rights to works of literature, science and art, neighbouring property rights and rights to industrial property), as well as other property rights and duties stipulated by law.

A will can be made, altered, supplemented or revoked exclusively by the testator him or herself and only by a legally capable person who is able to comprehend the importance and consequences of his or her actions. A will may be made in a notary authenticated form by a minor of at least 15 years of age, and in that case, the minor does not require the consent of his or her legal representative for making a will.

Under the laws of Estonia a *reciprocal will of spouses* is available. A reciprocal will of spouses can be made exclusively as an official will and only by spouses. A reciprocal will of spouses is a will made jointly by the spouses in which they reciprocally nominate one another as his or her successor, or make other dispositions of the estate in the event of his or her death. The whole property of the deceased (including the part of the common property of the spouses therefrom) is inherited by the surviving spouse, except the succession of the compulsory portion. In a reciprocal will of spouses, whereby they reciprocally nominate one another as sole successor, the spouses may designate to whom the estate of the surviving spouse transfers upon his or her death. A reciprocal will of spouses shall be made in a notary authenticated form.

A domestic will may be a will signed in the presence of witnesses or a holographic will. A testator may make a domestic will, which he or she shall sign in the presence of at least two witnesses with active legal capacity and in which the testator shall indicate the date and year of making the will. The witnesses shall be present at the signing of the will concurrently. A domestic will becomes invalid if six months have elapsed from the date of its making and the testator is alive at the time. If a domestic will does not indicate the date and year of its making and it is not possible to establish the date of making the will in any other manner, the will is void. A testator may keep a domestic will himself or herself, or give it to another person for safekeeping. Upon becoming aware of the death of a testator, a person with whom the testator has deposited his or her will, or who possesses the will on another basis is required to submit the will promptly to a notary.

The notary shall issue a document to the person who submitted the domestic will concerning the deposit of the will, which shall be signed by the person who submitted the will and the notary. If a holographic will is submitted to a notary and the notary prepares a notarial instrument concerning thereof pursuant to the Estonian Notarisation Act, the holographic will is valid as a notary authenticated will. If the will was deposited by the testator himself or herself, then the requirement is that he or she declares the will expressed is his or her final true intent.

A testator can deposit a will with the notary public or a consular official of Estonia in a foreign state.

2. ENFORCEABILITY OF FOREIGN WILLS

Estonia is a party to the Hague Conference on Private International Law (HCCH) Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961 (Hague

Testamentary Dispositions Convention). As a result, the validity of a will drawn up in another state depends on the requirements therein.

If the last residence of the estate-leaver or testator was in a foreign state, an Estonian notary shall conduct succession proceedings only with respect to property located in Estonia, provided the succession proceedings cannot be conducted in the foreign state, the proceedings conducted in the foreign state do not include the property located in Estonia or the succession certificate prepared in the foreign state is not recognised in Estonia.

As a member of the European Union, Estonia applies EU Regulation No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. However, a person who creates a will may choose as the law to govern his or her succession, as a whole, the law of the state whose nationality he or she possesses at the time of making the choice or at the time of death.

A succession certificate prepared in a foreign state is recognised in Estonia pursuant to Regulation (EU) No 650/2012 of the European Parliament and of the Council. In the case the specified regulation is not applicable, a succession certificate prepared in a foreign state shall be recognised in Estonia if the procedure for the preparation and the legal effect thereof are comparable to the provisions of Estonian law concerning succession certificates. In such a case, the provisions of the Code of Civil Procedure concerning the recognition of judgments of foreign courts shall apply to recognition. Recognition shall be adjudicated by the Harju County Court.

Estonia has also entered into bilateral agreements on legal assistance and legal relations in civil, family and criminal matters. Estonia has signed agreements with Russia, Poland and Ukraine, as well as tripartite agreements with Latvia and Lithuania. These agreements are important for succession matters because, pursuant to the agreements, Estonia and its partner country share the rights of determination of applicable law. The main principle set up in these agreements is that the form of a will must comply with the requirements of the state of the testator's domicile at the time when the disposition was made.

