
Ukraine

International Estate Planning Guide

Individual Tax and Private Client Committee

Contact:

Viktoriya Fomenko
INTEGRITES, *Kyiv*
viktoriya.fomenko@integrites.com

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I. Wills and disability planning documents

A. Wills under Ukrainian legislation

Only individuals in full legal capacity are entitled to make a will. The right of the testator is exercised personally, whereas a will must be made freely in a written form and signed by the testator. Making a will through a representative is not permitted under the Civil Code of Ukraine (the 'Civil Code').

If a person, by virtue of some kind of illness, physical disability or any other reason, is incapable of signing the will in person, it can be signed by another person and witnessed by a notary and the testator. An heir cannot be a signatory to such a will.

The testator may appoint one or several heirs, as well as an alternate heir, irrespective of any family relations (even a legal entity can be appointed as an heir). At the same time, the forced heirship regime applies, provided heirs meet certain conditions prescribed below.

The testator may also divest any of the legal heirs of the right to inherit. Nevertheless, in case of the death of the person divested before the testator's death, the divestment of the right to inherit loses effect. Thus, the children of such a divested person shall have the right to succession on common grounds.

General requirements for the form of the will under the Civil Code are as follows:

1. issued in writing, with the specification of the date and place of issuance;
2. signed personally by the testator or, as explained above, in exceptional instances, by another person; and
3. verified by a notary or other authority provided by law.

Thus, the following wills are deemed notarised if attested in the presence of at least two witnesses:

- wills of persons undergoing treatment in hospitals or any other institutions of medical care attested by chief doctors, their deputies for medical matters or doctors on duty at these hospitals or institutions;
- wills of persons sailing in seagoing vessels or ships in internal waters under the flag of Ukraine attested by the masters of those ships;
- wills of participants in an expedition attested by its head;
- wills of soldiers attested by the commanders of units, formations or institutions and military schools;
- wills of persons convicted to imprisonment or under arrest attested by the head of the respective institution; and
- wills attested by local governmental authorities if the will is not private and if there is no notary in the respective locality (in this particular situation, witnesses are not required).

The violation of the aforementioned requirements leads to the nullity of the will.

A duly verified will has to be registered in the Inheritance Register.

The Civil Code envisages several types of wills.

CONDITIONED WILL

The testator may impose a certain condition on the right to inherit under the will, either related or unrelated to the heir's actions. Such a condition shall not be unlawful or contradict moral principles. The condition specified in the will shall exist at the time of the opening of the inheritance in order for the heir to inherit the respective estate.

WILL WITH TESTAMENTARY RENUNCIATION (LEGACY)

The testator may impose on the heir an obligation to provide a respective person (the legatee) with a certain property or proprietary right, regardless of whether such a property or proprietary right is included in the estate. However, the heir's obligations under testamentary renunciation are limited to the amount of inherited property subject to the deduction of the testator's debts.

WILL WITH TESTAMENTARY BURDEN

The testator may oblige the heir to perform specific non-material actions (eg, dispose of personal papers, special place and/or form of the burial ritual, or inform somebody of something).

WILL WITH SERVITUDE

The testator may establish servitude over the land plot, other natural resources or other immovable property for the benefit of a particular person.

PRIVATE WILL

A notary verifies a private will without becoming acquainted with its content. The will must be passed to the notary in a sealed envelope with the testator's signature on it.

JOINT WILL OF SPOUSES

Spouses may issue a will with respect to the jointly owned estate. After the death of one of the spouses, his/her estate is transferred to the other spouse. In the event of the death of the other spouse, the right to inherit passes to the persons specified by the spouses in their joint will.

The property of a person may also be inherited under an *inheritance agreement*. According to the terms of such an agreement, one party (the heir) undertakes to fulfil certain instructions from the other party (the testator), and in the event of the death of the latter, his/her property is passed to the former.

The subject of the inheritance agreement may also be property owned by the spouses under the right of joint ownership.

The testator is entitled to oblige the party(ies) of the agreement to perform proprietary and non-proprietary actions. The inheritance agreement must be concluded in written form before a notary and registered in the Inheritance Register.

B. *Enforceability of foreign wills*

Foreign wills are generally enforceable and recognised in Ukraine. If an heir wants to rely on a foreign will, it should be recorded in the Inheritance Register of Ukraine.

