KPMG

1 Legal Issues

1.1 Basis in law

In the Estonian legislation, leasing agreements are regulated by the Law of Obligations Act, which came into force in July 2002. According to the law, by the leasing contract, the lessor undertakes to acquire a certain object (the object of leasing) from a seller and to grant use of the object to the lessee. The lessee is required to pay a fee for use of the object of leasing.

In addition, the regulation of the consumer credit contract set forth in the Law of Obligations Act may be applied to the lease agreements.

Since the regulation set forth in the Law of Obligations Act may be regarded as non-imperative, some contractual arrangements can be negotiated between the parties to fit their individual needs.

Classification of Lease Agreements

The Estonian legal framework does not classify lease agreements. The distinction between operating leases and finance leases only exists for taxation and accounting purposes.

1.2 Leasing Companies

There is no mandatory legal form for leasing companies in Estonia, unless the leasing company also conforms to the conditions of a credit institution. Usually such companies are established in the form of limited liability companies – either as an *osaühing (OÜ)* or an *aktsiaselts (AS)*.

1.3 Regulatory Issues

No special regulation has been established for leasing companies in Estonia. Special regulation only applies for leasing companies belonging to the same consolidation group as a credit institution.

Recently, amendments to the Advertising Act came into force, setting new requirements for advertising financial services, leasing among them. An advertisement must inform in a clear, concise and prominent way with an example of the interest rate (specifying whether it is fixed or unfixed) about the amount of credit, the annual percentage rate (indicating what charges make it up), the duration of the consumer contract, price of the object of the contract in the event//upon immediate payment and the amount of the advance payment, the total amount payable by the consumer and the amount of repayments. It should also clearly inform about any compulsory additional agreement, such as insurance.

2 Accounting

2.1 Classification of Leases for Accounting Purposes

Leases are divided into finance and operating leases. Under the Estonian generally accepted accounting principles (the Estonian GAAP), classification of leases is regulated by Estonian Accounting Standards Board Guideline 9 whose guidance corresponds to International Accounting Standard (IAS) 17, according to which a lease is classified as a finance lease if it transfers substantially all the risks and rewards of ownership. Title may or may not eventually be transferred to the lessee. An operating lease is a lease, which does not meet the finance lease definition. A lease should be classified according to the nature and not the legal form of the agreement.

2.2 Lessor Accounting

The accounting treatment of finance and operating leases corresponds to the guidance given in IAS 17.

2.3 Lessee Accounting

The accounting treatment of finance and operating leases corresponds to the guidance given in IAS 17, except for the accounting for sale and leaseback transactions resulting in a finance lease in the financial statements of the seller-lessee. Under IAS 17 any excess of the sales proceeds over the carrying amount of the "sold" asset is deferred and amortised to income over the lease term; under Estonian Accounting Standards Board Guideline 9, the transaction is accounted for as a loan taken with the asset as security and no income (nor increase in depreciation expense) is recognised.

2.4 Sale and Leaseback

If a sale and leaseback transaction results in a finance lease, the transaction is recognised as a financing transaction, not as a purchase and sale transaction, i.e. the "sold" asset remains in the balance sheet of the seller and a finance lease liability is recognised in the amount of the payment received ("sale price"). The difference between the "sale price" and the minimum lease payments is recognised as interest expense over the lease term similarly to regular finance lease contracts.

If a sale-leaseback transaction results in an operating lease, the transaction is recognised as a purchase and sale transaction, and any profit or loss is recognised immediately, except when:

1. the sale price is below the fair value of the asset and the low price is compensated for by low interest rates in the future; or

2. the sale price is above the fair value of the asset.

2.5 Back and Front-loaded Leases

For operating leases, the lease payments made over the lease term shall be recognized as an expense or revenue on a straight-line basis over the lease term unless another systematic basis is more representative of the time pattern of the benefit derived from the leased asset. Lease payments are recognised as an expense or revenue on a straight-line basis irrespective of the periods and amounts in which the payments are actually made.

2.6 Defeasance

There are no rules on defeasance of a lease in the financial accounting standards. Defeasance of a lease depends on the agreement terms.

3 Direct Taxation

3.1 Rate of Taxation

The rate of income tax is 20 percent for resident companies and individuals as well as non-residents. Corporate income tax is calculated on the net amount of dividend by applying a rate of 20/80, which equals 20 percent on the gross amount of distribution.

