



ISSUES IN OWNERSHIP OF REAL ESTATE

ESTONIA

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1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, fee simple absolute property ownership is permitted in Estonia.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

According to Article 64¹ of the Law of Property Act for the transfer of immovable property ownership a notarised agreement between the entitled person and the other party (a real right contract) is required and a corresponding entry shall be made in the land register.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Estonia has a system of a strong land register. The land register is a register of real rights in immovable property. The system of the land register ensures the legal certainty of immovable property ownership and hedges risks of immovable property transactions because:

- the real rights related to a registered immovable are made public through the land register and nobody can be excused of nescience of the data of the land register;

- real rights in immovable property are created, amended or extinguished by making a respective entry in the land register and they can be relied on upon making transactions;
- entries regarding a registered immovable are made in the order of registering applications in the land registry journal;
- the rights entered in the land register can be amended only on the basis of the application or consent of the owner of the right or through judicial proceedings.

Registered immovables shall be plots of land, apartment ownerships and rights of superficies (incl. rights of superficies in apartment ownerships). Ownership relations and limited real rights established on the registered immovable for the benefit of third persons shall be entered in the land register in respect of an immovable:

- rights connected with securities: mortgages and real encumbrances;
- rights of use: rights of superficies, real servitudes and personal servitudes (usufruct and personal right of use);
- rights connected with acquisition: preemption right.

The land register is composed of register parts, a land registry journal and a land registry file:

- for each immovable a separate register part which sets out entries regarding that immovable shall be opened. Real rights in immovable property are created, amended and extinguished by making an entry;
- the land registry journal shall set out the applications submitted to the land registry department by which an entry in the land register is requested to be made;
- the land registry file shall hold the documents submitted on the immovable.

The register parts of the land register are public. Anyone may access them in the land registry department of the court and order transcripts of them. Upon entering into a notarised immovable property transaction the notary public shall verify the status of the land register. Today the register parts are still on paper. The Centre of Registers of the Ministry of Justice maintains a central database of the land register where the data concerning register parts is electronic. This can be used through the Internet for a charge but this does not have a legal effect yet.

A land registry file may be examined in the land registry department of the court by a competent official or a private person with a legitimate interest in the matter.

The land register maintained in courts is a legal register – making entries in the register creates, amends or extinguishes real rights.

The land cadastre maintained in the Land Board is a technical register – it reflects the data regarding land surveying, the natural status, value and actual use of land. Cadastral reference data is also presented in the form of cadastral maps.

Both registers exchange data. The land register also contains cadastral reference data – area, address, intended purpose of land, etc. In the land register such data has only an informative meaning. If the cadastral data changes, relevant corrections shall be made in the land register on the basis of a notice of the Land Board.

So there are a number of opportunities to use the data of the land register:

- one may access documents in the land registry department of a court;
- one may order copies from the land registry department of a court;
- upon certification of an immovable property transaction the notary verifies the data of the land register and the marital property register;
- partial access to the data is available via the homepage of the Centre of Registers.

The transition to the fully electronic land register takes place by register parts. The register part where a respective mark is electronically visible has obtained legal force. If there is no such mark, the paper register part has legal force and electronic data has a merely informative meaning. The computerised data of the land register is available free of charge via the computer network to administrative and judicial agencies for performing the functions placed on them by law. Others can use the data for a service fee. The [electronic query system](#) is connected with the [query system of the commercial register](#). A subscriber contract must be entered into with the Centre of Registers for obtaining the right to inquire. The service fee is the monthly subscription fee of EEK 150 (which covers both the subscription fee of the land register and the commercial register) and the fee for specific inquiries (based on the amount of data, EEK 10-30 for the data regarding one registered immovable). The computerised data can be additionally processed based on the client's request.

A service fee for an inquiry where only an invoice is issued as an output will be charged on the basis of the machine-hour rate. The received service fee is used for the administration and development of the inquiry system.

The land register data can also be received by calling the paid number of the Centre of Registers and Infosystems **0900 1212** (12 EEK/min.). The information service is available from Monday to Thursday from 9:00 a.m. to 4:30 p.m. and on Friday from 9:00 a.m. to 4:00 p.m.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Insurance service providers in Estonia are registered insurance companies and their branches, which are under supervision of the Financial Supervision Authority. The most usual class of property insurance is home and home asset insurance. What, to which extent and against what risks to insure, it is agreed upon in insurance contract concluded between policy holder and insurance company. Directly it is possible to conclude insurance contract in a bureau of insurance company or in the internet. Generally home and home asset insurance is optional. It means that obligation to conclude an insurance contract is not derived from the law and the main presumption for conclusion of such contract is insurable interest.

The Estonian Insurance Association unites insurance companies operating in Estonia. The association was founded on February 15, 1993.

The objectives of the organisation are to represent the general interests of its member companies in the development of the insurance sector as well as in the social and economic environments.

Non-life insurance companies:

- [ERGO Kindlustuse AS](#)
- [AS Inges Kindlustus](#)
- [QBE Kindlustuse Eesti AS](#)
- [Salva Kindlustuse AS](#)

- AS If Eesti Kindlustus
- Seesam Rahvusvaheline Kindlustuse AS
- Eesti Liikluskindlustuse Fond
- Hansa Varakindlustus AS

Estonian Insurance Association is member of Comité Européen des Assurances (CEA) and member of Estonian Employers' Confederation.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

– **Investment Fund**

An investment fund means a pool of assets established for collective investment or a public limited company founded for collective investment, which is or the assets whereof are managed, accordingly, on the principle of risk-spreading by a management company. A respective activity license is required for management of investment funds. The activity license is issued and revoked by a decision of the Supervisory Authority.

