
Czech Republic

International Estate Planning Guide

Individual Tax and Private Client Committee

Contact:

Jitka Logesová

Wolf Theiss Attorneys-at-Law, Prague

jitka.logesova@wolftheiss.com

Dita Šulcová

Wolf Theiss Attorneys-at-Law, Prague

dita.sulcova@wolftheiss.com

Michal Matouš

Wolf Theiss Attorneys-at-Law, Prague

michal.matous@wolftheiss.com

Table of Contents

I. Wills and disability planning documents	Error! Bookmark not defined.
A. Will formalities and enforceability of foreign wills	3
B. Will substitutes.....	4
C. Advance directives, advance healthcare directives and similar disability documents ...	4
II. Estate administration	5
A. Overview of administration procedures	5
B. Intestate succession and obligatory heirship.....	6
1. Intestate succession	6
2. Obligatory heirship	7
C. Marital property.....	8
D. Tenancies, survivorship accounts and payable-on-death accounts.....	8
III. Trusts, foundations and other planning structures	9
A. Legal concept	9
B. Establishment of a trust	9
C. Fiduciary duties	10
D. Beneficiary.....	11
E. Dissolution of a trust	11
F. Foundations	11
G. Treatment of foreign trusts and foundations	12
IV. Taxation	13
A. Domicile and residency.....	13
B. Gift, estate and inheritance taxes.....	14
C. Taxes on income and capital	15
D. Property taxes	21
E. Real estate transfer tax.....	21

I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills

In the Czech Republic, there are generally two ways of distributing an estate. The first is intestate (statutory) succession, which applies if the deceased does not choose to make a will and does not divide up the estate. Any deceased intending to decide how his or her estate will be disposed of may do so by way of dispositions *mortis causa* (dispositions for the event of death) in a will, inheritance contract or testamentary clause on legacy.

A *will* is a unilateral expression of intent in the event of death by which the testator leaves a share of the estate to at least one person. It must meet certain requirements set out by Czech law, particularly by Act No 89/2012 Coll, the Civil Code (the 'Civil Code'). A will must be in the prescribed compulsory written form (except where it is made with concessions) and must be true, serious, free from mistakes, express and intelligible.

Czech law recognises the following types of wills:

- private form of wills:
 - (1) holographic: written by one's own hand without witnesses;
 - (2) general allographic: a statement before two witnesses and signed by one's own hand; and
 - (3) special allographic: used for persons with sensory disabilities or persons unable to read and write, in which three witnesses are necessary;
- public forms of wills: in the form of a notarial deed;
- wills with concessions (privileged will): do not require to be made in writing; these are intended for persons who are in a life-threatening situation and are valid for a limited duration.

In comparison with other possible forms, having a will drawn up by a notary gives more certainty of the will having the consequences intended by the testator and that the estate will be handled in accordance with the will. The original of the last will drawn up by a notary always remains with that notary. The drawing up of the will is recorded in the non-public electronic Database of Legal Acts for the Case of Death, maintained by the Notary Chamber of the Czech Republic.

A testator may impose a condition, a time endorsement, or an order on the heirs together with the acquired property in the will through ancillary clauses. However, this will of the testator is limited and is not taken into account where the ancillary clause is clearly and wilfully intended by the testator to frustrate the heirs, where it contravenes public order (eg, incites the heir to unlawful conduct), or where it is incomprehensible or unrealistic. An ancillary clause is also void in the event of impermissible interference with the heir's personal rights in the realm of marriage (eg, marriage condition).

The testator can name an 'executor' of the will and, if necessary, determine what his or her duties are and whether and how he or she will be remunerated. The executor of the will ensures that the testator's will is duly executed. The executor enjoys all rights necessary to fulfil his or her tasks, including the right to defend the validity of the will before the court, to contest the incapacity of the heir and to ensure that the testator's instructions are carried out. The testator may also name an administrator of the estate or of any part of it.

The testator has the right to revoke the will at any time, either by making a new will or by revoking it entirely. Such a revocation may be achieved either by making a declaration in the same form as the testator chose to create the will or by destroying it or returning the will made by notarial deed to the testator.

In the case of foreign wills, these should be recognised under Regulation (EU) No 650/2012 of the European Parliament and of the Council where they comply with the law of the state in which they were made or if they comply with the law of the state in which the deceased or one of the heirs was domiciled, habitually resident or a national. In the case of immovable property, it is sufficient for the will to comply with the law of the state in which the property is situated.

Besides a will, in the Czech Republic it is also possible to conclude an *inheritance contract*, which, unlike a will, is a bilateral agreement in which the testator invites the other party as the heir and the other party accepts. However, the consent of the heir is also required to revoke it. It must always be concluded in the form of a notarial deed and it can cover no more than three-quarters of the estate. The last quarter must be settled in another way, such as by a will.

Also worth mentioning is the *testamentary clause on legacy* which, unlike a will and an inheritance contract, does not appoint an heir, but rather makes other arrangements. With a testamentary clause on legacy, the deceased can order a legacy; make a legatee or heir subject to a condition; determine a time restriction; or impose a mandate on a legatee or heir. The provisions governing a will also apply, by analogy, to testamentary clauses on legacy. Testamentary clauses on legacy can be made simultaneously with the will or separately.

B. *Will substitutes*

Czech law recognises a trust as a form of transferring property at death outside of a will. A trust is created by setting aside part of the property owned by the founder in such a way that the owner entrusts the trustee with the property for a particular purpose and the trustee undertakes to keep and administer the property. A precondition for creating a trust is that the assets to be administered must be duly designated and must be kept separate from the ownership of the founder. The allocation of assets to the trust is made by contract or disposition *mortis causa*. Depending on whether the trust is established by contract or by disposition *mortis causa*, the trust will be recognised as being an *inter vivos* trust or a *mortis causa* trust (established on death). This issue is described in more details in section III.

