Ukraine

International Estate Planning Guide

Individual Tax and Private Client Committee

Contact:

Viktoriya Fomenko
Integrites, Kyiv
viktoriya.fomenko@integrites.com

Updated 9/2021

Table of Contents

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, witnessed by a notary. An heir cannot be a signatory of 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 the 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 to the form of will under the Civil Code are as follows:

- issued in writing, with specification of date and place of issuance;
- signed personally by the testator or – as explained above – in exceptional instances, by another person;
- verified by the notary or other authorities, provided by the 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 and so on, attested by the 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 of 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).

Violation of the aforementioned requirements leads to nullity of the will.

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

The Civil Code envisages several types of wills as summarised below.

1. CONDITIONED WILL

The testator may put the right to inherit under will upon a certain condition both related to the heir's actions or not. Such a condition shall not be unlawful or contradicting moral principles.

2. PRIVATE WILL

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

3. JOINT WILL OF SPOUSES

The spouses may issue a will with respect to the jointly owned estate. Such a will cannot be private. After the death of one of the spouses, his or 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.

4. INHERITANCE AGREEMENT

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 of the other party (the testator), and in the event of the death of the latter, his or her property is passed to the former.

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

The testator is entitled to oblige the party/parties 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 or her place of permanent residence at the time of issuing the will or at the time of death.

In addition, Ukraine has either entered into, or succeeded after the Soviet Union, a number of bilateral agreements with many countries (Bulgaria, China, Cyprus, Czechia, Estonia, Georgia, Greece, Hungary, India, Latvia, Libya, Lithuania, Moldova, Mongolia, North Korea, North Macedonia, Poland, Turkey and the United Arab Emirates), 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 for by the convention. Thus, a testator can register his or 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, as well as 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 exchange of the information with interested parties.

II. Estate administration

A. Overview of administrative procedures

Under Ukrainian law, the responsibility of administering deceased estates may be rested with the executor, who is usually appointed by the testator.

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 the heir (even if there is more than one heir).

In the case that no executor has been appointed by the testator or if the person appointed refuses 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 executor may be appointed by the court. A new appointed executor should agree to perform functions delegated to him or her.

The functions of the executor are as follows:

- guardian of the inheritance estate;
- informing heirs, the bequeathed and creditors regarding opening of the inheritance;
- demanding the testator's debtors to perform their obligations;
- managing the inheritance until its full acceptance by the heirs;
- ensuring receipt of the due part of the estate by each of the heirs under the will; and
- ensuring performance of any 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 upon his or her own initiative or upon application of the heirs. The necessary measures of the protection can be taken only after receiving documents confirming the death of the testator, time and place of opening the inheritance, but not later than the next day from the date of receipt of such documents.

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

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 or she becomes a guardian of all the estate. Unless a guardian is one of the heirs, he or she is entitled to remuneration in the amount established by law; his or her expenses associated for custody and management of the estate can be compensated.

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

B. Intestate succession and forced heirship

In the absence of a will, 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, survivor spouse and parents;
Second priority:	brothers and sisters, grandfather and grandmother (both paternal and maternal);
Third priority:	aunt and uncle;
Fourth priority:	persons who lived as one family with the testator for at least five years before the inheritance opening; and.
Fifth priority:	other relatives up to the sixth degree of kindred (the relatives of a closer degree shall have priority over the further degree relatives) and dependents other than his or her family members.

Notes

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.

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.

When there are several heirs of the same priority, they are entitled to equal shares in 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 vehicle, the heirs shall enter into written notarised agreement.

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

- The 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 opening of the inheritance;
- the great grandmother and great grandfather shall inherit the share of the inheritance to be legally inherited by their children (ie, grandmother and grandfather of the testator), had they lived at the moment of 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 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 opening of the inheritance.

To this type of succession shall apply the same rules regarding equal shares.

Finally, certain persons are entitled to a mandatory portion in inheritance (the forced heirship regime). Irrespective of the will, that is, the deceased's: (1) juvenile children; (2) grown-up incapable children; (3) incapable widow (widower); and (4) 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 the 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 inheritance of the estate obtained in the period of marriage. However, according to the Family Code of Ukraine, the property acquired by the spouses during the marriage belongs to them as a right of joint ownership, regardless of the fact that one of them did not have independent earnings (income) for a valid reason (ie, education, household, childcare, illness, etc). It is presumed that everything acquired during the marriage, apart from the personal things for individual use, is the object of the right of joint ownership of the spouses.