Generally, cross-border inheritance typically causes conflict of laws to arise. In this regard, the ability of the testator to make or revoke a will, as well as the form of the will, are governed by the law of the country in which the deceased had his/her place of permanent residence at the time of issuing a will or at the time of death.

In addition, Ukraine has either entered into or succeeded after the Union of Soviet Socialist Republics (USSR) a number of bilateral agreements with many countries (Lithuania, Latvia, Mongolia, Poland, Moldova, Georgia, Estonia, China, North Macedonia, Turkey, Czechia, Hungary, Greece, Bulgaria, Cyprus, Libya, the United Arab Emirates and India), which govern various issues relating to cross-border inheritance.

Ukraine is also a party to the 1993 Minsk Convention, which applies between most of the former Soviet republics, as well as to the Convention on the Establishment of a Scheme of Registration of Wills (the 'Registration of Wills

Convention'). For the purposes of the Registration of Wills Convention, each contracting state is responsible for registration provided by the convention. Thus, a testator can register his/her will with the competent authorities not only in Ukraine but also in other contracting states to the Registration of Wills Convention. The Ministry of Justice of Ukraine and the competent authorities of other contracting states to the Registration of Wills Convention facilitate international cooperation in order to ensure the registration of relevant foreign wills and contracts of inheritance, as well as the exchange of information with interested parties.

II. Estate administration

A. Overview of administrative procedures

Under Ukrainian law, the responsibility for administering the deceased's estate may rest with the executor, who is usually appointed by the will-maker.

An executor can be a natural person with full civil capacity or a legal person. The position of the executor is voluntary and any person may be appointed as an executor, including an heir, if there is more than one heir.

In the case in which no executor is appointed by the will-maker, or the person appointed refused to fulfil the will or was removed from the execution of the will, a notary can appoint a will executor. Alternatively, in similar circumstances, the heirs have the right to choose the will executor from among the heirs or appoint another person as a will executor. If the heirs cannot reach an agreement regarding the person who should be appointed as an executor of the will, the latter may be appointed by a court. The new appointed executor should agree to perform functions delegated to him/her.

The functions of the executor are as follows:

- be the guardian of the inheritance estate;
- inform the heirs, legatees and creditors of the opening of the inheritance;
- demand that the testator's debtors perform their obligations;
- manage the inheritance until its full acceptance by the heirs;
- ensure the receipt of the due part of the estate by each of the heirs under the will, as well as under the forced heirship regime; and
- ensure the performance of actions conditioned in the will.

The certificate confirming powers of the will executor is issued by the notary who oversees the succession. The notary who manages the succession takes measures to protect the inheritance estate on his/her own initiative or on the application of the heirs. The necessary measures for protection can only be taken after documents confirming the death of the testator have been received, as well as the time and place of the opening of the inheritance, but not later than the day after the date of the receipt of such documents.

The notary also prepares a list (inventory) of the inheritance estate and transfers listed property to the heirs or other persons. An inventory is carried out with the participation of interested persons and the will executor (if he/she was appointed in the will) in the mandatory course of the inventory of the estate.

As a next step, the notary appoints a guardian of the estate from the list of heirs, or it could be any third party proposed by the heirs. If there is a will executor, he/she becomes a guardian of the entire estate. Unless a guardian is one of the heirs, he/she is entitled to remuneration in the amount established by law; he/she can be compensated for expenses associated with the custody and management of the estate.

As to estate protection, it lasts until the heirs accept the inheritance or the expiration of a six-month period (if the inheritance was not accepted). The term for protecting the estate can be extended.

B. Intestate succession and forced heirship

For cases in which a will is absent, the Civil Code of Ukraine prescribes the mechanism of succession under the law.

There are five priorities of legal heirs:

First priority	Children, including those conceived in the lifetime and born after the death of the testator, surviving spouse and parents
Second priority	Brothers and sisters, grandfather and grandmother, both paternal and maternal
Third priority	Aunts and uncles
Fourth priority	Persons who lived as one family with the testator for at least five years before the inheritance opening
Fifth priority	Other relatives up to the sixth degree of kindred ¹ (relatives of a closer degree shall have priority over relatives of a further degree) and dependents ² other than his/her family members

When there are several heirs of the same priority, they are entitled to equal shares of the inheritance. At the same time, it is possible to change the share of one of the heirs in the inheritance by oral agreement with regard to movable property. With respect to immovable property or vehicles, the heirs shall enter into a written notarised agreement.