B. Will substitutes (revocable trusts or entities)

Estonia does not have trust law and is not a party of the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention). As a result, it is not possible to set up a trust in Estonia. Furthermore, trusts governed by the laws of a foreign jurisdiction may not be recognised in Estonia, and the consequences of setting up a trust in another country often cannot be foreseen.

As a possible alternative to a will, besides lifetime gifts, life insurance policies or pension funds with directives concerning a beneficiary can be used. The main problem is that the assets are in the possession of the insurance company and these will substitutes may be used on assets that a beneficiary does not expect to need personally during his or her lifetime until incurring the insured event or retirement moment. However, the advantages are that the donor is still free to change the beneficiary, and can avoid personal income tax (PIT) and forced heirship rules.

C. Powers of attorney, directives and similar disability documents

Only persons of full active capacity may grant a power of attorney to another person to represent a principal in establishing and maintaining relations with third persons. An authorised agent only has the rights clearly defined in the power of attorney. However, there are no cases authorising an agent to make a will or accept succession in the principal's name. Estonian law has no statutory rules for power of attorney, directives or similar instruments providing for future disability or incapacity. In some cases, the power of attorney has to be notarised. Under the laws, the power of attorney expires upon the recognition of legal incapacity, partial capacity, absence or death of a person vested with

power of attorney. As a result, rules of guardianship or curatorship become important for the control of assets of legally incapacitated or partially incapacitated persons.

A person may be declared incapacitated in a particular field and placed under guardianship by the court when he or she, due to a mental disorder, becomes unable to understand the meaning of his or her actions in a particular field or control them as a result of mental illness. The court that declares the person incapacitated shall provide an exhaustive list of fields in which a person is recognised as incapacitated. If an adult person is permanently unable to understand or direct his or her actions due to mental illness, mental disability or other mental disorder, a court shall appoint a guardian to him or her on the basis of an application of the person; his or her parent, spouse, adult child, rural municipality or city government; or on its own initiative. A guardian shall be appointed only for the performance of the functions for which guardianship is required. Guardianship is not required if the interests of an adult can be protected by granting authorisation and through family members or other assistants. Upon the establishment of guardianship, a court shall assess the person's capability to understand the legal consequences of contraction of marriage, acknowledgement of paternity and other transactions concerning family law. Guardianship of a person subsumes guardianship of the person's property in that particular field. As a result, all contracts in that field on behalf of, and in the name of, the person who was declared incapacitated, are concluded by his or her guardian. The guardian is entitled to enter into all the necessary transactions in that particular field (eg, including acceptance of the succession) in the interests and on behalf of the represented legally incapacitated ward.

A court shall verify at least once every five years whether the continuation of guardianship over a ward is necessary for the protection of the interests of the ward and whether grounds exist for extension or restriction of the duties of the guardian by making a respective ruling.

A special guardian shall be appointed to a person to whom a guardian has been appointed for the act that cannot be performed by the parents or guardian. A special guardian shall be appointed in particular for the administration of property acquired by succession or as a gift if the estate-leaver or donor has specified that the parents or guardian shall not administer the property.

II. Estate administration

A. Overview of administrative procedures

A will that has come into legal effect must be executed by the executor of the will who has been appointed in the respective will or by a notary. If a person renounces the duty of the executor of a will or if the testator has not specified the executor of the will, but it is obvious that testator had wished to appoint an executor of the will, the notary shall appoint an advocate or another person who agrees to perform the duties of the executor of the will. An advocate shall not refuse to accept the duty of the executor of a will without good reason.

Nobody is bound to undertake the duty of the executor of a will, but if someone has already undertaken it, he or she no longer has the right to withdraw without good cause. Moreover, if the person appointed as the executor of a will has accepted a legacy from the testator, then he or she may no longer withdraw from the duties of the executor of the will. The executor of a will may transfer his or her duties to someone else only if this is specifically permitted in the will. Nevertheless, the right of the executor to act through an authorised representative in case of necessity is not limited.