A foundation can also be established by disposition *mortis causa*.

C. *Advance directives, advance healthcare directives and similar disability documents*

1. ADVANCE DIRECTIVE

A person may express his or her will in anticipation of being subject to a future incapacity to make legal acts (eg, in the case of a progressive disease) by making an 'advance directive', or 'living will'. In an advance directive, a person can express a will for:

- his or her matters to be administered in a certain way;
- his or her matters to be administered by a certain person; and/or
- for a certain person to become his or her guardian (see point 3 below).

Advance directives must generally take the form of a notarial deed. If it is not in the form of a notarial deed, the advance directive must be made before two witnesses confirming the content of the advance directive and the capability of the person to act (it must also be dated and the witnesses state their identity in the confirmation – the witnesses must be without interests in the advance directive or its content).

Unless the advance directive relates to appointing a guardian (in which case, see point 3 below), a court decision is required to confirm that the conditions in the advance directive have been fulfilled (eg, whether the person has lost the capacity to make legal acts). Additionally, the court may amend or revoke the advance directive in the event of a significant change in circumstances (in other words, if the person would not have made the advance directive or would have made it differently under the new circumstances).

If the advance directive is invalid for any reason, the court should nevertheless take it into consideration unless there is reason to doubt the will of the person making the directive.

2. ADVANCE HEALTHCARE DIRECTIVE

Advance healthcare directives are also recognised in the Czech Republic. In this directive, a patient can consent or oppose a medical procedure in advance in the event that he or she will, in the future, reach the state where he or she is incapable of making decisions about his or her own wellbeing (eg, unconsciousness and dementia). This will then be used as a substitute for the consent or non-consent to the procedure itself if the person is unable to give consent directly. The previously expressed wish states the situation and the course of action the patient wishes to implement. Advance healthcare directives cannot be used by patients who are not of legal age or patients with limited capacity. Previously expressed wishes have unlimited validity unless the patient chooses to revoke them.

A patient must make an advance healthcare directive in writing and it must bear the patient's certified signature. The directive must include a written statement regarding the consequences of the patient's decision. The patient may also make an advance healthcare directive upon being admitted to care by the healthcare provider or at any time during hospitalisation. Such a directive is recorded in the patient's medical record and must be signed by the patient, the healthcare professional concerned and a witness. In this case, official certification of the patient's signature is no longer required.

3. APPOINTMENT OF A GUARDIAN

In certain cases, the court appoints a guardian for a person if it is necessary to protect his or her interests or if the public interest so requires. In particular, the court appoints a guardian for a person whose legal capacity has been limited, for a person whose whereabouts are unknown, for an unknown person involved in a legal action or for a person whose state of health makes it difficult to manage his or her property or defend his or her rights.

II. Estate administration

A. *Overview of administration procedures*

The court conducts the proceedings regarding the estate (ie, the inheritance proceedings). As a rule, the court in whose district the deceased had a registered place of residence at the time of death is competent to hear the inheritance proceedings. The acts of the court in inheritance proceedings are performed by a notary who has been appointed by that court to act as its commissioner. This is the only case in which the notary cannot be chosen for notarial service. The notary is assigned to execute the estate

on behalf of the court according to a predetermined schedule, for reasons of the impartiality and objectivity of judicial decision making.

Inheritance proceedings are initiated by the competent court without a claim proposal, on the basis of a notification made by the registry office that a person has died. Proceedings are initiated on proposal only if it is apparent from the proposal that the claimant is claiming a right to the estate as heir.

The notary will conduct a preliminary inquiry in which he or she carries out all necessary acts to verify the state of the deceased's estate and to identify the heirs, legatees, executors and administrators of the estate and all other persons whose rights and obligations are at stake in the proceedings. The notary will also check the Register of Legal Acts in the Event of Death (see also section I) to see whether there are legal acts or other legal facts (in particular, a will, an inheritance contract, etc) which are relevant to the proceedings and to the decision over the estate. Anyone who has knowledge of facts relevant to the proceedings and the decision over the estate must disclose these upon the request of the notary. Anyone who has in his or her possession the deceased's death certificate or any other document relevant to the proceedings and to the decision over the estate must hand it over to the court upon request. This does not apply for documents received in a notarial institution, in which case the notary who has custody of it will ascertain its condition and content. The instrument is returned as soon as it is no longer needed for the proceedings.

The notary informs anyone who might be considered an heir of the deceased of their right to inherit, and informs them that they may refuse the inheritance and of the formalities and consequences of such a refusal. If a person who has not yet been informed by the notary of his or her right to inherit is deemed to be the heir of the deceased, he or she may, pending the conclusion of the succession proceedings, assert his or her right before the court in writing or orally on the record. The notary will investigate the succession rights of all those whom he or she has notified of those rights or who have duly exercised their succession right if they have not refused the succession or if their right to refuse the succession has expired.

The notary will order a non-public hearing and summon the heirs of the deceased, the executors of the will and other parties whose rights or obligations are at stake at the hearing, as well as their representatives and other persons whose presence is necessary. Parties to the proceedings will also be allowed to attend the hearing even if they have not been summoned.

The notary will issue a decision on the succession in which he or she will, in particular, confirm who has acquired the succession, including any division of the estate among several heirs.

If the testator has left no estate property, the court will dismiss the proceedings. If the testator has left property of no value or only property of negligible value, the notary will deliver the testator's property to the person who has taken care of the funeral if he or she has consented to acquiring that property and will at the same time bring an end to the proceedings.