3.2 Taxation of Lessor

Individuals

Finance lease

The lessor is obliged to pay income tax on income derived from the lease interest. The lease payments are considered as income from transfer of property and any capital gain is taxed, unless the income was derived from the transfer of movable property in personal use or transfer of a dwelling used as the individual's usual place of residence up to that moment.

If the payer of the interest is a legal entity income tax at a rate of 20 percent has to be withheld on the interest payments. Upon withholding income tax a basic exemption of EUR 154 per month can be applied on the basis of an application filed by the lessor.

Operating lease

The lessor is obliged to pay income tax on all income derived from the lease.

If the lease payments are made by a corporation, income tax is withheld on the lease payments to an individual. Upon withholding income tax a basic exemption of EUR 154 per month can be applied on the basis of an application filed by the lessor.

Corporations

The corporate tax system in Estonia differs from those used by many countries, so that corporate income is taxable mainly upon profit distribution in the form of a dividend. Therefore, lease income is not taxable for companies before the income is distributed to the shareholders or specific taxable cost or payment is made.

3.3 Taxation of Lessee

Individuals

In the case of finance or operating leases, resident individuals are entitled to claim as tax deductible, interest payments on a lease used to acquire a home, or a piece of land for the purpose of building a home. This is on the basis that interest is paid to a commercial credit company resident in the EEA or a financial institution belonging to the same corporation, or a branch office of a non-resident credit company registered in the above mentioned countries. Buying a home includes expenses incurred for the purpose of building, expanding or renovating a building and also replacing or rebuilding its supply and drainage systems. Interest is only deductible on a lease to acquire one home.

Resident individuals from the other countries of EEA are entitled to claim tax deductions proportionally to their Estonian source income of the taxation period, if at least 75 percent of the taxable income was derived in Estonia. Deductions are allowed also in case the income derived in Estonia is lower than 75 percent of the taxable income, in such a case the individual has to prove that no deductions available to residents have been made in any other country.

Corporations

If a leased asset is used for business purposes no income tax is payable. Non-business expenses are similarly to a distribution of profit subject to tax. An expense is considered to be business related if it is incurred for the purpose of taxable income or is necessary or appropriate in order to preserve or develop such business, and if the expense is clearly made for business purposes. If the expense is not related to the business of the company, income tax at a rate of 20/80 on the net amount of the payment is applied.

Use of a leased asset in such a manner that an employee or a person equal to an employee (e.g. a spouse, a child, etc.) receives a monetarily appraisable benefit constitutes a fringe benefit and the costs incurred are subject to income tax and social tax. An exception is the use of automobiles for which the law provides a maximum value of the fringe benefit.

3.4 Tax Depreciation

As Estonian companies pay income tax upon distribution of profit, tax depreciation is not relevant in the case of the Estonian corporate income tax system.

3.5 Investment or Other Tax Allowances

Allowances are not applicable under the Estonian system for companies.

3.6 Tax Consequences of Different Methods of Financing

Normal methods of financing do not bring about tax consequences if the transferor does not incur unjustified losses.

3.7 Transfer of Ownership of Asset or of Rentals

No income tax consequences arise for the individual where income was derived from the transfer of movable property in personal use or transfer of a dwelling used as the individual's usual place of residence. Capital gains received by the resident legal person are subject to taxation upon the profit distribution.

3.8 Sale and Leaseback

There are no special regulations regarding sale and leaseback transactions for tax purposes.
In practice the leaseback may be either operating lease or finance lease. The lease back is normally seen as a separate transaction from the sale and taxation follows general principles.

3.9 Back and Front-loaded Leases

There are no special tax regulations for back- or front-loaded leases. The tax treatment normally follows the accounting treatment.

3.10 Leasing and Leverage Tax Aspects

There are no special tax consequences arising from such arrangements, but under certain conditions the transaction may be subject to taxation under transfer pricing regulation (transactions between related parties).

3.11 Termination Arrangements

There are no special rules dealing with early termination.

3.12 International Issues

Taxation of Non-Resident Lessor / Resident Lessee

In the case of a finance lease, a non-resident lessor is obliged to pay income tax on income derived from the lease, i.e. on capital gains from the transfer of property, if the leased asset is either registered or to be registered in an Estonian register or immovable property is located in Estonia. Income derived from the lease is not subject to taxation in Estonia, if payment is made to a person resident in a country with whom Estonia has concluded an agreement for the avoidance of double taxation (tax treaty) and lessee has received a certificate of residence to prove this. Income derived from the immovable property located in Estonia is always taxable in Estonia.