In addition, the Civil Code prescribes for the right of *succession based on the right of representation*:

- grandchildren and great-grandchildren shall inherit the share of the inheritance to be legally inherited by their mother, father, grandmother or grandfather, had they lived at the moment of the opening of the inheritance;
- great-grandmothers and great-grandfathers shall inherit the share of the inheritance to be legally inherited by their children (ie, grandmothers and grandfathers of the testator), had they lived at the moment of the opening of the inheritance;
- nephews and nieces shall inherit the share of the inheritance to be legally inherited by their mother and father (ie, sister and brother of the testator), had they lived at the moment of the opening of the inheritance; and
- cousins shall inherit the share of the inheritance to be legally inherited by their mother and father (ie, aunt and uncle of the testator), had they lived at the moment of the opening of the inheritance.

The same rules regarding equal shares shall apply to this type of succession.

Finally, certain persons are entitled to a mandatory portion of the inheritance (forced heirship regime). Irrespective of the will, the heir's

- juvenile children;
- grown-up incapable children;

- incapable widow (widower); and
- incapable parents

shall inherit half of the shares that would belong to each of them in the case of legal succession.

The court may decrease the amount of the mandatory portion, taking into account relations between the given heirs and the testator or other essential circumstances. The mandatory portion of the inheritance shall include the value of the usual household and private items; the value of testamentary renunciation for the benefit of a person eligible to the hereditary portion; and the value of other items and property rights inherited by this person.

C. Marital property

The Civil Code of Ukraine does not directly regulate the inheritance of an estate obtained in the period of being married. However, according to the Family Code of Ukraine, property acquired by spouses during the marriage belongs to them under the right of joint ownership, regardless of the fact that one of them did not have independent earnings (income) for a valid reason (education, household, child care, illness, etc). It is presumed that everything acquired during the marriage, apart from the things of individual use, is an object under the right of joint ownership of the spouses. Ukrainian legislation does not provide for special rules of matrimonial property succession; therefore, in such a case, the general regime of inheritance shall apply, taking into account the legal positions of the Supreme Court.

On the death of one of the spouses, inheritance opens only with respect to the personal property of the deceased and does not include the other spouse's share in the matrimonial property. The surviving spouse acting as heir may apply for the acceptance of the estate and for the issuance of a matrimonial share certificate with respect to his/her share in the matrimonial property.

As regards civil marriage, the Family Code of Ukraine enshrines that if a woman and man live as one family but are not married, the property acquired by them during the period of their joint living belongs to them under the right of joint ownership, unless otherwise stipulated in a written agreement between them.

Therefore, there are no special rules for marital property succession. Meanwhile, both married persons and those residing together shall also enjoy the regime of joint ownership for the purposes of succession issues.

D. Succession of separate categories of property

The Civil Code also envisages peculiarities for particular cases of inheritance. This is connected with a particular character of the estate.

LAND

The right to ownership of land shall pass to the heirs on general grounds, with the preservation of the land's target use. The Land Code of Ukraine (the 'Land Code') distinguishes between nine categories of land plots, including agrarian, residential and public building, and recreational.

If a person inherits houses, other buildings and constructions, he/she shall also acquire:

- the right to ownership or use of the land under the said constructions; and
- the right to ownership or use of the land necessary for maintenance thereof (unless another size of the land plot is specified in the will).

PAYOUTS

The amount of wages, pension, scholarship, alimony, aids for temporary work incapability, compensation for mutilation or other health disturbance, and other welfare benefits of the testator that were not received in his/her lifetime shall be transferred to his/her family members, or in the absence thereof, included in the inheritance.

DEPOSITS

A depositor can dispose of his/her right to a deposit in a bank or financial institution in the case of death by making a will or a testamentary arrangement with the bank or financial institution. The right to a deposit shall be included in inheritance, irrespective of the manner of disposal thereof.

INSURANCE PAYMENTS

Insurance payments shall be inherited in general order. Meanwhile, in the case in which the insurer in the personal insurance contract appointed a person to inherit the insurance payments, this right is excluded from the estate.

COMPENSATION

Heirs are entitled to all types of compensation, inter alia, in connection with a breach of contract and causing damages. This also includes penalties resulting from the non-fulfilment of contractual obligations before the testator that were awarded by a court to the testator in his/her lifetime.

The right to compensation for moral damages passes to the heir, subject to it being awarded by a court to the testator in his/her lifetime.

