



DOING BUSINESS GUIDE IN ESTONIA



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INTRODUCTION

General facts and information

Estonia is situated in the Eastern Europe, bordering the Baltic Sea and Gulf of Finland, between Latvia and Russia. With an area of 45 227 km² (including 1520 islands in the Baltic Sea) it is a relevantly small country on the world scale, still remaining slightly larger than for example Denmark, Netherlands and Switzerland.

The capital and also the biggest city is Tallinn with a population of approximately 420 000. Other most populated cities are Tartu, Narva and Kohtla-Järve.

Natural resources: shale oil, peat, phosphorite, amber, cambrian blue clay

Estonia regained its independence on the 20th of August 1991 (from the Soviet Union) and until now maintains parliamentary democracy. Constitution was adopted on the 28th of June 1992.

Legislature: unicameral Estonian parliament— Riigikogu. Estonian president Toomas Hendrik Ilves (since the 9th of October 2006) is an official chief of state.

Estonia has been a member of the United Nations since 17 September 1991, of the European Union since 1 May 2004 and of NATO since 29 March 2004.

With only 1.3 million inhabitants, Estonia is one of the least populated countries in the European Union. There is a problematic negative population growth rate of -0.632% (est. 2008) and also negative migration -3.24 migrant(s)/1,000 inhabitants (est. 2008).

In accordance with statistics provided in 2000 Estonia includes following ethnic groups: Estonian 67.9%, Russian 25.6%, Ukrainian 2.1%, Belarusian 1.3%, Finn 0.9%.

Official and most widely spoken language is Estonian at the rate of 67.3%, but also Russian at the rate of 29.7%.

Level of the Estonian economy development, considered an „Estonian economic miracle”, is often addressed to as the Baltic Tiger. Availability of Scandinavian markets, advantageous location between Eastern and Western Europe, competitive cost structure and high-skill labor force have been the major Estonian comparative advantages since the 1990s.

Estonia has a modern market-based economy and one of the highest per capita income levels in Central Europe. The economy benefits from strong trade ties with Finland, Sweden and Germany. The current government has pursued quite liberal fiscal policies, resulting in relatively balanced budget and low public debt.



GDP (est. 2007):

- Purchasing power parity €18.89 billion
- Official exchange rate €13.65 billion
- Real growth rate 7.3%
- Per capita (PPP): €14032
- Composition by sector: agriculture: 2.9%, industry: 28.9% , services: 68.2%

Unemployment rate: 5.2% (est. 2007)

Inflation rate (consumer prices): 6.3% (est. 2007)

Investment (gross fixed): 33.3% of GDP (est.2007)

Estonia has not yet joined the European Monetary Union and uses it's own currency, Estonian Kroon (EEK). The Kroon is divided into 100 Senti.

Estonia imports machinery and equipment (33.5% of all imports annually), chemical products (11.6% of all imports annually), textiles (10.3% of all imports annually), food products (9.4% of all imports annually), and transportation equipment (8.9% of all imports annually).

Estonia exports machinery and equipment (33% of all exports annually), wood and paper (15% of all exports annually), textiles (14% of all exports annually), food products (8% of all exports annually), furniture (7% of all exports annually), and metals and chemical products. Estonia also exports every year 1.562 billion kilowatt hours of electricity.

Export/import relation to other countries (est. 2006):

Estonia	Export	Import
Finland	18.2%	18.4%
Sweden	12.2%	9.2%
Latvia	9.1%	5.8%
Russia	7.9%	12.9%
US	6.6%	-----
Germany	5%	12.3%



Court system and arbitration

The legal power pursuant to the Estonian constitution belongs to the national courts. The courts can be considered independent from any governmental institutions providing security and reliability towards the system. Judgments from foreign courts are recognized and executed in accordance with legal co-operation and assistance agreements concluded with other countries. Besides that Estonia has joined several international conventions with regard to both civil and criminal matters.

Estonian court system is similar to the most of European countries having three stages of appellation proceedings. The first instance consists of both city and county courts handling civil as well as criminal cases, whereas administrative matters are settled in administrative courts. Under the proceedings in the first instance matters are handled by a single judge often assisted by two assessors. The second instance contains district courts, situated in Jõhvi, Tartu and Tallinn, handling the matters of appellations with regard to decisions made in the first instance. The second instance presupposes handling of the matters in question by three judges. The third instance is the Estonian Supreme Court situated in Tartu. The Supreme Court may change the decision of a district court or in some cases make amendments in decision made by lower courts.

A statement of a claim shall be filed to the court of first instance, an appeal to the court of second instance and an appeal in cassation to the Supreme Court. The Supreme Court shall take up the matter only after all previous court instances have been passed. The court decisions are made public in the database of court statistics and court decisions.

In order to avoid the ordinary time consuming processes of litigation, parties may agree on dispute resolution by means of arbitration. The Arbitration Court of the Estonian Chamber of Commerce and Industry handles the matters in question. In order for a case to be reviewed, it has to be clear that parties implicitly agreed on the resolution at the Arbitration Court and the claim has to be submitted under condition the actions of the defendant cannot be observed as obstructive to such settlement. There are also situations where international agreements might subject certain disputes to be resolved by the Arbitration Court. Disputes shall be resolved within six months. The decision of the Arbitration Court is final and enforcement does not require any separate procedure.



TAXATION

General information

Estonian tax system consists of state taxes which are imposed by Acts concerning taxation of relevant areas and taxes imposed by rural municipality or city council. The following state taxes are applied in Estonia:

Income tax;

- Social tax (social security contributions);
- Value added tax (VAT);
- Land tax;
- Gambling tax;
- Customs duty;
- Excise duties (including alcohol, tobacco products and fuel);
- Heavy goods vehicle tax.

Separate local tax system contains following tax duties:

- Sales tax;
- Boat tax;
- Advertisement tax;
- Road and street closure tax;
- Motor vehicle tax;
- Animal tax;
- Entertainment tax;
- Packaging excise duty
- Parking charge.

In accordance with the principle of legality taxpayers are required to pay only such state and local taxes that are prescribed by law providing the rates and formal framework. The tax



authorities for state taxes are the Customs Board and the Tax Board with its local offices. Following persons are considered to be taxable persons:

- Taxpayer;
- Withholding agent;
- Other persons that might be responsible for the tax liability of a taxpayer or withholding agent pursuant to law or a contract.

In order to ensure the performance of functions imposed on tax authorities, taxable persons are required to register in the state register which is established by the Estonian Government. The following persons are required to register themselves in the local Tax Board office of their residence, seat or place of business prior to the commencement of activities:

- Legal persons who are not to be entered into the Estonian commercial register
- State, rural municipality or city agencies which are not to be entered into the Estonian state register of state and local government agencies
- Sole proprietors who are not to be entered into the Estonian commercial register
- Foreign legal persons, associations of persons or pools of assets without the status of a legal person, which are commencing economic activity in Estonia through a permanent establishment not entered into the Estonian commercial register as a branch

Application for registration of legal person, sole proprietor and permanent establishment submitted to Tax Board shall include a number of aspects like code enabling identification, residency, area of activity and principle place of business, documents of authorization and agreements having direct connection to registered entities. It has to be mentioned that non-resident employers, including foreign agencies and international organizations, which are not subject to registration requirement, have the right register themselves in the Estonian register of taxable persons.

Estonian legislation gives the protection and provides secrecy for data regarding taxation. The tax authorities, officials and any other staff thereof are required to maintain the confidentiality of information concerning taxable persons, including business secrets and information subject to banking secrecy. The obligation to maintain secrecy remains also after the termination of service relationship. Yet it is important to notice that information regarding taxation debts of a legal or natural person can be accessed by public and databases, providing that information, are therefore often used by loan and credit entities.



The language of tax authorities and their proceedings shall be Estonian pursuant to law unless they agree otherwise. Yet the foreign languages may be used in the communications and proceedings in accordance with provisions of the Language Act.

The Estonian tax authorities may impose tax audit in order to ascertain all the facts relating to the tax liability. The tax audit may cover on one or several types of taxes during one or several taxation periods, but the objective may also be an investigation of a specific issue. In the course of the tax audit, facts relating to the tax liabilities of other persons may be ascertained, if the person subject to the audit is required to withhold tax on payments made to such persons. Finally it has to be noticed that a natural person can only be audited if he operates as a sole proprietor or is a withholding agent.

Income tax

Personal income tax

Personal income tax is imposed on the income of a taxpayer from which deductions pursuant to Estonian tax legislations have been made. The income tax shall be paid by natural persons and employers, who are natural persons, who in any way derive a taxable income. The period of taxation of personal income from which the deductions allowed pursuant to law have been made is one calendar year. The period of taxation of fringe benefits is one calendar month.

Following tax rates are applied during periods of taxation:

- 21% during 2009;
- 20% during 2010;
- 19% during 2011;
- Beginning from 2012 18%.

Natural person is considered as Estonian resident if he or she has an actual residence in Estonia or has spent consecutively during the period of twelve calendar month at least 183 days. A person in question is considered a resident, with regard to the above mentioned conditions, from the day of arrival to Estonia. A non-resident natural person shall pay an income tax only on earnings derived from Estonian sources.

