



ISSUES RELATING TO COMMERCIAL LEASING

ESTONIA

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CONTACT INFORMATION

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1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

Estonia does not have transfer tax.

The taxation on lease depends on the character of the contract - does it meet the nature of financial or operational lease. The financial lease (the sale of goods) is basically taxed as sale by installments. All the VAT must be accounted and paid at the moment of transfer of the lease object. Lease interest is exempt from tax. The operational lease, where the right of ownership does not transfer, is taxed as service performance. The VAT is accounted periodically from the payments provided in lease contract.

VAT rate is 18%.

2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).

Under Estonian law, there are no legal restrictions limiting the maximum term of a lease. However, if a lease agreement has been concluded for a term exceeding 30 years, then after the first 30 years, either party may terminate the agreement without indicating the reason, by giving to the other party a three-month prior notice.

3. Describe any laws requiring landlords to allow a tenant to renew its lease.

In case of commercial lease, Estonian laws do not require a landlord to allow a tenant to renew its lease. However, in practice lease agreements relatively often contain a provision on the tenant's pre-emptive right to renew the lease. If an agreement is concluded for a lease of residential premises, then the tenant may claim the landlord for extension of the lease term for additional three years if terminating of the agreement would bring along serious results for the tenant or his/her family. If the landlord does not agree to extend the residential lease period under such circumstances, then the tenant may claim the extension of term in a lease committee (which is a voluntary alternative dispute resolution body for lease disputes) or in a competent court.

4. Describe any restrictions on rent that may be charged for to a tenant.

There are no such restrictions.

5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.

A tenant may terminate a lease prior to its stated expiration date only upon material reasons, foremost due to a material breach of duties by the landlord, such as the landlord impeding the use of the leased premises, or because the leased residential premises are become health hazardous. Furthermore, as mentioned under the first questions, a tenant (as well as a landlord) may terminate a lease agreement, which is concluded for a period exceeding 30 years, after the first 30 years have passed, without indicating the reason thereto.

6. Describe any laws allowing tenants to assign or sublease without landlord's consent.

A tenant may not assign the lease or sublease the premises without landlord's consent. However, the landlord may not withhold such consent without a material reason.

7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.

A landlord may withhold its consent to sublease only if the landlord has a material reason thereto. The law provides for an illustrative list of such reasons, including the following:

- the tenant does not disclose the terms and conditions of the sublease to the landlord;
- sublease would bring along material loss/damage to the landlord;
- sublease would unreasonably burden the leased premises;
- landlord has a material reason that relates to the person of the sublessee.

If a landlord refuses the consent to sublease without a material reason, then the tenant has right to terminate the lease agreement on real property by giving a three-month prior notice.

If a reasonable increase in the rent may be assumed for the sublease, then the landlord may state that the tenant's consent to the increase of the rent is prerequisite to the landlord's consent for the sublease.

8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?

In order to evict a tenant, the landlord should file a claim to the court demanding the premises out of the tenant's possession back to the landlord. After a court resolution has been obtained and this has entered into force, the resolution can be compulsory executed by a bailiff on the landlord's request. In frames of the execution proceedings, the bailiff first gives to the tenant a term of up to three months to voluntarily comply with the court resolution and to leave the premises. After this term has passed without success, then the bailiff will evict the tenant, if necessary, with help of the police.

The length of this process depends mainly on duration of the court proceedings. The duration of the court proceedings may vary depending on the parties' arguments, necessity to hear witnesses, the number of the hearings, appealing to higher court instances, etc. The average duration of the court proceedings is 1.5 years. The customary length of compulsory execution of an eviction resolution in force is ca 6 months. Thus, the average length of time for eviction of a tenant is ca 2 years.

9. Are there any legal restrictions on pledging a leasehold interest as security for a financing?

No.

10. Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.

The landlord is required to hold the security deposit in a credit institution on an account separate from the landlord's own assets. At least the local average interest should be earned on the security deposit, and this interest belongs to the tenant. The law does not state clearly if the landlord can hold one separate account for all tenant security deposits or whether each security deposit must be held in its own separate account. However, if the landlord holds due accounting on the interest corresponding to each security deposit, then the landlord should have the right to have only one separate account for all tenant security deposits.

If a lease agreement is concluded in respect of any other property than residential premises, then the parties may agree upon that the deposit security must not be kept on a separate account. Without the respective clause in the agreement, the above-described provisions of law apply.

11. Describe any required statutory or other legal disclosures to be made to all tenants.

There are no such legal requirements.

12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.

The VAT on rent is optional. VAT Act provides that the leasing or letting of immovables or parts thereof are supply exempt from tax, but the legislation provides an opportunity to add VAT to immovables rent if the tax authorities are notified in a written form about that. Must

be noticed that the rent on dwelling is not optionally taxable.

13. Describe any limitations on the ability of landlords to exercise self-help.

Generally, no self-help is allowed. However, a landlord has statutory pledge on the furnishings and the tenant's property at premises. By such pledge, the claims for the current and the last year rent as well as claims for damages are secured. The landlord may use self-help in order to exercise rights arising out of this pledge. The parties may exclude applying of the statutory pledge and the related allowed self-help by agreement.

14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.

In Estonia, clauses on acceleration of rent are very uncommon, and the law does not expressly provide for such possibility. However, the parties may add such a clause to the commercial lease agreement.

15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.

There are no such expedited remedies.

16. Describe any formal requirements for the execution of a lease.

Generally, there are no mandatory formal requirements for the execution of a commercial lease. If a residential lease agreement with a term exceeding one year is not concluded in written form, then such agreement is considered to be concluded for an indefinite term.

A tenant may demand from the landlord making an entry on the lease to the Land Register of Estonia, which is a publicly reliable register of real property. Such entry in the Land Register secures the tenant's rights in case of transfer of the real property to a new owner – in case of an entry in the Land Register, the new landlord is prohibited to terminate the lease agreement due to the change of ownership of the real property.

17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.

As mentioned under the last question, to enforce a lease against third parties, an entry can be made in the Land Register. But it should be noted that a lease is transferred to a third party acquiring the real property also if there is no such entry in the Land Register and even if this third party is not aware of the lease agreement. Hence, a lease is enforceable against third parties also without the entry in the Land Register but an unregistered lease agreement can be terminated by the acquirer of the real property within three months as of the transfer of the lease.

18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant's rights or obligations?

There are no restrictions on the transfer of ownership of real properties subject to a lease. In

case of transfer of ownership, the lease on the real property remains in force and is transferred to the new owner, and the tenant retains its rights and obligations. However, the new landlord may terminate the lease agreement, by giving a three-month prior notice, within three months as of the date of acquiring the real property, unless the lease agreement is registered with the Land Register. Under the same conditions, a lease agreement concluded in respect of commercial (or residential) premises can be terminated by the new landlord only due to the reason that the new landlord strongly needs these premises by its own.