Any other compensation that could have been obtained by the testator during his/her lifetime shall be automatically awarded to the heir.

At the same time, the heir shall compensate for material damages caused by the testator. Moral damages caused by the testator shall be compensated for by the heir only if such compensation was adjudicated by the court in the testator's lifetime. The same rule applies to penalties ordered by the court in the testator's lifetime.

Generally, the sum of compensation is limited to the value of inherited property.

MAINTENANCE, CARE, TREATMENT AND BURIAL OF THE TESTATOR

The heirs are obliged to reimburse one of them or another person for the reasonable expenses incurred in the maintenance, care, treatment and burial of the testator. The costs of maintenance, care and treatment of the testator include the costs for up to three years before his/her death.

III. Planning structures

A. Legal concept

1. TRUST

Ukrainian legislation does not have a common law concept of 'trusts' with a split between legal and beneficial ownership. In addition, Ukraine has not ratified the Convention on the Law Applicable to Trusts and on their Recognition (Hague Trusts Convention) of 1 July 1985. Nonetheless, the Ukrainian concept of a so-called 'trust' (which is not a trust in the original meaning) has two subdivisions under the Civil Code of Ukraine: (1) trust as a means for securing borrowers obligations (eg, pledge, mortgage or suretyship) arising from a loan agreement; and (2) trust established under an asset management agreement.

As to the second subdivision, a trust may be established under an asset management agreement pursuant to which the settler transfers respective property to the management of the other party for a certain period of time and the manager undertakes to manage such property on its own behalf, but in the interests of the settler or any

other beneficiary nominated by the settler and against remuneration payable by the settler. Establishing a trust under an asset management agreement does not result in the termination of the settler's legal and beneficial ownership.

The Supreme Court defines a trust created under an asset management agreement as a limited proprietary right conferred on the trustee, the scope of which is limited by law and the respective asset management agreement.

Therefore, a trust scheme in which the trustee becomes the legal owner of the trust property and holds the title of ownership for the benefit of the beneficiary cannot be set up under Ukrainian law, nor is it recognised in Ukrainian legislation, other than for the purposes of anti-money laundering and the controlled foreign companies' rules. Notwithstanding the aforementioned, Ukrainian residents and citizens of Ukraine are not prohibited to set up foreign trusts, endow assets therein and act as a settler, protector or beneficiary of a trust (subject to currency control restrictions). Moreover, according to Ukrainian conflict of laws, foreign trustees may act in Ukraine under the authority conferred on them by a respective trust agreement governed by a foreign law.

2. ARRANGEMENT OF THE MANAGEMENT OF PROPERTY

The Ukrainian legal system has features of the continental type, which explains the absence of the 'trust' concept. As mentioned previously, in Ukrainian legislation, a similar vehicle is an asset management agreement.

According to legislation, the manager undertakes to conduct the management of the transferred assets on his/her behalf and in the interests of the owner. The manager doesn't gain any benefit from the transferred assets, but he/she obtains the right to remuneration for completed duties.

Benefits from property transferred to management belong to the owner of the property. In addition, the owner of the property may indicate a person who is entitled to benefit from the property transferred to management (beneficiary) under such an agreement.

As a rule, money cannot be the subject of a property management agreement.

3. FUND/FOUNDATION

National legislation enshrines the possibility to incorporate a charitable foundation or investment fund depending on their purposes.

Charitable foundations

First, as adopted by most European countries, Ukrainian legislation also defines that the purpose of charitable organisations cannot be the receipt and distribution of profits among the founders, members of management bodies or other related persons, as well as among the workers at such organisations.

Under the Law on Charitable Activities and Charities, the charitable foundation is recognised as an organisation that operates on the basis of the charter, has participants and is managed by participants who are not obliged to transfer any assets to this organisation for the achievement of charitable purposes. A charitable foundation can be created by one or several founders both as individuals or legal entities. The assets of the charity fund may be endowed by the participants and/or other benefactors.

Funds

In Ukraine, investment funds are called joint investment institutions (the 'Funds'). According to the Law of Ukraine on Joint Investment Institutions, Funds are determined as specific legal vehicles developed for the attraction and effective allocation of investors' financial resources.

The aforementioned law provides that a corporate investment fund can be established in the form of a joint-stock company. It can be founded by one or more individuals or legal entities. Legal entities cannot be the founders of a Fund if its share of state property in the statutory capital exceeds 25 per cent.

