

Gift deed – is everything as straightforward as it seems? 3/46/23

Under the Civil Code, a gift is a legal transaction whereby someone gives an asset to another person for free out of generosity. While a gift is mainly associated with something pleasant, there may be risks and questions – read on to find out more.

A donation or a gift deed is divided into three types:

1. An ordinary gift, with nothing being demanded in return
2. A gift with a binding direction, where the donor lays down conditions the donee has to meet in order to receive it
3. A gift as a reward, where the gift is a form of gratitude or reward for some favour or charity work the donee has carried out for the donor's benefit

Of course, the donor can informally pass a gift to the donee by delivery and acceptance, for example, when giving money. A gift can also take the form of a contract: a private contract, a private contract on which a notary has confirmed the authenticity of the parties' signatures, or a notarial instrument.

Key elements of a gift deed and the consequences of ignoring them

There are two things that may be recognised as key elements of a gift deed. One is the will of the parties in offering an asset and agreeing to accept it. The other is capacity to act and legal capacity. Every capable person can make a gift and anyone capable of taking possession can accept a gift. For example, a minor's will has no legal force. If the donee is a minor child, the guardian acts on his behalf. If the intended donee has lost capacity to act, the gift must be recognised as void.

The Civil Code (CC) makes no requirement for the form of a gift deed. A written agreement is good for ensuring the gift has actually been made. CC section 1483 states that written form is needed when a gift is entered on the land register, for example, when real estate (RE) is gifted. Failure to meet this statutory requirement makes the agreement invalid.

If a gift is to be recognised as having been given, it must be accepted. If the gift involves a personal asset, ownership passes once it has been handed over, but in the case of RE – from the date it was entered on the land register.¹ Entering RE on the land register changes the owner who later has the right to dispose of the property or its parts.

Implications of a gift deed

A gift deed passes ownership to the donee. So, for example, if the donor has gifted his only RE where he is living, then he may face an unpleasant situation. A gift with a binding direction may state that the donee does not have the right to sell the RE, for example, by specifying a period after which it can be sold. There may also be cases where it's necessary to consider entering into other agreements, such as maintenance agreement or inheritance agreement.

As the personal asset is handed over to the new owner or RE is entered on the land register, the gift passes to the donee with all encumbrances and burdens. The donee is not liable for the donor's debts but is subject to a claim for permission to recover debts out of the gift. A creditor's claim against the donee

means seeking a court order to recognise the creditor's right to recover a debt out of the gift.² If the donor has any creditors with outstanding claims, they can recover those debts out of the gift by court order. This can occur regardless of the donee not assuming liability for the donor's debts.

In exercising his statutory rights, a creditor may demand that the amount of money necessary to repay the debt should be taken out of the gift. This claim mainly applies to the gift if the donor had debts at the time of giving it that now need to be repaid. The donee is not liable for such debts.

The Civil Code also states that in the case of a gift deed, forced heirs have the right to claim portions of the estate from the donee if the gift has been made to such an extent that they are left without their inalienable portions. A forced heir may claim his inalienable portion only from the person whom the estate leaver has gifted and not from any third party that has acquired the asset at a later date.³

The right to reclaim a part of the gift is there to protect the interests of forced heirs. At the time of making the gift, the donor is obliged to account for forced heirs. A forced heir is given the opportunity to receive as much as he would be entitled to if the inheritance were discovered at the time of the gift.⁴ So it's important to remember that on the donor's death, if the only estate has been gifted, the donee may have to settle with the heirs.

How is a gift valued financially and what taxes are due?

Gifts can also be made in cash, so it's worth remembering that such gifts are subject to restrictions. Latvian law states that a gift from a donor who is related to the donee up to the third degree is exempt from personal income tax (PIT). However, any gifts that exceed EUR 10,000 are exempt from PIT but must be reported on the annual tax return. If the donor and the donee are not related, PIT is payable on the portion of a gift that exceeds EUR 1,425.

More questions arise when the gift is a piece of RE. The gift deed may specify the value of RE; if this is not specified, its cadastral value will be taken into account on the date it was entered on the land register. If RE was acquired before 2001 and the person has no documents to confirm its value, the current cadastral value will be taken as the acquisition cost.

If the selling price of RE is greater than its acquisition cost together with any investments and if the transaction does not match any of the exempt income types, the person must pay PIT on a capital gain. The law requires the person to calculate the PIT charge by applying a rate of 20%.

While the general principle dictates that any income arising on the sale of RE is subject to PIT, the law makes a number of exceptions. The most common exception involves selling RE that a person owned for more than five years after it was entered on the land register and that was their declared residence for at least 12 consecutive months in the last five years. Meeting these ownership and residence conditions exempts PIT on the income.

Can a gift deed be revoked?

Only the donor may exercise this right in statutory cases.

Firstly, a deed can be revoked when the gift is demanded back. This right can be exercised in reclaiming a certain portion of the gift to protect the interests of forced heirs. Such heirs are entitled to the portions that were gifted. Also, if the donor has children after the gift deed was performed, he has the right to

revoke the gift to the extent necessary for their inalienable portions.

In the case of engagement or marriage, the gift can be revoked in the following cases:

- The donee (spouse) dies without leaving any downward heirs.
- The marriage ends in divorce because of the donee's behaviour.
- The marriage has been declared void and the donor has been misled about its existence.

Secondly, revocation is possible when the donee shows gross ingratitude. The law does not specify any period or amount of gratitude the donee must show to the donor. The law states that gross ingratitude manifests itself in rude words or actions, significant property damage caused intentionally, endangering the person's life, leaving the person in a helpless state if it was possible to help.

Only significant property damage that is caused deliberately, i.e. with malicious intent, is recognised as gross ingratitude. While the donor may believe the donee is showing gross ingratitude, in the event of a dispute this will be decided by the courts because not all of the donee's actions can be treated as gross. This does not apply to gifts made as a reward.

Thirdly, revocation is possible if a gift with a binding direction puts the donee under an obligation against the donor and he fails to honour it. The direction may become unenforceable because of natural obstacles or for legal or moral reasons. In that case the gift stands but the direction is void.

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¹ Commentaries on the Civil Code: Part 4. Law of Obligations. A team of authors in the general scientific edition of prof. K. Torgans. - Riga: 'Mans Īpašums', 2000, page 370

² The Supreme Court Civil Division's ruling SKC-376/2019 of 3 December 2019, paragraph 8

³ The Supreme Court Civil Division's ruling SKC-23/2012 of 25 January 2012

⁴ Commentaries on the Civil Code: Part 4. Law of Obligations. A team of authors in the general scientific edition of prof. K. Torgans. - Riga: 'Mans Īpašums', 1998, page 373