Estonia

International Estate Planning Guide

IBA Private Client Tax Committee

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I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills

1. ESTONIAN WILLS

In Estonia, a testator may freely transfer their property (movable and immovable things or non-material objects, eg, securities, 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, but this process does not have to involve the making of a new 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 (the 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 themselves, and only by a legally capable person, who is able to comprehend the importance and consequences of their actions. A will may be made in a notary-authenticated form by a minor of at least 15 years of age: in that case, the minor does not require the consent of their legal representative for making a will.

Under the laws of Estonia, a reciprocal will of spouses or registered partners 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 or registered partners in which they reciprocally nominate one another as their successor or make other dispositions in terms of their estate in the event of their 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 their death. A reciprocal will of spouses shall be made in a notary-authenticated form.

A domestic will is a will signed in the presence of witnesses or a holographic will. A testator may make a domestic will, which they 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 the making of 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 the making of the will in any other manner, the will is void. A testator may keep a domestic will themself or give it to another person for safekeeping. Upon becoming aware of the death of the testator, a person with whom the testator has deposited their 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 pursuant to the Estonian Notarisation Act, the holographic will is valid as a notary has authenticated the will. If the will was deposited by the testator themself, then they are required to declare that the will expresses their final true intent.

A testator can deposit a will with a notary who is a 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 Laws Relating to the Form of Testamentary Dispositions 1961 (the 'Hague Testamentary Dispositions Convention'). As a result, the validity of a will drawn up in another state depends on the requirements contained 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 650/2012 of the European Parliament and of the Council of 4 July 2012 on the 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 that governs their succession, as a whole, the law of the state whose nationality they possess at the time of making the choice or at the time of their death.

A succession certificate prepared in a foreign state is recognised in Estonia pursuant to Regulation (EU) 650/2012. In a case in which the 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 the 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 Poland and Ukraine, as well as tripartite agreements with Latvia and Lithuania. These agreements are important for succession matters because, pursuant to these agreements, Estonia and its partner country share the rights of determination of the 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 a law on trusts and is not a party to the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (the '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, in addition to 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 this type of will substitute may be used in regard to assets that a beneficiary does not expect to need personally during their lifetime until the insured event or retirement occurs. 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 them in establishing and maintaining relations with third persons. Only the authorised agent has rights that are clearly defined in regard to the power of attorney. However, there are no instances in which an agent is authorised to make a will or accept succession in the principal's name. Estonian law has no statutory rules on the 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 relevant laws, the power of attorney expires upon the recognition of legal incapacity, partial capacity, absence or the death of a person vested with the 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 they, due to a mental disorder, become unable to understand the meaning of their actions in a particular field or control them as a result of a 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 their actions due to a mental illness, mental disability or other mental disorder, a court shall appoint a guardian to them on the basis of an application in terms of the person; their parent, spouse, registered partner or adult child or rural municipality or city government; or based 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 managed through family members or other assistants. Upon the establishment of guardianship, a court shall assess the person's ability to understand the legal consequences of the contraction of marriage, the 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 their guardian. The guardian is entitled to enter into all the necessary transactions in that particular field (eg, including the acceptance of 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 the 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 an act that cannot be performed by the parents or the 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 their 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 the 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 a good reason.

Nobody is bound to undertake the duty of the executor of a will, but if an individual undertakes such a position, they no longer have the right to withdraw without a good cause. Moreover, if the person appointed as the executor of a will has accepted a legacy from the testator, then they may no longer withdraw from the duties of the executor of the will. The executor of a will may transfer their 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 permitted.

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 a 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 forms the instructions from which the executor may not deviate. The executor of the will should consider the opinion of the heirs. However, in cases in which there is a dispute between the executor of the will and the heirs, the matter will be reviewed and determined by the court. Expenditure 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 their 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 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 in regard to the heirs and other persons who have an interest in the estate only if appropriate remuneration has been specified in regard to the efforts of the executor.