In the case of an operating lease, the resident lessee is obliged to withhold income tax at a rate of 10 percent from payments made to a non-resident, as operating lease is considered to be royalty payment. The tax treaty sets a lower withholding income tax rate of 5 percent to merchandise, commercial or scientific equipment and in the other cases the tax at a rate of 10 percent applies. If the lessor is an EU or Swiss Confederation resident company, then such payments are not taxable, if the value of the lease payment corresponds to the market value and at least one of the following conditions is met:

- The lessee has owned at least 25 percent of the lessor′s shares at the time of the transaction and for a minimum of two years prior to the transaction
- The lessor has owned at least 25 percent of the lessee′s shares at the time of the transaction and for a minimum of two years prior to the transaction
- One and the same resident company of the EU or the Swiss Confederation owns at the time of payment and has owned during the period of two years or more immediately preceding the payment at least 25 per cent of the share capital of the lessee and the lessor.

If a non-resident receives rental payments under an operating lease contract for real estate located in Estonia, these are subject to Estonian income tax at a rate of 20 percent.

Non-residents are not entitled to tax relief on income related to business activities. Exception to this is a lessor who is an individual resident in an EEA country, who in the course of the taxation period at least 75 percent of his income derived from Estonia. Tax deductions are allowed proportionally to the Estonian source income. Deductions are allowed also in case the income derived in Estonia is lower than 75 percent of the taxable income, but in such a case the individual has to prove that no deductions available to residents have been made in any other country.

Taxation of Resident Lessor / Non-Resident Lessee

A resident lessor pays income tax in Estonia regardless of whether the lessee is a resident or a non-resident.

3.13 Withholding Taxes

Income tax paid or withheld in another country is deductible from the income tax payable in Estonia, unless the income is not taxable according to the Estonian Income Tax Act. The overpaid amount of income tax paid in the foreign country is not refunded in Estonia. However, as a rule tax treaties allow the income tax that was withheld in Estonia to be deducted from the corporate income tax of the residence country.

3.14 Anti-avoidance

The general anti-avoidance measure is that if it is evident from the content of a transaction that the transaction is carried out for tax evasion purposes, conditions which correspond to the actual economic content of the transaction apply upon taxation. This is the so-called “substance over form” provision.

There are no thin capitalization regulations in Estonia.

As regards transfer pricing, the Income Tax Act states that if the value of a transaction conducted between associated resident and non-resident or resident persons differs from the value of similar transactions conducted between independent persons, the tax authorities may, upon making an assessment of income tax, apply the value of transactions used by independent persons under similar conditions. Income tax at a rate of 20/80 has to be paid either on the income which the taxpayer would have derived or the expense which the taxpayer would not have incurred, if the value of the transaction conducted with the associated person had been such as applied by non-associated independent persons under similar conditions. From 2007 the transfer pricing documentation requirement is applied.

Payments made to companies located in a low tax rate territory by an Estonian company are subject to taxation at a rate of 20/80.

3.15 Tax Authorities' Approach

There is no special guidance from the tax authorities regarding leasing taxation. As of 2008 the binding ruling application system is applied.

4 Value Added Tax

4.1 General

The Estonian VAT Act broadly follows the European VAT directive 2006/112/EC. In the core aspects, the current system of VAT is identical to the common VAT system used in the EU.

VAT is due on any supply of goods or services made in Estonia, where it is a taxable supply made by a taxable person in the course or furtherance of a business carried on by said person, including the leasing or hire of goods, the transfer of rights, and obligations to refrain from an economic activity.

A company can deduct VAT, if the following conditions are met:

• a VAT liability has arisen

• the supply is used for the company's business purposes

• the company has an invoice from the supplier.

Goods imported into Estonia from outside the EU are liable to import VAT. Import VAT can be deducted on the basis of a customs declaration in the tax period during which the customs released the goods.