B. *Intestate succession and obligatory heirship*

1. INTESTATE SUCCESSION

Intestate succession, also known as the legal succession, is considered the weakest inheritance title. Legal succession applies only to the extent that there is no inheritance

contract or will. Situations may also arise where there is no heir even under legal succession, in which case the inheritance will pass to the state.

The degree of kinship with the testator is decisive in determining the legal successor. Kinship between the testator and another person is a relationship based on blood ties or arising from adoption. However, the relatives of the testator do not all inherit equally, but rather are classified into six classes of inheritance. This classification is based on the relationship of those persons to the testator or to ancestors in common with the testator. The classes of inheritance are as follows:

- first: the testator's children and his or her spouse inherit, each of them equally;
- second: if the deceased's descendants do not inherit, then the spouse, the deceased's parents and those who lived in a common household with the deceased for at least one year prior to the deceased's death and who, for that reason, looked after their common household or were dependent on the deceased for maintenance inherit in this class;
- third: if neither the spouse nor either parent inherits, the siblings of the deceased and those who lived in a common household with the deceased for at least one year before his or her death inherits in this class, in equal shares;
- fourth – if no heirs in the third class inherit, the grandparents of the deceased inherit equally in this class;
- fifth: if none of the heirs of the fourth class inherit, only the grandparents of the testator's parents inherit in this class. The grandparents of the testator's father receive half of the inheritance, while the grandparents of the testator's mother receive the other half. The two sets of grandparents share equally in the half that accrues to them; and
- sixth: if no heirs of the fifth class inherit, the children of the testator's siblings and the children of the testator's grandparents inherit in the sixth class, each in equal shares.

2. OBLIGATORY HEIRSHIP

It is generally expected that the testator will leave his or her estate to the closest relatives, especially to any children. However, the principle of the testator's freedom of disposition also exists (ie, the right for the testator to decide freely over the property which he or she accumulated during life). These two principles are counterbalanced through the use of the obligatory share.

The 'non-negligible heir' is entitled to an *obligatory share* of the estate. Non-negligible heirs are the children of the deceased or, if they do not inherit, their descendants. If the heir is an adult, he or she will receive at least one-quarter of his or her legal share of the inheritance. If the heir is a child, he or she will receive at least three-quarters of his or her legal share of the inheritance.

In practice, this means that the testator in general cannot fully exclude the non-negligible heirs from their inheritance (eg, by way of a will) to the extent that they are entitled to their obligatory shares. There are certain limited statutory exceptions from this rule where the testator may exclude the non-negligible heirs even from their obligatory shares (disinheritance). Nevertheless, such situations are limited by law to cases such as where the heir:

- has not provided necessary help to the testator in need;

- does not show any real interest in the testator;
- has been convicted for a crime showing his perverted nature; or
- has been continuously leading a degenerate life.

The obligatory share does not always have to be satisfied in money. The obligatory share may take the form of a share in the estate or a legacy and it must remain completely unencumbered to the non-negligible heir. If the testator appoints a non-negligible heir as an heir in his or her will, thus leaving that heir with a share of the estate, the value of the share left to that heir must be at least equal to the value of the obligatory share set out by the Civil Code. If this is the case, it is not necessary to deal with the question of the obligatory share. Otherwise, if the non-negligible heir has been deprived of the net value of the obligatory share, he or she is entitled to have this supplemented.

Anyone who has renounced the inheritance or the obligatory share, who is incapable of inheriting or who has been disinherited by the testator is not entitled to the obligatory share, but will be taken into consideration, when calculating the obligatory shares of the other heirs, as if he or she had not been excluded from the right of inheritance.

C. *Marital property*

The statutory matrimonial property regime in the Czech Republic is the community of property between spouses, which is governed by the Civil Code, whereby the spouses acquire joint ownership over property from the date of the marriage. The Civil Code specifies what constitutes part of community property and which debts the spouses share in common.

Spouses who wish to own property in a manner other than that provided for by law have the option of regulating their property relations by means of a marital (prenuptial) agreement executed in the form of a notarial deed. This is usually done between the future spouses before the marriage and takes effect at the time of the marriage, but a marital agreement can also be executed during the marriage itself.

In a marital agreement, the (future) spouses may decide to be bound by the separation of property regime (which is the most common choice) or they may reserve the creation of community property for the date of dissolution of the marriage (ie, the community property comes into existence only at the time of dissolution of the marriage for the sole purpose of its settlement). Another option is that they can extend their community property and include in it what would not have become part of the community property when the marriage was entered into. They can also reduce the community property and thereby ensure that an item which would have formed part of their community property after the marriage does not become community property.

At the request of both spouses, or if so agreed, the marital agreement can be entered in the List of Deeds on the Matrimonial Property Regime maintained by the Notary Chamber of the Czech Republic. The legal effects of this registration are such that the spouses may always invoke these agreements against third parties, even if those third parties have not been informed of their contents, and they are therefore effective against third parties without further delay. This is also due to the fact that this list is publicly accessible via the website of the Notary Chamber of the Czech Republic.

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

The Civil Code sets out a special rule with regards to the transfer of tenancy. If the tenant dies (and it is not a joint tenancy), the tenancy passes to a member of the tenant's household who was living in the apartment on the date of the tenant's death and does not

have his or her own apartment. If that person is someone other than the tenant's spouse, partner, parent, sibling, son-in-law, daughter-in-law, child or grandchild, the tenancy will pass to that person only if the landlord has agreed to the transfer of the tenancy to that person. Any person who meets the conditions for the transfer of the tenancy may, within one month of the death of the tenant, notify the landlord in writing that he or she does not intend to continue the lease. The lease will then terminate on the date that the landlord receives the notice.

If the rights and obligations under the tenancy do not pass to a member of the tenant's household, they will pass to the tenant's heirs. Persons who lived in a common household with the tenant until the tenant's death are jointly and severally liable with the tenant's heir for debts arising from the tenancy before the tenant's death.