If an executor of a will has negligently or severely breached their 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 by a notary public, except for cases where there is a dispute regarding the division of the estate. In the case of disputes, the estate is divided by the court.

B. Intestate succession and forced heirship

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

In instances where a 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 through a will or succession contract disinherited a descendant, their parents or spouse who are entitled to succeed in intestacy and with respect to whom the testator bears, at the time of their death, a maintenance obligation arising from the Family Law Act or a testator has reduced their shares in the estate as compared to their shares according to intestate succession, they have the right to claim a compulsory portion from the successors. The same right applies to a registered partner, provided that the testator had a valid maintenance obligation towards them at the time of their death.

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 them.

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 in the place of the opening of the succession. If the succession is opened in a foreign state, but Estonian law will be applied, 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 the succession and a third person who accepts the estate is obliged to tolerate that the claims of the creditors will be settled on account of the received estate.[1]

2. THE SURVIVING SPOUSE AND REGISTERED PARTNER DURING INTESTATE SUCCESSION

The surviving spouse or registered partner inherits from the deceased regardless of the form of the property relationship that was in effect between the spouses or registered partners during their marriage or registered partnership. If the marriage ended in divorce or has been declared annulled, the former spouses shall not inherit from each other. Similarly to marriage, if a registered partnership has been terminated or annulled, the former partners shall not inherit from each other. The share of the estate inherited by the spouse or registered partner depends, first, on whether there are other heirs, and, second, on how many children the deceased had. According to the law, the surviving spouse or registered partner will inherit a portion that is equal to the share granted to that of a child of the estate leaver, but which is no less than one quarter of the estate. The surviving spouse or registered partner will get half of the estate if there are only second-order heirs or the entire estate should there be no first- or second-order relatives.

In addition to their share of the estate, the surviving spouse or registered partner may request the establishment of a personal right of use of an immovable asset that was the matrimonial home of the spouses, provided that the standard of living of the surviving spouse would otherwise deteriorate if the request was not granted.

3. OTHER HEIRS WHO ARE KIN OR ADOPTEES DURING 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 applicable. All kin and adoptees are divided into orders. An heir of a lower order cannot inherit if an heir of a higher order has expressed their intention to inherit.

If, in any order, an invited heir with priority status drops off, the estate devolves to their 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 terms of 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 the 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.

[1] Estonian Supreme Court decision, 25 May 2010, www.riigikohus.ee/et/lahendid/?asjaNr=3-2-1-41-10 last accessed on 12 August 2025.

With respect to the order of succession, the heirs are set out, as follows:

1. First-order descendants are the deceased person's direct descendants who do not have another eligible descendant between them and the deceased. Adoptees inherit as the children of the deceased.
2. 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.
3. 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 and registered partnership property

Estonian international private law determines that if a marriage or registered partnership is contracted in Estonia, Estonian law applies to the procedure for the contraction of the marriage. Personal and property relations of the spouses must be determined in accordance with Estonian law if the place of residence of the spouses is in Estonia. In the case of registered partnerships, Estonian law applies if Estonia is the country where the partnership was registered. Where particulars concerning a registered partnership are recorded in the registers of several states, general legal consequences of the partnership are subject to the law of the state that effected the last registration. The law of the state mentioned in the previous sentence is applied going forward from the time the particulars were registered. If the property of the spouses or registered partners is located in Estonia, the spouses or registered partners will be subject to Estonian mandatory rules, regardless of whether they themselves have a place of residence in Estonia.

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

If registered partners have a valid registered partnership contract entered into in Estonia, then upon subsequently entering into a marriage, the proprietary relationship under the registered partnership contract remains valid. In such a case, their proprietary relationship is deemed to have commenced at the time of entry into the registered partnership contract.

