
Russia

International Estate Planning Guide

Individual Tax and Private Client Committee

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Updated 7/2021

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 country where the testator(s) had his or her last place of residence at the time of drawing up, amending or revoking a 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 himself or herself, or a notary can have it written, from the testator's words. Russian law allows using 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 an attestation of a will. If a will is to be presented abroad, it is suggested to make a will in the presence of two witnesses, as 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 the witness is present, he or she also signs the will, and his or her name and address are indicated in the will. The witness certifies, by signing a 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.

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 to a testator a certificate of a 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

Provisions on joint wills of spouses are quite recent (introduced on 19 July 2018). Despite this, the instrument is in demand: in the first six months, after entry into force of the provisions on joint wills of spouses, 736 joint wills of spouses were made. The formalities to execute this type of will are the same as with an individual will, except for a minor difference:

a video-fixation of execution of a joint will is mandatory (section 5.1 of Article 1125 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 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 the 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 freedom of wills takes four forms:

- freedom to make a will;
- freedom to choose a type of a 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 identification of particular assets, that is, determine the heir's share in the whole estate, or his or her share in the 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 on 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 by a will provisions on forced heirship 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, 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 survivor 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 a 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 testamentary dispositions. In accordance with these dispositions, the heir could have a duty to care for an 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 the 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 legal provisions of the country where a testator had his or her place of residence, at the time of making a will and the substance of the will does not conflict with Russian public policy.

Notwithstanding this, the difficulties are highly likely to arise if the foreign will stipulates a transfer of the Russian assets to a foreign trust.

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 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 (ie, whether the will has been issued, whether it is the last version of the will etc). 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. The 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 the spouses act as the 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 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-fixation of its execution.

The testator has the same freedom as to the dispositions, as it is stipulated for individual wills, or joint wills of spouses. Yet 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 implementation of legacies and testamentary dispositions.

One of the advantages of the inheritance agreement is that 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 the assets that are 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 with different heirs, were made, the inheritance agreement that was concluded prior to all other inheritance agreements takes precedence.

Furthermore, the testator has a right to repudiate, at any time, the inheritance agreement, by asking the 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 expenses of the other parties that have arisen due to the performance of the inheritance agreement.

Other parties could also have a 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. *Inheritance foundation*

An inheritance foundation (the 'foundation') could be set up on the basis of the aforementioned instruments: an individual will, a joint will of spouses or an inheritance agreement. Irrespective of the chosen type of the instrument, the instrument must be accompanied by a decision of the testator to set up a foundation, by the articles of association of the foundation and provisions that provide for the administration of the foundation.

The foundation is created only after the testator's death, meaning that 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 the provisions for the administration could be modified during the testator's life, but upon his or her death become unchangeable.¹

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

Once the foundation is set up, the foundation becomes the owner of the transferred assets. The foundation has management bodies – either a chief executive officer or an executive board (natural persons or legal entities could fill the positions). The beneficiaries could not be part of these bodies, but they could be members of the supreme collegiate body. The articles of association could provide for oversight functions to the supervisory board.

Russian, as well as foreign, assets could be transferred to the foundation. When the latter are transferred, the testator should carefully think of foreign assets' management and establish a succession plan that will work for all the jurisdictions concerned.

The beneficiaries' rights could be subject to conditions, they are not transferrable and their personal creditors cannot directly take recourse on their rights. Furthermore, upon death of a beneficiary, the beneficiary's rights are excluded from the beneficiary's estate. In this case, the rights of the deceased beneficiary are attributed to persons at whom the provisions, for administration of the foundation, point.

Given this, the establishment of the inheritance foundation considerably expands the freedom of the testator and allows him or her to dispose of the estate in the most consistent way that matches his or her desires and views.

D. *Will substitutes*

1. GIFTS

A lifetime gift is one of the means that allow 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 to a separate property regime, by a nuptial agreement. The choice of a separate property regime to all the marital property excludes the possibility of allocation of half the estate to the surviving spouse upon death of the other (for details on ownership regime and spousal share, see II.D).

3. LIFE INSURANCES

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

6. PERSONAL FOUNDATION

On 1 July 2021, the Russian President signed a draft law on amendments to the Russian Civil Code, establishing the possibility of creating personal foundations³ from 1 March 2022. These amendments to the law propose that a personal foundation is a non-commercial legal entity that can be created by one individual or by both spouses being in an official registered

marriage for property, management and estate planning. The value of assets transferred to a foundation shall be not less than RUB 100m, according to an independent professional appraisal report. The personal foundation can be created for a certain period or without time limits.

Unlike an inheritance foundation, which can be created after a testator's death (see I.C), a personal foundation can be created during a founder's life. That means that the property transferred to the personal foundation, most likely, will be excluded from the founder's estate and be distributed between beneficiaries, according to corporate documentation of the foundation, approved by the founder. The authors expect that this law will have a significant influence on practical issues of the estate planning of the Russian individuals.