Where an account holder dies, banks typically freeze the bank accounts as soon as they become aware of that event.

III. Trusts, foundations and other planning structures

A. Legal concept

Trusts are a typical common law institution. In recent years, they have also become embedded in continental legal systems. The legal regulation of trusts was inspired by the regulation of trusts pursuant to the Canadian Civil Code for Quebec 1994 (*la fiducie*). A similar concept of a separated set of assets had been adopted in French, Romanian or Scottish law. In 2014, trusts were introduced into Czech law by the new Civil Code. In 2018, an amendment to the Civil Code brought in a requirement to register trusts in a public register.

A trust is generally formed by a set of assets. It is not a legal entity and, therefore, does not have legal personality.

There are three important persons linked to a trust: the founder, the trustee (administrator) and the beneficiary. A trust is created by setting aside part of the property owned by the founder in such a way that the founder entrusts the trustee with the property for a particular purpose through a contract or disposition *mortis causa*, and the trustee undertakes to keep and administer the property. The creation of a trust establishes separate and independent ownership over a part of property and the trustee is responsible for its administration. No person has rights *in rem* to a trust and a trust has an autonomous nature.

The rights arising from the ownership of the property in a trust are exercised by the trustee in his or her own name and on the account of this trust. The trustee is a direct executor of the ownership rights to the set of assets. However, the property in a trust is not owned by the trustee, nor is it owned by the founder or by the beneficiary.

A trust may be of public benefit or it can be private. When a trust is established for private purposes, it serves either to benefit a certain person or to be in memory of that person. The primary purpose of a trust of public benefit cannot be to make profit or to operate an enterprise.

B. Establishment of a trust

Any person or legal entity can become a founder of a trust under Czech law. There can even be more than one founder, mostly for trusts created by setting aside property in joint ownership or the community property of spouses. Every trust needs to have its own name, which must express its purpose and contain the word 'trust' (in Czech. *svěřenský fond*). The trust is created when the trustee accepts the authorisation to administer the

trust. If there is more than one trustee, it is sufficient for the authorisation to be accepted by one of them.

A distinction can be drawn between the creation of a *trust inter vivos* (this trust has to be created by agreement; it cannot be established on the basis of unilateral legal action, such as a declaration, which is usually how trusts are created under common law), or a *trust mortis causa*. An agreement establishing a trust *inter vivos* is commonly concluded between the founder and the trustee. When a trust has been established by a disposition *mortis causa*, it is created upon the death of the deceased. Trusts are often used to transfer property to the next generation within a family.

A trust must have a statute (a deed of foundation), which is issued by the founder and must be executed in the form of a notarial deed. A statute must contain at least:

- the trust's name;
- identification of the property which constitutes the trust upon its creation (a particular set of assets must be determined to create the trust);
- purpose of the trust;
- conditions for paying out from the trust;
- duration of the trust: if the duration has not been determined, the trust has been created for an indefinite period;
- identity of the beneficiary or how the beneficiary can be determined, provided that the assets are to be paid out to a certain person; and
- number of trustees and determination of how they are to act.

For a trust to be created properly, all trusts established pursuant to Czech law must be recorded in the Trust Register. This obligation was introduced in 2018 and it derives from the amendment to the Czech Civil Code and tax regulations.

The Trust Register is a public information system in which data on Czech and some foreign trust funds, as defined by law, are entered. The Trust Register also includes a collection of deeds. Anyone can obtain a basic extract from the Trust Register, which does not contain – for instance – the name of the founder or the beneficiary. Anyone who proves they have a special interest may obtain a full extract from the Trust Register.

C. Fiduciary duties

A fiduciary, meaning a trustee of a trust, can be any person with full legal capacity. A legal entity can be a trustee where, provided by law, albeit the only case under the applicable legal regulation, is an authorisation for investment companies under Act No 240/2013 Coll, on Investment Companies and Investment Funds.

The trustee is the most important person with regard to the organisational structure of a trust. He or she is appointed and removed by the founder, who is entitled to change how trustees are appointed and removed. The trustee is entitled to exercise the full administration of the set of assets in a trust, which constitutes a broad authority. They are also recorded in the Trust Register as the owner of the property alongside the note '*svěřenský správce*' (trustee).

Supervision over the administration of a trust is exercised by the founder and the person designated as beneficiary, or by other persons where so determined by the statute.

D. Beneficiary

The founder of a trust is entitled to appoint the beneficiary and determine a performance to be provided to him from the trust. If the founder does not use this right, this appointment will be made by the trustee instead. The appointment is effective from the day on which the beneficiary is recorded in the Trust Register. Anyone can be appointed as beneficiary (ie, a natural person or legal entity).

The beneficiary may be granted the right to enjoy the fruits and profits from the trust or the right to the property therein, or to share in the property. The main idea behind the trust is to provide a certain benefit to a certain person (beneficiary) or for another objective purpose, which is not profit for a specific person. In the latter situation, the fund does not have a beneficiary.

The specific content of the beneficiary's rights is governed by the trust's statute or additional conditions set out on the basis of that statute.

E. Dissolution of a trust

Trusts may be dissolved in the following cases:

- The trust's term expires in accordance with its statute.
- The purpose of the trust for which it has been created is fully achieved.
- A decision to dissolve the trust is ordered by the court.
- Where a trust was created for private purposes, its administration terminates where all beneficiaries give up their rights to performance from the trust.
- Furthermore, where the trust was created for private purposes, the right of a beneficiary to the benefits and profits from the trust terminates 100 years from the creation of the trust at the latest; where the beneficiary is a natural person, this right can exist until his or death.