An executor of a will may derogate from the duties assigned in the will with the consent of interested persons if this is in the interest of executing the testamentary intention of the testator. If the interested persons do not consent to derogation from the duties, a court shall settle the dispute at the request of the executor of the will.

The tasks of the executor of a will are defined by the intent of the testator expressed in the will. The will shall be instructions from which the executor may not deviate. The executor of

the will should consider the opinion of the heirs; however, in the case in which there is a dispute between the executor of the will and the heirs, the matter is reviewed and determined by the court. Expenditures associated with the execution of a will must be reimbursed from the estate. An executor of a will has the right to demand reasonable remuneration for his or her activities unless otherwise provided by the will. If the executor of a will is a successor or legatee, the value of the estate or legacy shall be taken into consideration upon determination of the remuneration, unless otherwise specified by the testator.

The testator may appoint more than one executor. If a testator appoints several executors of the will but does not distribute the duties among them, the executors of the will shall perform the duties jointly and are solidarily liable. They are permitted to act alone in the case of unavoidable necessity. The executors of the will are solidarily liable even if they distribute the duties among themselves. Regarding liability, an executor is liable for ordinary negligence to the heirs and other persons who have an interest in the estate only if appropriate remuneration has been specified for the efforts of the executor.

If an executor of a will has negligently or severely breached his or her obligations, a court may release the executor from the duty of the executor of the will at the request of a successor, legatee or other person who has an interest in the estate.

The estate may be divided in a private manner or at a notary public, except for cases when there is a dispute regarding division of the estate. In case of disputes, the estate is divided by the court.

B. Intestate succession and forced heirship

Succession is intestate if the estate-leaver has not left a valid will or succession contract.

Even when the will or succession contract of an estate-leaver only concerns a share of the estate, the remaining share is succeeded to in intestacy.

If a testator has by a will or succession contract disinherited a descendant, his or her parents or spouse who are entitled to succeed in intestacy and with respect to whom the testator bears, at the time of his or her death, a maintenance obligation arising from the Family Law Act or a testator has reduced their shares of the estate as compared to their shares according to intestate succession, they have the right to claim a compulsory portion from the successors.

The estate-leaver's parents and distant descendants are not entitled to claim a compulsory portion if a descendant who would exclude them in the case of intestate succession may claim a compulsory portion or accepts the estate given to him or her.

1. PROPERTIES WITHOUT HEIRS

When there are no surviving heirs or such heirs either refused to inherit or have not proven their right to inherit, then the property of the estate-leaver will go to the local government of the place of opening of a succession. If a succession is opened in a foreign state but Estonian law will be applied, then the Republic of Estonia will become the intestate successor if the property is without heirs. The Estonian Supreme Court has recognised that if the heir to a succession has refused to inherit, then the creditors of the heir can claim settlement of their claims on account of succession and the third person who will accept the estate has an obligation to tolerate that the claims of the creditors will be settled on account of the received estate.¹

2. THE SURVIVING SPOUSE IN INTESTATE SUCCESSION

The surviving spouse inherits from the deceased regardless of the form of property relationship that was in effect between the spouses during their marriage. If the marriage has ended in divorce or has been declared annulled, the former spouses shall not inherit from each other. The share of the estate inherited by the spouse depends, first, on whether

there are other heirs, and, second, on how many children the deceased had. According to the law, the surviving spouse will inherit equally with the share of a child of the estate-leaver, but not to less than one-quarter of the estate; the surviving spouse will get half the estate if there are only second-order heirs and the entire estate should there be no relatives from first or second order.

In addition to his or her share of the estate, the surviving spouse may request the establishment of the personal right of use on an immovable that was the matrimonial home of the spouses, provided the standard of life of the surviving spouse would deteriorate otherwise.

3. OTHER HEIRS WHO ARE KIN OR ADOPTEES IN INTESTATE SUCCESSION

Other heirs who are kin or adoptees inherit according to a specific order, which is based partly on the type of kinship and partly on the degree of kinship. All the kin and adoptees are divided into orders. An heir of a lower order cannot inherit if an heir of a higher order has expressed his or her intention to inherit.