To protect the interests of creditors, the law establishes subsidiary liability of the founder, in respect of the foundation's debts and subsidiary liability of the foundation, in respect of the founder's debts/obligations during the three years after the creation of the personal foundation.

II. Estate administration

A. Overview of 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.⁴ To initiate a succession procedure, the heirs shall submit the 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 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 he/she occupies 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 Russian registration confirms that the testator's place of residency was in Russia. Therefore, even if the testator relocated and permanently resided overseas, as long as he or she maintained Russian 'residency registration', in the legal sense of the 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

The 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 of acts that evidence an actual acceptance of the estate (ie, within six months, an heir took the 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).

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, or 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.⁵

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

- Receiving applications on estate acceptance, from the persons who consider themselves as heirs.
- Determination of assets that are to be included into 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, 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), being due on the testator's death, shall be included into 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.

- Making requests to the state bodies/banks for confirmation of the testator's rights to the assets.

In particular, the notary checks the Russian State register of immovable property and looks for the real estate registered in the testator's name. Also, the notary may send requests to the banks and registrars of shares in legal entities' capitals. It is highly recommended for the heirs to provide the notary with information about the testator's property, because Russian notaries usually are not very active in the research of the testator's assets.

- Requests the foreign competent authorities regarding the validity of the foreign will (if any).

If there was a foreign will in respect of the assets, given the applicable succession law is the Russian law, the notary shall make a request to the competent foreign authorities to confirm that the provided version of the will was executed properly, and has not been amended or revoked. Under general rule the notary sends requests abroad through 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, being the ground for registration of heir's rights, in a particular manner sufficient for identification of specific assets. The foreign assets are not usually described in the certificate (in this case only an heir's share of all foreign assets is indicated). Only in some exceptional cases, the determination of certain items of foreign property in the certificates is possible.

The notary is also entitled to issue the 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, the notaries are usually reluctant to use this right, as the possibility of the appearance of other heirs, during the term, could not be fully eliminated.⁶

It shall be noted that Russian jurisprudence take the view that obtaining an inheritance certificate is a right of an heir, who has accepted the estate, not his or her obligation.⁷ Therefore, if the heir properly and timely accepted the estate, 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 the Russian assets, the notary issues the certificate of inheritance that indicates the details of the specific assets. Based on such a certificate, the competent authorities/organisations register heirs' rights to the estate.

4. PROTECTION OF THE ESTATE

Before the heirs have registered their rights on 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).

The 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:

- *Ensure the receiving of the estate by the heirs, in accordance with the will and the Russian law:* This provision includes performance of legal and actual (non-legal) actions that are necessary to help the heirs accept the estate (eg, to provide assistance in preparing documents and organising consultations for heirs (if necessary)). It shall be emphasised that the executor is not a legal representative of heirs, he or she acts on his or her name.
- *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 could be taken in respect of

assets that require management (eg, securities, shares in a limited liability company and leased real estate).

If the executor has not been appointed by the will, the notary dealing with the inheritance case is entitled to establish a 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 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 being under the fiduciary management, this heir has a right to terminate any fiduciary management.

If the executor has been appointed by a will, he or she shall be nominated, by a notary, as a fiduciary manager from the moment he or she expresses the 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 children, the surviving spouse and parents of the testator. The heirs of the second line are the testator's full and half siblings, his or her grandparents from both paternal and maternal sides. Heirs of the next line of the priority will 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 could not be divided in kind, they become 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 of the owners, in case of 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 disabled children of the testator, and his or her 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 jurisprudence 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).⁸

The above persons are entitled to claim the forced (obligatory) share that is separated from unbequeathed testator's property. If such property is not enough to satisfy the claims of the forced heirs, they are entitled to claim their obligatory 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 shared property of heirs and necessity to manage and dispose of such an asset jointly with other owners.

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 current joint

residence, by the law of 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* is regarded as joint property of the spouses. 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.

Individual property of each spouse could be recognised by the court as a 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 have been made (eg, overhaul and reconstruction).

The spouses are free to conclude a nuptial agreement or agreement on division of joint property of the spouses⁹ and state other rules for determination of 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 in the joint property of the spouses, as described above. This means that if either spouse has passed away, the surviving spouse has a right to a spousal share of half 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 time frames are not applicable for the surviving spouse, as the right to receive the spousal share in the estate could be enforced, even if the surviving spouse has not accepted the estate, and rights of heirs on the estate have been registered.

If there is no joint property owned by the deceased together with the surviving spouse, the surviving spouse may submit, to the notary, a statement confirming this fact, 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 a right for allocation of the spousal share, if the joint property 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 inheritance case.

3. 'HIDDEN' SPOUSAL SHARE

Another situation is possible if the joint property is registered in the surviving spouse's name. In such a situation the heirs are entitled to request the inclusion of half of such joint assets into the estate of the deceased. This can be done through notarial procedures, if the surviving spouse agrees, or in the court order in the case of conflict between the surviving spouse and the heirs.

