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# Belarus

## International Estate Planning Guide

### Individual Tax and Private Client Committee

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## Table of Contents

I.	Wills and disability planning documents .....	3
A.	Will formalities and enforceability of foreign wills .....	3
1.	Belarusian wills .....	3
2.	Enforceability of foreign wills .....	4
B.	Will substitutes (revocable trusts or entities).....	5
C.	Powers of attorney, directives and similar disability documents.....	5
II.	Estate administration.....	6
A.	Overview of administration procedures.....	6
B.	Intestate succession and forced heirship.....	7
C.	Marital property .....	8
1.	Joint community property .....	8
2.	Marriage contracts.....	9
D.	Tenancies, survivorship accounts and payable on death accounts.....	10
III.	Trusts, foundations and other planning structures .....	10
A.	Common techniques .....	10
1.	Trusts .....	10
2.	Foundations .....	10
3.	Other instruments.....	10
B.	Fiduciary duties (trustees, board members, directors, etc) .....	11
C.	Treatment of foreign trusts and foundations .....	11
IV.	Taxation .....	12
A.	Domicile and residency .....	12
B.	Taxation of gifts, inheritance and real estate .....	12
1.	Gift tax.....	12
2.	Inheritance tax.....	12
3.	Real estate tax .....	12
4.	Land tax .....	13
5.	Transport tax .....	13
C.	Taxes on income and capital .....	13
1.	Personal income tax.....	13
2.	Social contributions .....	14

## I. Wills and disability planning documents

### A. Will formalities and enforceability of foreign wills

#### 1. BELARUSIAN WILLS

The Civil Code of the Republic of Belarus (the 'Civil Code') defines a will as 'the expression of the person's wish on the disposal of his property in case of death' and qualifies the will as a unilateral deal whose validity shall be determined at the moment of the will's execution.

Apart from the testator's assets, inheritance comprises all rights and obligations that belong to the testator at the time of the inheritance opening and do not cease to exist after his or her death. At the same time, rights and obligations inseparably connected with the testator's personality do not form part of the inheritance.

The freedom of the will provides the testator with a variety of options. For example, the testator can include provisions regarding property that will be acquired by the testator at the moment of the inheritance opening to condition the acquisition of inheritance by the specific lawful condition concerning the nature of the heir's behaviour. The will can also be cancelled or amended at any time and the testator does not have to explain the reasons for doing so.

However, the freedom of the will is limited by the rules on the compulsory share. The compulsory share means that minor or incapacitated children of the testator, as well as the testator's incapacitated spouse and parents, shall inherit, regardless of the will's content, not less than half the share, which should be due to each of them in case of intestate succession. Incapacitated persons include those who are entitled to a retirement pension on a general basis and disabled persons in 1–3 groups, as well as persons under the age of 18.

Moreover, it is not permitted to impose on the persons appointed to be the heirs in the will the obligation to dispose of the bequeathed property in a certain way in the event of their death, as well as to include in the will unlawful conditions or conditions of behaviour that are impracticable for the heir due to objective reasons.

The heirs by the will and law can be citizens that are alive at the time of the inheritance opening or those conceived during the life of the testator and born alive after the inheritance opening.

As to the rules on the form of the will, Belarusian law requires the will shall be drawn up in writing and certified by a notary, otherwise the will would be void. There are some cases in which the will can also be certified by other persons.

- When the right to the execution of notarial actions is granted by law to authorised officials of the local executive and dispositive bodies, diplomatic agents of the diplomatic representation of Belarus and consular officials of consular posts of Belarus, the will may be certified by the respective official in compliance with the requirements of the Civil Code on the form of the will and the procedure of its notarial certification.
- Wills are considered to be equated to notarially certified in the following cases:
  1. wills of citizens under treatment at hospitals and other healthcare organisations providing inpatient medical help, or citizens living in residential homes for the elderly and disabled certified by chief doctors, their deputies for medical affairs or doctors on duty at these hospitals and other healthcare organisations, and also by the heads of military hospitals, and directors of residential homes for the elderly and disabled;
  2. wills of citizens boating under the state flag of the Republic of Belarus certified by the captains of these boats;
  3. wills of citizens residing in exploratory, Arctic or other similar expeditions certified by the heads of these expeditions;

