
Russia

International Estate Planning Guide

Individual Tax and Private Client Committee

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I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills: general consideration

The Russian succession law forms part of the Russian Civil Code (the 'Civil Code') and most of the provisions are contained in chapters 61–65 of the Civil Code. Russian law provides for three types of succession: by operation of law, by will and by inheritance agreement (Article 1111 of the Civil Code).

1. TYPES OF WILLS UNDER RUSSIAN LAW

There are two types of wills in Russia: an individual will and a joint will of spouses.

As a general rule, a will can be drawn up by one person only. Spouses constitute an exception to this rule. It shall be emphasised that only spouses, who, at the time of the testament, are in an officially registered marriage, can make a will together. It means that unmarried cohabitants cannot issue a joint will. To be able to make, amend or revoke both types of wills (individual will and joint will) a testator(s) must have full legal capacity at the time such actions are performed. Testamentary capacity is determined by the law of the country where the testator(s) had his or her last place of residence at the time of drawing up, amending or revoking the will.

a. Individual will

Russian law provides for a qualified written form of a will, which means that a will shall be drawn up in writing and shall be notarised. A testator can write it by him or herself or a notary can have it written from the testator's words. Russian law allows the use of technical means to draw up a will, but it prohibits making a will orally; in a purely electronic form, such as by email; in a video form; or by use of blockchain technology.

An individual will is made in the presence of a notary and, if the testator wishes, a witness can attend the attestation of a will. If a will is to be presented abroad, it is suggested that it is made in the presence of two witnesses because international treaties and foreign laws usually require the presence of such a number of witnesses. During the certification procedure, the testator either reads it by him or herself, or has it read to him or her by a notary. The testator signs the will and, if a witness is present, he or she also signs the will, and the witness's name and address are indicated in the will. The witness certifies, by signing the will, that the testator freely expressed his or her last will, appeared to have testamentary capacity and that the will was read by the testator or for the testator.

Under Russian law, a testator is free to revoke or amend a will in whole or in part at any time before passing away without stating the reasons for such an amendment or revocation, and without any need for third party consent. The testator can also make a new will, which automatically cancels the previous one in a contradicting part (unless otherwise directly stated in the new will).

b. Closed individual will

A closed individual will is written by the testator from beginning to end by hand and its substance is strictly confidential during the testator's life. Once the will has been written, the testator puts it into a sealed envelope and takes it to a notary, who puts the sealed envelope into one more envelope in the presence of two witnesses. As evidence of receipt of a will, the notary gives the testator a certificate of the closed will's acceptance. The substance of the will remains confidential until the testator's death. After the testator's death, and upon tender of the certificate of the testator's death, the notary, in the presence of at least two witnesses, and some of the heirs at law, opens the envelope, reads the will and certifies the substance of it.

c. Joint will of spouses

The possibility to make a joint will of spouses was introduced on 19 July 2018, and the instrument is well-used now. The formalities to execute this type of will are the same as with an individual will, except for a minor difference: a video recording of the execution of a joint will is mandatory (Article 1125 (5.1) of the Civil Code), whereas the issuance of an individual will can be video recorded, if the testator wishes.

A joint will of spouses loses its legal force upon divorce or upon the execution of a new will by one of the spouses. It shall be emphasised that each of the spouses can at any time, including after the death of the other spouse, draw up a new individual will or revoke a joint will. If this

occurs, the other spouse (if this spouse is alive) is notified of this change.

Joint wills of spouses are often issued by spouses who want to have a mutual inheritance strategy and, at the same time, do not want to enter into a nuptial agreement. Nevertheless, it is quite common in the estate planning process to use a joint will in conjunction with a nuptial agreement with the view to attaining greater certainty, both during the lifetime and after death.

2. FREEDOM OF WILLS AND ITS LIMITATION

The principle of the freedom of wills takes four forms:

- freedom to make a will;
- freedom to choose the type of will;
- freedom to determine the content of a will; and
- freedom to revoke/amend a will.

Within the limitations of statutory entitlements, a testator is generally free to dispose of his or her entire wealth, or any portion of it, at his or her discretion. When ascertaining the assets to be conveyed, the testator can make an inventory or dispose of wealth without the identification of particular assets, that is, determine the heir's share of the whole estate, determine the heir's share of a particular asset, or transfer a specific asset to a particular heir. The testator is free to combine the modes of disposition in a will. The part of his or her estate that is not disposed of passes to the statutory heirs of the testator.

The following dispositions are possible. The testator can:

- name any person as an heir;
- appoint a substitute heir in case the heir predeceases the testator or disclaims the inheritance;
- leave legacies and dispositions;
- appoint an executor of the estate; and
- decree that an inheritance foundation is to be set up after the testator's death.