Income tax is charged on incomes derived by natural person from sources both within and outside Estonia. The following income is a subject to personal income tax:



- Income from employment;
- Business income;
- Gains from transfer of property;
- Rent and royalties;
- Interest;
- Dividends;
- Maintenance support, pensions, scholarships, grants, benefits, awards, lottery prizes;
- Insurance indemnities and pension funds;
- Income of a legal person located in a low tax territory.

If a person derives income in foreign state, the income tax is not charged in case the person has stayed in the foreign state for the purpose of employment for at least 183 days over the period of 12 consecutive months and the specified income has been the taxable in that foreign state.

Regarding taxation of employment income, income tax is charged on all monetary remunerations of an employee or a public servant including all wages, salaries, holiday payments and benefits, compensations and extra payments of any kind. Furthermore the income tax is charged on remuneration or service fees paid on the basis of a contract for services, authorization agreement or any other contract under the law of obligations, including amounts paid to sportsmen. Income tax also concerns remunerations paid by legal bodies to members of management or controlling body.

In the list below some of gains which are free of income tax charge are mentioned:

- Compensation for travel, accommodation and daily expenses of official travels;
- Use of an automobile;
- In-service training and re-training of employees paid for by the employer upon termination of the employment or service relationship due to redundancy;
- Health treatment of employees injured at work.

Business is considered person's independent economic or professional activity and income tax is charged on gains regardless time of receipt. Yet it has to be noticed that transfer of securities owned by a natural person does not automatically constitute business.



Gains from transfer of property include sale or exchange of any transferable and monetarily appraisable objects like real or movable property, securities, registered shares, contributions made to a general or limited partnership or an association, units of investment funds, rights of claim, rights of pre-emption, rights of superficies, personal rights of use, mortgages aso. In case of reduction in capital share of limited liability companies and redemption or return of shares or contributions income tax is charged on the amount in which the payments made to a person exceed the acquisition cost of the holding or the contribution.

All dividends received in monetary or non-monetary form from the foreign legal person by resident natural person are subject to income tax. Income tax is not charged in case the taxation of the share of profit has taken place or if income tax on the dividends has been withheld in a foreign state.

Deductions from income of resident natural person:

- Basic deductible exemption:
27000EEK (1725EUR) in 2009
30000EEK (1930EUR) in 2010
33000EEK (2110EUR) in 2011
from 2012 36000EEK (2300EUR)
- Exemption in case of three or more children amounting to one additional deductible exemption per child every year;
- Exemption in case of pension;
- Exemption in case of compensation for accident at work or occupational disease;
- Exemption regarding maintenance support;
- Housing loan interest;
- Exemption regarding necessary livelihood;
- Additional training expenses;
- Gifts, donations and trade union entrance and membership fees;
- Insurance premiums.

A non-resident natural person who derives an income from work under an employment contract or in public service or from activities engaged in on the basis of a contract for services, an authorization agreement or a contract entered into for the provision of any other services shall be charged with personal income tax. An important aspect to consider is that the



duties or services are performed in Estonia as well as payments are made by an Estonian state or local government authority or resident or a non-resident operating in Estonia as an employer. Payments are also considered if made through the permanent establishment of a non-resident or if the natural person in question has stayed in Estonia for the purpose of employment for at least 183 days over the period 12 consecutive calendar months.

Situations, where income tax is not charged with regard to a non-resident natural person include foreign diplomatic or consular representative, diplomatic delegation, members of international or intergovernmental organizations, who are not a citizen or permanent residents of Estonia.

Corporate income tax

It is important to bear in mind that in Estonia in contrast to a number of European countries there is no systematic monthly corporate tax. Instead a resident company shall pay income tax on profits distributed as dividends or any other profit distributions in monetary or non-monetary form upon their payment. With regard to the distribution the income tax is not charged on profit distributed by the way of a bonus issue.

Furthermore there are several exception situations where taxation on the corporate level is applied. In accordance with Estonian legislation such corporate income tax can be imposed on the resident legal person or a non-resident legal person that has a registered permanent establishment in Estonia. A legal person is considered a resident if it is established in accordance with Estonian law.

The period of taxation of non-resident legal person's income from which the deductions allowed pursuant to law have been made is one calendar year. The period of taxation of fringe benefits for resident and non-resident legal persons as well as for distributed profit, gifts, donations, costs of entertaining guests and expenses and payments not related to business regarding resident and non-resident legal persons is one calendar month.

Following tax rates are applied during provided periods of taxation:

- 26,58% (21/0,79) during 2009;
- 25% (20/0,80) during 2010;
- 23,46% (19/0,81) during 2011;
- Beginning from 2012 21,95% (18/0,82).

Payments made upon reduction of share capital or contribution, redemption of shares or liquidation of a legal person shall be taxed pursuant to the procedure of taxation of gains from



transfer of property. The payments may be considered dividends if the value of transaction conducted between a resident legal person and a non-resident or natural person associated with the resident legal person differs from the value of similar transactions conducted between non-associated persons. In such case a tax administrator may, determining the income tax, apply value of transactions applied by non-associated independent persons under similar conditions.

An employer that is a resident legal person or a non-resident legal person having a permanent establishment has to pay income tax on fringe benefits granted to its employees. Fringe benefits may include goods, services, different forms of remuneration and monetary benefits which are given in connection to employment service or contractual relationship, membership in the management. In order to draw a line it is important notice that fringe benefits do not include cash payments regarded as salary, wages, supplementary remuneration and payments, remuneration of a management as well as payments for goods or services.

Resident legal person shall also pay income tax on all gifts and donations which have not been taxed under fringed benefits or have not been subject to withholding tax. Regarding those incomes there is a list of non-profit associations and foundations approved by the Government as well as a number of religious associations, hospitals, cultural, scientific, and educational, sports, law enforcement and social welfare institution which have been granted a tax relief.

Resident legal person may be subjected to taxation of expenses not related to business. In accordance with the Estonian legislation following expenses can be classified as not being related to business:

- Fines and penalty payments imposed on the basis of law;
- The cost of property seized from the taxpayer;
- Payments related to environmental issues;
- Gratuities and bribes;
- Entrance and membership fees, payments for services and obligations not related to business;
- Representation costs.

Furthermore a number of payments including acquisitions of property, securities, payment of a fine for delay or a contractual penalty or granting a loan may be considered as payments not related to business and subjected to income taxation, especially if connected to law tax rate territories.



A permanent establishment of a non-resident legal person that is registered in Estonia shall be charged with income tax. All fringe benefits, gifts, donations and costs of entertaining guests granted by a non-resident to its employees or members of the management shall be taxed regardless of whether the recipient is a resident or non-resident. The income tax is also imposed on the cost of property taken out of a permanent establishment, exceeding the total amount of the cost of property of the permanent establishment located in Estonia, payments made through or on account of a permanent establishment to the head office or any third party and remittance of goods for which no return compensation of any value is received. Yet the distribution in question may be tax-free if the receiver owns at least 10% of the shares, stocks or votes of the distributing permanent establishment situated in contract state unless it is considered a low tax rate territory.

Withholding tax

According to Estonian legislation income tax shall be withheld from the following payments:

- Salaries, wages and other remuneration subject to income tax paid to a resident natural person, taking into account relevant deductions;
- Salaries, wages and other remuneration paid to a non-resident;
- Remuneration paid to a natural person on the basis of a contract for services, authorization agreement or any other contract under the law of obligations;
- Interest payment subject to income tax paid to a non-resident or to a resident natural person;
- Dividend subject to income tax paid to a non-resident legal person;
- Insurance indemnities, pensions, scholarships, grants, lottery prizes and maintenance support paid to a non-resident or to a resident natural person;
- Rent from a commercial or residential lease paid to a non-resident or to a resident natural person;
- Royalties paid to a non-resident;
- Payments made to a non-resident artist, sportsman or sportswoman for activities conducted in Estonia;
- Payments to a non-resident for services provided in Estonia;

- Payments to a legal person located in a low tax rate territory for services provided to an Estonian resident.

There is a system of deduction upon withholding an income tax stated in the Income Tax Act as well specification of withholding rates varying currently from 10% to the rate of the above mentioned full corporate income tax of 26,58% .

Changes in the corporate tax system

Certain changes in the Estonian corporate income taxation were implemented from the 1st of January 2009 in accordance with the Law on Changing the Income Tax Act Some of the more important aspects:

- The tax base for companies generally remains the same meaning that corporate profits shall still be taxed upon their distribution;
- The taxation period was be extended to a financial year;
- Liquidation incomes, payments made upon redemption of shares and capital reductions that exceed contributions to equity (exceeding remittance of profit which , as it has been mentioned above, was taxable only at shareholder level) became subject to corporate income taxation;
- With regard to the previous point shareholders' double tax relief was provided;
- No threshold for tax exemption on distribution of dividends between parent companies and subsidiaries of different Member States, Switzerland, Iceland and Norway (was 15% of votes and shares). Any withholding tax on dividends (and royalties) was abolished.

Changes were inquired mostly in order to comply with the “Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States” after the European Court of Justice (ECJ) judgment in *Athinaiki Zythopiiia vs. Greece* (C-294/99). But according to the latest news the ECJ passed a new judgment on the 26th of June 2008 in *Burda GmbH vs. Germany* which takes a new stand providing that current Estonian legislation does not contradict the above mentioned Directive.