4. wills of military personnel at the places of deployment of military units, where there are no notaries, as well as the wills of civil personnel working in these units, members of their families and members of the families of the military servicepeople certified by the commanders of these units; and
5. wills of persons held in institutions for the service of punishment in the form of arrest, restriction of freedom and deprivation of freedom, or places of detention certified by the heads of the respective institutions for the service of punishment or chiefs of administrations of the places of detention; and
6. in the case of the disposal of rights to monetary means in a bank or non-bank credit and financial organisation, the will disposition shall be handwritten and signed by the testator with an indication of the date of its drawing up, and shall be certified by the clerk of the bank or non-bank credit and financial organisation that has the right to accept the execution of the client's order concerning the monetary means on the client's account under the procedure determined by legislation.

A will can only be made by a person who has full legal capacity. Making a will through a representative is not allowed. If the testator cannot sign the will with his or her hand because of physical disability, disease or illiteracy, then, upon the testator's request, the will may be signed in the presence of a notary by another person, with an indication of the reasons thereto. A notarially certified will can also be written by the notary from the testator's words with the mandatory presence of a witness.<sup>1</sup>

Upon the testator's wish, the will can be certified by a notary without the notary being familiarised with its content (closed will). A closed will must be handwritten and signed by the testator. Failure to comply with these rules invalidates the will.

The will may be deemed to be invalid by a court upon a suit by a person whose rights or interests are violated by this will. Contesting the will before the inheritance opening is not allowed. At the same time, the recognition of the will as invalid shall not deprive the persons specified therein as heirs or legatees of the right to inherit by law or on the grounds of another valid will.

## 2. ENFORCEABILITY OF FOREIGN WILLS

The law of the testator's last place of residence is the general reference that determines the law applicable to the inheritance relations, unless, in the will, the testator has chosen the law of the country of which he or she is a citizen.

The capacity of a person to draw up and cancel the will, the form of the will and the act of its cancellation shall be determined by the law of the country where the testator had the place of residence at the time of drawing up the act, unless the testator in the will has chosen the law of the country of which he or she is a citizen. However, the will or its cancellation cannot be declared invalid due to non-compliance with the form if the latter meets the requirements of the law of the place where the act was drawn up or the requirements of the law of the Republic of Belarus.

The inheritance of immovable property is determined by the law of the country where this property is located. Concerning immovable property that is registered in Belarus, inheritance shall be determined by the law of Belarus.

Belarus is party to the Minsk Convention of 1993 and the Chisinau Convention of 2002, which establish the following conflict of laws rules:

- the right to inherit movable property is determined by the legislation of the country in whose territory the testator had his or her last permanent place of residence;
- the right to inherit immovable property is determined by the legislation of the country in whose territory this property is located; and

- the ability of a person to make a will and cancel it, the form of the will and its cancellation are determined by the law of the country where the testator had his or her place of residence at the time of making the will. A will or its cancellation may not be declared invalid due to non-compliance with the form if it meets the requirements of the law of the place where the will was made.

The norms concerning inheritance can also be found in the bilateral treaties on legal assistance. For example, treaties with Lithuania and Latvia on legal assistance in civil, family and criminal matters establish that:

- citizens of one contracting party are treated identically to citizens of the other contracting party residing in its territory concerning the ability to draw up or cancel a will for property located in the territory of the other contracting party, or for the rights to be exercised there, as well as concerning the ability to acquire property or rights by inheritance;
- the form of a will or its cancellation shall be governed by the legislation of the contracting party of which the testator was a national at the time of making or cancelling the will. It is sufficient, however, to adhere to the legislation of the contracting party in whose territory the will was drawn up or cancelled;
- the legal consequences of the shortcomings of the will, as well as the method of challenging the validity of the will, shall be determined by the legislation of the contracting party of which the testator was a national at the time of making or cancelling the will; and
- documents certifying the right to inheritance, in particular, a certificate of inheritance or a certificate of execution of a will, drawn up by a competent institution of one contracting party, shall also serve as evidence of the relevant facts in the territory of the other contracting party.

