

Ukraine

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1. Types of tax

Ukraine has no specific inheritance or gift taxes. According to the Ukrainian law, transfer of property – either inherited or received as a gift – is subject to personal income tax. In addition, the state duties may apply in certain cases, such as, verification of testaments and issuance of certificates on the right to inheritance, verification of certain gift agreements.

Personal income tax

In general, current Ukrainian tax law provides the same personal income tax implications with respect to income received as a gift or inheritance.

According to the clarifications from the Ukrainian tax authorities, the taxable event for the heir occurs at the moment he or she obtains the certificate on the right to inheritance. Such a certificate can be obtained as late as six months after the inheritance commencement date, which is the actual date of the testator's death. It should be noted that inheritance of immovable property in Ukraine requires further state registration of the ownership rights to it. Thus, the moment when the individual obtains inheritance and is liable for paying taxes on it and the moment when he or she becomes its actual owner do not always coincide.

The state duty

The state duty is imposed for verification of testaments at the rate of 0.05 of the non-taxable minimum (i.e. UAH0.85 or €0.07 at the current exchange rate) per each testament. It is also imposed for the issuance of the certificate on the right to inheritance at the rate of two non-taxable minimums (i.e., UAH34 or €2.5 at the current exchange rate) per each certificate.

If there are several heirs, the state duty is calculated for each of their shares (portions).

The law stipulates that if a subject matter of a gift agreement is an immovable property or any currency valuables amounting over UAH850 (€64 at the current exchange rate) it must be notarized. The state duty in such a case amounts to 1% of the contractual price, but not less than one non-taxable minimum (i.e., UAH17/€1.3) per contract.

The state duty on verification of succession agreements amounts to 1% of the value of the transferred property, but not less than one non-taxable minimum (i.e., UAH17/€1.3) per the agreement.



1.1 Inheritance tax and tax on gifts during lifetime

There are no inheritance or gift taxes in Ukraine.

1.2 Gift tax

There is no gift tax in Ukraine.

1.3 Real estate transfer tax

There is no real estate transfer tax in Ukraine.

1.4 Endowment tax

There is no endowment tax in Ukraine.

1.5 Transfer duty

There is no transfer duty in Ukraine.

1.6 Net wealth tax

As of now there is no net wealth tax in Ukraine, however, amendments to the tax law introducing the net wealth tax are currently considered.

2. Who is liable?

2.1 Residency

Generally, taxation in Ukraine depends on an individual's tax residence status, source of income and type of income.

In defining tax residency status, the Ukrainian law uses the tiebreaker residency test.

An individual is considered a tax resident of Ukraine if he or she:

- ▶ Has a place of residence in Ukraine
- ▶ Has a permanent place of residence in Ukraine (if he or she also has a place of residence in a foreign state)
- ▶ Has close personal or economic links (center of vital interests) in Ukraine (in case he or she also has a place of residence in a foreign country)
- ▶ Spent fewer than 183 days in Ukraine (including arrival and departure days) (if the state in which an individual has a center of vital interests cannot be defined)
- ▶ Is a citizen of Ukraine (despite the actual time he or she spent on Ukrainian territory during the reporting period)

Regardless of the test, according to the practical approach of the Ukrainian tax authorities, the number of days spent by an individual in Ukraine within the calendar year is considered the main criterion for determination of the tax residence status.



2.2 Domicile

Domicile is identified in Ukraine with an individual's permanent place of residence and is applicable for determining the individual's tax residence status. See Section 2.1.

3. Rates

The general personal income tax rate in Ukraine is 15% or 17%. A 15% tax rate applies to the monthly income of up to 10 times minimum wage established for 1 January of the reporting year (UAH12,180 or €913 in 2014 at the current exchange rate) and 17% applies to the excess amount. Ukrainian tax law provides for special tax rates applicable to income received in the form of gift or inheritance, which are as follows:

	1st degree of kinship (spouse, parents and children), %	Other family members and all other Ukrainian tax residents, %	Disabled individual of the 1st category, an orphan child or a disabled child, %	Ukrainian tax nonresident, %
Real estate	0	5	0	15/17
Movable property	0	5	0	15/17
Commercial property*	0	5	5	15/17
Insurance payouts	0	5	0	15/17
Monetary assets	0	5	5	15/17
Property owned by a Ukrainian tax nonresident	15/17	15/17	15/17	15/17

* For further taxation purposes investment assets (e.g., securities, dividends) received as a gift or inherited are considered to have been acquired at the value of the state duty and personal income tax paid in connection with such acquisition.

4. Exemptions and reliefs

According to the Ukrainian tax law, a 0% tax rate applies to the income received by Ukrainian tax residents from a Ukrainian tax resident in the form of:

- ▶ Assets received by the heirs, legatees and/or donees of the first degree of kinship
- ▶ Immovable and movable property, monetary assets (both cash and funds available on the bank accounts) received by a disabled individual of the first category or an orphan child
- ▶ Immovable and movable property received by a disabled child
- ▶ Money deposits stored in the former USSR savings bank and state insurance institutions as well as funds invested into the former USSR governmental securities



5. Filing procedures

Income in the form of an inheritance or a gift has to be disclosed in the annual tax return. Filing exemption applies to the individuals who received property taxed at a 0% tax rate or those who paid taxes prior to obtaining the certificate on inheritance or verification of the gift agreement by a notary (e.g., tax nonresidents).