If, in any order, an invited heir with priority status drops off, the estate devolves to his or her co-heirs who have the same right of inheritance. If the co-heirs also drop-off, then the estate devolves to those persons who, in this same order, are invited to inherit from the estate-leaver. If there is no one in this order who is entitled to inherit or if all heirs in this order have dropped off, then the estate devolves to heirs in the next order; that is, if there are no heirs in the first order, only then does the right to inherit transfer to the second order. Likewise, if there are no heirs in the second order, the right to inherit transfers to the third order, and so on.

With respect to the order of succession, four classes of heirs are set out:

- *Descendants* in the first order are all those descendants of the estate-leaver between whom, on the one part, and the estate-leaver on the other part, there are no other descendants who would be entitled to inherit. Adoptees inherit as the children of the deceased.
- *Ascendants and siblings* in the second order are the parents of the estate-leaver, as well as the estate-leaver's brothers and sisters and the children of those brothers and sisters who had predeceased the estate-leaver. Third-order intestate successors are the grandparents of the estate-leaver and their descendants. This means that the nearest ascendant inherits; that is, a parent, or if there is no parent, a grandparent.

C. Marital property

Estonian international private law determines that if a marriage is contracted in Estonia, Estonian law applies to the procedure for the contraction of the marriage. Personal and property relations of spouses must be determined in accordance with Estonian law if the place of residence of the spouses is in Estonia. If the property of the spouses is located in Estonia, the spouses will be subject to Estonian mandatory rules, regardless of whether they themselves have a place of residence in Estonia.

If spouses have not defined their marital property regime by entering into a marriage contract (a prenuptial or postnuptial contract), then the statutory regime applies. Under Estonian law, the default marital property regime is joint property.

1. LAWFUL PROPERTY RELATIONS OF THE SPOUSES

Under Estonian law, spouses can elect the marital property regime at the time of submitting the application for marriage. Prospective spouses can elect joint property, set-off of assets increment or separateness of property regimes. Should the prospective spouses also conclude the nuptial agreement the nuptial agreement will be applied.

Under the *joint property regime*, however, each spouse retains the property that belonged to him or her before the marriage, as well as the property he or she acquires during the

marriage as a separate property. By contrast, everything acquired during the marriage by the spouses together, or by one of them but using the resources of both spouses, or with the assistance of the actions of the other spouse, is the joint property of both spouses. In case of uncertainty, it is presumed that such property belongs equally to both spouses. The burden of establishing that certain property is separate lies upon the spouse who asserts this.

The spouses must jointly administer and act in regard to the joint property of both spouses, but upon the agreement (usually a nuptial agreement) of both spouses it may also be administered by one of them. Any acts regarding such property by one of the spouses requires the consent of the other spouse.

The transactions made with a joint property and without the consent of the other spouse are void.

Each spouse has the right to administer and use all of his or her own separate property. The separate property of each spouse especially is:

- property owned by a spouse before the marriage, or property the spouses have, by contract, designated as separate property;
- items that are suitable only for the personal use of one spouse, or are required for his or her independent work;
- property that was acquired gratis during the marriage by one of the spouses;
- income from the separate property of a spouse that is not assigned to the needs of the family and joint household finances; and
- property that replaces the separate property.

The legal property relations of spouses are terminated: (1) on the basis of an agreement between the spouses; (2) if one of the spouses dies; (3) the spouses divorce; or (4) according to the court decision based on the claim of one of the spouses.

Under the *set-off of assets increment regime* the assets acquired during the marriage or before the marriage are the sole property of each party. Assets belong to the spouse under whose name they were acquired. As an exception, the consent of the spouse who is not the owner is needed to make transactions with a dwelling used as a family home. Upon the termination of marriage, the spouses shall ascertain the status of their acquired assets and set-off the acquired property. If the acquired assets of one spouse are greater than the acquired assets of the other spouse, half the difference between the values of the acquired assets shall belong to the spouse who received the smaller amount of acquired assets on the basis of a financial claim for set-off.