To establish a Fund, its founders enter into an agreement, approve the statute (regulation) and register the Fund in the order prescribed for the registration of joint stock companies.

Under Ukrainian legislation, the size of the required minimum capital depends on the size of the minimum salary that is determined by the Law on the State Budget for the relevant year. As prescribed in the law, the capital shall be at least 1,250 minimum salaries, which is equivalent to UAH 8,375,000 as for 2023 (approximately €210,215 as of August 2023).

The assets of the investment fund belong to its investors under the rights of joint ownership. The participation of each investor in the investment fund is confirmed by the ownership of the securities of this fund: investment certificates or shares. The classification of investment funds is as follows:

Depending on the form:		
Unit investment fund	Corporate investment fund	Venture fund
<p>The pool of assets belong to the members of such a fund under the right to collective share ownership, and are managed by the company and accounted for separately from the results of its economic activity.</p> <p>This fund is not a legal entity and cannot have officials.</p>	<p>A legal entity formed in the form of a joint-stock company and exclusively conducting joint investment activities.</p>	<p>A non-diversified joint investment institution that exclusively conducts the private placement of the securities of the collective investment institution among certain legal entities.</p>

Depending on the arrangements for the exercise of activities:			
Open	Closed	Interval	
<p>It is deemed to be open to the extent that it remains legally liable to purchase back the securities issued by such a Fund from any investor holding such securities at any given moment.</p>	<p>It is deemed to be closed to the extent that it does not remain legally liable to purchase back the securities issued by such a Fund from any investor holding such securities at any given moment.</p>	<p>Remains liable to purchase back the securities issued by such a Fund from any investor holding such securities during the period prescribed in the investment declaration of the Fund.</p>	
Depending on the structure of assets:			
Diversified	Non-diversified	Specialised	Qualified

<p>Funds whose asset structure simultaneously complies with special requirements defined by law and aimed at reducing the risks associated with portfolio investment activities. Open and interval Funds may only be diversified.</p>	<p>Funds whose asset structure is not subject to the requirements and/or restrictions provided for diversified, specialised and qualified investment funds.</p>	<p>Funds that correspond to certain classes defined by law (eg, money market funds, government securities funds, index funds and banking metals funds).</p>	<p>Funds that invest assets exclusively into one of the qualifying classes of assets defined by law (eg, the united class of shares, credit assets class and class of real estate) and do not have any asset structure requirements.</p>
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B. *Management and fiduciary duties*

1. CHARITABLE FOUNDATION

The governing bodies of charitable foundations are:

- the general meeting of the members that conduct the functions of the governing body in relation to issues of charitable foundations, where the exclusive competence of the general meeting of participants includes the making of amendments to the charter; appointment, election or termination of powers (revocation) of the executive body and supervisory board members; and making a decision on reorganisation or liquidation;
- the executive body that performs the role of the permanent governing body of the charitable organisation, where one or more individuals with full capacity can be members of the executive body, which acts on behalf of the charitable foundation in the order and within the limits of the powers established by law and the constituent documents of the charitable foundation; and
- the supervisory board is the supreme governing body that approves charitable programmes and monitors the compliance of activities and the use of the foundation's assets with its constituent documents. In addition, members of the supervisory board of the charitable organisation cannot be members of the executive body.

2. FUND

The corporate fund's bodies are:

- the general meeting, which is the supreme body that makes decisions regarding any issue related to the Fund's activity; moreover, legislation contains the actions that are included for the exclusive competence of the general meeting, such as making amendments to the charter, making a decision on the payment of dividends and the election of members to the supervisory board; and
- the supervisory board, which ensures the protection of participants' rights, as well as supervision over the fund's activities and fulfilment of the terms stated in its constitutive documents.

The assets of the investment fund are owned by individual investors-shareholders and managed by an asset management company (AMC). Under legislative requirements, every fund is obligated to hire an AMC to manage

its assets. Prior to operating on the market, the AMC shall obtain the relevant licence issued by the National Securities and Stock Market Commission (NSSMC) for the provision of professional services.

The officials of an AMC are the chair and members of the supervisory board, executive body, corporate secretary, and chair and members of other bodies of the company (if the formation of such bodies is provided by its charter).

An AMC's activities are strictly regulated and limited by law and controlled by the NSSMC.