#### *B. Will substitutes (revocable trusts or entities)*

In Belarus, the analogue to the trust concept is the institution of trust (fiduciary) management. The difference is that trust management does not provide for the transfer of a property's ownership. Under the contract of the trust management of property, one party shall transfer property to the other party (fiduciary manager) for a determined period, and the trustee manager undertakes to manage this property for a fee in the interests of the grantor or the person specified by him or her (beneficiary). In the case of concluding a contract for the trust management of property in the interests of a citizen who, due to illness, is in an unconscious state, which excludes the possibility to understand the meaning of his or her actions or direct them, such a contract may be concluded without paying remuneration to the trust manager.

According to the Civil Code, if the legal concepts requiring legal qualification are not known to the law of the forum or are known under a different name or with different content and cannot be determined by interpretation under the law of the forum, the law of the foreign state may be applied for their qualification.

#### *C. Powers of attorney, directives and similar disability documents*

The conclusion of a transaction through a representative which, by its character, may be concluded only personally, and likewise other transactions specified by law, shall not be permitted. Because the will is strictly personal, it is not permitted to issue a power of attorney for another person to make a will. Besides, any power of attorney is terminated upon the expiry of its term, death of the citizen who issued the power of attorney (or to whom it was issued), declaration of his or her incapacity, limited legal capacity or declaration of him or her as missing or dead, and revocation of the power of attorney by the citizen who issued it (or renunciation by the person to whom it was issued).

A citizen who, as a consequence of a mental disorder (disease), has a limited ability to understand the meaning of his or her actions or to direct them may be declared by a court as

having limited legal capacity under the procedure established by civil procedure legislation. Guardianship is established over him or her.

A citizen who, as a consequence of a mental disorder (disease), cannot understand the meaning of his or her actions or direct them, may be declared by a court as incapacitated under the procedure established by civil procedure legislation. Custody is established over him or her. The same rule applies to a citizen that is unconscious and not able to understand the meaning of his or her actions, or direct them due to illness.

## **II. Estate administration**

### *A. Overview of administration procedures*

Inheritance opens as a result of the death of a person or the court's declaration of a person as deceased on the day of death or on the day when the court's decision comes into legal force accordingly. The place of the inheritance opening is the last testator's place of residence (in the absence of this, place of stay) on the date when the inheritance was opened or if it is unknown, the place where the immovable property or the main part of it is located, or, in the absence thereof, the place where the main part of the movable property is located.

If the testator left a closed will, the notary checks information about the testator's death through the official authorities. Upon the receipt of the documentary proof of death, the envelope with the will shall be opened by the notary within 15 days in the presence of two witnesses. The notary then drafts the protocol and notifies the interested persons.

Upon the application of one or several heirs, as well as an executor, local government and self-government body or other persons, the notary shall take the following measures:

- make the inventory of the estate with the participation of two witnesses and the interested persons who wished to be present in the course of an inventory of the property, providing that:
  1. the money in cash included in the estate is transferred to the deposit of a notary, a diplomatic agent of the diplomatic representation of the Republic of Belarus or a consular official of the consular office of the Republic of Belarus, and the currency value, items made of precious stones and metals, and securities not requiring administration shall be transferred to the bank or non-bank credit and financing institution for storage under the contract;
  2. a weapon is transferred for storage to the bodies of internal affairs; and
  3. other property, if it does not require administration, shall be transferred by the notary under the contract for storage to one of the heirs, or, if it is impossible to transfer it to the heirs, to another person on the discretion of the notary;
- if there is property in the estate that requires administration (eg, an enterprise, a share in the charter capital of a company or partnership, securities or exclusive rights), a notary shall conclude the contract of the trust management of this property; and
- other necessary measures for estate protection and administration.

If the executor of the will is appointed (see III.B below), and unless otherwise provided by the will, he or she shall take measures necessary for the execution of the will:

- ensure the transfer of the due property to the heirs in accordance with the will of the testator and the law;
- independently or through a notary take measures to protect the estate and manage it in the interests of the heirs;
- receive the amounts of money and other property due to the testator for transfer to the heirs, unless such amounts are subject to transfer to other persons; and
- execute the testamentary assignment or demand from the heirs under the will the execution of a testamentary refusal or testamentary assignment (see III.A.3 below).