Acquired property is a difference between the spouses' total property at the time of termination of the marriage and fixed property prior to the marriage.

The most independent property regime is the *separateness of property regime*, under which property belongs to the spouse in whose name it is and who acquired it during the marriage. In case of separateness of property, in proprietary relations spouses shall be deemed to be persons not married to each other.

2. MARRIAGE CONTRACTS

Spouses may, by marital property agreement: (1) terminate a selection made upon marriage or a proprietary relationship valid on the basis of a marital property contract; (2) establish another proprietary relationship prescribed by law; or (3) make alterations in the selected proprietary relationship in the cases prescribed by law. A marital property contract may be entered into before or during a marriage. A marital property contract entered into before marriage enters into force on the date of contraction of marriage.

Additionally, notarial procedures apply to such contracts, such as the personal presence at the same time of both spouses and the contract must be registered in the public register. By

agreement of the parties, the marital property agreement may be amended or a new marital property agreement may be entered into. Any changes in a proprietary relationship made on the basis of a marital property contract shall be entered in the marital property register.

If spouses change a proprietary relationship, the changes shall have legal effect with regard to a third person only if the changes have been entered in the marital property register as a marital property contract or the third person was aware of the existence of the marital property contract.

A marital property agreement determines which property remains separate property and which is considered joint property, and how this joint property is used and how it is divided, if necessary. The marital property agreement may not deny a spouse or divorced spouse the right to receive maintenance or waive the right to divide the joint property of the spouses upon termination of the marriage. A marital property agreement is terminated upon termination of a marriage, if the spouses enter into a new marital property agreement or if the property regime is terminated in court.

3. TENANCIES, SURVIVORSHIP ACCOUNTS AND PAYABLE ON DEATH ACCOUNTS

Estonian law does not recognise survivorship accounts. The term 'survivorship account' is used to describe a joint bank account that carries an automatic right to survivorship. Similarly, as in the case of joint tenancy, this means that upon the death of one account holder the assets are transferred to the surviving account holder. In case of intestate succession, all the jointly owned assets must be added to the entirety of the property of an estate after the share of the joint property of the spouse has been divided.

Since Estonian law recognises inheritance contracts, persons may make their instructions in the event of death in the form of this contract. However, as stated above, a testator may freely determine the disposition of his or her whole estate in case of his or her death, but only provided that the rights of the persons entitled to preferential shares are observed.

III. Trusts, foundations and other planning structures

A. Common techniques

1. FOUNDATIONS

In Estonia, a foundation is a legal person in private law that has no members and is established to administer and use assets to achieve the objectives specified in its articles of association. The transformation of a foundation into a legal person of a different class is prohibited. Currently, there is no separate legislation for private foundations and most foundations are used for public purposes.

A testator has the right to bequeath the whole estate, part of the estate, or an individual thing to the society for useful purpose or charity. In succession pursuant to a will, the decedent's property can pass to legal persons (including foundations) that existed at the moment of the testator's death or were established in executing the testator's true intent expressed in his or her will. Therefore, a foundation may be founded on the basis of a notarised will and contain a foundation resolution that complies with several requirements in the Estonian Foundation Act. If a foundation resolution contained in a will does not comply with the requirements, the executor or administrator of a will may, if necessary, appoint the members of the management board and supervisory board of the foundation, and determine the conditions of the foundation resolution and articles of association that are not determined by the will. Until the appointment of the management board and supervisory board, an executor or administrator of a will has the right to exercise rights arising from the foundation resolution and to administer transferred assets pursuant to the articles of association of the foundation. A foundation established by a will or succession contract shall be deemed to exist at the time of opening of the succession if it acquires the rights of a legal person later. If a will does not designate an executor of the will who must ensure the entry of the

foundation in the non-profit associations and foundations register, the court shall designate an administrator therefor who has the rights and obligations of an executor of a will.