The main functions of an AMC are as follows:

- issuance, placement and redemption of the Fund's securities;
- attraction of agents who place/repurchase the Fund's securities among investors;
- analysis of the securities market, real estate and other markets, the instruments of which are part of the Fund's assets; and
- regular revaluation of assets, registration of contracts for the acquisition and sale of assets, preparation of reports to state controlling bodies and so on.

The custodian of the assets, depository, auditor (audit firm), appraiser of property and their affiliated entities cannot be participants in the fund with which they have entered into service contracts.

C. Establishment and incorporation

1. CHARITABLE FOUNDATION

Charitable foundations acquire the rights and duties of a legal entity from the moment of their state registration. The state registration of charitable foundations is conducted by the state registrars.

According to the results of the state registration, the charitable foundation receives a paper extract from the Unified State Register of Enterprises, Institutions and Organizations upon request. An electronic version of its statute is published on the website of the Ministry of Justice of Ukraine (access is possible using the access code provided during the state registration).

2. FUND

Under the provisions of national legislation, Funds must be registered by the NSSMC. The commission enters all the relevant information about the Fund into the Single State Register of Collective Investment Institutes and, as a result, the registration code is assigned to the Fund.

The Regulation of Funds is the source of information for the purposes of entering information into the register. The regulation is a document defining the procedure, terms, conditions and features of the activity of Funds. The registration of a regulation or changes to it is carried out within 30 working days from the date of the receipt of documents by the NSSMC.

The grounds for refusal to register the regulation and Fund in the register, as well as amendments to the regulation, are as follows:

- the inconsistency of the submitted documents with the requirements of the law;
- the absence of documents that must be submitted according to the law;
- the indication of inaccurate information in the submitted documents;
- the availability of mutually exclusive information in the documents submitted for the registration of the regulation or its amendments; or

- violations of the procedure for the establishment of a joint investment institution.

IV. Taxation

A. Domicile and residency

Ukrainian legislation uses the concept of tax residency in order to define whether a person shall be liable for taxation. Residents are taxable on their worldwide income, whereas non-residents are taxed on Ukrainian-sourced income only.

INDIVIDUALS

According to the Tax Code of Ukraine (the 'Tax Code'), an individual shall be considered as a tax resident of Ukraine if he/she meets one of the following criteria:

1. the individual resides in Ukraine;
2. the individual, residing both in Ukraine and abroad, has a place of permanent residence (ie, lives permanently) in Ukraine;
3. the individual, having a place of permanent residence both in Ukraine and abroad, has his/her centre of vital interests in Ukraine (ie, stronger personal and economic relations);
4. it is not possible to define the state where the individual has his/her centre of vital interests or the individual does not have a permanent residence in any other state; however, such an individual resides in Ukraine not less than 183 days per fiscal (calendar) year;
5. if it is not possible to define the residential status of the individual according to the aforementioned criteria, the individual is considered to be a tax resident of Ukraine if he/she is a citizen of Ukraine; or
6. if the individual has no citizenship and the above rules do not apply, his/her residential status shall be defined in accordance with the provisions of international law.

Self-determination by an individual that he/she has a place of permanent residence in Ukraine and the registration of such an individual as a self-employed person are sufficient for the recognition of the individual as a tax resident of Ukraine.

It should be noted that the double tax treaties (DTTs) between Ukraine and other jurisdictions stipulate rules for determining the place of an individual's tax residence, and if such rules are different from those provided by Ukrainian legislation, the DTT's rules shall prevail.

LEGAL ENTITIES

Legal entities are tax residents of Ukraine if they were established and conduct business activity according to Ukrainian legislation, either within the territory of Ukraine or outside.

Foreign companies, organisations, their branches and/or representative offices are not tax residents of Ukraine, unless recognised as tax residents according to the permanent establishment concept. However, as of 1 January 2022, a foreign company may be deemed as a tax resident of Ukraine if its place of effective management is in Ukraine (eg, management of the company's accounts or staff is conducted in Ukraine, or meetings of the executive body are held in Ukraine).

In any event, the provisions of a DTT shall prevail over domestic law when identifying a legal entity as a tax resident.

B. *Gift, estate and inheritance taxes*

1. GIFT AND INHERITANCE TAX

According to the Tax Code, the same tax regime is applied to gifts and inheritance, with some minor differences.

Individuals

The following factors are relevant in order to determine taxation on gifts/inheritance.

