

Transfer of inherited property restituted after being unlawfully expropriated

Pursuant to clause 5 of subsection 4 of § 15 of the Income Tax Act, income tax is not charged on the income from the transfer of land returned in the course of ownership reform. In the opinion of the tax authority, the wording of subsection 4 of § 15 of the Income Tax Act supports the application of the tax exemption with respect to the successor on the ground that clause 5 of the provision does not make the exemption conditional on a particular person, but is based solely on the means of acquisition of the land. Therefore, it can be concluded that the tax exemption applies to the first transfer of the land returned in the course of the ownership reform. According to the guidelines of the Supreme Court, succession does not constitute a transfer transaction but is a legal succession arising from the law, so the exemption applies to the person who transfers the land returned in the course of the ownership reform for the first time. In the opinion of the tax authority, it is not a proprietary right inseparably related to the person of the bequeather.

A legacy is a right of claim against successors and arises automatically on the basis of a will if the right is not waived within three months. A notarised contract for the transfer of a legacy is entered into for the transfer of a legacy. If the legatee is a legal successor at the same time, tax exemptions apply to the transfer of the property received as a legacy, which would have applied to the bequeather. If the legatee is not the legal successor, the tax exemptions of the bequeather do not apply to the transfer of the property received as a legacy.

In the opinion of the tax authority, according to the guidelines issued by the **Administrative Law Chamber of the Supreme Court in the judgment of 25 May 2018 (administrative matter No. 3-16-903)**, the transfer of the tax exemptions provided for in clauses 2 and 5 of subsection 5 of § 15 of the Income Tax Act to the successors is possible, as the legislator has not at present restricted the transfer of the tax exemption to the successors. Thus, it is possible for successors to apply the above tax exemption upon the first transfer of immovable property, if the property transferred for the first time has become the property of the bequeather by returning the unlawfully expropriated property.

Please note that for the application of the tax exemption provided for in clauses 3 and 5 of subsection 5 of § 15 of the Income Tax Act, there is a prerequisite that the immovable property has become the property of the taxpayer by privatisation with the right of pre-emption. Thus, if the person who acquired the property by way of privatisation with the right of pre-emption does not use the tax incentive granted to him or her, but decides to bequeath it, his or her successors cannot benefit from the tax incentive provided for in clauses 3 and 5 of subsection 5 of § 15 of the Income Tax Act (**administrative matter No. 3-14-50711**).