To establish a foundation, all founders shall sign a foundation resolution and the articles of association approved thereby. A foundation resolution and the articles of association approved thereby shall be notarised. A representative of a founder may sign if the authorisation document granted to the representative therefor is notarised. Articles of association shall be amended after entry in the register of the foundation. In managing a foundation, the management board shall adhere to the lawful orders of the supervisory board. Transactions that are beyond the scope of everyday economic activities may only be entered into by the management board with the consent of the supervisory board. The management board shall present an overview of the economic activities and financial status of the foundation to the supervisory board at least once every four months, and shall immediately give notice of any material deterioration of the financial status of the foundation or of any other material circumstances related to the economic activities of the foundation.

A beneficiary is a person to whom disbursements from the assets of the foundation may be made pursuant to the articles of association of the foundation. If a set of beneficiaries is not determined by the articles of association, all persons who are entitled to receive disbursements pursuant to the objectives of the foundation shall be deemed to be beneficiaries.

2. TRUSTS

There is no trust legislation in Estonia and the common law trust is not a generally recognised legal concept in Estonian law. Estonia has not ratified the Hague Trust Convention of 1 July 1985. Since a trust is not recognised as a legal person in Estonia, it is not possible for a trust to own property or even open a bank account in Estonia. Estonian residents are free to use foreign trusts, but this often leads to qualification conflicts.

It is possible under the Civil Code to make a property usufruct agreement, where a usufruct encumbers an immovable in such a way that the person for whose benefit the usufruct is established is entitled to use the immovable and to acquire the fruits thereof. A real right contract entered into for the establishment of a usufruct shall be authenticated by a notary. A usufruct extinguishes by the death of the usufructuary unless otherwise provided by law. If the law or a transaction designates that a usufruct shall transfer to a successor of the usufructuary, the usufruct shall remain valid with respect to the successor.

3. OTHER INSTRUMENTS

A contract providing for the transfer of a gift to the ownership of the donee after the death of the donor is null and void (such relations are governed by the provisions regulating succession). However, as an alternative to a will, regular lifetime gifts may be used. Despite that, for the following reasons, this will substitute is not popular in practice. First, their tax treatment is not favourable: gifts (with some exceptions) are taxed on PIT. An application by a donor to be prepared in writing only when the donor has to assume obligations arising from a gift unless otherwise provided by law. A gratuitous contract is deemed to be valid upon performance of the obligations that arise from the gratuitous contract even if the formal requirements are not complied with. A gift contract of immovable property must be notarised.

A testator has the right to provide in a will that, in the case of arrival of a particular date or fulfilment of a suspensive condition, the entire estate or a share thereof transfers from a successor to a subsequent successor. A successor for whom a subsequent successor is nominated is a provisional successor. A subsequent successor shall not be designated for a subsequent successor.

The testator may place an obligation on a successor or legatee in a will or succession contract without the creation in any person of a right corresponding to the obligation. The testator can also oblige a successor or legatee in a will or succession contract to use the estate or legacy for the designated purpose. The testator may appoint a person for the

execution of a testamentary direction who has the rights and obligations of an executor of a will with respect to the assets designated for the execution of the testamentary direction. A testator may nominate a successor, give a legacy or make other dispositions with a suspensive condition or specified term in a will. If a legacy is support for a minor, it shall be deemed to be given until the person attains the age of majority unless otherwise provided by the will or succession contract.

An heir by law or successor by a will has the right within three months from the day of the opening of succession to renounce an inheritance. The term shall commence from the moment the successor becomes aware, or ought to become aware, of the death of the estate-leaver and of his or her right of succession. Renunciation may not be in part or subject to conditions or exceptions. No renunciation is allowed in the instances where the successor has filed an application on the acceptance of succession with the notary public of the place of the opening of succession or asked for issuance of the certificate of the right to inheritance.