1. LAWFUL PROPERTY RELATIONS OF SPOUSES AND REGISTERED PARTNERS

Under Estonian law, spouses can opt for the marital property regime at the time of submitting their application for marriage. The same options and rules regarding the choice of the marital property regime apply to registered partners at the time of submitting their application for a registered partnership. Prospective spouses can elect for the joint property, set-off of assets increment or separateness of property regimes. Prospective spouses can also conclude a nuptial agreement. Likewise, registered partners may agree to deviate from the default proprietary regime by concluding a registered partnership contract, which must comply with the provisions applicable to nuptial agreements.

Under the joint property regime, however, each spouse retains the property that belonged to them before the commencement of the proprietary relationship of jointness of property, as well as the property they acquire during the commencement of the proprietary relationship of jointness of property as separate property. In 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 cases of uncertainty, it is presumed that such property belongs equally to both spouses. The burden of establishing that certain property is separate rests with the spouse who makes the assertion.

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 such activities may also be administered by just one of them. Any acts regarding such property administered by one of the spouses requires the consent of the other spouse.

Any transactions made in regard to joint property and without the consent of the other spouse are void.

Each spouse has the right to administer and use all of their own separate property. The separate property of each spouse includes:

- property owned by a spouse before the commencement of the proprietary relationship of jointness of property, or property the spouses have, by contract, designated as separate property;
- items which are suitable only for the personal use of one spouse, or are required for their 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) if the spouses divorce; or (4) according to a court decision based on a claim by one of the spouses.

In the case of registered partners, the legal property relationship ends on similar grounds: (1) upon the death of a registered partner; (2) if the registered partnership is terminated by agreement; or (3) according to a court decision.

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 involving 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 a set-off.

The acquired property is the difference between the spouses' total property at the time of termination of the marriage and the 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 registered and who acquired it during the marriage. In the case of the separateness of property, in terms of proprietary relations, spouses shall be deemed to be persons not married to each other.

2. MARRIAGE CONTRACTS

Spouses may according to a marital property agreement: (1) terminate a selection made based upon marriage or a proprietary relationship that was valid on the basis of a marital property contract; (2) establish another proprietary relationship prescribed by law; or (3) make alterations to the selected proprietary relationship in regard to 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 the contraction of the 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 martial 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 on 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 on 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 the 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 the 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 outline their instructions in the event of their death in the form of this type of contract. However, as stated above, a testator may freely determine the disposition of their whole estate in the instance of their 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 entity 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 entity 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 or charitable purposes. In regard to 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 that were established during the execution of the testator’s true intent, expressed in their 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 the 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 the 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 entity 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 who has the rights and obligations of an executor of the 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 the resolution if the authorisation document granted to the representative is notarised. The articles of association shall be amended after their 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 which 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 entity 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 it often leads to qualification conflicts.

It is possible under the Civil Code to make a property usufruct agreement, wherein a usufruct encumbers an immovable asset in such a way that the person for whose benefit the usufruct is established is entitled to use the immovable asset 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 is extinguished 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 relationships are governed by the provisions regulating succession). However, as an alternative to a will, regular lifetime gifts may be used. Despite that option being available, for the following reasons, this will substitute is not very popular in practice. First, the tax treatment is not favourable: gifts (with some exceptions) are subject to PIT. An application by the donor must prepared in writing only at the time when the donor has to assume the obligations arising from the 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 pertaining to immovable property must be notarised.

