



MAKSU- JA TOLLIAMET

Transfer of immovable property

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If an immovable has been transferred into the ownership of the taxpayer through return of unlawfully expropriated property and an essential part of the immovable or the object of an apartment ownership or of a right of superficies in an apartment is a **dwelling** (for example, a residential building returned as a movable, which is later registered and sold as an immovable), then the income from the transfer of such immovable is not subject to income tax.

This tax incentive does not apply to the transfer of business premises (such as offices, shops or production facilities) even if they were obtained by way of return.

If a person has been restituted a plot of land larger than the part of the right of claim, then the income from the sale of this plot of land is also exempt from tax.

However, gains from the transfer of standing crop of the restituted forest land **is taxed with income tax**.

Transfer of property restituted after being unlawfully expropriated if:

THE PROPERTY 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 for the **first time**. If the owner of the property restituted after being unlawfully expropriated 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 PROPERTY IS RECEIVED AS A GIFT

Gifting is a transfer transaction and the tax exemption cannot be used upon transfer of property, which has been restituted after being unlawfully expropriated and received as a gift. If the owner of property restituted after being unlawfully expropriated gives this property as a gift and the recipient of the gift sells it, then he or she must pay income tax on the gain received.

THE PROPERTY IS RECEIVED AS A LEGACY

If the property restituted after being unlawfully expropriated 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 property, he or she must pay income tax on the gains received.

Last updated on 08.01.2025

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 clause 5 of subsection 4 of § 15 of the Income Tax Act allows the application of the tax exemption with respect to the successor on the ground that it 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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