Despite very wide testamentary freedom, the testator cannot overrule provisions on forced heirship by a will and dispose of the other spouse's share in the joint property (for details, see II.C and II.D). A joint will is an exception to the latter, as the spouses can dispose of both joint and personal property by execution of their joint will. Given this, the execution of a joint will of spouses precludes uncertainties with regard to joint property and, as a result, eliminates potential disputes between heirs and the surviving spouse.

With respect to legacies, the testator can oblige one or several heirs to perform a duty for the benefit of the legatee, who has the right to enforce the obligation within a three-year limitation period. General provisions on obligations are applicable to the heir-legatee relations.

Russian law also provides for the testator's possibility to oblige the heir to care for the testator's animal, or to perform an action of a proprietary or non-proprietary nature in favour of *pro bono publico* (eg, charitable activities).

Notwithstanding wide testamentary freedom, the testator cannot choose a law applicable to his or her will. The law applicable to inheritance is considered in detail below.

3. ENFORCEABILITY OF FOREIGN WILLS

In accordance with Article 1224 of the Civil Code, foreign wills are recognised in Russia, provided they are drawn up in accordance with the legal provisions of the country where a testator had his or her last place of residence at the time of making the will and the substance of the will does not conflict with Russian public policy.

Notwithstanding this, difficulties are highly likely to arise if the foreign will stipulates a transfer of Russian assets to structures not known to Russian law (eg, foreign trust). In such a case, the foreign will is highly likely to be unenforceable in Russia.

A foreign will is to be accepted by a Russian notary, provided it has been apostilled in

accordance with the Hague Convention Abolishing the Requirements of Legalisation for Foreign Public Documents 1961 or, if the convention does not apply, legalised by a Russian consulate located in the country of the testament.

Upon the tender of the foreign will, the Russian notary will make inquiries with the competent authority of the foreign state in order to verify certain issues (eg, whether the will has been issued and whether it is the last version of the will). This will take extra time and prolong the term taken to register hereditary rights.

B. *Inheritance agreement*

Besides the aforementioned types of wills, Russian law provides for inheritance agreements. An inheritance agreement sets out the heirs, types, portion of the testator's assets, and provides for parties' obligation(s) to perform proprietary and/or non-proprietary actions. The agreement is concluded between the testator and any person chosen by the testator, with the possibility to name this person or any other person as an heir.

If spouses act as testators, they can dispose of personal as well as joint property. It is worth mentioning that, if a joint will of spouses has been drawn up prior to the inheritance agreement, it loses its judicial force and the inheritance of personal and joint property, indicated in the inheritance agreement, is governed by the inheritance agreement. As with a joint will of spouses, a divorce terminates the inheritance agreement concluded by the spouses.

As to the formalities, the inheritance agreement is concluded before a notary, with a mandatory video recording of its execution.

The testator has the same freedom regarding dispositions as stipulated for individual wills and joint wills of spouses. However, the testator cannot vary the Russian provisions on forced heirship. In addition to general dispositions that could be provided in a will (for details, see I.A.2), the testator could oblige the parties to the inheritance agreement to perform proprietary and non-proprietary actions, including the implementation of legacies and testamentary dispositions.

One of the advantages of the inheritance agreement is that the obligations of the parties to the agreement can arise during the testator's life. Furthermore, the consequences provided for in the inheritance agreement could be subject to conditions and events, both predictable and unpredictable, that (might) arise up until the testator's death.

A testator who has entered into an inheritance agreement enjoys all the ownership prerogatives throughout his or her life vis-à-vis assets that are the subject matter of the inheritance agreement. The testator is free to do whatever he or she likes with the assets, including actions that could potentially deprive the heir of the assets. Provisions that limit this freedom are void.

If several inheritance agreements with the same subject matter but different heirs were made, the inheritance agreement that was concluded prior to all other inheritance agreements takes precedence.

Furthermore, the testator has the right to repudiate, at any time, the inheritance agreement by asking a notary to serve a notarised notice to all the parties to the inheritance agreement. Given that an inheritance agreement could provide for obligations that arise during the life of the testator, the testator shall recoup the expenses of the other parties that have arisen due to the performance of the inheritance agreement.

Other parties could also have the right to repudiate the inheritance agreement, provided this right is stipulated in the agreement. In the absence of it, the inheritance agreement could be terminated or modified during the life of the testator by the parties' mutual consent or by the decision of the court pronounced in view of *clausula rebus sic stantibus*.

C. *Will substitutes*

1. GIFTS

A lifetime gift is one of the means that allows a person to exclude assets from the estate and overcome forced heirship rules (see II.C). None of the succession instruments indicated above allow this aim to be fully achieved. However, it should be borne in mind that once the donation

has been made, the person's proprietary rights towards the asset cease.