Ukrainian legislation is silent with respect to the succession of marital property. Instead, it is based on the aforementioned concept of joint ownership. There are no special rules for such a type of property. The Civil Code provides that the joint ownership shall be inherited on the general grounds.

In addition, a holder of the right to joint ownership shall have the right to devise a share in the right to joint ownership also before its allocation in kind.

As regards the civil marriage, the Family Code of Ukraine enshrines that if a woman and a man live as one family but are not married, the property acquired by them during the period of their joint living belongs to them on 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 enjoy the regime of joint ownership also for the purposes of succession issues.

D. Succession of separate categories of property

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

1. LAND

The right to ownership of a land shall pass to the heirs on general grounds with 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 building, and constructions, he or 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).

2. PAYOUTS

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

3. DEPOSITS

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

4. INSURANCE PAYMENTS

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

5. COMPENSATION

The heir is entitled to all types of compensation in connection with breach of contract and causing moral damages. It also includes the penalties.

At the same time, the heir shall compensate material or moral damages incurred by the testator. Generally, the sum of compensation is limited to the value of the inherited property.

6. MAINTENANCE, CARE, TREATMENT AND BURIAL OF THE TESTATOR

The heirs are obliged to reimburse the reasonable expenses incurred by one of them or by the other person for 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 or her death.

III. Planning structures

A. Legal concept

1. TRUST

Ukrainian legislation does not have the concept of 'trusts'; the common law trust is not a generally recognised legal concept. Also, Ukraine has not ratified the Convention on the Law Applicable to Trusts and on their Recognition (Hague Trusts Convention) of 1 July 1985.

Nevertheless, the national law regarding the prevention of money laundering, financing terrorism and financing the proliferation of weapons of mass destruction defines the trust as a non-resident legal entity that carries out its activities on the basis of trust property, where the attorney acts at the expense, and in the interests, of the principal, and also undertakes to perform certain legal actions for remuneration.

It is possible under the Civil Code to make an agreement on the management of property. However, there is no set of rules establishing trust elements, in particular the duties and powers of the trustee, the fiduciary relationship between trustee and beneficiary, breach of trust, and so on.

2. ARRANGEMENT OF THE MANAGEMENT OF PROPERTY

The Ukrainian legal system has the features of the continental type, which explains the absence of the 'trust' concept. As mentioned above, in Ukrainian legislation, a similar vehicle is the agreement on the management of property, where one party (owner of the property) transfers his or her assets to another party (manager) for management within a specified period.

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

The benefits from property transferred to management belong to the owner of the property. Also, the owner of the property may indicate a person who is entitled to benefit from the property transferred to the 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 its purposes.

a. Charitable foundations

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

Under the Law on Charitable Activities and Charities, a charitable foundation is recognised as an organisation that operates on the basis of a 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 individuals or legal entities. The assets of the charity fund may be endowed by participants and/or other benefactors.

b. 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 the 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 order to be 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, which is determined by the Law on the State Budget for the relevant year. As prescribed in legislation, the capital shall be at least 1,250 times the minimum salary, which is the equivalent of UAH 7,500,000 for 2021 (approximately €235,000 as of September 2021).

The assets of the investment fund belong to its investors on 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 the following:

Depending on the form:			
Unit investment fund	*Corporate investment fund*	*Venture fund*	
The pool of assets belonging to the members of such a fund under the right to collective share ownership, which are managed by the company and accounted for separately from the results of its economic activity. This fund is not a legal entity and cannot have officials.	A legal entity that is formed in the form of a joint-stock company and exclusively conducts joint investment activities.	A non-diversified joint investment institution, which exclusively conducts the private placement of the securities of a collective investment institution among certain legal entities.	
Depending on the arrangements for the exercise of activities:			
Open	*Closed*	*Interval*	
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.	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.	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.	
Depending on the structure of assets:			
Diversified	*Non-diversified*	*Specialised*	*Qualified*

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.	Funds whose asset structure is not subject to the requirements and/or restrictions provided for diversified, specialised and qualified investment funds.	Funds that correspond to certain classes defined by law (money market funds, government securities funds, index funds, banking metals funds, etc).	Funds that invest assets exclusively into one of the qualifying classes of assets defined by law (the united class of shares; credit assets class; class of real estate, etc) and do not have any asset structure requirements.