Law tax rate territories

Estonian legislation defines a law tax rate territory as a foreign state or a territory with an independent tax jurisdiction in a foreign state, which does not impose a tax on the profits earned or distributed by a legal person or where such tax is less than two-thirds of the income



tax which a natural person who is an Estonian resident would have to pay on a similar amount of business income. In case taxes imposed on the income earned or distributed by different types of legal persons are considerably different, a territory is deemed to be a low tax rate territory only with regard to legal persons in relation to whom the tax meets the conditions for low tax rate territory. It shall be observed that a legal person cannot be considered having its location in low tax rate territory if more than 50% of its annual income is derived from manufacturing of goods, trading and providing of transport, communications, accommodation and tourism services in the home country of the legal person in question as well as chartering of freighting vessels.

Following is the list of countries not considered to be a low tax rate territory:

United States of America (except Virgin and Marshall Islands), Austria, Belgium, China (except Hong Kong and Aomen), Spain, Holland (except Aruba and Antilles), Ireland, Iceland, Italy, Japan, Canada, Greece, Latvia, Lithuania, Moldova, Norway, Poland, Portugal, France, Sweden, Germany, Finland, United Kingdom and Northern Ireland (except Anguilla, Bermudas, British Virgin Islands, Cayman Islands, Gibraltar, Jersey, Guernsey, Isle of Man, Montserrat, Turks and Caicos Islands), Denmark, Check Republic, Ukraine, Kazakhstan, Belorussia, Armenia, Malta, Cyprus, Luxemburg, Slovakia, Slovenia, Hungary, Croatia, Switzerland, Turkey, Romania, Bulgaria, Georgia, Singapore.

Value added tax

An important aspect to consider is that the VAT registration at the Tax Board is voluntary until the company reaches the annual turnover of 250 000 EEK (approximately 16000 EUR). Upon reaching the critical amount the registration becomes compulsory.

Value added tax is imposed on following objects:

- Supply created in Estonia with exception of VAT tax reliefs;
- Imported goods except for those exempt from taxation;
- Services provided with supply place outside Estonia;
- Immovables and parts thereof, their leasing and letting, some financial services and securities if the taxable person has added value added tax to the taxable value of such goods or services;
- Intra-Community acquisitions of goods, except for where exempt from tax is applied.



A person is charged with the value added tax if it can be considered to engage in business and is registered or required to register as a taxable person. A person is a natural person or a legal person, including a legal person in public law or a state, rural municipality or city authority.

A general current rate of value added tax in Estonia is 18%. There is a 9% value added tax on the following goods and services:

- Books and learning materials;
- Medical products and equipment, sanitary and toiletry products;
- Accommodation services;
- Periodic publications.

0% value added tax is imposed on following goods:

- Exported goods;
- Goods if their transfer and transport can be considered intra-Community supply of goods;
- Sea-going vessels navigating in international waters;
- Aircraft used by an air carrier including fuel, equipment, spare parts aso.;
- Goods transferred and transported to another Member State to diplomat, consular agent or similar representative;
- Goods transferred and transported to another Member State, having a relation to NATO;
- Non-Community goods in a free zone or free warehouse;
- Community goods transported to a free zone or free warehouse for export purposes (a 15days export requirement);
- Gold transferred to Eesti Pank.

0% value added tax is imposed on following services:

- Services where the place of supply is not Estonia;
- Services necessary for the journey to passengers on board vessels or aircraft during the international transport of passengers;



- The provision of port services to meet the direct needs of vessels navigating in international waters;
- The provision of navigation services and airport services to meet the direct needs of aircraft used mostly on international routes;
- The repair, maintenance, chartering and hiring of or establishment of a usufruct on sea-going vessels navigating in international waters;
- Intermediation, if the place of supply of the transaction being mediated is a third country;
- Transport service for goods placed under an external transit procedure;
- Transport services for the export of goods, and ancillary services related to such transport of goods;
- Transport services for the import of goods if the cost of such services is included in the taxable value of the goods to be imported;
- Carriage of goods to the Azores or Madeira, or from the Azores or Madeira to Estonia or another Member State;
- Work with movables which are brought to Estonia for the purpose of provision of VAT free services;
- Carriage of passengers including their personal luggage and personal means of transport;
- Services provided to persons (diplomats, consular agents), representations, agencies, special missions, Community institutions or armed forces (NATO).

A person with a limited value added tax liability has to be officially registered as such and shall pay value added tax on imported goods, intra-Community acquisitions of goods as well as services received from a foreign person engaged in business that is not registered as a taxable person in Estonia. Regarding the latter, an Estonian person or a foreign person operating in Estonia through a permanent establishment who receives such services is required to register as a taxable person with limited liability from the on which such service was received. Yet it shall be noticed that this does not apply to taxable persons and natural persons who are not engaged in business. VAT is also imposed on persons with limited value added tax liability if following situations:



- The acquisition of goods to be installed or assembled in Estonia from a person of another Member State engaged in business who is not registered as a taxable person in Estonia;
- The acquisition of goods where the person is an acquirer in a triangular transaction;
- Provision of certain services where the place of supply of services is Estonia.

Social tax

Estonian legislation defines Social (Security) Tax as financial obligation imposed on taxpayers in order to secure revenue for pension insurance and state health insurance. Social tax shall be paid on following:

- Wages and other remuneration paid to employees in money;
- Wages and other remuneration paid to public servants;
- Remuneration paid to members of the management or controlling bodies of legal persons;
- Business income of sole proprietors;
- Remuneration paid to natural persons on the basis of contracts for services, authorization agreements as well as contracts under the law of obligations entered with the purpose of provision of other services;
- Fringe benefits;
- Benefits paid pursuant to the Estonian unemployment remuneration system;
- Any other work remuneration paid in accordance with Estonian legislation.

Social tax is paid on wages and remuneration received by the employees for every particular month. Yet it is important to notice that there is a minimum monthly wage rate established by the state budget for the budgetary year, which in 2008 was set to 2700 EEK (approximately 173 EUR). Certain exceptions also consider the period of taxation for persons receiving a state pensions, employees and public servants with suspended employment contracts or working part-time. A sole proprietor is required to pay social tax annually on a minimum amount of monthly rates established by the state budget.

Following persons are subject to social tax:



- Resident legal person;
- Natural persons;
- Non-residents having a permanent establishment in Estonia;
- State, rural municipality and city authorities.

The current rate of the social tax in Estonia is 33% of the taxable amount. There are exceptions considering persons receiving unemployment or social benefits, leaving tax rate at 13%.

Excise duties

Current rates of excite duty on alcohol in Estonia:

- On beer as of 1st July 2008 is 77 EEK (approximately 5 EUR) per 1% of ethanol by volume per hectoliter. For small producers the rate is 50% of the above mentioned rate;
- On fermented beverages or wine with an ethanol content of up to 6% (inclusive) by volume as of 1 July 2008 is 451 EEK(approximately 29 EUR) per hectoliter;
- On fermented beverages with an ethanol content exceeding 6% by volume is 1040 EEK (approximately 66 EUR) per hectoliter;
- On wine with an ethanol content exceeding 6%t by volume is 1040 EEK (approximately 66 EUR) per hectoliter;
- On intermediate products as of 1st July 2008 is 2222 (approximately 142 EUR) EEK per hectoliter;
- On other alcohol as of 1st July 2008 is 202 EEK (approximately 13 EUR) per 1% of ethanol by volume per hectoliter.

Current rates of excise duty on tobacco in Estonia:

- The rate consists of a fixed rate per one thousand cigarettes and a proportional rate calculated on the basis of the maximum retail price of the cigarettes. As of 1st July 2008 the fixated rate is 500EEK (approximately 32 EUR) and the current proportional rate is 31% of the maximum retail price;



- On cigars and cigarillos the current rate is 2500 EEK (approximately 160 EUR) per one thousand cigars or cigarillos;
- On smoking tobacco and chewing tobacco as of 1st July 2008 the rate is 400EEK (approximately 26 EUR) per one kilogram. As of 1st July 2009 it shall be 455 EEK (approximately 29 EUR) and 2010 501 EEK (approximately 32 EUR) per one kilogram.

Current rates of excise duty on some of fuel forms are following:

- On unleaded petrol is 5620 EEK (approximately 360 EUR) per one thousand liters;
- On leaded petrol is 6600 EEK (approximately 422 EUR) per one thousand liters;
- On aviation fuel is 1120 EEK (approximately 72 EUR) per one thousand liters;
- On diesel fuel is 5165 EEK (approximately 330 EUR) per one thousand liters;
- On heavy fuel oil is 235 EEK (approximately 15 EUR) per one thousand kilograms;
- On natural gas is 157 EEK (approximately 10 EUR) per 1000m³;
- On electricity is 50 EEK (approximately 3 EUR) MW/h.

Land tax

Estonian land tax is based on the assessed value of a specific land territory, calculated pursuant to the procedure for contestation by local government authority set out in the Land Valuation Act. Land tax shall be paid by the owner of land or if the use of land has not been re-registered in accordance with the land reform, the user of the land is responsible for paying the land tax. Furthermore the person obtaining the right of superficies, a usufruct or mining of natural resources (appointed by the national or municipality government) is subject for Estonian land tax.