Inter vivos transferring assets owned by Russian individuals to trusts and foundations under foreign law can also be used as an estate planning strategy. For more information, see III. below.

2. NUPTIAL AGREEMENTS

As a default rule, a marriage triggers the emergence of a joint ownership regime to marital assets (ie, assets acquired during the marriage). This regime could be modified to a community property regime or separate property regime by a nuptial agreement. The choice of a separate property regime for all marital property excludes the possibility of the allocation of half the estate to the surviving spouse upon the death of the other (for details on the ownership regime and spousal share, see II.D).

3. LIFE INSURANCE

Life insurance policies provide for the payment of an insurance premium to a named third party upon the donor's death out of the inheritance (probate) procedures. Such transactions are used by individuals for two reasons. First, insurance payments may become financial support for family members after the individual passes away, as generally, these payments are paid to beneficiaries more quickly compared to the time involved in probate procedures. Second, insurance policies allow for the exclusion of assets from the estate, which means that rules on forced heirship and the spousal share are overcome.

4. POWER OF ATTORNEY

The power of attorney is used for empowering a person to manage a testator's asset on his or her behalf in case of the testator's disability. However, according to Article 188 of the Civil Code, the power of attorney terminates upon a principal's/agent's death or incapacity. Therefore, this instrument is viable only if the testator is disabled, but not incapacitated.

5. CLOSED-END FUNDS

A closed-end fund is not a legal entity but a separate property complex that is managed by a professional manager. A fund investor can transfer his or her business, real estate, money, works of art and so on to a closed-end fund. The 'pros' of the closed-end fund are that the heir inherits a share of the fund instead of receiving a variety of assets (ie, the shares of the fund are included in the estate). It allows for an easier registration process of hereditary rights, plus the fund's assets are professionally managed during the term of the estate acceptance. This is convenient because, during this term, as a general rule, the heirs do not have legal possibilities to manage the estate. The 'cons' are that the maximum term of the agreement on closed-end fund management is 15 years and the shareholders are not entitled to receive their transferred property at any time. In addition, the inheritance of shares of the fund is subject to the rules on forced heirship and the spousal share. The tax implications of transferring the property to the structure needs to be considered carefully.

6. PERSONAL FOUNDATION

Since 1 March 2022, it has been possible to create a personal foundation. A personal foundation is a non-commercial legal entity that can be created by an individual or both spouses in an official registered marriage for property, management and estate planning.

The value of the founder's property transferred to the personal foundation shall be at least 100m rubles. This value shall be confirmed by an independent appraisal report.

A personal foundation can be created for a certain period or without an individual establishing a particular term. The foundation can also be created by a notary after the founder's death, but only if its creation is provided for in a will. If it is created after the testator's death, the personal foundation will be considered as an inheritance foundation.

Any assets (ie, both Russian and foreign) can be transferred to the foundation, but the founder should carefully think of foreign asset management and establish a succession plan that will work for all the jurisdictions concerned.

The property transferred to the personal foundation is most likely to be excluded from the founder's estate and distributed between beneficiaries according to the corporate documentation of the foundation approved by the founder. To protect the interests of creditors,

the law establishes the subsidiary liability of the founder in respect of the foundation's debts; and the subsidiary liability of the foundation in respect of the founder's debts/obligations during the three years after the creation of the personal foundation.

The personal foundation is of interest to owners of Russian private capital as an alternative to both foreign trusts/funds and a will. This creates new opportunities for lifetime property arrangement, estate planning and asset management.

As mentioned above, if the personal foundation is created after the testator's death, it becomes an inheritance foundation; that is, it is not feasible to test, during the life of the testator, whether the management terms and conditions are viable. Moreover, the articles of association and provisions for administration can be modified during the testator's life, but become unchangeable upon his or her death.¹

The inheritance foundation is an indispensable instrument for testators who wish to accelerate the procedure of the transfer of rights to the estate;² partition administration functions and an acquisition of income right; provide for efficient management of the business assets and indivisible assets; and organise the disposal of assets (eg, exercise an option).

The Russian Civil Code does not contain a clear procedure for transferring property to a personal foundation, so Russian notaries face various difficulties. Nevertheless, during this year, eight personal foundations were established in Russia, and none have been liquidated.

However, to become a popular succession planning tool in Russia, it is necessary to fix some of the initial drawbacks in legislation applicable to private foundations, as well as to develop reliable court practice on the protection of assets.

II. Estate administration

A. Overview of the administrative procedure

Under Russian law, the person entitled to deal with estate administration is a notary.