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; 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, taking a decision on reorganisation or liquidation;
- the executive body that conducts the role of the permanent governing body of the charitable organisation; 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, and approves the 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 and makes decisions regarding any issue related to the fund's activity; moreover, legislation contains the actions that are included to the exclusive competence of the general meeting, such as making amendments to the charter, taking a decision on payment of dividends, election of members to supervisory board, and so on; and
- the supervisory board, which ensures the protection of participant's 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 the 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 State Commission of Securities and Stock Market (the 'Commission') for the provision of professional services.

The officials of the AMC are the chairman and members of the supervisory board, executive body, the audit committee, the auditor, the corporate secretary, the chairman 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 Commission.

The main functions of an AMC are the following:

- issuance, placement and redemption of a Fund's securities;
- attraction of agents who place/repurchase a Fund's securities among investors;
- analysis of the securities market, real estate and other markets, 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, the depositary, the auditor (audit firm), the 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

A charitable foundation acquires the rights and duties of a legal entity from the moment of its state registration. The state registration of the charitable foundation is conducted by the state registrars.

According to the results of 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 by the access code that is provided during the state registration).

2. FUND

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

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

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

- the inconsistency of the submitted documents with the requirements of legislation;
- the absence of documents that must be submitted according to law;
- the indication of inaccurate information in the submitted documents;
- the availability of mutually exclusive information in the documents submitted for 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 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.

1. INDIVIDUALS

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

- the individual has place of permanent residence (ie, lives permanently) in Ukraine;
- the individual, having a place of permanent residence both in Ukraine and abroad, has his or her centre of vital interests in Ukraine (ie, stronger personal and economic relations);
- it is not possible to define a state where an individual has his or 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;
- 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 or she is a citizen of Ukraine; or
- if the individual has no citizenship and the above rules do not apply, his or her residential status shall be defined in accordance with the provisions of international law.

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

It should be noted that double tax treaties (DTT) 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.

2. 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 from 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, the management of the company's accounts or staff is conducted in Ukraine or the meeting of the executive body is held in Ukraine).

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

a. Individuals

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

- Is the donator/testator a tax resident of Ukraine?
- Is the donee/heir a tax resident of Ukraine?
- Are the donator/testator and the donee/heir respectively family members (relatives)?

The most beneficial tax regime is stipulated in the case where the donator/testator and the donee/heir 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 nil per cent tax rate.

If the donator/testator and the 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 a five per cent rate of personal income tax (PIT) and 1.5 per cent military duty tax.

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

As to the basis for the PIT calculation, generally, such a base shall be estimated as the value of a gift or inheritance (usually determined by a licensed assessor). However, for gifts, such a base shall be decreased by 25 per cent of the monthly minimum salary (approximately €48 as of 2021).

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

b. Legal entities

Resident legal entities shall include all sums of gifts and inheritance to their overall income for the purpose of calculating the financial result (which may be subject to tax adjustments). If 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 an estate owned either by individuals or legal entities, namely annual property tax and PIT/CPT resulting from an estate's transfer.

a. 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 minimum salary (approximately €3 as of 2021) 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;
- house(s) does not exceed 120 square metres; or
- apartments and houses, if an individual owns both, does not exceed 180 square metres.

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

However, if the total area of the apartment owned by the individual or legal entity exceeds 300 square metres and/or the area of the house exceeds 500 square metres, an individual/legal entity shall additionally pay fixed tax in the amount of UAH 25,000 (approximately €790 as of September 2021) per annum.

A separate tax applies for 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 on 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.

b. PIT (individuals)

An applicable tax regime depends on:

- type of an 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 part thereof);
- apartment (or part thereof);
- room; or
- garden house,

provided that the legal title has been held not less than three years before the sale, there will be no PIT levied on income resulting from the respective property's sale. The requirement of the three-year period of ownership 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 the limits stipulated for a free-of-charge transfer defined by 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 tax. Thus, if a seller is a tax resident of Ukraine, there will be five per cent of PIT and 1.5 per cent of military duty tax 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 a licensed assessor.

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

c. CPT (legal entities)

Resident legal entities shall include all sums of generated income to its 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 tax

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 providing a preferential tax regime to some types of income generated by residents of one state in another state.