The current rate of land tax in Estonia is 0.1%-2.5% of the assessed value of land. The precise rates are established by the local government council not later than by 31st January of the taxation year and shall be paid annually. It is of importance to mention that the land tax for areas used for agriculture and natural grassland is 0.1%-2.0% of the assessed value.

Following is the list of land exempt from land tax:



- Land where economic activities are prohibited by law or pursuant to the procedure provided by law;
- Land assigned to buildings of diplomatic missions and consular representations of foreign states;
- Land assigned to foreign state or international organization having a relevant agreement with the Government of the Republic of Estonia;
- Cemeteries;
- Land assigned to churches and congregations;
- Municipal land under the jurisdiction of a local government;
- Land assigned to public use;
- Land in the use of the headquarters of allied forces.

Gambling tax

In accordance with Estonian legislation gambling tax is imposed on organizers of gambling activities. Following objects are subject to gambling taxation:

- Amounts received as stakes in games of skill, totalisators or betting pursuant to Estonian Gambling Act;
- Gambling tables and gambling machines used for organising games of chance;
- Amounts received as stakes in games of chance which are not organised on gambling tables or gambling machines;
- Amounts received from the sale of lottery tickets when lotteries provided for in the Estonian Lotteries Act are organized.

The general taxable period for gambling taxation is one calendar month.

Following are current rates of gambling taxation:

- 7000 EEK (approximately 447 EUR) per one gambling machine
- 20 000 EEK (approximately 1278 EUR) per one gambling table
- 5% for betting (from the amount)



- 5% for a totalisator (from the amount)
- 18% for a game of skill (from the amount)
- 18% for a game of chance which is not organised on a gambling table or a gambling machine (from the amount)
- 18% for a usual lottery (per ticket)
- 18% for an instant lottery (per ticket)
- 10% for a numbers' lottery (per ticket)

ACCOUNTING

General information

All the general principles of accounting are set out in the Estonian Accounting Act that provides legal bases and establishes requirements for organizing accounting and financial reporting pursuant to internationally recognized principles. Besides the Accounting Act, there are several guiding principles issued by the Accounting Standards Board in order to simplify the process of accounting and to ensure its compliance with requirements of current legislation. In accordance with the latter all legal persons and branches of foreign companies registered in Estonia as well as sole proprietors are entities which are subject to accounting.

An accounting entity is required to organise its accounts in such a way as to ensure the provision of up-to-date, relevant, objective and comparable information concerning its financial position, economic performance and cash flows. All transactions shall be documented and documents thereof preserved for seven years as of the end of the financial year during which the source document was recorded. Business transaction is an important term in the Estonian accounting legislation and is interpreted as a transaction concluded by an accounting entity, a transaction between third parties or an event relevant to an accounting entity, as a result of which changes occur in the assets, liabilities or owner's equity of the accounting entity.

Accounting entities are furthermore required to establish accounting policies and procedures with detailed specification of recording of transactions, flow and preservation of source documents, maintenance of accounting journals and ledgers, physical inventory of assets and liabilities, preparation of financial statements, usage of accounting software as well as other aspects relevant to the organisation of accounting and the implementation of related internal audit measures.

Annual reports

The length of a financial year is estimated to twelve months (one calendar year, unless provided otherwise). There are several cases where the financial year may be shorter or longer than the previously mentioned term, yet it shall not exceed eighteen month.

At the end of each financial year an accounting entity is required to prepare an **annual report** which consists of the annual accounts and the management report. To the annual report shall also be annexed the auditor's report and, in the case of a company, the profit distribution proposal for the financial year at hand. Still if there is no auditing requirement, adding the auditor's report is not compulsory.

Preparation and submission of annual reports includes following aspects:



- Preparation of annual accounts;
- Preparation of management report;
- Auditing (in case provided by law);
- Preparation of the profit distribution proposal for the financial year (in case of a company);
- Submission of the annual report for approval.

Following is the list of important criteria for an accounting entity to be audited:

- If at the balance sheet date of the accounting year the accounting entity exceeds the limits of at least two of the three following criteria:
 1. Net turnover, in the case of a company, or income, in the case of other accounting entities of 10 million EEK (approx. 639 000 EUR);
 2. Balance sheet total of 5 million EEK (approx. 319 500 EUR);
 3. Number of 10 employees.
- A private limited liability company shall have an auditor if the share capital of the private limited company is greater than 400 000 EEK (25 500 EUR) or if auditing is prescribed by law or the articles of association;
- There is a legal requirement for public limited liability company to be audited whereas the number of auditors and their appointment lies on the shoulders of general meeting;
- Similar to private limited liability companies there is a general audit requirement also for branches of foreign companies, as the director of the branch shall submit an unattested copy of the audited and approved annual report to the commercial register of the seat of the branch not later than one month after approval of the annual report or seven months after the end of the financial year (unless Contracting Parties to the EEA);

In order to give a true and fair view of the financial situation, economic performance and cash flows of the accounting entity the annual accounts shall be prepared. Following statements shall be comprised:

- Balance sheet;
- Income;



- Cash flow;
- Changes in the owners' equity.

The annual accounts shall be prepared on the basis of the business transactions and adjusting entries recorded in the journals and ledgers during the financial year. For the purpose of preparation physical inventory shall be taken of the balances of the assets and liabilities of the accounting entity. The value of the assets and liabilities shall furthermore be assessed to verify the conformity with previous recordings of entries.

The accounting policies and presentation formats used in the accounting of the entity at hand are required to conform to the international reporting standards and principles generally accepted in Estonia. It is also important to notice that the annual accounts shall be prepared in Estonian using the currency officially applicable in Estonia.

There is a written management's declaration that shall be submitted together with the annual accounts and signed and dated by the entire management of the accounting entity declaring their liability for the preparation of the annual accounts. Management shall also prepare an overview of the following aspects of the entities' annual activity:

- The main areas of activity, product and service groups;
- Significant investments;
- Significant projects in the field of research and development;
- The remuneration and other significant benefits (accrual value) for the members of the management;
- Significant events during the preparation of annual accounts.

It is important to observe that there are some specific requirements considering content of the management report if an accounting entity is audited or if the shares of the company are registered for trading on a stock market. The annual report of an accounting entity shall be signed and dated by the members of the management and the members of the highest supervisory body (if that body exists) immediately after the relevant body has approved the report. The final signed annual report shall be submitted by the 30th of June of the following year.



Annual Reports of Consolidation Groups

Estonian legislation defines consolidating entity as a parent undertaking or any other accounting entity exercising dominant influence over another accounting entity (consolidated entity). Following are examples of often occurring dominant influence:

- A holding of more than 50% of the voting rights belonging to the consolidated entity;
- A right arising from law or a contract to appoint or remove a majority of the members of the management or the highest supervisory body (usually on account rights of general meeting or a founder).

Thus consolidation means joining of the financial statements of different accounting entities in order to provide a united annual report as if companies in question were one single entity. The accounting of consolidation groups generally follows the traditional accounting lead as the provisions of the legislation have only a few minor differences. Yet what should be mentioned are situations where consolidating entities are not required to prepare an annual report of the consolidation group:

- A company where at least 90% of the votes represented by shares belong to a consolidating entity which is registered in Estonia and has the obligation to prepare and disclose the audited annual report of the consolidation group;
- A company where at least 90% of the votes represented by shares belong to a consolidating entity which is registered in a Contracting State and has the obligation to prepare and disclose the audited annual report of the consolidation group under the law of its home state;
- A consolidating entity if at the balance sheet date of the accounting year, the entity does not exceed the limits of two of the three following consolidated criteria:
 1. net turnover or income: 10 million EEK (approx. 639 000 EUR);
 2. balance sheet total: 5 million EEK (approx. 319 500 EUR);
 3. number of employees: 10.
- A consolidating entity if the total amount of the balance sheet totals of each of the consolidated entities added together does not exceed 5% of the balance sheet total of the consolidating entity and if its net turnover does not exceed 5% of the net turnover of the consolidating entity;



- No consolidation group reports with regard to consolidated entities which are companies whose shares have been acquired for trading or purchase has the purpose of reselling.

COMPETITION

General information

Framework of commercial competition in Estonia is provided in the Competition Act adopted in November 2001. Estonian legislators working on that Act were following the EC competition legislation and competition guidelines issued by the European Competition Board were also partly implemented and are applied while handling specific competition violation cases. The essence of the competition regulation can be considered relatively new for Estonian legal climate but it has been acquiring more attention during the recent years and obtaining a significant role with regard to most of the current commercial activity branches.

Prohibition on agreements, concerted practices and decisions by associations of undertakings

Prohibition concerns agreements, concerted practices and decisions by associations of undertakings which have as their object, purpose or effect any restriction of competition. Following activities are objects of such prohibition, having a negative effect on competition:

- Directly or indirectly fixed prices or any other trading conditions, including prices of goods, tariffs, fees, mark-ups, discounts, rebates, basic fees, premiums, additional fees, interest rates, rent or lease payments applicable to third parties;
- A limitation of production, provision of services, goods markets, technical development or investments;
- Share of relevant goods markets or sources of supply. Here are also included restrictions on access for the third party to a goods market in question or any other attempt to exclude the person from such access;
- Exchange on crucial information that might be restrictive to competition;
- Agreeing on the application of dissimilar conditions to equivalent agreements, thus placing other trading parties at a competitive disadvantage;
- Enhance an agreement that is subject to acceptance by the other parties, with supplementary obligations having no genuine connection to the subject of such agreement.