The persons entitled to receive the estate, under the operation of law (see further II.B) or under a will/inheritance agreement (see I.A. and I.B) may accept the estate within six months from the death of the deceased.³ To initiate a succession procedure, the heirs shall submit an application on estate acceptance to a competent notary, that is, a notary at the place where the testator had his or her last place of residence, or at the place of the estate location (if the testator's place of residence was abroad or unknown).

1. APPLICABLE LAW

One of the first steps taken by the notary is the determination of the applicable succession law. According to Article 1224 of the Civil Code, the inheritance of worldwide *movable* assets and obligations is governed by the law of the country in which the deceased had his or her place of habitual or permanent residence at the time of death.

In accordance with Article 20 of the Civil Code, the permanent residence is the place where a person primarily or permanently resides. This notion is defined as 'a house, an apartment, or any other dwelling, where a person primarily, or permanently, resides and which they occupy as an owner, tenant, or stays there on any other legal basis'.

Under Russian law, it is mandatory for persons residing in the territory of Russia to obtain a 'residency registration' at such a place. According to Russian jurisprudence and the position of state authorities, for inheritance purposes, the presence of such a Russian registration confirms that the testator's place of residency was in Russia. Therefore, even if the testator relocated and permanently resided overseas, provided he or she maintained a Russian 'residency registration', in the legal sense of Russian inheritance law, his or her permanent residence is considered to be in Russia.

The inheritance of *non-Russian real estate* is governed by the law of the country where such real estate is located. The inheritance of *real estate located in Russia* and/or registered in the state register of the Russian Federation is governed by Russian law, irrespective of the testator's place of residence.

2. ESTATE ACCEPTANCE

Russian law provides for two methods of estate acceptance:

- by submitting an acceptance application to a competent notary responsible for the inheritance case; and
- by commissioning acts that evidence the actual acceptance of the estate (ie, within six months, an heir took possession/carried out the management of the estate or took measures to secure and protect the estate from the interference and/or claims of third parties).

To accept the estate, it is necessary to visit a notary and submit the respective application. The heir can visit a notary in person or the application can be submitted by his or her authorised representative under the power of attorney duly certified and apostilled (if the heir is a Russian citizen living abroad, power of attorney shall be certified by the Russian Consul).

If an heir has not accepted the estate within the six-month term provided by law, there is a high risk of losing the rights to the estate, save the respective term is not restored by the court. The valid reasons for restoring the term on estate acceptance include severe illness, helpless condition and illiteracy. However, certain circumstances, such as a short-term health disorder, a lack of knowledge of civil law regarding the terms and procedure for accepting an estate or a lack of information about the composition of the inherited property, do not constitute valid reasons for restoring the term for estate acceptance.

Once the notary has determined that the applicable succession law shall be the Russian succession law and has received the application on estate acceptance, the notary opens the inheritance case.

After the inheritance case has been opened, all other heirs who want to inherit shall submit their applications on estate acceptance to the notary who opened the case. Information regarding the opened inheritance cases is publicly available.⁴

In addition, there are some aspects on the acceptance of the estate by minor heirs (under the age of 18). Legal representatives act on behalf of minors under 14, that is, they execute the acceptance application, receive all the documents and apply to the registration authorities (if applicable) on behalf of the children. Children aged between 14 and 18 accept the estate themselves, but with the consent of their legal representatives.

3. NOTARY'S AUTHORITIES IN PROBATE PROCEDURES

The notary dealing with an inheritance case has the following duties and authorities.

- The notary receives applications on estate acceptance from the persons who consider themselves as heirs.
- The notary determines the assets that are to be included in the estate. The estate includes all the property (belongings and property rights) registered in the testator's name. It does not include the rights and obligations that are inextricably connected with the personality of the testator, in particular, the right to alimony and the right to compensation for damage caused to the life or health of a citizen. However, any debt of the testator (including a debt on alimony payment) due on the testator's death shall be included in the estate. The testator's creditors have the right to submit their claims to the heirs who accepted the estate within the limitation period established for the corresponding claims. If no heirs have accepted the estate yet, the creditors may submit their claims to the notary dealing with the inheritance case or to the executor of the will. The heirs who have accepted the estate are jointly and severally liable for the debts of the testator within the value of the estate received by them.
- The notary makes requests to state bodies/banks for the confirmation of the testator's rights to the assets. In particular, the notary checks the Russian state register of immovable property and looks for real estate registered in the testator's name. In addition, the notary may send requests to banks and registrars of shares in legal entity capital. It is highly recommended that the heirs provide the notary with information about the testator's property because Russian notaries are usually not very active in the research of the testator's assets.