Upon the termination of the trust's administration, the trustee transfers the set of assets to the person entitled to the property. Czech law perceives the termination of the trust's administration as the final phase of the trust's existence, which immediately precedes its dissolution. Except where the trust is dissolved by the court, the dissolution of the trust does not require any special form.

F. Foundations

Under Czech law, a foundation is a legal entity comprising a property. Its activities serve a specific purpose, for which it has been established. It is a special-purpose association of property, established by the founder to achieve a socially or economically beneficial objective. A foundation typically provides funding and support for other charitable organisations. A foundation's name must contain the word 'foundation'.

A founder forms a foundation so as to permanently serve a socially or economically useful purpose. Foundations may have a publicly beneficial purpose if it aims to promote common welfare, or a charitable purpose if it aims to support a specific group of persons defined individually or otherwise.

Under Czech law, it is prohibited to form a foundation to support political parties and movements or to otherwise participate in their activities. Furthermore, foundations cannot be formed for solely profitable purposes. Where a foundation serves a prohibited purpose, a court will dissolve it and order its liquidation even without a motion to do so. Foundations may conduct business activities only if this business is a secondary activity

and if its proceeds serve only to support the purpose of the foundation. Furthermore, a foundation cannot be an unlimited partner of a company.

Foundations are established by a foundation charter, which may take the form of a founder's deed or disposition *mortis causa*. A founder's deed can be executed by one or more persons. In any case, a foundation charter must take the form of a notarial deed.

A founder's deed should contain at least:

- the name of the foundation and its registered office;
- the name of the founder and his or her address or registered office;
- the purpose for which the foundation is created;
- the amount of the contribution from each founder;
- the amount of the foundation capital;
- the number of members of the foundation board and the names and addresses of its first members, and how the foundation board members will act on behalf of the foundation;
- the number of members of the supervisory board and the names and addresses of its first members; where a supervisory board is not established, the name and address of residence of the first inspector;
- the appointment of the contributions administrator; and
- the conditions for providing foundation grants, or the names of the persons to whom they may be provided.

Where a foundation is established by a disposition *mortis causa*, the creation becomes effective upon the death of the testator. In this case, the foundation charter should contain at least:

- the name of the foundation;
- the purpose for which the foundation is created;
- the amount of the contribution;
- the amount of the foundation capital; and
- the conditions for providing foundation grants, or the names of the persons to whom they may be provided.

Czech law requires foundations to be registered in the public register.

G. Treatment of foreign trusts and foundations

Trusts are popular and have been used for many years in foreign countries. The legal regulation of trusts is inspired by foreign legal systems, although there are distinctions between foreign trusts and trusts under Czech law. For example, an obligation to register trusts in a public register was introduced in France in 2010, whereas in the Czech Republic the same obligation was imposed on trusts from 1 January 2018. The main purpose of this obligation is fighting money laundering.

Trusts governed by the law of a foreign state and which operate in the territory of the Czech Republic must be recorded in the Czech Trust Register along with Czech trusts.

IV. Taxation

A. Domicile and residency

In the Czech Republic, the taxation of individuals depends on their tax residency status. Residents of the Czech Republic are liable to tax on their worldwide income. Non-residents are taxable on Czech-source income only.

An individual is considered a resident for tax purposes in the Czech Republic if either of the following conditions is met:

- The individual has a permanent home in the Czech Republic. A permanent home is defined as either an owned or rented residence where the individual has the intention to live permanently. The residence can be rented out to a third person in a way that enables the renewal of the use by the individual without delay. The intention to live in the residence permanently is considered in the light of the individual's personal and family status, that is, whether he or she lives there, for example, with a spouse, children, parents or whether the residence is used in relation to his or her economic activities (self-employment, employment, etc).
- The individual is present in the Czech Republic for 183 or more days in a calendar year. This includes the days of arrival and departure. However, an individual staying in the Czech Republic for the purpose of study or medical treatment only is considered as non-resident even if he or she stays in the Czech Republic for 183 or more days in a calendar year.

An individual not meeting the conditions of tax residency is considered as non-resident. Also, an individual can be considered as non-resident based on the applicable double taxation treaty.

The final tax residency is determined based on the applicable double taxation treaty if the individual is considered as a dual resident (ie, resident in both treaty countries under their national laws). Most double taxation treaties determine tax residency based on the following tie-breaker rules:

- permanent home;
- centre of vital interest (strong personal and/or economic connection to the country);
- a habitual place of residence; or
- citizenship in the respective country.

The individual is deemed to be a resident of the state determined by the criteria in the order of precedence stated above.

A corporation or other legal entity is considered as resident if its registered office of place of management is in the Czech Republic. The transfer of a legal entity's tax residency abroad may trigger exit tax. This is generally levied upon the relocation of assets if the Czech Republic loses the right to tax income from their future sale (there is a legal fiction of the sale of property at market price).

B. Gift, estate and inheritance taxes

1. INHERITANCE TAX

On 1 January 2014, inheritance tax was abolished in the Czech Republic. The taxation of this type of income is governed by the Income Taxes Act. No inheritance tax is payable on inherited property.

2. GIFT TAX

On 1 January 2014, gift tax was abolished in the Czech Republic. The taxation of received gifts is governed by the Income Taxes Act.

3. CALCULATION OF INHERITANCE AND GIFT TAX

Inheritance of property is exempt from income tax.

Similarly, a tax exemption applies to income obtained from the assets of a trusts, which were contributed to the trust for the case of death.

4. TAX-FREE ALLOWANCES

Income from gifts is exempt if the gifts are received occasionally and the value of the gifts from one donor is less than CZK 15,000 (approximately €570) for the tax period.

Since the income from gifts is subject to income tax, the taxpayer may claim allowances and reliefs under the Income Taxes Act.