It shall be noticed that in accordance with Estonian legislation the above mentioned prohibitions, with exception of price fixing, do not apply to agreements and practices of agricultural producers unless competition is substantially restricted by such agreements, practices or decisions. Furthermore prohibition on the basis of exchange of information, application of dissimilar conditions and supplementary non-relevant provisions do not apply to agreements, practices and decisions which can be considered to be of minor importance. The term “minor importance” can be taken into consideration if the combined market share of the total turnover of the undertakings in question does not exceed:

- 15% for each party in the case of a vertical (undertakings operate at different levels of the production or distribution chain) agreement, practice or decision;
- 10% in total for all parties of a horizontal (undertakings operate as competitors at the same level of the production or distribution chain) agreement, practice or decision;
- 10% in the case of an agreement, practice or decision which includes concurrently the characteristics of vertical and horizontal agreements, practices or decisions.

Besides aspect of “minor importance” there is an amount of exceptions regarding prohibitions of commercial activity with regard to distortion of competition. In the list below some of those exceptions including also a block exemption are stated:

- Agreement, decision or activity contributes to improvement of the production or distribution of goods or to promoting technical or economic progress or to protecting the environment, while allowing consumers a fair share of the resulting benefit;
- Agreement, decision or activity does not impose any restrictions which are not crucial for the achievement of the objectives described in the previous point;
- Agreement, decision or activity does not provide the sufficient possibility to eliminate a significant competition on the relevant market;
- Block exemption is a general permission granted by the regulation of the Government of the Republic on the proposal of the Minister of Economic Affairs and Communications to enter into certain type of agreements (most of them specified in the previous points) without a danger of restricting the competition.

An undertaking which enters into an agreement, providing a decision or an activity which might be restrictive to competition can turn to exemptions but shall thus also present proof concerning compliance with all the conditions set forth. In case an agreement or a decision or part thereof do not fulfill the conditions for exemptions and can be found as restrictive to competition shall be admitted as void.

Dominant position of the undertakings

In accordance with the Estonian legislation an undertaking can be considered to have a dominant position if its position on the market enables it to operate to a considerable extent independently of competitors, suppliers and buyers. Thus dominant position may be presumed if such an undertaking stands for at least 40% of the turnover in the relevant market. Furthermore, the situation of a dominant position may include several undertakings operating on the same market thus jointly creating an independent environment and accounting for at least 40% of the relevant market.

The state or a local government may grant special and exclusive rights to an undertaking by which enable the undertaking to have a competitive advantage over other undertakings in a goods market or to be the only undertaking in the market. Procedure of granting of such an artificial dominant position is granted by the Government of the Estonia.

Furthermore a dominant position of an undertaking might be determined by its ability to control an essential facility. This means that in case an undertaking possesses or operates a network, infrastructure or any other essential facility without access to which or the existence of which it is impossible to operate in the relevant market and this essential facility cannot be or is substantially difficult or costly to duplicate, the undertaking can be considered to have a dominant position.

Any direct or indirect abuse of the dominant position is prohibited. Such an abuse may often include following:

- Imposing of unfair purchase or selling prices or providing any other unfair trade conditions;
- Limiting production, service, goods markets, technical development or investment;
- Application of any dissimilar conditions in equivalent agreements, providing thus a competitive disadvantage;
- Using irrelevant and disadvantageous conditions in the agreements that are a subject of definite acceptance;
- Forcing an undertaking in disadvantageous position to enter into agreement;
- Unjustified refusal to sell (buy) goods or provide services.



Control of mergers

Pursuant to Estonian legislation mergers (Estonian legislation has a slight linguistic difference using the term concentrations) usually arise in the cases where one or several (jointly) undertakings acquire control over whole or a part of another undertaking. Furthermore there is an option of a natural person already having a part of an undertaking to acquire control through an enhanced partnership. Legal aspects of mergers are governed by the provisions stated in the Estonian Commercial Act.

Competition legislation requires that a merger has to be a subject of a Competition Board control if during the previous financial year, the total turnover in Estonia of the parties of the merger exceeded 100 million EEK (approx. 6 391 000 EUR) and the total turnover in Estonia of each of at least two parties of the merger exceeded 30 million EEK (approx. 1 917 300 EUR). Yet the merger shall not be a subject of the Competition Board control in case it is controlled pursuant to Council Regulation 139/2004/EC on the control of mergers between undertakings unless appointed otherwise.

Estonian competition legislation sets out the requirement to notify the Competition Board of the relevant merger procedure before entry into force of the latter in case the conditions in the previous paragraph are fulfilled. Such a notification shall be submitted in writing and shall contain following:

- Information on parties of the merger;
- A description of the merger;
- Data concerning turnovers;
- Information concerning exercised control or owned holdings;
- Information concerning relevant markets;
- Objective description of the effect of merger on the relevant market;
- Information concerning associations of undertakings (where parties are members);
- Restrains of trade clauses;
- List of other competition authorities notified;
- Any other necessary information concerning aspects of the merger in question.



Finally it is important to bear in mind that the Director General of the Competition Board or his or her deputy may decide to revoke a decision to give a permission to merge if among the submitted documents can be found false or misleading information or the merger procedure is executed violating legal provisions. Yet it does not deprive the parties from the right to submit a new application or appeal the decision of the Director General.

Unfair competition

There is a clear and definite prohibition of unfair competition in Estonia. In accordance with legislation unfair competition arises in cases of dishonest trading practices and acts which are contrary to good morals and practices. This may also include following:

- Publication and presentation of misleading information;
- Disparagement of a specific competitor or its goods or services;
- Misuse of confidential information obtained;
- Misuse of an employee or a representative of a competitor.

It might be useful to observe that in cases of misleading, offensive or derogatory information applied as a method of advertising shall be prosecuted in accordance with Advertising Act. Otherwise the existence or absence of unfair competition shall be determined in a dispute between parties held pursuant to civil procedure.

INTELLECTUAL PROPERTY RIGHTS

General information

Since the declaration of independence Estonia has taken a number of significant steps towards the European level of intellectual property rights' protection. Following acts have been passed:

- Trademark Act (1992);
- Copyright Act (1992);
- Patent Act (1994);
- Utility Models Act (1994);
- Protection of Geographical Indications Act (1999);
- Industrial Design Protection Act (1997);
- Layout-Designs of Integrated Circuits Protection Act (1998);
- Implementation of the Convention on the Grant of European Patents Act (2002).

Besides implementation of intellectual property rights into legislation, Estonia has ratified several international conventions on protection of intellectual property:

- Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967)—joined 24 August 1994;
- Convention Establishing the World Intellectual Property Organization (Stockholm, 1967)—joined 5 February 1994;
- Patent Cooperation Treaty (Washington, 1970)—joined 24 August 1994;
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957)—joined 27 May 1996;
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977)—joined 14 September 1996;
- Locarno Agreement Establishing an International Classification for Industrial Designs (1968)—joined 31 October 1996;
- Strasbourg Agreement concerning the International Patent Classification (1971)—joined 27 February 1997;
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989)—joined 18 November 1998;
- Agreement on Trade-Related Aspects of Intellectual Property Rights—joined 13 November 1999;
- The European Patent Convention—joined 1 July 2002;
- Trademark Law Treaty—joined 7 January 2003;
- Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs—joined 23 December 2003;
- Patent Law Treaty—joined 28 April 2005;
- Nairobi Treaty on the protection of the Olympic Symbol—joined 11 May 2006.



Patents

Inventions in any field of technology may be protected by a patent if the invention complies with the criteria of patentability. In order to obtain such protection the invention shall be registered in the register of patents. In accordance with Estonian legislation the subject of an invention may be a device, process, material, including biological material or a combination thereof. The Patent Act provides also a number of objects that cannot be considered as inventions and thus are not available for patentation and defense. Such objects include for example schemes, rules and methods for performing mental acts or doing business, design and plans documentation (building), symbols, presentations of information aso. Furthermore, there is a list of inventions which even considering their novation cannot be patented on the grounds of immorality or the medical and biotechnological nature.

All the patented inventions are classified according to the international patent classification adopted under the Strasbourg Agreement concerning the International Patent Classification. The above mentioned patentability criteria includes following aspects:

- Invention involves an inventive step and is susceptible to industrial application;
- Invention is considered as new if it does not form part of the state of the art (everything made available to the public by means of written or oral description);
- Invention shall be considered involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art;
- Invention can be manufactured or used in economy.

The scope and the content of the patent protection is determined by the wording and composition of the patent claim. Patent claims shall define the subject matter of the invention in words in a clear, concise and short manner, providing the essential features. Descriptions, drawings and any other illustrative material is often used for facilitation of interpretation.

The first person filing an application or registration obtains the priority that is the preferential right of the person for protection of an invention in question. In case there is a conflict of applications filed with regard to the same patent within twelve months from the first filing to the Patent Office, the priority is established on the basis of date of the filing in any State party to the Paris Convention of the Protection of Industrial Property or member state of WTO as well as state that is not a party to the Paris Convention and not a member in WTO if such state guarantees equivalent conditions for first patent (as in Estonia).

