

To gift, to sell, or to bequeath real estate? 1/39/21



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There are a variety of available legal instruments for leaving a person's estate to beneficiaries (including trusts, which are becoming popular in Latvia). This article explores three common solutions to the problem of inheritance in Latvia: gift, sale, and bequest. The best solution will be different in each situation, so this article aims to provide an overview of how the beneficiary (heir) or the grantor (testator) is taxed under each of these options. This article explores only Latvian tax resident individuals' dealings with real estate (RE).

Gift

This is a method people usually choose to bequeath RE to their descendants because in that case a transfer of inheritance can be performed early to the beneficiary of their choice and for no consideration. We should remember, however, that a contract of gift can be challenged by heirs entitled to their inalienable portion claiming a part of the RE or a similar consideration.

A gift is taxable income under the [Personal Income Tax \(PIT\) Act](#), meaning you may have to pay PIT when you receive a gift. Gifts from individuals are exempt from PIT if the donor is related to the taxpayer by marriage or by blood up to the third degree under the Civil Code. If the donor is not related to the taxpayer up to the third degree, PIT is due on the gifted RE if it is worth more than EUR 1,425. So a gift from any person other than the spouse or a relative up to the third degree is the recipient's taxable income subject to progressive rates of PIT.

An exempt gift worth more than EUR 10,000 must be reported by the recipient on their annual income tax return.

A contract of gift should state the value of RE for PIT and stamp duty purposes. Stamp duty is payable when legal title changes hands on the land register. Stamp duty is charged on the RE value specified in the contract of gift or on the cadastral value (whichever is higher). Under paragraph 13.1 of the [Cabinet of Ministers' Rule No. 1250, Stamp Duty Payable on Entering Legal Title and Mortgage on the Land Register](#), stamp duty for children, spouses, parents, brothers, sisters, half-brothers, half-sisters, grandchildren, great-grandchildren and grandparents is 0.5% of the RE value (3% in other cases). There are also some other smaller duties to pay.

Sale

By selling RE to a beneficiary, the grantor prevents his property from getting into the hands of another potential heir, because third parties are unable to challenge the sale. The only exception is if the transaction has been a fictitious one, with only a token payment being received for the RE. In that case third parties may challenge the legitimacy of the transaction and point out that this kind of transaction has been a gift aimed at circumventing other statutory heirs (i.e. it is not a sale).

On a sale of RE, taxable income may arise for the seller, not the buyer. Taxable income under the [PIT Act](#)

is a profit, meaning a positive difference between the price paid for the RE and expenses associated with its purchase (including the acquisition cost). If the transaction causes a loss, this does not constitute taxable income for the seller and may be offset against profits arising on other transactions involving capital assets within the tax year.

Also, a sale will not constitute taxable income for the seller if one of these **PIT Act** exclusions applies:

- The person owned the RE for more than 60 months after it was entered on the land register and it had been the person's declared residence for at least 12 consecutive months in the 60-month period up to the date the contract of sale was entered into.
- The person owned the RE for more than 60 months after it was entered on the land register and it had been the person's sole RE for the last 60 months up to the date of sale.
- The RE has been entered on the land register as the person's sole RE and the proceeds from it are reinvested in a functionally similar property within 12 months after the RE was sold or before it was sold.

Additionally, stamp duties and other duties are payable at the Land Registry. Stamp duty is 1.5% of the RE value if the buyer is an individual. Stamp duty falls to 0.5% if the buyer is the seller's child, spouse, parent, brother, sister, half-brother, half-sister, grandchild, great-grandchild, or grandparent.

Inheritance

Any person has the right to express their last will in a testament or in a contract of inheritance. This gives the heir a standstill entitlement to the future inheritance. If the inheritance contract is entered on the land register, this will prevent the testator from selling, mortgaging or encumbering his property without the heir's consent. An inheritance contract ensures that the testator's last will and testament will be taken into account and carried out. RE can also be inherited by the operation of law under the **Civil Code**.

In the case of a statutory or contractual inheritance, neither party has taxable income under **section 9 of the PIT Act**.

If the inherited RE is worth more than ten minimum monthly wages (EUR 5,000 in 2021) there is stamp duty to pay. The amount varies according to the legal basis of inheritance (statutory or contractual) and the heir's degree of relationship.

Summary

Each case should be assessed on its own merits. The information set out in this article can help you decide on the best way of dealing with your inheritance in the present situation from a tax perspective.

	Testator		Heir	
	Up to 3rd degree relationship	Others	Up to 3rd degree relationship	Others
Gift	Exempt	Exempt	No PIT	PIT - 20% of RE value exceeding EUR 1,425
			Stamp duty - 0.5% of RE value	Stamp duty - 3% of RE value

Sale	PIT – 20% of profit if exemption is not available	PIT – 20% of profit if exemption is not available	Stamp duty – 0.5% of RE value	Stamp duty – 1.5% of RE value
			No PIT	No PIT
Inheritance	Exempt	Exempt	Stamp duty – depending on type of inheritance and degree of relationship	Stamp duty – depending on type of inheritance and degree of relationship