- The notary makes requests to foreign competent authorities regarding the validity of the foreign will (if any). If there was a foreign will in respect of the assets, given that the applicable succession law is Russian law, the notary shall make a request to competent foreign authorities to confirm that the provided version of the will was executed properly and has not been amended or revoked. Under a general rule, the notary sends requests abroad through the official procedures of the Russian Ministry of Justice and the Ministry of Foreign Affairs, if otherwise not stipulated by an international treaty (if any) concluded between Russia and the state where the will was executed. In practice, the answer to such a request is received after several months, meaning that this prolongs the term taken to register hereditary rights.

If the six-month term of estate acceptance has expired and there are no court proceedings connected with the estate, the notary is entitled to issue a certificate of inheritance for the heirs who accepted the estate in respect of both the Russian and foreign assets. The Russian assets are described in the certificate, which is the ground for the registration of heir's rights, in a particular manner sufficient for the identification of specific assets. Foreign assets are not usually described in the certificate (in this case, only an heir's share of all foreign assets is indicated). The determination of certain items of foreign property in the certificate is only possible in some exceptional cases.

The notary is also entitled to issue a certificate of inheritance before the expiration of the six-month period if he or she is sure that there are no other potential heirs entitled to receive the estate, except for those who have already accepted the estate. However, notaries are usually reluctant to use this right because the possibility of the appearance of other heirs during the term cannot be fully eliminated.⁵

It shall be noted that Russian court practice takes the view that obtaining an inheritance certificate is the right of an heir who has accepted the estate, not his or her obligation.⁶ Therefore, if the heir accepted the estate properly and in a timely manner, but did not receive the inheritance certificate and/or did not register his or her rights, he or she should be recognised as the legal owner of the estate.

In respect of Russian assets, the notary issues a certificate of inheritance that indicates the details of the specific assets. Based on such a certificate, the competent authorities/organisations register the heirs' rights to the estate.

4. PROTECTION OF THE ESTATE

Before the heirs have registered their rights to the estate, the protection and management of the estate is carried out by a notary dealing with inheritance cases or the executor of the will (if appointed).

Russian law (Article 1134 of the Civil Code) establishes the right of the testator to appoint the executor in his or her will. The executor shall take the necessary measures for the execution of the will, in particular:

- the executor ensures that the heirs receive the estate in accordance with the will and Russian law. This provision includes the performance of legal and actual (non-legal) actions that are necessary to help the heirs to accept the estate (eg, providing assistance in the preparation of documents and organising consultations for heirs (if necessary)). It shall be emphasised that the executor is not a legal representative of the heirs; he or she acts in his or her name; and
- the executor takes protection and management measures. Protection measures include executing the inventory of the assets, arranging for property valuations and/or for the disposition of cash and jewellery with a notary. Management measures can be taken in respect of assets that require management (eg, securities, shares in a limited liability company and leased real estate).

If an executor has not been appointed in the will, the notary dealing with the inheritance case is entitled to establish fiduciary management of the estate and engage a professional manager based on a fiduciary management agreement. This agreement establishes the manager's rights and obligations in respect of certain assets that are the subject matter of the agreement. The term of the fiduciary management contract cannot exceed five years. Once the certificate

of inheritance has been issued and the heir has registered his or her right to the assets under the fiduciary management, this heir has the right to terminate any fiduciary management.

If an executor has been appointed in the will, he or she shall be nominated, by a notary, as a fiduciary manager from the moment he or she expresses consent to be an executor.

B. Intestate succession

If there is no will, joint will of spouses or an inheritance agreement, as a default rule, the estate is transferred to the statutory heirs within the lines of succession. The law provides for eight lines. The heirs of the first line are the children, surviving spouse and parents of the testator. The heirs of the second line are the testator's full and half siblings, and his or her grandparents from both the paternal and maternal sides. The heirs of the next line of priority succeed only if there are no heirs of the previous line.

All legal heirs who are called upon to inherit in accordance with the succession sequence of lines shall inherit the estate in equal shares. If some assets included in the estate are indivisible, meaning that they cannot be divided in kind, they become the shared property of the heirs. Shared property implies that the possession, management and disposal of an asset shall be governed by the agreement reached between all the owners, and in the case of a failure to reach an agreement, in accordance with the procedure established by a court.

C. Forced heirship rules

Russian law provides for forced heirship rules (Article 1149 of the Civil Code) applicable if the testator has issued a will, a joint will of spouses or entered into an inheritance agreement. Minors or the disabled children of the testator, and the testator's incapable spouse and parents, as well as incapable dependents of the testator, shall inherit, irrespective of the provisions of the will or inheritance agreement, not less than half a share that this person would have had in the event of intestate succession. Russian law provides for categories of persons regarded as forced heirs:

- children aged less than 18 years;
- men aged at least 60 years and women aged at least 55 years; and
- persons recognised under Russian legislation as disabled persons of group I, II or III (ie, persons incapable due to their health condition).