The proprietor of a patent has an exclusive right to the invention protected by the patent. This means a right to exercise rights arising from the patent and to prohibit other persons from



exercising those rights. No other legal or natural person shall without a specific permission of the proprietor be able to manufacture, use, distribute, sell or offer for sale products, components or parts thereof or apply patented processes.

Patent applications shall be filed to the Patent Office and a state fee for the filing shall be paid within two months from the date of filing. The procedure for filing patent applications shall be prescribed by the Minister of Economic Affairs and Communications.

Finally, it is important to notice that in case Estonian legislation provides a position contrary to an international agreement, the provisions of the international agreement with regard to a patent issue at hand shall be applied. The rights and obligations prescribed by law apply equally to natural and legal persons of Estonia as well as foreign states unless the Estonian legislation or international agreements ratified by the Estonian Parliament provide otherwise.

Trademarks

Estonian legislation defines trademark as a sign used to distinguish the goods or services of a person from other similar types of goods or services of other persons. Legal protection of trademarks includes thus the recognition and protection of the rights of the person who holds an exclusive right to a trademark. In order to be able to exercise the mentioned exclusive right the person has to be entered in the register of trade and service marks as the proprietor. There is also an option of an international registration valid pursuant to Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks that can be exercised in Estonia by the person entered into the International Register of the International Bureau of the World Intellectual Property Organization.

Following summarizes trademarks which may be protected:

- Well-known trademarks in Estonia within the meaning of the Paris Convention for the Protection of Industrial Property. It should be observed that Estonian Trade Marks Act contains own provisions on the aspect of recognition of well-known trademarks.
- Trademarks registered in the register.
- Trademarks having an Estonia registration entered into the International Register of the Bureau pursuant to the Madrid Protocol.

Important aspect of legal protection of trademarks is that they shall have a graphical representation. The scope of protection is based on such representation, whereas well-known trademarks rely on the form that they became well-known for. The scope is furthermore determined by the goods and services which the trademark used to designate when it became

well-known or by a list of goods and services entered into the International Register of the Bureau.

Exclusive right of trademark gives to its proprietor a right to prohibit third parties to use any similar or identical sign with regard to identical or similar goods and services. Prohibition of marketing of similar goods and services under an identical or similar trademark also includes an aspect of possible public confusion. In case of dissimilar goods prohibition may take place under condition of unfair advantage or possible detriment towards distinctive features or the status of the trademark.

Activities related to trademarks shall be performed in the Patent Office and in the Industrial Property Board of Appeal by interested persons or expressly authorized patent agents. A person with no residence, seat or commercial or industrial enterprise in Estonia shall authorize a patent agent as the representative in order to perform procedures related to trade marks in the Patent Office and in the Board of Appeal (except the filing of an application).

Legal protection of a registered trade mark is valid for the period of ten years as of the filing date of an application for the trademark's registration. The term of legal protection of a trademark may be renewed at the request of the proprietor for ten years at a time. The person who first files an application obtains a priority— a preferential right for legal protection of a trade mark. The filing date of the first application is deemed to be the date of priority.

The rights and obligations deriving from the Estonian Trademarks Act and other legal acts concerning protection of trademarks apply equally to persons of Estonia and nonresidents. However, it is important to bear in mind that the Trademarks Act provides a number of restrictions concerning persons with no residence, seat or commercial or industrial enterprise operating in Estonia.

Design

Industrial design is given a definition of the two-dimensional or three-dimensional design of a product in. Furthermore, Estonian Industrial Design Protection Act provides that a design means the set of features of a product which either separately or in combination form the shape, configuration, ornamentation, colors, texture and material of the product.

In order for design to obtain a legal protection, it has to be a new, have an individual character and may be applied for manufacturing of industrial or handicraft products. In case the latter conditions are fulfilled the legal protection is acquired by registration in the register of industrials designs.



The design is considered new if no identical or confusingly similar design has been disclosed in Estonia or any foreign state prior to the filing date of the registration application (in case the priority is claimed, prior to priority application date).

The aspects of individual character is considered fulfilled if the overall impression the design produced on specialists in particular field is different from any other design disclosed within the territory of Estonia or in a foreign state prior to the filing date of the registration application. As disclosure is an important aspect of design, it is important to observe that Industrial Design Protection Act regards design disclosed if it is published in a public publication or made otherwise available to a large number of people.

Following is the list of designs which normally are not subjects of protection:

- Designs which derive solely from the technical function of the product;
- Designs contrary to generally accepted good practice;
- Designs of unstable nature;
- Layout design of integrated circuits;
- Design of a component or a spare part that is not clearly visible.

The owner of an industrial design has the exclusive right to manufacture products according to that design, to distribute (including import and export), sell, offer for sale or store for aforementioned purposes products which are manufactured pursuant to the registered industrial design. Similarly to the cases of trademark and patent, the owner has furthermore the right to prohibit other persons from manufacturing without authorization products according to an identical or confusingly similar industrial design and from distributing, selling, offering for sale as well as stocking for the aforementioned purposes any of such products.

The author or person who has acquired the right to apply for the registration of the industrial design from the author or by way of transfer of such right has the right to apply for the registration and to become the owner. Several persons may apply for the registration jointly. The registration application shall be filed to the Patent Office and may include one industrial design, the variants thereof or a set of industrial designs. During the application it is important to pay attention to the following requirements of design representation:

- A representation shall give a clear and complete depiction of the industrial design;
- A representation shall contain the perspective view of the design and other views which are necessary for a clear and complete impression;
- A representation shall be photographic or graphic;
- A representation of a variant of an industrial design shall contain the perspective view and other views which are necessary for a clear and complete impression;



- A representation of a set of industrial designs shall contain the perspective view and other views which are necessary for a clear and complete impression.

The rights and obligations arising from the Estonian Industrial Design Protection Act and other legal acts regulating the legal protection of industrial designs apply equally to natural and legal persons, regardless of their residence. In order to avoid possible confusion, the Industrial Design Protection Act also specifically provides that the legal protection of industrial designs shall be treated independently from the protection arising from the Copyright Act.

Copyright

The copyright protection provides the set of rights with regard to:

- Author of literary, artistic and scientific works;
- Persons who may acquire rights to literary, artistic or scientific works created by an author and the rights of such persons;
- Performers, producers of phonograms and broadcasting organizations;
- Creators of databases and the right concerning their execution.

The Estonian Copyright Act governing the field applies to the following works:

- The author of which is a citizen or a permanent resident of Estonia;
- First published in the territory of Estonia or not published but located in the territory of Estonia;
- Which must be protected in accordance with international agreements that are ratified by Estonia.

The term “works” includes literary, scientific and artistic works, meaning any original results in any of the latter domains which are expressed in an objective form and can be perceived and reproduced in this form. A work is considered original only if it can be observed as the author’s own intellectual creation. An interesting aspect to mention is that the purpose, value, specific form of expression or manner of fixation of a work shall not be taken into account as grounds for the non-recognition of copyright.

Copyright in a work arises upon its creation by the author whereas moral and economic rights shall be considered to constitute the content of copyright.



To be more specific, the moral rights grant work's author the possibility to appear in public as the creator of the work and claim recognition of the fact of creation (right of authorship) as well as decide in which manner the his name shall be designated upon use of the work. Moral rights constitute furthermore the right to make changes, additions or contest any misinterpretations and authorize others to such actions.

Economic rights on the other hand include authorization and prohibition of the use by others while receiving an income from such use. The main actions upon the copyrighted work with regard to economic rights are reproduction, distribution, adoption, compilation and systematization, any public display or performance as well as carrying out the architectural (or any other related) projects pursuant to the copyright in question.

Moral rights are inseparable and non-transferable while the economic rights of an author are transferable.

With regard to above mentioned rights the author has the right to obtain a remuneration for the use of his or her work by other persons. Works may be used by other persons only in a case of transfer (assignment) of the author's economic rights by him or her or on the basis of an authorisation.

The duration of copyright protection is estimated to the life time of the author and seventy years after his or her death, irrespective of the date when the work is lawfully made available to the public. In the case of anonymous or pseudonymous works, the term of protection of the copyright shall run for seventy years after the works are lawfully made available for the public.

The Copyright Act also sets the scope of related rights. Owners of related rights to a copyright may be performers, producers of phonograms, broadcasting organisations, producers of films or a person who, after the expiry of copyright protection, for the first time lawfully publishes or in any other way makes available to the public a previously unpublished work. The related rights shall not expire before the end of a period of fifty years since the first performance (production) or in case of producers of phonograms since the first fixation and in case of broadcasting organization since the first transmission.