The following types of investment funds can be founded in Estonia:

- a contractual investment fund;
- an investment fund founded as a public limited company;
- a mandatory pension fund;
- a voluntary pension fund.

– **Risk and Accident Insurance**

If a company operates in a field where the likelihood of death or injury of employees due to an accident is relatively high (e.g. construction, fishing, forestry), the company should conclude a risk life insurance contract. On the one hand, this insurance policy helps to compensate for possible claims brought against the company (civil law action in case of an occupational accident) and on the other hand, it provides the family of employees with a feeling of security.

– **Time Deposits**

For companies, investment of money in an ordinary term deposit is the simplest solution. For a period of three months, you can deposit a minimum of EEK 3,000, for one month, a minimum of EEK 30,000 and for two days, a minimum of EEK 100,000.

A **savings deposit**, where you can deposit money on a regular basis or make one-time payments, according to the dynamics of the cash flow of your company, is good for saving starting capital for a major investment or project. Moreover, upon incurring unexpected expenses you can use the deposited funds to the extent of 90% on a short-term basis without terminating the deposit. To open a savings deposit you need no more than EEK 100. You can open a savings deposit for 6, 9 or 12 months.

You can open a term deposit in Estonian kroons as well as foreign currencies. In addition to Estonian kroons, the savings deposit can be opened in euros or US dollars.

Interest on an ordinary term deposit is paid on a monthly basis or upon expiry of the deposit term, depending on the customer's preference. Interest is paid on the savings deposit on a monthly basis and clients can have the interest transferred to their current account or added to the deposit.

Companies can earn more on their available assets compared to current accounts. While upon investing in funds it is impossible to precisely forecast the income earned, both term and savings deposit offer a guaranteed rate of return.

– **Bonds**

Bonds and commercial papers are suitable for investors interested in liquidity. Compared to deposits, where the funds are not available for a certain period, commercial papers and bonds are usually in high demand on the market and can be sold before maturity at the time suitable for investors. In general, bonds provide higher yield than deposits of the same period. Estonia has the most liquid short-term bond market in the Baltics. If companies are not interested in taking risks in the local market or if their revenues are mostly in euros or US dollars, they can purchase bonds traded in international markets.

– **Issues of Securities**

Offering of securities is any offer for acquisition of securities, including an invitation to make a bid, issue and offering of securities, under the terms whereof the offered securities are issued or conveyed to the investor by a third person.

Every offering of securities is public, except if the securities are offered only:

1. to professional investors or
2. to not more than 50 persons who have been identified by names in advance or
3. at the total price of up to 40,000 Euros per one offering as of the day of passing the decision on the issue or offering of securities or
4. for acquisition of single securities or a set of securities for at least 40,000 Euros per each investor as of the day of passing the decision on the issue or offering of securities.

An issue of securities is a set of securities issued on the basis of a single decision of an issuer. Securities issued in a series are deemed to constitute one issue.

The person organising the offering of the issuer's securities (underwriter) shall publicise a respective prospectus in relation to a public offering of securities in Estonia (hereinafter: the prospectus), which shall be registered with the Financial Supervisory Authority (hereinafter: the Supervisory Authority) before publication and announcement of the offering.

A foreign investor can conduct his business operations in Estonia through a branch or a subsidiary. Because a branch is not considered to be a legal person, a foreign company is liable for the obligations of its branch.

The following types of business entities can be formed under the national law of Estonia:

1. a sole proprietor,
2. a general partnership,
3. a limited partnership,
4. a private limited company,
5. a public limited company,
6. a commercial association.

The most popular forms of companies in Estonia are the private limited company and the private limited company.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There is a Trust Law adopted on 14 April 2004.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There are no stamp or transfer taxes imposed on purchase/sale of real property in Estonia.

Further instructions have been drafted in order to explain taxation of gains derived from transfer of properties of non-residents in Estonia with income tax.

Non-residents (natural and legal persons) are taxed on Estonian-source income only.

Pursuant to § 29(4) of the Estonian Income Tax Act, income tax is charged on gains derived by a non-resident from transfer of property if:

- the sold or exchanged immovable is located in Estonia;
- the transferred real right or the right of claim is related to an immovable or a structure as a movable, which is located in Estonia;
- the transferred holding is a holding of a person who at the time of transfer owned at least 10 per cent in a company, investment fund or pool of assets of whose property, at the time of transfer or during certain period within two years immediately preceding the transfer, more than 50 per cent was directly or indirectly made up of immovables or structures as movables, which are located in Estonia.

The gains or loss derived from the sale of property is the difference between the acquisition cost and the selling price of the sold property.

Land Tax is levied on the taxable value of all land (other than that, which is specifically exempt) based on an official valuation. The owners of the land are liable to land tax. The annual land tax rate varies between 0.1% and 2.5% of the assessed value of the land. The council of the local authority is authorized to establish the rate of land tax. Land tax is paid to

the local government in increments of at least one thirds of the total sum thrice a year: by April 15th, June 15th October 15th.

Value added tax shall generally not be imposed on the supply of immovables.

Tax exemption is not applied:

- to an immovable if an essential part thereof is a construction works or a part of a construction works which is to be transferred prior to the commencement of use of the construction works;
- to an immovable if an essential part thereof is a construction works which has been significantly improved, or a part of such construction works which is to be transferred prior to the post-improvement resumption of use of the construction works or the part thereof,
- to a lot within the meaning of the Planning Act if the lot does not contain any construction works.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

There are no stamp or transfer taxes imposed on purchase/sale of real property in Estonia.

See prior answer for additional information.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

In Estonia political subdivision makes no difference in case of taxation because local authorities are not in charge of imposing aforementioned taxes.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Yes.