To accept the inheritance, within six months from the day of the inheritance opening, the heir should file to the notary an application for the acceptance of the inheritance or for issuing the certificate of the right to the inheritance. It is also possible to accept the inheritance through a representative if that is specifically mentioned in the power of attorney.

On the application of the heir who has missed the deadline for acceptance, the court may deem the heir as having accepted the inheritance if the court finds the reasons for missing the deadline reasonable, in particular, if the court determines that the deadline was missed because the heir did not know and should not have known about the inheritance opening. Besides, the heir shall apply to the court within six months after the reasons for missing this deadline have ceased to exist.

To refuse succession, the heir can apply to the notary on the same terms as those for the acceptance of succession. If the heir accepted succession, then subsequently changed his or her mind, but the six-month term for refusal has elapsed, the court (upon establishing the term was missed for justifiable reasons) may declare the heir as having refused succession. However, once refused it may not be subsequently changed or recalled.

While refusing succession, the heir has the right to specify that he or she refused it in favour of other persons from those who are the heirs by the will or by operation of the law of any priority, including those who inherit by the right of representation. A refusal in favour of another person shall not be permitted:

- from the property, inherited by the will, if all the property of the testator is bequeathed to the heirs appointed by him or her;
- from the compulsory share in the estate; and
- if the heir is sub-appointed for the heir.

Refusal of succession under a reservation or condition, as well as refusal from part of the estate due to the heir, is not permitted under Belarusian law. But if the heir is called to inherit both by the will and by law, he or she has the right to refuse the inheritance on one of these grounds or on both grounds.

### *B. Intestate succession and forced heirship*

For intestate succession, Belarusian legislation establishes the priority of heirs. The heirs of each priority listed below obtain the right to succession in the case of the absence of heirs of a preceding priority or if they are debarred from succession, or their non-acceptance or refusal of succession.<sup>2</sup>

The heirs of one priority inherit equal shares, except for heirs who inherit by the right of representation. Succession by the right of representation means that the share of the heir by operation of law that died before the inheritance opening or simultaneously with the testator shall be transferred by the right of representation to his or her corresponding descendants and shall be divided between them equally.

#### 1. FIRST PRIORITY

This includes the children, spouse and parents of the deceased. The grandchildren of the deceased and their direct descendants inherit by the right of representation.

In this case, adoptees and descendants thereof on one side, and the adoptive parent and relatives thereof on the other side are fully equated to blood relatives. At the same time, as a general rule, the adoptee and descendants thereof shall not inherit by operation of law after the death of the adoptee's parents and other relatives by birth, and the adoptee's parents and other relatives by birth do not inherit by operation of law after the death of the adoptee and descendants thereof.

#### 2. SECOND PRIORITY

This includes blood or non-blood brothers and sisters of the deceased. Their children – the nephews and nieces of the deceased – inherit by the right of representation.

### 3. THIRD PRIORITY

This includes the grandparents of the deceased both on the father's and mother's side.

### 4. FOURTH PRIORITY

This includes uncles and aunts of the deceased. Cousins of the deceased shall inherit by the right of representation.

### 5. THIRD, FOURTH, FIFTH AND SIXTH PRIORITY

In the case of the absence of heirs of the listed priorities, the deceased's relatives of the third, fourth, fifth and sixth degree of relation, not in relation to the heirs of the preceding priorities, shall obtain the right to succession by operation of law. The relatives of a closer degree of relation shall debar the relatives of a more distant degree of relation from succession.<sup>3</sup>

### 6. SURVIVING SPOUSE

As stated above, the surviving spouse is entitled to inherit under intestate succession and is considered as an heir of the first priority. While being an heir by operation of law, the spouse also keeps the property rights, related to marriage with the estate leaver, including ownership of the part of the property jointly acquired in the period of marriage (see II.C below).

The spouse (except if he or she is incapacitated) may be debarred from intestate succession by the court if it is proven that marriage with the estate leaver was factually terminated before the opening of inheritance, and the spouses lived separately and did not run the common household during at least five years before the opening of inheritance.