The above persons are entitled to claim the forced (obligatory) share that is separated from the testator's unbequeathed property. If such property is not enough to sustain the claims of the forced heirs, they are entitled to claim their forced share from the property that has been bequeathed, devised or legated. In this case, such an heir is entitled to receive a part of each asset of the estate that leads to the creation of the shared property of heirs and the necessity to manage and dispose of such an asset jointly with other owners.

If the forced heirs are appointed as beneficiaries of an inheritance foundation, by default, they lose the right to receive the obligatory share. However, the forced heirs are still allowed to choose whether they would like to be a beneficiary of the foundation and forfeit the right to receive the obligatory share in the estate, or refuse their beneficiary rights and retain the right to the obligatory share defined in accordance with the law.⁷

D. Marital property

1. STATUTORY AND CONTRACTUAL REGIME OF PROPERTY OF THE SPOUSES

The personal non-proprietary and proprietary rights and duties of spouses are determined by the law of the state where they have a joint residence and, in the absence of a current joint residence, by the law of the state where they had their last joint residence. The personal non-proprietary and proprietary rights and duties of spouses who did not have a joint residence are determined in the territory of the Russian Federation by the legislation of the Russian Federation (Article 161 of the Family Code).

Under Article 33 of the Family Code, property (including income or capital accumulated through any employment, business venture or enterprise) acquired by the spouses *during their marriage* constitute the joint property of the spouses regardless of who was the formal owner

of such property (also see section 3 below). Meanwhile, the property owned by each spouse before the marriage registration, or received by either spouse during the marriage as a *gift or by way of inheritance*, shall be regarded as that spouse's individual property.

The individual property of each spouse could be recognised by the court as the joint property of the spouses if, during the marriage, at the expense of the joint property of the spouses or individual property of the other spouse, investments that significantly increased the cost of such individual property were made (eg, overhaul and reconstruction).

The spouses are free to conclude a nuptial agreement or agreement on the division of the joint property of the spouses⁸ and state other rules for the determination of the proprietary regime to the assets (for details, see I.D.2).

2. SPOUSAL SHARE

Under Russian law, the estate includes the testator's personal property and his or her share of the joint property of the spouses, as described above. This means that if either spouse has passed away, the surviving spouse has the right to a spousal share, which is half of the joint property of the spouses.

The spousal share could be drawn from the deceased's assets acquired during the marriage in the case of intestate succession, or succession by a will or other succession instruments, unless the spouses have disposed of their joint property by the joint will of spouses or entered into a nuptial agreement that provides for a separate property regime. Any timeframes are not applicable for the surviving spouse because the right to receive the spousal share of the estate can be enforced, even if the surviving spouse has not accepted the estate and the rights of heirs to the estate have been registered.

If no joint property is owned by the deceased together with the surviving spouse, the surviving spouse may submit a statement confirming this fact to the notary, which will result in the division of the whole estate between the heirs.

Note that, in some situations, the testator's former spouse also has the right to the allocation of the spousal share if the joint property owned with the deceased was not divided during the divorce proceedings or after. However, for this, the former spouse shall apply to the court rather than to the notary dealing with the inheritance case.

3. 'IMPLIED' SPOUSAL SHARE

Another situation is possible if the property is registered in the surviving spouse's name only but was acquired during the marriage. Such property also constitutes the spouses' joint property that shall be divided equally, and only the testator's share can be inherited.

Earlier, it was possible to include half of such joint assets in the estate of the deceased if there was no dispute between the heirs; however, recently, the approach of notaries has changed.

Now, notaries do not accept a spouse's application in the absence of the spousal share because such a refusal from the share can be challenged by the heirs. Moreover, even if there is no conflict with the heirs, such an approach may result in future disputes (especially taking into account that information on the marriage is included in the register of immovables). Finally, in the case of such disputes after the waiver of the spousal share, the court will also reserve the spousal share, that is, all assets will be divided equally.

Considering this, in the absence of a will/inheritance agreement, each asset is to be divided in half, and only the testator's half is to be inherited.

III. Trusts, foundations and other planning structures

Russian legislation does not have the concept of 'trusts' or 'foundations', but, formally, it does not prohibit Russian citizens and residents from transferring assets to foreign trusts and becoming a settler, beneficiary, protector and so on. Assets transferred to such structures are considered to be owned by third parties (eg, trustees) and thus, are not included in the deceased's estate.