5. OTHER INHERITANCE TAX AND GIFT TAX EXEMPTIONS

The following gifts/gratuitous income received by individuals are exempt from personal income tax:

- gifts from first-degree or second-degree relatives: including spouse, children (including adopted children), parents (including adoptive parents), grandparents, grandchildren, sibling, uncle, aunt, nephew or niece, child's spouse, spouse's child, spouse's parents or parents' spouse;
- gifts from persons who share the same household for a period of at least one year before the gift was provided; and
- income received from the assets of a trust, which were previously transferred to such trust by the recipient or by a person whose relationship with the recipient is eligible for the 'gift' tax exemption as stated above.

The income is obtained from a first-degree or second-degree relative (eg, a sibling, uncle, aunt, nephew or niece, spouse, child's spouse, spouse's child, spouse's parents or parents' spouse).

Income from gifts (and other gratuitous income) is exempt from corporate income tax if it is acquired by the following entities:

- Czech Republic or other European Union Member States, Norway or Iceland;
- non-profit organisations with their registered office in the Czech Republic or other EU Member States established for the qualified purposes, such as for the purpose of support and development of culture, education, healthcare, social services and sports.

6. TAXATION OF THE ASSETS OF A TRUST OR FOUNDATION

No gift or inheritance tax applies to the transfer of assets of a trust or foundation. For income tax, see IV.C.3.

7. INHERITANCE TAX AND GIFT TAX DOUBLE TAX TREATIES

In relation to inheritance and gift taxes, the Czech Republic has entered into two double taxation treaties, with Austria and Slovakia. The tax treaties in relation to inheritance and gift taxes apply to the elimination of the double taxation of income which is subject to Czech income and falls within the scope of these treaties.

8. TAX ASSESSMENT

Unless a tax exemption applies, the value of the gift received by a resident is added to the income tax base and the overall income is taxed at the applicable rates on the basis of the annual income tax return (see IV.C.2).

In general, gifts provided to non-residents which are considered as income from Czech sources (ie, gifts received from Czech residents or permanent establishments and income from the transfer of Czech real estate) are subject to withholding tax. The withholding tax rate of 15 per cent applies in the case of gifts to EU residents, European Economic Area (EEA) residents, bilateral double tax treaty country/jurisdiction residents or residents of a country/jurisdiction having a bilateral agreement on exchange of information in tax matters concluded with the Czech Republic). Otherwise, the tax is levied at the rate of 35 per cent. EU residents and EEA residents have the option to file an annual income tax return in which they calculate the tax under the rules which are applicable to residents (ie, deduction of expenses and tax allowances, taxation at the regular tax rates). The withholding tax is credited against the tax liability reported in the tax return; a tax overpayment is refunded.

Individuals who receive any income exempt from the personal income tax exceeding CZK 5m are required to report the respective income to the Czech tax authorities. The threshold of CZK 5m is considered for each income or transaction individually. An exception applies to certain types of income where the relevant information can be obtained by the tax authorities from public registers (eg, real estate cadastre). The reporting deadline is the same as the deadline for filing of the individual's tax return (see below).

High penalties apply if the reporting obligation is not met (0.1 per cent of the income in the case of late reporting; ten per cent of the income if the income is reported late based on the request by the tax authorities; and 15 per cent if the taxpayer does not report the income even if he or she is requested to do so by the tax authorities).

C. Taxes on income and capital

Corporate income tax and personal income tax are direct taxes on income levied in the Czech Republic from legal entities and individuals, respectively. There is no separate capital gains tax. Unless an exemption applies, capital gains are subject to corporate income tax (see IV.C.1) or personal income tax (see IV.C.2). The Czech Republic does not levy a net wealth tax.

Although the duty of an individual to pay income tax terminates at death, there is a legal fiction for the purposes of the tax administration and tax calculation. The legal facts are considered as if the deceased lived until the day preceding the end of the inheritance proceedings. The person administering the estate fulfils the tax liability in his or her own name and on the account of the inheritance estate during the inheritance proceedings.

The tax liability passes to the heirs on the date upon the court's decision on inheritance. As of this date, the heirs are in the position of taxpayers and are jointly and severally liable for all unpaid taxes of the deceased.

1. CORPORATE INCOME TAX

Income of legal entities is generally subject to corporate income tax. A special regime applies to the income of general partners in general partnerships and limited partnerships, which are flow-through entities for tax purposes for them. The taxable profits are calculated at the level of the partnerships and the income of general partners is assigned to them and taxed in their hands.

Resident legal entities are subject to tax on their worldwide profits. Non-resident legal entities are taxable on their income from Czech sources (see IV.C.2).

The taxable profits are calculated according to Czech accounting rules, with adjustments according to the Income Taxes Act (eg, tax depreciation, non-deductible expenses, transfer pricing and thin capitalisation rules).

The corporate income tax rate is 19 per cent and applies to all business profits including capital gains from the sale of shares (unless a participation exemption applies). A special five per cent tax rate applies to income of certain investment funds and a zero per cent rate applies to pension funds.

Dividends are subject to the tax rate of 15 per cent (unless a participation exemption applies). Dividends and capital gains can be tax exempt if conditions derived from the EU-Parent-Subsidiary Directive are fulfilled. The main conditions are the specific legal form, tax residency of the parent company and of the subsidiary, 'subject-to-tax' rule and a minimum participation of ten per cent over a minimum holding period of 12 months.

2. PERSONAL INCOME TAX

Resident individuals are subject to personal income tax on their worldwide income. The Income Taxes Act recognises the following five categories of income:

- employment income: income from employment relationships, including salaries, wages, bonuses, and other compensation from similar relationships, where a person must follow instructions of his or her employer; and remuneration of executives and board members;
- income from independent activities: income from business activities and professional services; income of general partners of general partnerships and limited partnerships; and income from copyrights and industrial property royalties;
- capital income: interest, dividends and income from silent partnership (also from foreign sources for Czech tax residents);
- rental income: income from the lease of immovable property; and
- other income: other income which increases the taxpayer's property and is not specified in other categories, including, inter alia, income from the sale of securities and sale of property, and income from gifts (unless tax exempt).