ESTABLISHING A COMPANY

Estonian corporate legal entities

As it derives from Estonian Commercial Act following legal entities may be established in Estonia:

1. *Public limited company or stock company (aktsiaselts/AS)*
The minimum capital requirement is 400 000 EEK (approx 25600EUR). The minimum nominal value of a share shall be 10 EEK. Shares shall be registered in the Estonian Central Register of Securities. Public limited company may be founded by one or more persons whereas founder might be a physical as well as a legal person. A memorandum of association and articles of association shall be concluded in accordance with principles of Estonian Commercial Act. The company shall be registered with the Estonian Commercial Register. The process of registration usually takes up to three weeks.
2. *Private limited company (osaiühing/OÜ)*
Private limited company shall have a minimum capital of 40 000 EEK (approx 2600 EUR) and a minimum nominal value of share equaling 100 EEK (approx 6,4 EUR). It may be founded by one or more persons whereas founder may be a physical as well as a legal person. The company shall be registered with Estonian Commercial Register. From filing of notarized petition the process of registration takes usually up to three weeks.
3. *General partnership (täisühing/TÜ)*
This is a form of a partnership where two or more partners operate under a common business name being equally liable for partnership's obligations with all their assets. No minimum capital requirements are imposed. The relationship between partners, their contribution and dividend shares are regulated by the partnership agreement. The partnership in question shall be registered with Estonian Commercial Register.
4. *Limited partnership (usaldusühing/UÜ)*
Limited partnership is quite similar to general partnership. The minor difference contain aspects of liability, where at least one of the persons, being a general partner, is liable for the obligations of the partnership with all its assets, while at least one person, being a limited partner, is liable only for obligations in regard to his contribution. The relationship between partners, their contribution and dividend shares are regulated by the partnership agreement. The partnership in question shall also be registered with Estonian Commercial Register.



5. *Commercial association (Tulundusühistu or Ühistu)*

Commercial associations are much alike limited companies. The main differences concern voting procedures and payments of dividends. In accordance with the Association Act the votes of association members are equal, dividends are limited and profit is generally distributed with regard to members' contribution to association's activities. Commercial association shall also be registered into the Commercial Register. Participation in commercial association is voluntary.

6. *Sole proprietor (füüsilisest isikust ettevõtja/FIE)*

Sole proprietor is liable for all of his/her obligation with all his/her assets. He/she shall be registered into the Commercial Register if he/she is registered with the Tax Board as a taxpayer under the Value Added Tax. Petition to Commercial Register has to be notarized and shall be reviewed in 15 days.

7. *Branch (filiaal)*

Branch is an opportunity for a foreign company to provide goods and services on the Estonian market without establishing a new company. A branch cannot be considered as a separate legal person. Consequently foreign parent company is liable for all obligations connected to branch's commercial activity. The branch shall be registered with Commercial Register, where notarized petition is usually reviewed in three weeks. The branch is registered in the manner of limited company. The branch shall have its own separate accounting, following the provisions of Estonian Accounting Act.

Fees and formal aspects of registration

General costs for establishing a company in Estonia include the relevant notary fee. With regard to establishment of general and limited partnership as well as a sole proprietor the state fee 200 EEK (approx 12,8 EUR) has to be transferred to the account of Ministry of Finance upon registration. In case of private and public limited liability company as well as foreign entity branch registration the state fee is 2200 EEK (approx 140 EUR).

In order to register the company into the Commercial Register an entrepreneur is required to submit several documents which are the basis for an entry, which consists of documents provided by law as well as notarized specimen of board members' signatures. Still it has to be mentioned that the registrar may sometimes demand supplementary documents if these are necessary to determine the facts which are the basis for the registration.

Following documents necessary for registration shall be prepared and attested by the notary:

1. Shareholders' agreement, signed by all founders, shall include:

- The business name, seat and address
- The names and residences or seats of the founders
- The proposed amount of share capital
- The nominal value and number of shares, their division among the founders
- The amount to be paid for shares and the procedure, time and place of payment
- In case shares are paid for by a non-monetary contribution, the item of the non-monetary contribution and its valuation method
- Information on the members of the management board and, if a supervisory board is formed, on its members, furthermore information on procurators or auditors, if appointed

2. Articles of association, approved and signed by the founders and annexed to the shareholders' agreement, shall include:

- The business name and seat
- The amount of share capital that may be specified as a specific amount or as a minimum and maximum capital whereas the minimum capital shall be at least one quarter (25%) of the maximum capital
- The procedure of payment for shares
- The specific rights attaching to a share, or of a shareholder
- In case shares are paid for by a non-monetary contribution, the valuation method of the non-monetary contribution
- Reserve capital
- The number of the members of the board that may be a specified number or a minimum and a maximum number

3. Merger agreements, division agreements and division plans of companies including necessary documents of authorization.

A notary shall send to the registrar a petition which he or she has attested or certified and documents appended to the petition, unless all parties have agreed otherwise. A notary has the right to refuse to send a petition if the petition does not comply with the requirements of law or if the documents required by law are not appended to the petition within two weeks. In case of foreign entrepreneurs notarisation may be replaced by certification of the signatures on the petition by an official of a foreign state who has the right to attest the identity of persons, if the authorisation of the official has been confirmed by the legalisation of the document in an Estonian consular post. Estonian legislation does not require legalisation of documents to the extent provided by the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents and other international agreements.



The registrar shall make an entry no later than on the fifth day from signing ruling on entry. Notification considering positive ruling or refusal of entry shall be made promptly to the entrepreneur but not later than within ten working days from the relevant verdict.

LABOR LAW

Concluding of the employment contract

The core of the Estonian labor relations is regulated by the Estonian Employment Contracts Act. It includes numerous provisions governing the entry and the termination of the labor contracts, setting out rules and mandatory requirements in regard to important legal employment procedures.

An employment contract is usually concluded for an unspecified period of time. There is an option to limit the duration of contract by certain period of time or connect its durability to completion of a specific task or assignment, but in this case such contract cannot be concluded for a period longer than five years. The contract shall be concluded in written in two exemplars, unless it is entered for the period of less than two weeks.

The employment contract shall contain following mandatory information:

- Identities of the parties, date of entry and commencement, duration of validity;
- The official or professional title, description of the tasks assigned and the place of their performance;
- Standards for working time and wage conditions;
- The length of employee's annual holidays;
- Terms regarding termination of the employment contract at hand;
- Reference to the relevant collective agreement (if existent).

There are certain restrictions considering contracts with relatives or persons having direct marital connection. It also has to be noticed that all employees, including minors, have to conclude the labor contract directly with the employer or its representative.

Grounds for termination and formal aspects

Termination of the employment contract and firing of the employees are pursued by many rules and requirements strictly and exhaustively shaped in the Estonian Employment Contracts Act. Legal grounds for initiation of a process of termination are following:

- Termination on the basis of agreement of the parties;



- Expiry of the employment contract;
- On the initiative of the employee;
- On the initiative of the employer;
- At the request of third parties;
- In circumstances which occurred independently from parties.

Both employers and employees are required to give each other a notice in advance (period of notification is usually included in the employment contract) of the termination, whereas the termination cannot be depending on any conditions. Written notice may still be renounced if consent of the party is obtained.

The employer is required to register the termination in the employment contract, stating the basis for termination and providing relevant legislation, date for termination and information considering compensation. Furthermore a natural person employer (on behalf of the company) shall register termination of the contract with the labor inspector of his or her residence within one week after the date following the date of termination.

Termination on the initiative of the employee

If an employment contract is concluded for the unspecified period of time, the employee shall notify the employer of termination one month in advance. During the probationary period that time is three calendar days. If employment contract is concluded for a fixed term, the notification periods of premature termination shall be following:

- Two weeks in advance if the term of the contract exceeds one year;
- Five calendar days in advance if the term of the contract does not exceed one year;
- Five calendar days in advance if the reason for termination of the employment contract is an illness, disability, commencement of studies or a necessity to take care of a family member. The same is applicable on a woman raising a child under three years of age.

Employee shall provide to the employer a written proof of the reason for termination.

If the reason for termination of the employment contract is a violation of contractual terms by the employer, material deterioration of working conditions or changes in production or work organization without prior consent of the employee, the employee shall be notified at least five calendar days in advance. Upon termination for the above mentioned reasons, the employer shall, in case of a contract for unspecified period of time, pay to the employee compensation



in the amount of two average monthly wages. In case of a contract for a fixed term, the employer shall pay to the employee compensation in the amount of average wages until expiry of the term of the contract, but for not more than two months.

Upon expiry of a term for advance notice, an employee has the right to cease employment. But it is also important to notice that upon a continuation of the employment relationship after the term of the advance notice has expired, the employee is not able to terminate the employment contract unilaterally solely on the basis of a previously presented application.

Furthermore it is significant to observe that an employer, who releases an employee without its written consent prior to expiry of the term for advance notice, is obliged to pay compensation to the latter in the amount of the employee's average daily wages for each working day included into the term for advance notice.

Termination on the initiative of the employer

As the termination on the initiative of the employer is in the most cases has a negative impact on employees, Estonian legislation has set out strict rules regarding this matter in order to secure the weaker position. Following is the exhaustive list of arguments that may be used by the employer as a ground for premature termination of the employment contract:

- Declaration of bankruptcy of the employer, liquidation of the enterprise, agency or other organization;
- Dismissal of employees on the basis of lack of tasks or assignments;
- Unsuitability due to lack of professional skills, long-term incapacity to perform assigned work or deficient health condition (Long term incapacity factor may be applied if an employee has been absent from work for more than four consecutive months or for more than five months during a calendar year);
- Unsatisfactory results during probation period;
- Breach in duty, loss of trust or indecent act including act of corruption of employee (Loss of trust towards employees may include reasons of causing a deficit in, damage to, or destruction, loss or theft or endangering of the property of the employer, stealing the property of a co-worker at the workplace, causing distrust of the employer by consumers, clients or business partners.
Indecent act is usually considered as an act which is contrary to generally recognized moral standards or which discredits an employee's or employer's reputation. An indecent act also constitutes the basis for termination of an employment contract if it is committed outside of the performance of duties);

- Hiring of an employee for whom the position in question is considered to be the principle job;

An employer is required to notify employees of contract termination in advance, simultaneously providing the reasons for such termination. Such notification shall also be made to an organization or a person representing the employee in question. The terms of the advance notification are following:

- Not less than two months in advance upon liquidation of the enterprise, agency or other organization;
- 2-4 month prior regarding dismissal of employees, depending on the duration of their employment;
- Not less than one month in advance upon unsuitability;
- Not less than two weeks in advance in the case of long-term incapacity to work.