There are certain situations in which input VAT is not deductible. For example, where the VAT incurred relates to onward exempt supplies (with no input VAT deduction right) or non-business (including private) activities. Where VAT relates to both taxable and non-taxable supplies (exempt supplies or non-business activities), an apportionment is required and only the portion relating to taxable activities is deductible. In addition input VAT deduction in relation to company cars is limited, if the assets are not used for business purposes solely.

VAT Rate

Estonia applies a standard rate of 20 percent on most goods and services. In addition, a reduced rate of 9 percent is applied on selected goods and services (e.g. the supply of medical equipment, accommodation, periodicals). Furthermore, there is an extensive list of zero-rated supplies, including international transport services, exports and supplies effected through a free zone. Certain supplies such as postal services, health and welfare, insurance and financial services, transfers of immovable property, the leasing or letting of immovable property are exempt from VAT (with no input VAT deduction right).

The provision of financial services (including leasing) is tax-exempt supply under the Estonian VAT Act. However, there is a possibility to add VAT to the supply of financial services if a taxable person has beforehand notified the tax authority in writing. If a taxable person has chosen to add VAT to the price of the services, the decision is binding for at least two years. Optional taxation is available domestically. It is not allowed to use optional taxation when services are provided to a taxable person of another member state.

Although, the provision of the financial services is a tax exempt supply, no restrictions to the deduction of VAT will apply, if such exempt supplies can be regarded incidental tax exempt supplies.

Registration Matters

Compulsory Registration

Estonian Entities

If an Estonian entity (including the fixed establishment of a foreign person) makes taxable supplies in Estonia over the current VAT registration threshold of EUR 16,000, the entity is required to register and account for Estonian VAT.

Non-Estonian Entities

When a trader, with no fixed establishment in Estonia, who is liable to taxation in another country, makes a taxable supply in Estonia (that is not accounted for by the Estonian customer under the reverse charge procedure), then that foreign trader must register for VAT from the date the taxable supply was made. No registration threshold applies for such traders. The registration obligation does not arise if the foreign trader effects only supplies taxable at the zero percent VAT rate, unless it is intra-Community trade. Different rules apply in the case of distance sales and e-commerce.

When a trader from another member state transfers goods together with the delivery into Estonia to a person that is not registered for VAT purposes (i.e. performs distance sale), the registration for VAT purposes is due when such supplies exceed the limit of EUR 35 000 calculated as of the beginning of a calendar year

A company does not have to register for VAT in Estonia, if a trader effects all its supplies through the free zone or a Customs warehouse in Estonia.

Voluntary Registration

If a local or foreign entity trades below the registration threshold, it can still choose to register voluntarily for VAT. Upon the registration, it is obliged to prove its business activities or plan to commence business in Estonia.

4.2 Treatment of Asset Finance Transactions by Type

The VAT treatment is dependent upon the exact conditions of the lease agreement. The classification for taxation purposes and accounting purposes may differ.

Finance Lease

The provision of goods under a finance lease is treated as a supply of goods for VAT purposes. The VAT is payable at the time the goods are first made available. In the Estonian VAT Act the supply of goods is defined as the transfer of possession of goods together with the risk of accidental loss of the goods and the right to dispose of the goods and enjoy the economic benefits related to the goods as owner, regardless of the status of the goods in property law. In addition, the transaction is treated as a sale of goods where it is stated in the lease agreement that ownership passes to the contractual user of the goods upon termination of the contract (i.e. on payment of the final instalment).

VAT becomes payable on the taxation period when the goods were made available to the purchaser. If there has been any prepayment before that, VAT is payable in the period when the prepayment was received (considering that the amount paid includes also the VAT amount).

Operating lease

Operating lease is treated as a supply of services in VAT accounting. The VAT becomes payable at the time of each successive payment. The transaction that includes a right to purchase the leased asset at a residual value upon termination of the contract is also treated as operating lease.

VAT is payable on the first date on which either payment for the goods or services was received or the services were provided. In the case of regular provision of services, the time at which the services are provided and received is deemed to be the taxable period overlapping with the end of the period for which the invoice is submitted or during which payment is to be made as agreed, but not later than after twelve calendar months.

Transfer of Lease Portfolios and Lease Agreements

A transfer of lease portfolios or agreements is not separately regulated under the Estonian VAT Act. The VAT treatment depends on the exact circumstances of the transfer.