1. INDIVIDUALS

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

2. 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. The taxable profit shall be calculated in accordance with domestic accounting rules subject to tax differences.

Income generated by non-residents generally is subject to WHT at a 15 per cent tax rate unless a lower rate is stipulated by the applicable DTT.

D. Recent tax changes

During the last few years, Ukraine has made significant steps in the implementation of the Action Plan on Base Erosion and Profit Shifting (BEPS) into its domestic litigation to reconcile it with international standards and approaches. Thus, in July 2018, Ukraine signed the Multilateral Convention to

Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the 'Multilateral Instrument' or MLI) that was ratified further and, in 2020, Ukraine proceeded with the next steps in this direction, inter alia, the rules for taxation of controlled foreign companies (CFC) were introduced, taxation of permanent establishments of non-residents in Ukraine were amended, and a tax amnesty was enacted and became effective in September 2021.

1. 'BUSINESS PURPOSE TEST'

A 'business purpose test' (the 'Test') has been implemented into the Tax Code with respect to transactions with non-residents that are subject to transfer pricing control or fall under the list of 'low tax' states (territories) or the list of defined organisational forms of non-residents. The Test is also applicable to transactions on the payment of royalties to non-residents. The main core of the Test is that the benefits provided by the DTT do not apply if the receipt of such benefits was the main purpose of the transaction with a non-resident.

2. CONTROLLED FOREIGN COMPANIES

A CFC is any non-resident legal entity or foreign transparent entity (including partnerships, trusts and foundations) controlled by an individual resident or legal entity resident of Ukraine.

A controlling person of a foreign company is determined as a person (both individual resident and legal entity resident of Ukraine) who:

- holds a share of more than 50 per cent;
- holds a share of more than ten per cent, whereas residents of Ukraine altogether hold 50 per cent and more of shares; or
- exercises actual control over a foreign entity (even if such a person is not a legal owner).

Actual control defined on the basis of ownership share and other criteria and can be established either directly or through a chain of indirect ownership. The CFC rules stipulate taxation of the undistributed profits of CFC at the level of such a Ukrainian resident at the following tax rates:

- 18 per cent PIT and 1.5 per cent military duty in case a controlling entity is an individual (lower tax rates may apply: nine per cent or five per cent rates if special requirements are met);
- 18 per cent in the case that a controlling entity is a legal entity; and
- there are the following exemptions when the profit of the CFC will not be taxed:
  - there is a valid DTT between Ukraine and the country of the CFC's residency; and
  - profit of the CFC is effectively taxed at least by 13 per cent CPT; or
  - CFC receives 50 per cent and less of passive income.

At any event, a controlling person must file a proper report to the tax authorities. The first reporting period is 2022. The controlling person may also file the CFC report for 2022 together with his or her income tax return for 2023.

E. Temporary available measures

1. TAX FREE LIQUIDATION OF FOREIGN COMPANIES

Income derived by Ukrainian resident individuals from the liquidation of foreign entities is exempt from taxation by the PIT if the following requirements are met:

- the liquidation procedure has been initiated after 1 January 2020 and completed before 31 December 2021; and
- the CFC was established no later than 23 May 2020.

Together with a tax declaration, an individual must also file an application for tax exemption of the received income from liquidation, indicating the details of the assets received. However, such income remains subject to military duty tax at a rate 1.5 per cent.

2. TAX AMNESTY FOR INDIVIDUALS

Commencing 1 September 2021 up until 1 September 2022, individuals (both residents and non-residents) who were residents of Ukraine at the time they gained assets or income (with some exemptions) (the 'applicant') are entitled to legitimate their assets previously acquired for untaxed funds by filing a special declaration and paying a special fee.

The tax amnesty provisions cannot be applied to cash (unless money is placed in a bank account); however, the following assets are subject to the special declaration:

- currency values;
- shares in the property of legal entities, securities and financial instruments and intellectual property rights;
- movable and immovable property; and
- other assets, property and property rights owned or controlled by the individual.

Once a special declaration has been submitted, the applicant has to pay a special fee at the following rates:

- five per cent if the assets are located in Ukraine, including currency allocated in Ukrainian banks unless the fee will be paid in instalments;
- seven per cent if assets are located abroad and unless the fee will be paid in instalments; after 1 March 2022, the rate will increase to nine per cent; and
- 2.5 per cent for Ukrainian Government bonds that were purchased from 1 September 2021 to 31 August 2022.