However, although transferring Russian assets into foreign trusts is formally allowed, using these structures is not recommended for inheritance planning purposes because it leads to the unenforceability of such a transfer as the 'trusts' are not known in Russian law; hence, Russian

authorities cannot apply it.

It shall also be noted that Russian family law provides that the disposition of assets that form part of spousal joint property requires the consent of the other spouse for such an action, otherwise a transfer of assets to any foreign company (or the trust) may be disputed in court.

Furthermore, even if such a transfer has been performed, given that the assets transferred to these structures are not considered as part of the testator's property from the Russian law perspective, Russian forced heirship rules are rendered inapplicable. Nevertheless, it is recommended to include the forced heirs as beneficiaries of the relevant structure. Despite the absence of court practice on this matter in Russia, the consideration of the forced heirs' interests will help to avoid possible disputes between the forced heirs and the trust (foundation) beneficiaries. Alternatively, a person transferring assets to a trust or foundation may wish to ensure that the obligatory shares of the forced heirs will be granted from other assets that were directly possessed by the deceased and not transferred to the structure.

In any case, when choosing foreign instruments for transferring Russian assets (or dealing with foreign assets in Russia), it is necessary to analyse and take into account the international sanction regulation and Russian anti-sanctions regulation (which, inter alia, may restrict certain transactions with foreign persons).

IV. Taxes

A. Residency and domicile

There is no concept of domicile in Russian tax law and 'tax residency' is defined based on the number of days spent in Russia. According to the Tax Code of Russia (the 'Tax Code'), a Russian tax resident is an individual who spends at least 183 calendar days within 12 consecutive months in the territory of Russia.

For residency purposes, all days when an individual stays in Russia (including days of arrival and departure) are considered. Days spent travelling outside Russia for short-term treatment or study (not exceeding six months) are also considered as spent in Russia.

The final tax status of an individual is determined for the tax year (which equals the standard calendar year from 1 January to 31 December).

B. General rules on the taxation of income

Russian tax residents are obliged to pay personal income tax (PIT) on their worldwide income in accordance with a progressive taxation scale:

- a rate of 13 per cent applies to the amount of income up to RUB 5m per year; and
- a rate of 15 per cent applies to the amount of income exceeding the above threshold.

However, there are certain exceptions (eg, a 13 per cent flat rate applies to all income from the sale of property, excluding securities, and a 35 per cent rate is provided for certain types of income, such as prizes and winnings received within promotional campaigns exceeding RUB 4,000).

Non-resident individuals pay PIT at the 30 per cent rate on all Russian-sourced income, except for dividends, which are taxed at the 15 per cent rate. Starting in 2024, employment remuneration received by non-tax residents from Russian-based employers for remote work will be taxed at the 13/15 per cent rate as mentioned above for residents. Income received from sources outside Russia is not taxable for non-residents. There are some exceptions when a non-tax resident pays PIT at the rates of 13 per cent or 15 per cent in respect of Russian-sourced income (eg, foreign citizens with the status of highly qualified specialists with respect to their employment remuneration).

C. Gift, estate and inheritance taxes

1. GIFT TAXES

Generally, gifts between individuals (either in cash or kind) are non-taxable in Russia, except for gifted real estate, vehicles, shares and participating interests.

Any gifts between family members or close relatives⁹ are tax exempt.

2. ESTATE AND INHERITANCE TAXES

There are no estate and inheritance taxes in Russia. Any income received as a formal inheritance is not taxable, except for remuneration payable to the heirs of authors of works of science, literature and art, and patent holders of discoveries, inventions and industrial samples.

Payments to heirs from trusts and other foreign structures are not generally treated as inheritance and are taxed as ordinary income (see IV.E for more details).

Starting in 2024, the Tax Code will provide for a special tax exemption in respect of income received by beneficiaries of Russian personal foundations (see I.A.6 for more details). Generally, income (in cash and kind) received from a Russian personal foundation after the death of its founder will be tax exempt for beneficiaries, irrespective of their tax residency.

However, if the Russian personal foundation distributes property or funds during the life of its founder, such a distribution is tax exempt only if received by the founder, or his/her spouse, children, parents, grandparents, grandchildren or siblings. Tax exemption in this case applies only if the recipient is a Russian tax resident.

