MAKSU- JA TOLLIAMET

Transfer of immovable property

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Transfer of property returned in the course of the ownership reform

Gains derived from the **first transfer** of property returned in the course of the ownership reform (incl. returned forest land), is exempt from income tax. This is also the case if the property (plot of land) is divided into several parts and transferred as separate plots.

NB! However, gains from the transfer of standing crop of the returned forest land is taxed.

Transfer of property returned in the course of the ownership reform, if...

...THE LAND IS INHERITED

In the case of inheritance, it is legal succession arising from the law and the tax exemption can be used by the person **who transfers the land returned in the course of the ownership reform for the first time**.
If the owner of the property returned in the course of the ownership reform bequeaths the property to a successor and the successor transfers it, he or she does not have to pay income tax on the gains received.

...THE LAND IS RECEIVED AS A GIFT

Gifting is a transfer transaction and the tax exemption cannot be used upon transfer of land returned in the course of the ownership reform, which has been received as a gift.
If the owner of the land returned in the course of the ownership reform gives the land away as a gift and the recipient of the gift transfers it, then income tax must be paid on the gains received.

...THE LAND IS RECEIVED AS A LEGACY

If the property returned in the course of the ownership reform has been obtained by a contract for the transfer of a legacy, it is deemed to be the first transfer transaction.
If the legatee transfers the immovable property returned in the course of ownership reform, income tax must be paid on the gains received.

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Transfer of inherited property returned in the course of the ownership reform

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**).

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