A testator has the right to provide in a will that, in the case of the arrival of a particular date or fulfilment of a suspensive condition, the entire estate or a share thereof transfers from a named successor to a subsequent named successor. A successor for whom a subsequent successor is nominated is a provisional successor. A subsequent successor is not 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 regard to 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 a designated purpose. The testator may appoint a person to carry out 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 that are subject to a suspensive condition or specified terms in the will. If a legacy aims to provide 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 a successor appointed by a will has the right within three months from the day of the opening of succession to renounce the 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 their right of succession. Renunciation must be in its entirety and may not be subject to conditions or exceptions. A renunciation is not allowed in instances where the successor has filed an application confirming the acceptance of succession with the notary public in the place of the opening of succession or has asked for the issuance of a 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 the will. Nobody can be made to accept the position related to the duty of the executor of a will or to perform the obligations of an executor of a will prior to the acceptance of the duty of an executor of the will by the person. As part of their activities, the executor of the will has to perform all the actions necessary for the execution of the will and must be guided by it. In performing their duties, the executor of the will is obliged to act with the same diligence as when they take care of their own private interests, and to administer the will prudently and ensure the preservation of the estate necessary for the performance of their duties. The executor of a will is liable for any damage caused wrongfully to a successor or legatee caused by their duties, but has the right to demand reasonable remuneration for their 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 the administration of the estate until the acceptance of the succession by the successor and to 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 their 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 can decide not to 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 a foreign trust 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 of the assets (including those assets placed in a foreign trust) could be subject to intestate succession and forced heirship rules. Most likely, in practice, inheritance from the decedent's estate would not be able to be registered in the name of the foreign trust or trustee under the will. In addition to this, legal title to Estonian real property or bank accounts in financial institutions normally cannot be registered in the name of a 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 the beneficiary. Consequently, Estonian residents will have to pay 22 per cent PIT on such funds.

IV. Taxation

A. Domicile and residency

Estonia taxes individuals on the basis of their 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 or administrative officials), as well as any family members and support persons accompanying the individual.

The Estonian Tax and Customs Board can apply the physical presence tests recommended in the Organisation for Economic Co-operation and Development's (OECD) Model Tax 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 for corporate income tax (CIT) and are considered as non-business expenses and taxed accordingly at 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 for PIT. The documented costs related to the inheritance are deductible.

c. Real estate tax

Not applicable.

d. Land tax

Land tax is levied annually on the taxable value of land. The applicable tax rate depends on the intended use of the land and is set as follows:

- 0.1–1.0 per cent for residential land and the land use type of yard land on profit-yielding land;
- 0.1–0.5 per cent for other types of profit-yielding land; and
- 0.1–2.0 per cent for all other land use categories.

The municipal council establishes the rate of tax for each group of intended use of land at the latest by 1 October of the year preceding the taxation year. The municipal 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

a. Personal income tax

Income and capital gains are subject to a flat PIT rate of 22 per cent. The tax base includes, among others, active income, interest, royalties, capital gains and dividends, as well as the 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 for a seven per cent PIT that applied when the funds are within the scope of 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 the sale of the asset by the company, provided that such a transaction is not conducted for tax reasons. Profits earned by a holding company are not taxed on the receipt of income.

When using a registered business account (bank account), business income is subject to a 20 per cent tax. This provides more advantageous tax treatment for person-to-person (P2P) services.

The standard tax regime rate is 22 per cent; special tax rates are 20 per cent (final tax on business income under the simplified regime).

b. Corporate income tax

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 22 per cent (from the gross distribution) applies.

Pass-through dividends fall under the 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, including Switzerland, must have been subject to tax.

Loan financing of Estonian entities by non-residents is rather advantageous for the financer in terms of taxes paid. There is no withholding tax on interest payments to resident corporate lenders or non-resident lenders (either corporate or 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 the loan cost, Estonia enables the provision of extensive loan liabilities, even if a company has little capital. However, as a result of the harmonisation of the Anti-Tax Avoidance Directive (Council Directive (EU) 2016/1164) , the law provides an interest limitation rule under which excessive interest payments are subject to CIT, provided that the following three cumulative criteria are met:

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

Some exceptions apply to this, such as in regard to costs for financing certain infrastructure projects, the group equity rule and worldwide group ration 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 18 per cent. Additionally, shipping companies are subject to a tonnage tax.

c. Profit distributions

Estonia applies no withholding tax on profit distributions to resident or non-resident shareholders. Therefore, the final Estonian tax on profit distributions to foreign companies is 22 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 applicable to the shareholder (ie, in excess of the acquisition cost of the shares based on which the capital reductions are made).