## C. *Marital property*

The statutory Belarusian marital property regime (with some exceptions) is that of joint community property. However, spouses have the right to change their marital property regime by making a marriage contract (prenuptial or postnuptial contract).

### 1. COMMON JOINT PROPERTY OF THE SPOUSES

The property acquired by the spouses within the period of marriage, regardless of which of them acquired it or by whom or on whose account it was paid for, is their common joint property. Spouses have equal rights to own, use and manage this property unless otherwise provided by the marriage contract (see II.C.2 below). The property of spouses constitutes their common joint property until the division of property (eg, postnuptial agreement or divorce) or until the extinguishment of the common joint property rights in some other way (eg, the death of one of the spouses or declaration of the nullity of the marriage).

The shares of the spouses in common joint property are presumed to be equal by default (in the course of the division of the common joint property, the court may decide otherwise in some exceptional occasions provided by law). In the case of the death of one of the spouses, his or her share in the common joint property is inherited according to the general rules.

The individual property of a spouse that can be used and managed at his or her own discretion is:

- property acquired before marriage;
- property acquired by a spouse during marriage as a gift or by inheritance; and
- a spouse's personal items (footwear, clothing etc), except for jewellery and luxury items.

At the same time, the individual property may be considered by the court as the common joint property if, during the marriage, investments in the property were made at the expense of the

common joint property of the spouses or of the individual property of the other spouse and if such investments significantly increased the value of this property (eg, capital repair, reconstruction and re-equipping). This rule shall not apply if the marriage contract provides otherwise.

Spouses can enter into all transactions between each other not prohibited by law concerning property that is the individual property of each of them.

The division of the common joint property of the spouses, unless otherwise provided by the marriage contract, may be performed by mutual agreement of the spouses both during the period of marriage and after its dissolution by the conclusion of an agreement on the division of property, which is subject to notary certification.

## 2. MARRIAGE CONTRACTS

A marriage contract can be concluded either by the persons getting married or by the spouses, and defines their personal and/or property rights and obligations both during the period of marriage and after its dissolution. In the marriage contract, the spouses may define a legal regime both in respect of their existing as well as future property that will be acquired in the course of marriage.

Through the marriage contract, one can also regulate:

- the rights and obligations of spouses for mutual allowance, including after the dissolution of marriage;
- the procedure of the division of the common joint property of the spouses;
- jointly acquired property, which will be transferred to each of the spouses after the dissolution of marriage;
- instead of the regime of common joint property of spouses, conditions for the establishment of joint shared ownership or individual property of each of the spouses to enable all property to be classified as common joint property or for certain types of such property;
- conditions regarding the impossibility of recognising the property of each of the spouses as their common joint property if, during the period of marriage, investments that significantly increase the property's value were made at the expense of the common joint property of the spouses or the individual property of the other spouse;
- types of disputes between (former) spouses arising out of marriage and family relations, which can be referred by them to an arbitration court or for settlement with the participation of a mediator (mediators); and
- other aspects of the relationship between the spouses (eg, procedure for each of them to bear family expenses), parents and children, if this does not violate the rights and legitimate interests of other persons and does not contradict legislation.

The marriage contract should be made in writing and is subject to notary certification. Additionally, in cases in which the marriage contract contains provisions regarding real estate, the marriage contract shall be registered by the body for the state registration of real estate rights and related transactions.

A prenuptial marriage contract may be made before the registration of the marriage, but it comes into force on the day of the registration of the marriage. A postnuptial marriage contract may be made at any time after the registration of the marriage and comes into force on the date of its notary certification. Provisions concerning real estate become legally binding from the date of the state registration of the marriage contract.

The marriage contract may be amended or terminated by mutual consent of the persons entering into marriage, spouses – before the dissolution of marriage, as well as former spouses – during the validity of the marriage contract in the form and manner provided for the conclusion of the marriage contract. At the request of one of the spouses, the marriage contract may be amended or terminated by a court's decision on the grounds and in accordance with the

procedure provided for in the Civil Code. The marriage contract is considered to be terminated from the moment of the dissolution of the marriage, unless otherwise provided by the marriage contract or by law. The marriage contract, which defines the rights and obligations of the former spouses after the termination of the marriage, is valid until such obligations are fulfilled.