1. Is the donator/testator a tax resident of Ukraine?
2. Is the donee/heir a tax resident of Ukraine?
3. Are the donator/testator and donee/heir, respectively, family members (relatives)?

The most beneficial tax regime is stipulated in the case in which the donator/testator and donee/heir, respectively, are first- or second-degree relatives (ie, parents, spouses, children, siblings, grandparents or grandchildren). In this case, all gifts and/or inheritance are subject to a zero per cent tax rate.

If the donator/testator and donee/heir, respectively, are not first- or second-degree relatives, but both are tax residents of Ukraine, the gift and/or inheritance shall be taxed at the five per cent rate of personal income tax (PIT) and 1.5 per cent of military duty.

The least advantageous regime is provided if the donator/testator or donee/heir, respectively, are not tax residents of Ukraine. In this situation, the received gift/inheritance is subject to PIT at the 18 per cent rate and 1.5 per cent of military duty, even if such a non-resident is a first- or second-degree relative.

As to the base for the PIT calculation, generally such a base shall be estimated as the value of the gift or inheritance (usually determined by a licensed assessor). However, for gifts, such a base shall be decreased by 25 per cent of the minimum salary (approximately €42 as of 2023).

In addition, notwithstanding the above, in the case that a donator is a legal entity or individual entrepreneur, the full sum of the gift (decreased by the aforementioned 25 per cent of minimum wages) shall be taxed at the standard 18 per cent PIT rate and 1.5 per cent military duty.

Legal entities

Resident legal entities shall include all sums of gifts and inheritance in their overall income for the purpose of calculating the financial result (which may be subject to tax adjustments). In the case that the gross financial result is positive, such a result shall be subject to corporate profit tax (CPT). The basic CPT rate is 18 per cent.

2. ESTATE TAX

Generally, there are two types of taxes related to real estate owned either by individuals or legal entities, namely annual property tax and PIT/CPT resulting from real estate transfer.

Annual real property tax (individuals and legal entities)

Legal entities that own real estate are subject to tax at a rate of up to 1.5 per cent of the minimum salary (approximately €2.50 as of 2023) per square metre owned. The precise tax rate is defined by local authorities.

Individuals are exempt from annual real property tax if:

- the total area of their apartment(s) does not exceed 60 square metres;
- the total area of their house(s) does not exceed 120 square metres; or

- the total area of their apartments and houses, if individuals own both, does not exceed 180 square metres.

Each subsequent square metre shall be taxed at the aforementioned rate if the total area of an individual's estate exceeds the above indications.

However, if the total area of the apartment owned by an individual or legal entity exceeds 300 square metres and/or the area of the house exceeds 500 square metres, the individual/legal entity shall additionally pay a fixed tax in the amount of UAH 25,000 (approximately €627.50 as of August 2023) per annum.

A separate tax applies to land. Land tax at a rate of up to 12 per cent for legal entities and up to three per cent for individuals is applicable to the land's assessed value per annum. The precise tax rate is imposed by local authorities depending on the location and use of the land.

PIT (individuals)

The applicable tax regime depends on:

- type of real estate sold;
- duration of ownership; and
- residential status of the seller.

In particular, if an individual (resident or non-resident) sells, no more than once per fiscal year, a

- house (or a part thereof);
- apartment (or part thereof);
- room; or
- garden house,

provided that a legal title has been held for not less than three years, there will be no PIT levied on income resulting from the respective property's sale. The three-year period of ownership requirement does not apply to inherited property.

The same rules are applied to the sale of land, provided that the area of land does not exceed limits stipulated for the free transfer defined in the Land Code.

If there is more than one sale during a fiscal year or the sale of an object other than those indicated above, the generated income shall be subject to PIT and military duty. Thus, if the seller is a tax resident of Ukraine, there will be a rate of five per cent of PIT and 1.5 per cent of military duty applied to the income received. In the case of a non-resident seller, the PIT rate will be 18 per cent and 1.5 per cent military duty.

The tax base shall be the contractual value of the estate, which, however, must be not less than its estimated value calculated by the licensed assessor.

Apart from taxes, the purchaser is subject to a pension levy at one per cent of the contract price and a state levy by either party at one per cent of the contract price.

Gains derived from the sale of movable property are taxed at a rate of five per cent. However, if such gains were derived from the first sale of motor vehicles during the year, they are exempt from tax. Further sales of motor vehicles by the same person during the same reporting period shall be subject to tax at five per cent (second sale) and 18 per cent (third sale).