Expense deduction is allowed only for the income from the independent activity, rental and other income. Specific exemptions and deductions differ for each income category, for the income from the independent activity and rental income, expenses can be applied either as a lump sum (30 to 80 per cent of income depending on the type of income, up to

the maximum amount of the respective percentage out of CZK 2m, approximately €76,570) or as actual expenses.

Tax losses generated from independent activities and rental may be set off against other types of income, which is included into the regular tax base, except for employment income. Losses which cannot be set off can be carried forward (over five years) or carried back (in two preceding tax years, up to CZK 30m).

3. TAX EXEMPTIONS

The Income Taxes Act provides for several tax exemptions (in addition to the exemption of income from inheritance and gifts outlined at IV.B.5) including the following:

- income from the sale of a house or flat is tax exempt if the seller has a permanent residence there for at least two years before the sale or the income is used for the purchase;
- income from the sale of other real estate is exempt after a minimum holding period of five or ten years; extended holding period of ten years applies to sales of properties acquired after 1 January 2021;
- income from sale of movable property (some exceptions apply);
- income from the sale of a shares in a limited liability company are taxed after a minimum holding period of five years;
- income from the sale of securities is tax exempt after a minimum holding period of three years (or five years for equity certificates) or if the total income does not exceed CZK 100,000 (approximately €3,800);
- social transfers; and
- pensions are tax exempt up to an amount corresponding to 36 times the minimum wage (for 2021: CZK 547,200, approximately €20,690).

It should be noted that specific rules apply if the sold assets formed a part of business assets – in such a case, the minimum holding period is counted from the termination of the business activity. The income from the sale of movable assets is exempt after five years from the termination of the business activity.

D. Tax base and tax rate

Czech source investment income (interest, dividends, etc) is taxed separately under a lump sum withholding system. The standard withholding tax rate is 15 per cent (35 per cent rate applies to income paid to certain non-residents, see IV.B.8).

The total taxable income of an individual is calculated by aggregating the net income in the five categories. The taxable income can be reduced by tax allowances, which include, for example, interest on housing saving loans and mortgage loans used for an individual's housing needs up to CZK 300,000; life insurance contributions up to CZK 24,000; pension fund contributions exceeding CZK 12,000 up to CZK 24,000; and charity contributions of up to 15 per cent of the tax base.

The tax rates are 15 per cent and 23 per cent. The two per cent tax rate applies to income exceeding 48 times the average wage (for 2021: CZK 1,701,168, approximately €65,128).

The tax can be reduced by various tax reliefs, including a basic personal tax relief of CZK 27,840 (approximately €1,060); dependent spouse relief of CZK 24,840 (approximately

€950) and children tax allowances (between CZK 15,204 and CZK 24,204, approximately €580 and €930).

Taxpayers who have annual income of up to CZK 1m, and fulfil certain other criteria, may opt for a flat tax which is an annual lump sum – for 2021, CZK 65,000 (approximately €2,500). This covers both income tax and statutory social security and health insurance contributions.

1. TAXATION OF THE ASSETS OF A TRUST OR FOUNDATION

Trust and family foundations governed by Czech law are considered to be corporate income taxpayers. Even if the trust fund does not have a legal personality from the private law perspective, the tax law defines it as a tax subject, subject to the same rules as a legal person. The key person, as regards procedural law, is the trustee who has a similar role vis-à-vis the tax authorities as a statutory body of a legal person. In the case of foreign legal persons and trust structures without legal personality, they need to be considered based on concrete circumstances (including the 'residency' state) whether the entity is a taxpayer for Czech tax law purposes or whether the income should be attributed to another person. No problems should arise if the entity has legal personality. However, if the entity has no legal personality, the tax regime in the country of its establishment needs to be examined.

If the trust is treated as a Czech taxpayer, the following rules apply. Assets transfer into the trust or foundation from its founder at the foundation, and the subsequent contribution of assets to the funds are not subject to corporate income tax. They are treated similarly as contributions to a company's equity. All other income/profits are subject to 19 per cent corporate income tax. Dividends received by a Czech trust or a family foundation from investments in companies and capital gains from the sale of the participations can be tax exempt under the participation exemption rules. The main conditions are the legal form and the tax residency of the company and a minimum participation of ten per cent over a minimum holding period of 12 months.

Distribution of profits to the trust beneficiaries is treated as capital income and subject to a withholding tax. Other income paid out of the trust is currently also subject to withholding tax. The standard withholding tax rate is 15 per cent (35 per cent rate applies to income paid to certain non-residents, see IV.B.8). A specific tax exemption applies to income paid out of assets transferred to the trust in the case of death and to income received from the trust assets, which were previously transferred to such trust by the recipient of the income or by a person whose relationship with the recipient is eligible for the gift tax exemption as stated above or to income paid to the person (see IV.B.3 and IV.B.4).

2. NON RESIDENTS

Non-residents are taxable only on their income from Czech sources. This includes the following types of income regardless of who pays such income from:

- permanent establishment;
- employment in the Czech Republic (a tax exemption applies if the if certain conditions are fulfilled);
- professional services and activities of artists and sportsmen performed in the Czech Republic;

- services including income from business technical, intermediary, management, or other consultancy services (special rules apply for construction assembly projects),
- the sale of Czech real estate;
- the use/rental of Czech real estate; and
- the sale of participation in a Czech company.