#### *D. Tenancies, survivorship accounts and payable on death accounts*

In Belarus, common ownership is of two types: common ownership and shared ownership. However, neither of them provides an exclusive way to avoid probate. For example, the death of a participant in joint ownership triggers the determination of his or her share in such ownership and the division of the property or apportionment from it of the deceased participant's share. In this case, the inheritance opens with respect to the joint property, falling to the deceased participant's share, or, if it is impossible to divide the property in kind, with respect to the value of such a share.

Comparable to the payable on death account is a testamentary disposition of the rights to monetary funds in a bank deposit or bank account. A testamentary disposition with respect to monetary funds in a bank account has the same legal force as a notarially certified will.

Testamentary disposition should be handwritten and signed by the testator, indicating the date of its drafting. A bank employee who is empowered to accept the client's testamentary disposition for execution shall certify it. In order to get the monetary funds, the heirs should present a certificate of the right to inheritance to the bank. However, before presenting the certificate to the bank, the heirs noted in the testamentary disposition can also receive up to 100 basic units<sup>4</sup> from the testator's bank account.

### **III. Trusts, foundations and other planning structures**

#### *A. Common techniques*

##### 1. TRUSTS

Belarusian civil law does not operate by the concept of 'trust' and Belarus is not a party to the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. However, Belarusian law regulates the contract for the trust management of property. This is particularly the case when a property in the estate requires administration and the notary as the trustor shall conclude such a contract.

Under the contract for the trust management of property, a 'founder of management' transfers property (eg, enterprise, real estate and securities) in trust management to the trustee manager for a period specified in the contract. The trustee manager undertakes to effectuate the management of this property in the interests of the 'founder of management' or another beneficiary. The trustee manager is entitled to remuneration. The transfer of property for trust management does not mean the transfer of ownership.

Transactions with property transferred to trust management shall be effectuated by the trustee manager in his or her name, with the indication that he or she acts as such a manager. In the absence of this, the trustee manager becomes personally obliged to third parties and shall be liable to them for his or her personal assets only.

##### 2. FOUNDATIONS

There is no specific role of foundations in estate planning. Under the general rule, the testator can leave the estate to legal persons (including foundations) established at the moment of the death of the testator.

Under Belarusian law, a foundation is a non-commercial organisation that does not have a membership, founded by one or more persons and/or legal persons based on voluntary property contributions. Foundations pursue social, charitable, cultural, educational, sport-

promoting, scientific and other publicly useful purposes specified in their charter. The property transferred to a foundation by its founder(s) becomes the property of the foundation.

### 3. OTHER INSTRUMENTS

The testator has the right to entrust the heir by the will with performing some obligations at the expense of the estate (eg, transfer an item that is a part of the estate into the ownership of another person) for the benefit of one or several persons. In such a case, these persons acquire the right to demand the execution of a *testamentary refusal*. It should be noted that the recipient of a testamentary refusal cannot be liable for the debts of the testator. If the recipient refuses to get a testamentary refusal, the heirs are considered to be relieved from the obligation to perform it.

It is also possible for the testator to impose an *obligation* on one or more heirs *to perform an action aimed at the implementation of a socially useful goal*, as well as to take care of animals belonging to the testator. The same obligation may be imposed on the executor of the will when the testator allocated a part of the property for such an obligation.

The testator may also indicate an alternate heir in the case in which the heir who is specified in the will dies before the inheritance opening; does not accept succession or refuses it; is debarred from inheriting as an unworthy heir; or fails to meet the lawful conditions specified by the testator (sub-appointment of heir).

Estate property shall be transferred to the *common shared ownership* of the heirs from the day of the inheritance opening in the following cases:

- if, in the event of succession by the operation of law, the inherited property shall be transferred to two or more heirs; and
- if, in the event of succession by a will, the inherited property shall be transferred to two or more heirs without specification in the will of the items and rights inherited by each of the heirs.

Such property may be distributed under an agreement among heirs. If an agreement is not reached, the distribution shall be effectuated by the court.