CPT (legal entities)

Resident legal entities shall include all sums of generated income in their income base for the purpose of calculating the financial result (subject to tax adjustments). The financial result (if it is positive) will be subject to CPT at a rate of 18 per cent.

C. Taxes on income and capital

All tax residents of Ukraine, either individuals or legal entities, shall pay taxes on their worldwide income, while non-residents are liable to taxation only on Ukraine-sourced income.

Ukraine has also entered into a number of DTTs that provide a preferential tax regime to some types of income generated by residents of one state in another state.

INDIVIDUALS

The basic PIT rate is 18 per cent, while some income may be subject to a lower tax rate (zero per cent, five per cent or nine per cent) or tax-exempt. A 1.5 per cent military duty applies to all income subject to PIT.

LEGAL ENTITIES

The basic CPT rate is 18 per cent. Certain types of business, such as insurance, are taxed under special regimes with lower tax rates. Taxable profit shall be calculated in accordance with domestic accounting rules subject to tax differences.

Generally, income generated by non-residents is subject to WHT at a 15 per cent tax rate, unless a lower rate is stipulated by an applicable DTT.

D. Recent tax changes

Due to the unprovoked Russian aggression against Ukraine, most tax changes were caused by national security threats. These changes included, inter alia, the allowance for businesses to pay two per cent turnover tax instead of CPT and VAT, except for certain categories of companies, which was recently abolished and pre-war taxation restored; certain VAT exemptions for goods highly needed in wartime conditions; and a tax audit moratorium, which was partially revoked recently. There have been other tax developments not related to martial law.

E-RESIDENCY

Foreign individuals who have reached the age of 18, and subject to them not being residents of Ukraine; not having Ukrainian citizenship and Ukrainian tax residency; not having a permanent residency permit in Ukraine; and not deriving business income sourced from Ukraine (except passive income); and subject to them being citizens, permanent residents or tax residents of states included on the List of States Citizens that may Acquire Electronic Residency Status (E-Residency), may get e-residency status in Ukraine, which allows them to register in Ukraine as an individual entrepreneur, paying five per cent turnover tax, along with, for example, having access to Ukrainian banking services and having the opportunity to execute documents with an e-signature. An e-resident may not conduct business activities in Ukraine, which means that e-residency applies only to out-of-Ukraine commercial activities. In addition, an e-resident is supposed to comply with the annual turnover limit of 1167 minimum salaries established by law (approximately €196,258 as of August 2024), otherwise the exceeding sum will be taxed at the 15 per cent rate.

PAYMENT OF TAXES WITH ELECTRONIC MONEY

Taxes may be paid with electronic money, that is, units of value stored in electronic form, issued by banks, electronic money institutions or subsidiaries of foreign payment institutions licensed by the National Bank of Ukraine for payment transactions that are accepted as means of payment by persons other than their issuer, and are monetary obligations of such an issuer. Currently, due to martial law, the e-money moratorium is in force.

E. *Temporary available measures*

TAX AUDIT MORATORIUM

Despite the partial cancellation of the tax audit moratorium, taxpayers are still exempt from scheduled documentary tax audits, except certain categories of taxpayers, namely: (1) businesses engaged in the production and/or sale of excisable goods; (2) taxpayers operating in the field of gambling; and (3) taxpayers providing financial and payment services. While the law extends the list of grounds for unscheduled tax audits, the taxpayer will be exempt from penalties incurred on the amount of taxes additionally assessed based on the results of documentary audits subject to him/her paying the tax within 30 days.

LIABILITY RELIEF

Starting from 1 August 2023 until the termination of martial law, taxpayers are exempt from fines and penalties if mistakes in tax returns are corrected by the taxpayer himself/herself. Apart from that, taxpayers that are not able to fulfil their tax obligations in time due to the war conditions shall fulfil such obligations within six months after the termination of martial law and shall be exempt from liability for the failure to fulfil their obligations on time. However, taxpayers shall prove such an inability before the tax authorities by submitting a respective application outlining the circumstances that provide the ground for relief.

Notes

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- ¹ The degree of kindred shall be determined by the number of births between the testator and the relative. The testator's birth shall not be included in this number.
 - ² The dependent shall be an underage or incapable person other than the testator's family members, who received material assistance from the testator for at least five years, which was the only or the main means of subsistence.