In case of a failure to adhere the rules of advance notification the employer is required to pay compensation to the employee in the amount of the employee's average daily wages. Yet it has to be noticed that upon the declaration of bankruptcy of an employer, the latter is permitted to terminate employment contracts without advance notice to the employees.

However, there is an option to terminate the employment contract by a collective termination. The collective termination is considered in case termination of employment contract is taking place at the initiative of the employer whereby the contract is terminated due to termination of a legal person, termination of work of an employer who is a natural person, declaration of bankruptcy of the employer or a dismissal of employees within thirty days. There is an obligation for the employer to immediately inform representatives of the employees, provide the relevant information and consult them in order to reach amicably the most optimal solution.

Upon the termination of the employment contract the employer is required to pay employees following compensations:

- Due to the liquidation or bankruptcy of the enterprise, agency or other organization or dismissal of employees:
 1. two months' average wages to employees employed up to five years;
 2. three months' average wages to employees employed between five and ten years;
 3. four months' average wages to employees employed for more than ten years;

- Due to the unsuitability of the employees, compensation in the amount of one month's average wages of employees in question.

Estonian legislation has also outlined several restrictions regarding termination of employment contracts. There are specific rules considering labor relations with pregnant woman or person raising child under three years of age, underage persons and employee representatives. Termination of the employment contract is prohibited in following situations:

- During the temporary working incapacity of the employee;
- While the employee is on a holiday (including parental leave and unpaid holidays) and during periods when part-time working time has been established for the employee or he or she has been sent on a holiday with partial pay;
- During the strike if the employee legally participates in it pursuant to Estonian law;
- During the time of performance of duties imposed by state or local government authority, or representing employees pursuant to law or collective agreement;

During the dismissal due to lack of working tasks, the Estonian legislation constitutes the preferential rights for different kinds of employees. The representatives of employees have a preferential right to remain at work, followed by the employees whose work for such employer can be considered their principal job. Regarding other employees, preferential rights are given to persons with higher performance results. Special occasions of granting preferential rights also include injuries received at work, time of employment and skill development.

Termination of contract by agreement of parties and upon expiry

The employment contract can be terminated if one of the parties presents a corresponding written request and the other party gives written consent to termination of the contract.

Furthermore the employer has the right to terminate the contract upon its expiry. In that case the employer has to notify the employee in writing at least two weeks prior to the expiry of the term, if the term of the contract exceeds one year and at least five calendar days prior to expiry of the term, if the term of the contract does not exceed one year. At the same time if none of the parties demand termination of the contract concluded for a specific term upon its expiry or if a new contract is not concluded and the employment relationship continues, the contract for a fixed term is regarded as employment contract for an unspecified period of time.



Working time

The duration of the working time and guidelines for its organization are set out in the Working and Rest Time Act. The general national standard for working time is eight hours per day or forty hours per week. In case of part-time employment the working hours are usually shorter and are regulated on the basis of the relevant employment agreement. Furthermore a person due to its minor age maybe subject to a reduced working time. Reduced hours are also applied for employment hazardous to health, specific list on that matter is established by the Estonian Government.

Overtime shall be decided in the agreement between the parties. Yet in cases case of force majeure, an employee is usually required to comply with an order of an employer to work overtime if such work is of necessary and temporary nature and has to be performed promptly. There is the requirement to maintain separate records of overtime concerning every employee and every specific case of overtime.

Overtime shall not be required to:

- Pregnant women;
- Minors;
- Employees who are not allowed to work overtime by the decision of a doctor.

Working time together with overtime shall not exceed an average of forty-eight hours per week during a four-month period. Furthermore employees shall not be required to work overtime for more than four hours per day. Yet those standards may be abolished in case force majeure.

Finally an employer is required to grant employees a break for rest and meals after four hours of work unless otherwise is provided by the collective agreement. The duration of such break shall be at least thirty minutes. The rest time between working days and working shifts shall be at least eleven consecutive hours, and at least two days per week shall be available for off time.



IMMIGRATION AND RESIDENCY

Residence permit for the EU citizen

A citizen of the European Union (hereinafter EU), citizen of the member states of the European Economic Area and citizen of the Swiss Confederation may stay in Estonia without a residence permit with regard to following circumstances:

- Up to three months from the date of his or her arrival to Estonia, including cases of employment or engagement in business activities in Estonia;
- I cases of employment in another member state of the EU but with a residency in Estonia and with a fact of constant visiting at least once a week;
- Seasonal employment in Estonia;
- Up to six months for the purpose of seeking employment in case such seeking is registered pursuant to the procedure provided for in the Estonian Employment Service Act;
- A family member has the right to stay in Estonia together with a citizen of the EU who has one of the above mentioned legal bases for stay.

Upon the expiry of terms or other stay purposes the citizen of EU shall obtain a residence permit that may issued with regard to employment, engagement in business, studies, long-term stays or in case if the citizen of the EU has sufficient legal income which ensures own subsistence as well as of his or her family members in Estonia.

All the issue regarding residence permit for an EU citizen including refusal to issue, extension or refusal to extend and revocation shall be handled to the Citizenship and Migration Board. In order to submit an application for a residence permit, there is a requirement to appear at an official representation of the Republic of Estonia or the Citizenship and Migration Board. It might also be important to notice that for a purpose of supervision citizens of the EU and their family members may be required to prove the legal basis for their stay at the request of a police officer, border guard official or an official of the Citizenship and Migration Board.



Visas, residence and work permits for persons outside EU

A visa shall be issued for a person entering into Estonia setting out conditions for period, character and other aspects of such stay. A visa may be issued to the persons fulfilling certain conditions:

- Person holding a valid travel document which is recognized by Estonia;
- Person who has proved the purpose and reason of the stay that is of temporary nature;
- Costs relating to the accommodation and stay are covered during person's stay in Estonia;
- Intention to leave Estonia no later than upon termination of the period of stay shall be present;
- Costs relating to the return to the country of origin or departure from Estonia into another country are covered;
- Existence of valid health insurance policy shall be proved.

In order to apply for a visa an application shall be submitted to a representation of Estonia. At the request of a consular officer, an applicant is required to appear in the representation in person to provide explanations concerning facts which are relevant upon application for the visa or for additional identification. Finally issue of a visa or refusal to issue shall be decided by a consular officer.

Residence permits for noncitizen of the EU may be temporary - issued up to five years, as well as of permanent nature. Upon determination of the period of validity of a temporary residence permit, the circumstances which are the basis for the issue or extension shall be taken into account. A person is required to register the residency in Estonia in the population register within one month from entry in Estonia or commencement of stay. Temporary residence permit can be extended on the basis of an application if previous permit has not ceased to exist, the extension is justified and there is no basis for refusal. The issuing of such permit can be based on employment, economic activity, studying, settling with a close relative permanently resident in Estonia as well as on sufficient income proof and international agreements. An application for a temporary residence permit may be submitted to a representation of Estonia which, after identification of the applicant, shall forward it to the Citizenship and Migration Board

A permanent residence permit may be issued to a person who has resided in Estonia on the basis of a temporary residence permit for at least three years within the last five years and who



has a valid residence permit, an actual physical residence in Estonia and permanent legal income sufficient for independent subsistence.

A person from a non-member state is required to have a residence permit for employment or a work permit for activity in Estonia on the basis of an employment contract. Thus having no legal basis to stay in Estonia automatically prohibits from taking any employment in Estonia. Work permit grants the right of employment and determines the period of residency. A person having a residence permit can obtain a work permit through the Citizenship and Migration Board. The validity of such work permit issued shall yet not exceed the validity of the current residence permit. Furthermore depending on situations and terms the obtained work permit may be extended until the end of the validity of the residence.

However, there is an option of a short period employment that does not exceed six month during one year. Such an employment shall be registered at the Citizenship and Migration Board and serves as a legal basis for stay without a necessity to issue ordinary residence or work permits. One of the definite advantages of such short-time work permits is the process of issuing that usually takes around ten days. Short-time work permits might be useful in case of experts, advisers, consultants as well as visits regarding direct investments or establishment of a legal entity.

With regard to work permits it might finally be important to observe that a person having a legal basis to stay in Estonia (except for a residence permit) may be permitted to take employment in Estonia without a work permit or a residence permit and without registering short-time employment for a period of up to six months as a member of the management body of a legal person registered in Estonia with the duty to perform directing or supervisory functions. Furthermore a residence permit for enterprise may be issued to a person who has a holding in a company or who operates as a sole proprietor, if registered in the Estonian commercial register and the person's settling in Estonia is of essential importance for the enterprise.