#### *B. Fiduciary duties (trustees, board members, directors, etc)*

The testator may entrust the execution of the will to a person (not the heir) specified by him or her in the will. The consent of this person to be an executor of the will must be expressed either in his or her handwritten inscription on the will or in a statement attached to the will. If the executor of the will was not appointed by the testator, then the heirs may agree to entrust the execution of the will to one of them or a third person. If an agreement is not reached, the executor of the will may be appointed by the court at the request of one or several heirs from the candidacies proposed by them to the court.

The executor of the will is empowered to conduct affairs connected with the management of the estate and execution of the will in his or her own name. He or she has the right to refuse at any time to perform the duties assigned to him or her by the testator, subject to the preliminary notification of the heirs.

The executor of the will has the right to receive, at the expense of the estate, compensation of the necessary costs associated with the execution of the will, as well as to receive remuneration at the expense of the estate, if it is provided by the will.

#### *C. Treatment of foreign trusts and foundations*

Under the Civil Code, the civil legal capacity of the foreign legal person shall be determined in accordance with the law of the country where the legal person is established.

Because Belarusian authorities can be expected to be doubtful about trust arrangements and due to the lack of clear guidance under Belarusian law on this matter, the respective analysis should be made on a case-by-case basis from the inheritance and tax law perspective.

## **IV. Taxation**

### *A. Domicile and residency*

Generally, domicile does not influence tax liability in Belarus. However, the tax residency of individuals is taken into account in the majority of cases.

Individuals are generally considered to be Belarusian tax residents if they physically stay in the territory of Belarus for more than 183 days in a respective calendar year.

Individuals are recognised as Belarusian tax non-residents if they stay out of the territory of Belarus for 183 or more days in a respective calendar year.

When an individual is recognised as a tax resident of Belarus and another country in the same calendar year, the conflicting residence is solved based on the provision of double tax treaties concluded in Belarus. When an individual has conflicting residence in a state with which Belarus has not concluded a double tax treaty, Belarus will treat him or her as a Belarusian tax resident if he or she is a Belarusian citizen or a foreign citizen with a permanent residency permit in Belarus.

### *B. Taxation of gifts, inheritance and real estate*

#### **1. GIFT TAX**

There is no special gift tax in Belarus. Instead, a general 13 per cent personal income tax applies, taking into account some tax exemptions:

- gifts received from close relatives or close relatives-in-law are not taxable, assuming that these gifts are not related to entrepreneurial activity (close relatives include spouses, children, parents, siblings, grandparents and grandchildren); and
- gifts are exempt from personal income tax in the amounts not exceeding:
  - BYN 9,338 in aggregate (approximately €2,730): for gifts received from individuals not in the course of entrepreneurial activity;
  - BYN 2,821 (approximately €825): for gifts received from the employer not related to employment remuneration; and
  - BYN 186 (approximately €54): for gifts received from other companies (not employers).

#### **2. INHERITANCE TAX**

There is no special inheritance tax in Belarus.

Individuals are, by default, exempt from personal income tax on inheritance in Belarus, except for income received as author's royalties paid to heirs of the author. The sale of inherited property is also exempt from personal income tax.

#### **3. REAL ESTATE TAX**

Buildings, construction or their parts located in Belarus are taxable with real estate tax.

Real estate tax rate for individuals is 0.1 per cent and 0.2 per cent. This tax is also paid at a fixed amount in respect of real estate on which no assessed value is available. The tax amounts in such cases depend on the type, location and number of real estate objects owned, and it varies from BYN 10 to BYN 95 (approximately from €3 to €28) per object. One residential real estate object is exempt from real estate tax if it is owned by a pensioner, disabled or

incapacitated person, minor child, person engaged in temporary military/alternative service or veteran.

Real estate tax for individuals is calculated annually by tax authorities based on the assessed value of the real estate objects or the number of such real estate objects (when the assessed value is not available and a fixed amount is paid), and tax is paid based on notification from the tax authorities; that is, individuals do not calculate real estate tax by themselves.