Certain types of income are taxable only if the income is paid by Czech tax residents or from Czech permanent establishment on non-residents, including the following:

- payments for the right to use, or for using, industrial (intellectual) rights, software, production and know-how, copyrights or similar rights (royalties);
- dividends and shares in profits, settlement shares, liquidation proceeds and after-tax profits paid to a silent partner;
- interest and other yields on credits and loans, deposits and securities;
- income from the use of a movable asset in the Czech Republic;
- remuneration of executives and board members;
- income in relation to a decrease of registered capital;
- income from the sale of investment instruments and property rights registered in the territory of the Czech Republic;
- contractual penalties;
- income from trusts and family foundations; and
- gifts (revenue for no consideration).

Interest, dividends and royalties and certain other types of income are subject to withholding tax. The withholding tax rate of 15 per cent applies in the case of payments to EU residents, EEA residents, bilateral double tax treaty country/jurisdiction residents or residents of a country/jurisdiction having a bilateral agreement on exchange of information in tax matters concluded with the Czech Republic. Otherwise, the tax is levied at the rate of 35 per cent. EU residents and EEA residents have the option to file an annual income tax return in which they calculate the tax under the rules which are applicable to residents (ie, deduction of expenses and tax allowances, taxation at the regular tax rates). The withholding tax is credited against the tax liability reported in the tax return; a tax overpayment is refunded.

Certain types of income, such as income from permanent establishment or income from the sale of real estate, are taxed on the basis of an annual income tax return at regular tax rates. The Czech payer of the income may be required to deduct a tax security at the rate between one to ten per cent, which is considered as a tax advance. This does not apply in certain cases, for example, when the recipient is a tax resident in an EU or EEA Member State.

Employment income is taxed at a progressive tax rate (see IV.C.2); Czech employers or, in certain cases, even non-resident employers are required to deduct personal income tax advances on a monthly basis.

Non-resident individuals from EU/EEA Member States are entitled to claim most of the reliefs and allowances (except for the basic allowance) only if the Czech income

accounts for at least 90 per cent of their worldwide income. Tax non-residents of third countries are not eligible for the reliefs and allowances (except for the basic allowance) at all.

The Czech tax can be reduced or eliminated by the applicable double taxation treaty.

3. TEMPORARY RESIDENTS

An individual staying in the Czech Republic for the purpose of study or medical treatment only is considered as non-resident even if he or she stays in the Czech Republic for 183 or more days in a calendar year. Consequently, only income from Czech sources is taxable in the Czech Republic in the hands of such an individual.

4. TAX ASSESSMENT

Income tax returns are generally due by 1 April of the following year (if filed in paper form) or by 1 May (if filed electronically). The deadline can be extended until 1 July if the tax return is prepared and filed by a tax adviser or by an attorney based on a power of attorney. In addition, the extension is automatic for taxpayers who are required to have their financial statements audited. Further extension might be granted by the Czech tax authorities upon request. The outstanding tax is due within the same deadline. The deadline for a tax refund is 30 days following the tax filing unless the tax authorities disapprove the tax return.

In the case of death, an extraordinary tax return for the period preceding the death is due within three months. Another extraordinary tax return for the period preceding the date of the end of the inheritance proceedings is due within 30 days. The person administering the estate fulfils the tax liabilities in his or her own name and on the account of the inheritance estate. There is an automatic tax payment deferral until the end of the inheritance proceedings.

Income tax on employment income is generally withheld by the employer and remitted to the tax authorities on a monthly basis. An employee, who does not have to file the tax return, may ask his or her employer to perform an annual tax reconciliation on his or her behalf. The request must be signed by 15 February of the following year.

5. DOUBLE TAXATION TREATIES

The Czech Republic has a broad network of double taxation treaties in relation to corporate income tax and personal income tax, with many treaties following the Organisation for Economic Co-operation and Development (OECD) model treaty. As of 30 March 2021, it has tax treaties with 92 countries including Austria, Germany, the Netherlands, Switzerland, China, Hong Kong, the United Kingdom and the United States. Tax treaties override domestic law. They generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies and individual residents in the other, and protect from discriminatory taxation in the other. Czech treaties generally contain OECD-compliant exchange of information provisions.

Double taxation is generally avoided by the exemption-with-progression method or by the credit method. The credit method typically applies to withholding tax on dividends, interest and royalties (ie, the income is taxed in both states, but the state of residence gives an ordinary credit for the tax paid in the other state up to the amount of the Czech tax on such income). Employment income from abroad can be exempt from taxation in the Czech Republic based on the local Czech legislation, even if the applicable double taxation treaty provides for a credit method. Relief for foreign tax is available only for income from a treaty country. If no applicable treaty exists, income tax paid abroad can be deducted from the income taxable in the Czech Republic.

E. PROPERTY TAXES

The ownership of Czech real estate is subject to real estate tax. The real estate tax is imposed on buildings and plots of land registered in the Real Estate Cadastre, depending on their size, the purpose of usage and the location. For buildings or flats, tax rates vary from CZK 2 to CZK 10 (approximately €0.08–€0.38) per square metre. The tax rate is increased by CZK 0.75 (approximately €0.03) for each floor above ground. For land, tax rates vary depending on land usage and land area. For building land, the tax rate is CZK 2 (approximately €0.07) and for other land the tax rate is CZK 0.20 (approximately €0.01). For certain types of property, the tax rates are multiplied by coefficients, including a municipality coefficient of one to five, depending on the location of the property.

The tax is generally due from the owner. The tax period is per calendar year and the tax is assessed based on the situation as at 1 January of the given year. The tax return must be filed by 31 January of the tax year after the year when the ownership was registered in the Real Estate Cadastre. The due date for the tax payment depends on the amount of the tax and on the type of real estate.

F. REAL ESTATE TRANSFER TAX

The real estate transfer tax was abolished in 2020.