4.3 Domestic Asset Finance Transactions

VAT Treatment for Lessor

The finance lease transaction is treated as a sale of goods and is subject to Estonian VAT at 20 percent. If the lessor has interest income from the leasing of the goods and the interest income is not included in the taxable value of the goods, but it is shown separately on the invoice the interest charge is treated as an exempt supply. VAT can be optionally added to the lease interest, if the tax authorities have notified about the use of the option beforehand.

The operating lease transaction is treated as a supply of services. It is generally accepted when differentiation between the financial (interest) and non-financial element (lease payment) of the transaction is made. The leasing payments for the goods are subject to Estonian VAT at a rate of 20 percent. The interest paid for the leasing transaction may be treated as an exempt financial transaction (if lessor does not opt for taxation, see above). In practice sometimes financial element is not distinguished from the lease payment and then the supply consists of only taxable services.

Value added tax paid or payable on goods or services received to be used for repair and maintenance of an object of leasing is deductible as an input value added tax of the lessor only if:
1) the lessor has the obligation to provide repair and maintenance of the object of the lease agreement and the lease agreement is taxed with regard to the goods as well as financial operation or
2) the lessor provides repair and maintenance service.

In case lessor has any costs in Estonia related to above exempt financial transaction, the VAT related to those costs cannot be deducted. If the lessor has certain costs (i.e. administrative costs) that relate to both taxable activities and exempt financial services in Estonia, then the lessor has to calculate the proportion (the so-called 'pro-rata calculation') that relates to taxable supplies in order to determine the deductible amount. However, if the proportion of exempt supplies is less than one percent of all supplies made or exempt supplies are incidental, then no restrictions to the deduction of VAT will apply.

VAT Treatment for Lessee

Lessees should show the input tax incurred in the period on the relevant VAT return, assuming they are taxable persons.

Input VAT becomes deductible at the time the deductible tax becomes chargeable. In case of the finance lease where the VAT is due on the total value of the goods at the time the goods are provided, the VAT is immediately deductible by the lessee.

Input VAT shall be deducted on the basis of an invoice. This means that lessee must have the invoice by the day of the submission of the VAT return in order to deduct the input VAT.

In case a car is leased under finance or operating lease contract, input VAT deduction is limited to 50 per cent, unless it is proven that the car is used for business purposes solely.

4.4 Cross-border issues

Lessors leasing out of country

If a finance lease contract is concluded between an Estonian lessor and a person with a VAT registration number in another member state, the supply is treated as a zero rated intra-Community supply. In the case of an operating lease the service is taxable by the VAT registered customer in another member state, who accounts for the VAT under the reverse charge procedure. If lessee has no VAT registration in another Member State, both of the above mentioned transactions are subject to Estonian VAT at a rate of 20 percent.

Exceptions apply with regard to the leasing of means of transport. Hiring, leasing or establishment of a usufruct of means of transport for a period longer that 30 calendar days is taxable at the place the customer is established or has his permanent address or usually resides where services are provide to a customer with no VAT registration or third country person not engaged in business. If the customer has a seat or place of residence in Estonia, the service is taxable in Estonia. If the customer has a seat or place of residence outside Estonia, the service is not taxable in Estonia.

Another exception is the finance lease of new means of transport that is treated as a zero rated intra-Community supply of goods irrespective of the purchaser as the latter is liable for VAT in another member state.

Hiring, leasing or establishment of a usufruct of pleasure or recreational boats for a period longer that 90 calendar days is taxable in Estonia if the service provider's seat or permanent business establishment is in Estonia and the customer is not VAT registered or a third country person not engaged in business.

If the finance or operating lease agreement is concluded between an Estonian lessor and a non-EU lessee and involves movement of goods out of EU, the transaction is zero rated in Estonia regardless of the VAT status of the recipient. In the case of operating lease of means of transport between Estonian lessor and a non-EU lessee not engaged in business the transaction is subject to Estonian VAT at a rate of 20 percent.

The finance lease to a foreign lessee is subject to 20 percent Estonian VAT, if the transaction does not involve movement of goods out of Estonia.

Movement of goods

If assets are transported from Estonia to another Member State under a finance lease contract, it is considered to be an intra-Community supply. If the goods are transported to another Member State temporarily (under an operating lease), it is regarded as supply of services and not an intra-Community supply. These goods must be listed separately in the lessor's books. Assets transported from Estonia to non-EU countries under a finance lease are treated as an export for VAT purposes. The movement of goods under an operating lease is considered to be a temporary exportation, with a commitment to re-import the goods later.