Regarding real estate tax for companies, the general tax rate is one per cent of the residual value of real estate (buildings, construction and car parking spaces), and it varies from 0.1 per cent to 0.8 per cent in specific cases. An exemption from real estate tax applies to real estate objects owned by bankrupt companies that are in the process of liquidation. An exemption can also apply for the first year from the commission of a building, in some specific cases. Companies generally submit real estate tax returns annually and pay real estate tax quarterly or annually.

Local Councils of Deputies may increase or decrease the tax rate for certain categories of taxpayers, but not more than twice.

#### 4. LAND TAX

Land plots located in Belarus are taxable with land tax.

By default, the tax base is the cadastral value of the land plot. Rates vary significantly depending on the location and functional use of the land.

Individuals pay land tax annually based on notification from the tax authorities; that is, individuals do not calculate land tax by themselves. Companies generally receive pre-filled land tax returns from tax authorities, amend them (if needed) and submit them back to tax authorities annually. Land tax is paid in advance: companies pay advance payments quarterly in the amount of a quarter of the amount of land tax for the previous year.

#### 5. TRANSPORT TAX

Since 2021, individuals and companies have been subject to transport tax on owned vehicles registered with the traffic police of Belarus. Transport tax is paid at a fixed amount depending on the type and mass of the vehicle.

### *C. Taxes on income and capital*

#### 1. PERSONAL INCOME TAX

The general flat rate of personal income tax is 13 per cent.

For individuals, Belarusian tax residents pay personal income tax from their worldwide income. Belarusian tax non-residents pay personal income tax only from Belarus-sourced income. In the case that income is subject to taxation in Belarus and other countries, the elimination of double taxation can be done based on the provisions of double tax treaties between Belarus and other countries.

Personal income tax covers almost all income received by individuals, including salaries, dividends and capital gains.

##### a. Employment income

Employment remuneration is taxed at the 13 per cent personal income tax rate.

Belarusian companies that hire employees on the basis of an employment contract or civil law agreement act as tax agents and withhold personal income tax from the income of an employee.

If residents receive employment income from foreign sources, they shall submit an annual personal income tax return and pay personal income tax based on the tax authority's notification.

b. Dividends

The distribution of dividends from a Belarusian company is subject to the 13 per cent personal income tax rate. A special tax rate of six per cent applies if shareholders did not distribute dividends for three years, but rather reinvested the profits. If shareholders did not distribute dividends for five years and reinvested the profits, nil per cent applies to dividends. These benefits apply only for shareholders who are Belarusian tax residents and only for dividends distributed from a Belarusian company.

c. Entrepreneurial income

Individuals who are registered as individual entrepreneurs by default pay 20 per cent personal income tax from their income. They have to submit tax returns and calculate the amount of tax themselves.

d. Rental income

Rental income is generally taxed with the personal income tax rate in fixed amounts. The tax amounts vary depending on the type and location of rented premises.

## 2. SOCIAL CONTRIBUTIONS

Belarusian employers pay social security contributions for hired employees (including those who work under civil law contracts) on top of their salary at rates of 28 per cent for pension insurance; six per cent for social insurance; and 0.6 per cent for insurance against accidents at work and professional diseases. They also withhold a one per cent contribution for pension insurance at the cost of employees. All rates are applied to the gross amount of remuneration paid to employees, but the maximum base for social contributions is limited to five average salaries in Belarus for the previous month (to date approximately BYN 1,900 or €555).

Individual entrepreneurs generally pay social security contributions for pension insurance at a rate of 29 per cent and for social insurance at a rate of six per cent.

## Notes

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<sup>1</sup> The Civil Code lists seven types of persons that cannot act as a witness (eg, notaries and persons that have a conviction for perjury).

<sup>2</sup> The rules on the order of calling heirs to inherit by the operation of law and on the amount of their shares in the estate may be changed by a notarised agreement between the interested heirs concluded after the inheritance opening. Such an agreement should not affect the rights of non-participating heirs, as well as heirs entitled to a compulsory share.

<sup>3</sup> The degree of relationship is determined by the number of births, separating the relatives from one another. The birth of the testator shall not be included in this number.

<sup>4</sup> BYN 3,700 (approximately €1,080) as of 31 August 2023.