III. Trusts, foundations and other planning structures

Russian legislation does not have a concept of 'trusts', nor 'foundations', but does not prohibit Russian citizens and residents to transfer assets to foreign trusts and become a settlor, beneficiary, protector and so on. The assets transferred to such structures are considered to be owned by the third parties (eg, the trustees) and thus, are not included in the deceased's estate.

When Russian citizens and residents intend to transfer their assets to foreign trusts, certain rules shall be borne in mind. Considering the absence of the concepts of trusts and foundations in Russia, the Russian assets cannot be transferred to a trust (or foundation) directly, but they could do so through an intermediary foreign company.

Moreover, 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 action. Otherwise, a transfer of assets to the foreign company may be disputed in court.

Furthermore, 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 jurisprudence on this matter in Russia, 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 a foundation, may wish to ensure that the obligatory shares of the forced heirs will be satisfied from other assets that are directly possessed by the deceased and have not been transferred to the structure.

It is also recommended not to provide in a will for a transfer of assets, being subject to Russian inheritance law, to a trust or foundation, after the testator's death. It seems that it will not be practicable for a Russian notary to execute such provisions of the will. As an alternative, the testator might wish to consider a creation of a trust or foundation during his or her lifetime.

IV. Taxes

A. Residency and domicile

There is no concept of domicile in the 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).

Due to the Covid-19 pandemic, special rules apply to the tax year 2020. An individual could submit the application to the tax authorities and become a Russian tax resident if he or she spent at least 90 days in Russia during 2020. For other periods, such an opportunity is not provided.

B. General rules on 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 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 etc, exceeding RUB 4,000).

Non-resident individuals pay PIT at 30 per cent on all Russian-sourced income, except for dividends, which are taxed at the rate of 15 per cent. 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 the Russian-sourced incomes (eg foreign citizens having 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 in kind) are non-taxable in Russia, except for gifted real estate, vehicles, shares and participating interests.

Any gifts between family members, or close relatives,¹⁰ are tax exempt.

2. ESTATE AND INHERITANCE TAXES

There are no estate and inheritance taxes in Russia. Any income received as the formal inheritance is not taxable, except for remuneration payable to 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 also IV.E for more details).

The Tax Code does not provide for a special tax exemption, in respect of the income received by beneficiaries of Russian inheritance funds; thus, such payments may be considered as taxable by the Russian tax authorities. At the same time, since it is the new instrument in Russian legislation, special tax regulations may be introduced in the future.

D. Taxes on income and capital

In the case of use or disposal of property received by the way of inheritance or donation,¹¹ generally, the following tax rates are applicable:

	<i>Residents</i>	<i>Non-residents</i>
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 testator/donor (should be confirmed by documents) or 2. RUB 1m (for real estate)/RUB 250,000 (for other property)	30% (for Russia-based property) without opportunity to reduce income by the amount of costs In some cases, the income may be exempt in Russia under an applicable double tax treaty (except for the sale of Russian real estate)
	Non-taxable, after holding property for three years and more (except for certain property used within entrepreneurial activities)	
Investment income (interest, dividends,	13/15% (income from disposal of securities can be reduced by acquisition and holding costs incurred by the testator/donor)	15% for dividends from Russian companies 30% for another Russian-sourced

	<i>Residents</i>	<i>Non-residents</i>
income from disposal of securities etc)		income Tax can be reduced under an applicable double tax treaty
	Income from sale, or redemption, of participating interests in Russian companies and shares of Russian and foreign companies is not taxable, after holding them for more than five years, when the share of the Russian real estate of the assets of the company does not exceed 50% (directly, or indirectly)	

There are no special taxes on capital in Russia, except for taxation of the capital gain 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 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 establishment of the trust/foundation;
- file the regular CFC reporting 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 13/15 per cent rate (even if such payments are received as a result of inheritance). Distributions of trust/foundation profits earlier declared, and taxed by the tax resident as CFC profit, are not taxed on receipt, subject to meeting certain requirements.

Incomes received in cash, or in-kind, from trust/foundation and not qualified as distribution of profit of the trust/foundation are not taxable, within the value of property/property rights earlier contributed to the trust/foundation by the recipient, or his or her family members or 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, it may trigger taxable income.

Notes

1. Art 123.20-1 (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 time frames set out in the decision of the testator, to establish a foundation.
3. See <https://sozd.duma.gov.ru/bill/1172284-7> accessed 20 July 2021.
4. 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.

5. See <https://notariat.ru/ru-ru/help/probate-cases> accessed 9 July 2021.
6. 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 registration of the civil act abroad, or absence of the information in the state register, that has been created recently (since 1 October 2018).
7. 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'.
8. See n 7 above, para 31.
9. 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 state registration of marriage. Under the agreement on division of joint property, the spouses are entitled to divide the property acquired during the marriage. Unlike a nuptial agreement, the agreement on division of joint property can be concluded during marriage, or after marriage dissolution.
10. 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 the clarifications of the Russian Ministry of Finance, 'the family' is understood as persons related by blood relationship or affinity, living together, and maintaining a common household.
11. For the purposes of this section, it is assumed that the donor and the donee are family members, or close relatives in accordance with the Russian Family Code.