B. Fiduciary duties

A testator may appoint in a will one or several persons as an executor of the will. A testator may also appoint an alternative executor of a will. Nobody can be required to accept the duty of an executor of a will or to perform the obligations of an executor of a will prior to acceptance of the duty of an executor of the will by the person. In his or her activity, the executor of the will has to perform all the actions necessary for the execution of the will and is guided by it. In performing his or her duty, the executor of the will is obliged to act with the same diligence as in taking care of his or her private interests and to administer prudently and ensure the preservation of the estate necessary for performance of his or her duties. The executor of a will is liable for any damage caused wrongfully to a successor or legatee by their duties, but has the right to demand reasonable remuneration for his or her activities, unless otherwise provided by the will. If the executor of a will is a successor or legatee, the value of the estate or legacy shall be taken into consideration upon the determination of the remuneration, unless otherwise specified by the testator. The executor of a will is required to perform the obligations of the administrator of an estate or apply for administration of the estate until acceptance of the succession by the successor, execute legacies, testamentary obligations, testamentary directions and other obligations arising from the will or succession contract, to take an object forming part of an estate into his or her possession or to ensure in other ways the separation of the object from the property of the successor if it is necessary for the performance of the duties of the executor of the will.

C. Treatment of foreign trusts and foundations

Estonian authorities can be selective about trust arrangements and not recognise them as entities capable of owning property, especially immovable property. Although under the Civil Code, the civil capacity of foreign legal persons or any other organisations is governed by the laws of the state where these persons or organisations are founded, foreign trusts in civil cases have not been recognised as having a separate legal personality.

As a result, the use of foreign trusts in Estonia is not recommended. First, it remains unclear how a trust would be treated if the assets were placed in a foreign trust during the decedent's life. According to the law, it can be expected that such assets would be included in the decedent's estate. It means that all assets (including those assets placed in a foreign trust) would be subject to intestate succession and forced heirship rules. Probably inheritance from the decedent's estate could not be placed in a foreign trust under the will for the same reasons as well. In addition to this, legal title to Estonian real property or bank accounts in financial institutions could normally not be registered in the name of foreign trustee. As a result, such assets would have no legal owner for an indeterminate period of time.

It can be expected that distributions from foreign trusts will be treated as ordinary taxable income of a beneficiary. Consequently, Estonian residents will have to pay 20 per cent PIT.

IV. Taxation

A. Domicile and residency

Estonia taxes individuals on the basis of tax residence status. An individual is considered to be a resident of Estonia if:

- the individual's permanent place of abode (ie, registered address) is in Estonia;
- the individual is physically present in Estonia for at least 183 days in any 12-month period beginning or ending in the tax year in question; and
- the individual is a citizen of Estonia employed abroad by the government of Estonia (diplomats).

The Estonian Tax and Customs Board can apply the physical presence tests recommended in the Organisation for Economic Co-operation and Development (OECD) Model Convention.

1. GIFT, ESTATE AND INHERITANCE TAXES

a. Gift tax

Gifts between natural persons are tax exempt. Gifts made by companies to natural persons are liable to corporate income tax (CIT) and considered as non-business expenses and taxed accordingly on the corporate level. Gifts received from non-resident companies are taxable unless the taxpayer proves that the tax was paid abroad.

b. Inheritance tax

The receipt of an inheritance is tax exempt. The sale of the inherited assets is liable to PIT. The documented costs related to the inheritance are deductible.

c. Real estate tax

The standard tax rate is 0.1 to 2.5 per cent (based on the cadastral value of land excluding buildings).

Exercising share options:

- exercise less than three years from the grant: subject to fringe taxes; and
- exercise after three years from grant: exempt from fringe taxes.

d. Land tax

The tax rate of land shall be 0.1 to 2.5 per cent of the taxable value of land annually.

The rate of land tax for areas under cultivation and for natural grasslands shall be 0.1 to 2.0 per cent of the taxable value of the land annually.

The local government council shall establish the tax rates on its administrative territory not later than 31 January. The local government council may establish the rates of tax as a differentiated rate according to the value zones within the range specified by law. The amended tax rates shall apply as of the beginning of the year.