Lessors leasing into the country

VAT Treatment for Lessor

Generally a foreign lessor is not obliged to register for VAT purposes in Estonia if the transaction is taxable by an Estonian lessee in Estonia.

If the operating lease contract is concluded between a foreign lessor and an Estonian lessee who is not registered for VAT in Estonia, the transaction is generally taxable according to the rules in the state of lessor. An obligation to register for VAT purposes may arise for the lessee, when the transaction has not been subject to taxation elsewhere.

If a foreign lessor leases movable goods under an operating lease contract further to a person with an Estonian VAT number, the place of supply of the service is Estonia and the reverse charge mechanism applies.

Movement of goods

When goods are transported from another EU member state to Estonia for the purposes of effecting finance lease operations, the transfer is regarded as intra-Community acquisition of goods by the Estonian VAT registered lessee. Otherwise the regulation of the country of lessor applies.

VAT Treatment for Lessee

An acquisition of goods under a finance lease contract from another member state is considered to be an intra-Community acquisition and the reverse charge mechanism is applied by the recipient of the goods in Estonia, except for financial component (interest, transaction fees) as these are normally treated as VAT exempt.

The importer of goods is responsible for paying import VAT, irrespective of whether he is VAT registered or not.

In the case of an operating lease a temporary importation procedure with a partial or total relief from import duties may be used. The amount of import duties payable in respect of goods placed under the temporary importation procedure with partial relief from import duties shall be set at three percent, for every month or fraction of a month during which the goods have been placed under the temporary importation procedure with partial relief, of the amount of duties which would have been payable on the said goods had they been released for free circulation on the date on which they were placed under the temporary importation procedure. The maximum period during which goods may remain under the temporary importation procedure shall be 24 months (exceptionally extensions possible).

In the case of importation into free circulation, the Estonian lessee, who is deemed to be the importer of the leased equipment, is responsible for paying the customs duty and import VAT.

VAT recovery issues

If the goods were acquired or services received by a VAT registered person, the person is entitled to deduct the input VAT in Estonia. A lessee from another EU country may apply for VAT refund under the Council Directive 2008/9/EC. A lessee from a non-EU country who is not registered for VAT purposes in Estonia can apply for VAT refunds under the Directive 86/560/EEC (called also 13th Council Directive).

4.5 Termination

Termination of leasing agreements

There are no special provisions regarding termination of finance lease agreements. Upon termination of an operating or finance lease agreement, where it is followed by the subsequent sale of the leased good, the latter is regarded as separate supply of goods. VAT is charged on the usual value the goods. Where a new lease agreement is concluded, taxation depends on whether the new lease agreement is a finance or operating lease agreement.

Penalty payments

Penalty payments are not taxable supplies.

Rebates of Rentals

Rebates are dealt with by the issue of credit notes, under which the lessor can claim a reduction in VAT payable when the credit note is issued. Based on the credit note the lessor is entitled to make amendments in the VAT return concerning the period during which the invoice was cancelled and lessee is entitled to the corresponding reduction in deductible input tax. A credit note must have a reference to the initial invoice referred to on it.

Upon termination of a finance lease agreement, where the lessee who is not registered for VAT purposes returns the goods, the seller may adjust the amount of VAT payable for the period in which the goods where returned by the amount of VAT refunded to the purchaser.

Repossessions/Sale of Repossessed Assets

If a finance lease contract discontinues and the lessor transfers the lease asset it is regarded as a separate taxable supply. Since under an operating lease, the ownership of the goods remains with the lessor, repossession would have no effect for VAT purposes.

4.6 Other VAT Procedures

Bad Debt Relief

Under the Estonian law it is not allowed to adjust the VAT amount payable, where credit invoice has been submitted due to a failure to pay for goods or services partially or in full.

5 Stamp Duty

There are no other turnover or business taxes in Estonia.

An obligation to pay stamp duties in Estonia may arise upon the termination of a finance lease and re-registration of ownership. Such obligation depends on the type of the lease asset (immovable property, a ship or other movable property to be registered in Estonia). The rate of the state fee is fixed in the State Fees Act or set as a certain percentage of the value of the transaction (ca 0.2 – 0.4 percent).

6 Other Issues

6.1 Exchange Controls

There are no exchange controls in Estonia.