D. Taxes on income and capital

In the case of the use or disposal of property received by way of an inheritance or donation,¹⁰ or a transfer from a Russian personal foundation, generally, the following tax rates are applicable:

	Residents	Non-residents
Rental income	13/15%	30% (for rental income from Russian real estate)
Income from the sale of property	13% Income can be reduced by: 1. acquisition costs incurred by the testator/donor/Russian personal foundation (should be confirmed by documents); or 2. RUB 1m (for real estate)/RUB 250,000 (for other property)	30% (for Russia-based property) without the opportunity to reduce income by the amount of costs In some cases, income may be exempted in Russia under an applicable double tax treaty (except for the sale of Russian real estate)
	Non-taxable after property is held for three years or more (except for certain property used within entrepreneurial activities)	

	Residents	Non-residents
Investment income (interest, dividends, income from disposal of securities, etc)	13/15% (income from the disposal of securities can be reduced by acquisition and holding costs incurred by the testator/donor/Russian personal foundation)	15% for dividends from Russian companies 30% for other Russian-sourced income Tax can be reduced under an applicable double tax treaty
	Income from the sale or redemption of participating interests in Russian companies and shares of Russian and foreign companies is not taxable after they are held for more than five years when the share of the Russian real estate of the company does not exceed 50% (directly or indirectly) of the assets	

There are no special taxes on capital in Russia, except for the taxation of capital gains income mentioned above. Besides income tax, the owners of real estate and vehicles pay land tax/property tax and transport tax annually.

E. Taxation of trusts and foundations

Russia introduced controlled foreign company (CFC) regulations, which may be applicable to foreign trusts and foundations.

Depending on several factors, including the legal status of the tax resident, existence of controlling powers and other rights in respect of the trust/foundation, tax residents may be obliged to:

- notify Russian tax authorities on the establishment of the trust/foundation;
- file regular CFC reports on the trust/foundation; and
- pay tax on the undistributed profit generated by the trust/foundation.

Any payments to the tax resident from the trust/foundation are generally subject to taxation at the 13 per cent/15 per cent rate (even if such payments are received as a result of inheritance). The distribution of trust/foundation profit declared earlier and taxed by the tax resident as CFC profit are not taxed on receipt, subject to meeting certain requirements.

Income received in cash or kind from a trust/foundation and not qualified as the distribution of the profit of the trust/foundation is not taxable within the value of property/property rights previously contributed to the trust/foundation by the recipient or his/her family members/close relatives.

In addition, if the Russian tax resident uses, on a free-of-charge basis, real estate/vehicles or other assets belonging to a trust/foundation, this may trigger taxable income.

F. Taxation of a personal foundation established in accordance with Russian law

A personal foundation established in Russia, as a non-commercial legal entity, will be treated as a taxpayer in Russia.

According to the introduced changes, personal foundations pay 15 per cent corporate tax on their profit, provided that more than 90 per cent of the income of the personal foundation for the calendar year qualifies as passive income (dividends, interest, proceeds from derivatives, investments in mutual investment funds and rental income (with some exceptions)); otherwise, the general 20 per cent profit tax rate is applicable.

Notes

¹ Art123.20-1 (5) of the Civil Code sets out exceptions and procedures for post-mortem modification.

² The inheritance foundation could obtain an inheritance certificate within the timeframes set out in the decision of the testator to establish a foundation.

³ The heirs alive on the day of the testator's death, as well as children conceived during the testator's lifetime, but born after the opening of the succession, may apply to a notary for estate acceptance. An application for acceptance of the estate, on behalf of the heir, born after the testator's death, may be submitted by his or her legal representative, within six months from the date of birth of such an heir.

⁴ See <https://notariat.ru/ru-ru/help/probate-cases> accessed 4 September 2023.

⁵ Even if the notary has checked the information regarding the testator in the state register of the individuals' civil status acts, there is a risk of lack of information, due to the registration of the civil act abroad or absence of information in the state register, that has been created recently.

⁶ Para 7 of Resolution of the Plenum of the Supreme Court of the Russian Federation dated 29 May 2012, No 9 'On court practice on succession cases'.

⁷ Art 1149 (5) of the Civil Code.

⁸ Under the nuptial agreement, spouses are entitled to establish a regime of their property acquired during their marriage and change the property regime on certain assets. A nuptial agreement can be concluded before the state registration of marriage, or at any time during the marriage. If the marriage contract is concluded before the state registration of marriage, it enters into force from the date of the state registration of marriage. Under the agreement on the division of joint property, the spouses are entitled to divide the property acquired during the marriage. Unlike a nuptial agreement, the agreement on the division of joint property can be concluded during marriage or after marriage dissolution.

⁹ Spouses, parents and children, including adoptive parents and adopted children, grandfathers, grandmothers and grandchildren, siblings and half-siblings (having a common father or mother) are considered as 'close relatives'. However, the term 'family member' is not clearly defined in Russian legislation. According to clarifications by the Russian Ministry of Finance, the family is understood as persons related by blood relationship or affinity, living together and maintaining a common household.

¹⁰ For the purposes of this section, it is assumed that the donor and donee are family members, or close relatives in accordance with the Russian Family Code.