2. TAXES ON INCOME AND CAPITAL

B. Personal income tax (PIT)

Income and capital gains are subject to a flat PIT rate of 20 per cent. The tax base includes, among others, active income, interest, royalties, capital gains and dividends, as well as income of a tax haven company attributed to a private person.

Dividends received from an Estonian company are not taxed on a personal level, except with a seven per cent PIT when falling under a special regime for regular dividend payments.

Income tax liability on capital gains on a personal level can be postponed by making a non-monetary contribution to the equity of the company and sale of the asset by the company. Profits earned by a holding company are not taxed on receipt of income.

When using a registered business account (bank account), business income is subject to a 20 per cent tax (if sales less than €25,000) or 40 per cent (if sales more than €25,000), including income tax, social tax and pension payments. This provides more advantageous tax treatment for person-to-person (P2P) services.

The standard tax regime rate is 20 per cent, special tax rates are 20 per cent or 40 per cent (final tax on business income under a simplified regime).

C. Corporate income tax (CIT)

Estonian resident companies pay CIT on a deferred basis, meaning CIT is due only upon making profit distributions (dividends and capital reductions in excess of capital payments) or deemed profit distributions (ie, paying non-business expenses, conferring fringe benefits and making gifts). Similar tax treatment applies to permanent establishments of foreign entities (including branches), which are in principle treated the same as local corporate taxpayers.

When distributing corporate profits, a deferred CIT of 20 per cent (from the gross distribution) applies.

As an incentive to distribute profits at least once in three years, the part of the profit distribution corresponding to one-third of the taxable profit distributions made within the last three years (ie, the regular profit distribution) is subject to a reduced CIT rate of 14 per cent. It is therefore common that a profit distribution consists of profits which fall under two different tax rates. Note that 14 per cent CIT will be the effective tax rate only if regular profits are distributed to corporate entities – seven per cent withholding tax applies in addition to this when making regular profit distributions to natural persons, levelling off the tax incentive.

Pass-through dividends fall under participation exemption if the ten per cent shareholding requirement is met; that is, dividends received by a company can be distributed further without CIT or withholding tax liability, provided the company passing through the dividends holds a minimum of ten per cent of the shares in the subsidiary company. As an additional requirement, dividends received outside of the EU must have been subject to tax.

Loan financing of Estonian entities by non-residents is rather advantageous for the financier in terms of taxes paid. There is no withholding tax on interest payments to resident corporate lenders or non-resident lenders (either corporate and private). Interest paid to related parties in excess of the arm's length rate is subject to CIT paid by the borrower. As there is no traditional thin capitalisation rule for loan cost, Estonia enables extensive loan liabilities even if a company has little capital. However, as a result of the harmonisation of the Anti-Tax Avoidance Directive, the law provides an interest limitation rule under which excessive interest payments are subject to CIT, provided three cumulative criteria are met:

- exceeding borrowing costs exceed €3m;
- exceeding borrowing costs exceed 30 per cent of earnings before interest, taxes, depreciation, and amortization (EBITDA); and
- the interest-paying company is profitable.

Some exceptions apply to this, such as to costs for financing certain infrastructure projects, group equity rule and worldwide group ratio rule based on earnings. Credit institutions are not taxed under this rule.

A special regime applies to credit institutions, which are subject to quarterly advance CIT payments on corporate profits at a rate of 14 per cent. Additionally, shipping companies are subject to a tonnage tax.

D. Profit distributions

Estonia applies no withholding tax on profit distributions to resident or non-resident shareholders (with the exception of regular profit distributions to resident and non-resident natural persons, to which a seven per cent withholding tax applies). Therefore, the final Estonian tax on profit distributions to foreign companies is either 20 per cent CIT or 14 per cent CIT. Note that, in specific cases, capital reductions not subject to CIT at the level of the company reducing its capital may lead to taxation for the shareholder (ie, in excess of the acquisition cost of the shares based on which the capital reductions are made).

Notes

1 Estonian Supreme Court decision 25 May 2010
www.riigikohus.ee/et/lahendid/?asjaNr=3-2-1-41-10 accessed 6 July 2021.