6.2 Customs Duty

The rules governing customs are stipulated in the Customs Act and the Community Customs Code. This code is applied to trade between Estonia and countries and territories remaining outside of the Customs territory of the European Community. The import and export duties are regulated by the Commission Implementing Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and Common Customs Tariff. Reliefs from customs duties are regulated by the Council Regulation (EC) No 1186/2009 .

Basic EU rules regarding Customs duty rates are found in the Common Customs Tariff, called TARIC.

Customs duty is applied to goods, which are imported for release into free circulation in Estonia or under a temporary importation procedure. In calculating the Customs duty the following are taken into account:

• customs tariffs

• origin of the good

• customs value of the goods.

Temporary importation procedure can be made with a partial or total relief from import duties. The maximum period during which goods may remain under the temporary importation procedure shall be 24 months (exceptionally extensions possible). The amount of import duties payable in respect of goods placed under the temporary importation procedure with partial relief from import duties shall be set at 3 percent of the amount of total import duties and the amount is payable upon the acceptance of the import declaration.

According to the Community Customs Code the goods that have been placed to the customs free zone and free warehouse are considered, for the purpose of import duties and commercial policy import measures, as not being on Community customs territory. This applies if the goods are not released for free circulation or placed under another customs procedure.

6.3 Trade Tax, Transfer Taxes and Other Capital Taxes

There are no trade taxes, transfer taxes or other capital taxes in Estonia.

6.4 Investment Grants, Subsidies and Tax Incentives

There are no investment grants, subsidies or tax incentives in Estonia.

	OPERATING LEASE	FINANCE LEASE
Value Added Tax		
Subject to tax	Provision of services	Transfer of goods
Tax due date	End of the period of time for which an invoice is submitted or during which payment for the services has been agreed	Time of delivery of the product or receipt of payment, dependent on which takes place first
Taxation of leasing interest	If separately shown on the invoice, tax exempt supply to which VAT can be optionally added. Otherwise taxable as part of the lease payment.	If separately shown on the invoice, tax exempt supply to which VAT can be optionally added. Otherwise taxable as part of the lease payment.
VAT rate	Generally 20%. Rental of immovable property is tax exempt supply with an option to add VAT (except dwellings)	Generally 20%. Transfer of immovable property is tax exempt supply, except new buildings, plots of land and renovated buildings. Optionally VAT can be added to the supply of immovable (except dwellings)
Differences to transactions with non-residents	Rental of movable property is zero-rated supply	Transaction is considered zero-rated export or intra-Community supply of goods, when goods are taken out of Estonia incl. transfer of new means of transport
Income Tax		
Payments to resident individual	Income tax is withheld from rent and royalties at the rate of 20%, except when the payment is made to a sole proprietor	An individual pays income tax on gain from transfer of property (difference between the sales price and acquisition cost), except when the dwelling was used as a usual place of residence or movable in personal use was transferred
Payments to non-resident individual	Income tax at the rate of 20% has to be withheld on *rental income* (e.g. real estate). Tax Treaty may reduce the tax rate. Income tax at the rate of 10% has to be withheld on *royalty payments*. Tax Treaty may reduce the withholding tax rate	Certain gain from transfer of property is subject to taxation in Estonia, e.g. the gain from transfer of immovable property located in Estonia
Payments to non-resident company	Income tax at the rate of 20% has to be withheld on *rental income* (e.g. real-estate). Tax Treaty may reduce the tax rate. Income tax at the rate of 10% has to be withheld on *Royalty payments*. Tax Treaty may reduce the withholding tax rate.	Certain gain from transfer of property is subject to taxation in Estonia, e.g. the gain from transfer of immovable property located in Estonia. Tax consequences may arise also according to *transfer pricing* rules, if the value of the transaction does not correspond to market conditions

	Tax consequences may also arise according to *transfer pricing* rules, if the value of the transaction does not correspond to market conditions. Withholding taxes can be avoided if the transaction is carried out between related parties and the conditions set out in the Income Tax Act are fulfilled.	
Interest paid to non-resident	Generally, the operating lease interest is included in the rental payment; therefore these will not be subject to taxation separately	Interest is subject to taxation only if the interest paid among related parties differs from the market interest rate on similar debt obligation
Licence	A separate leasing licence is not required	A separate leasing licence is not required

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