According to the current Ukrainian tax law, an annual tax return has to be filed by 1 May of the year following the reporting one. The deadline for settlement of the personal income tax liability is 31 July of the year following the reporting year.

The Ukrainian tax residents who intend to leave Ukraine permanently are liable to file departure tax returns two months prior to the date of departure.

The Ukrainian tax nonresidents should calculate and pay the income tax liability arising from income received in the form of an inheritance prior to issuance of the inheritance certificate by a notary, but are not obliged to file the annual tax return with respect to the inherited assets (provided that there was no other income subject to taxation in Ukraine in the respective year).

6. Assessments and valuations

According to Ukrainian law, the term “estate” refers to the special object of civil rights and is defined as an item of property or as an accumulation of items, property rights and duties.

Even though an inheritance consists of the rights and duties of the deceased, a taxable base in case of an income received in the form of an inheritance or a gift is defined as the gross value of the received assets and no deductions are applicable (e.g., those related to formalizing the right to inheritance or debts).

For inheritance taxation purposes, the following types of assets comprise an estate:

- ▶ Immovable property
- ▶ Movable property (e.g., jewelry, transportation vehicles)
- ▶ Commercial property (e.g., securities, corporate rights, intellectual property and business ownership rights)
- ▶ Insurance payouts
- ▶ Monetary assets (both cash and funds on the bank accounts)

According to Ukrainian law, valuation of property for taxation purposes is conducted mostly by independent certified appraisers based on the statutory prescribed methodology for each type of assets. The valuation process is aimed to verify the fair market value (FMV) of a particular piece of property. For movable property such as cars, motorcycles and motor bicycles, the law provides for the possibility to determine the value of inherited/donated assets based on mid-market prices for the same kind of property published quarterly by the Ukraine’s Cabinet of Ministers.

7. Trusts, foundations and private purpose funds

Ukrainian law does not clearly define what trust is. What the world defines as a “trust” is carried out in Ukraine by means of conclusion of the estate administration agreement. Under such an agreement an owner conveys estate to a legal entity or a private entrepreneur who in return is obliged to manage the estate for the benefit of either the owner himself or herself or the owner-appointed beneficiary, based on an agreed-upon fee. The taxation of the income conferred on the beneficiary is subject to taxation in Ukraine at a 15% or 17% progressive tax rate. See Section 3.



Under an estate-administration agreement, a transfer of limited property ownership rights is restricted because the estate administrator cannot alienate the estate without the owner's consent.

According to Ukrainian law, an estate administration agreement automatically terminates with the owner's death. Therefore, a creation of a testamentary trust to facilitate transfer of property to the potential heirs is not possible.

8. Grants

This is not applicable in Ukraine.

9. Life insurance

By the general rule, an amount of life insurance payout is included into a decedent's estate. Such compensation is payable once an heir or legatee presents his or her certificate on the right to inheritance to an insurance company.

However, if the life insurance contract appoints a certain individual as a sole beneficiary of the insurance payout, this asset is not included into the estate and is not subject to inheritance. The insurance company should act as a tax agent of the life insurance payouts made to the heirs, withholding personal income tax on behalf of the individual and remitting it to the Ukrainian Treasury.

10. Civil law on succession

10.1 Estate planning

Estate planning opportunities in Ukraine are rather limited. The assets of a decedent are taxed at the fixed-tax rates, irrespective of the type of property. Transfer of property among individuals in Ukraine is mostly executed through either sales - purchase/ gift agreements or an inheritance and an income thus received is subject to personal income tax applied to its gross value.

It should be noted that rules for taxation of gifts in Ukraine are the same as those established for taxation of an inheritance. Therefore, there isn't any way to avoid an inheritance taxation by giving away assets as gifts prior to death.

The estate-planning process in Ukraine narrows down to tracing an individual's residence status where possible (as tax rates provide for a less favorable tax regime for tax nonresidents). It also might be considered to transfer a property via succession agreement instead of conducting a will in order to ensure that the assets are excluded from the inheritance pool and a designated individual obtains ownership rights to the property after the owner's death, regardless of any subsequent claims from heirs.

10.2 Succession

The Ukrainian law determines two main types of succession: intestate (by-law) succession and testament succession.

By the general rule, the individuals specified in the will have the right to succession. The law therefore determines by-law succession as a secondary type of succession (after a testament). According to the general intestate procedures, by-law heirs inherit the portion of the assets not covered in the will. The legatees are admitted to inheritance of this portion of assets on the general basis along with the by-law heirs.

By the general rule, the place of a commencement of inheritance is the last place a testator lived. If that place is unknown, the place of commencement is the place in which the testator's real estate (or the majority of it) is located. If he or she had no real estate, the place is where his or her movable property is located.



An heir who accepts an inheritance that includes real estate must obtain and register a certificate on right to the inheritance. Each heir receives his or her own certificate that specifies the names and shares of the other heirs. These certificates are issued six months after the inheritance begins. The heir becomes the owner of the real estate at the moment of its state registration.





In particular, the law establishes a six-month period for the heirs or legatees to accept the estate and a possibility for a testator to appoint the testamentary executor, which can either be a legal entity or an individual. The appointed testamentary executor's written consent is usually reflected in the testament or added to it. Under certain circumstances heirs or a notary can also be empowered to authorize the testamentary executor.

A testamentary executor's obligations are as follows:

1. To protect the inheritance
2. To inform heirs, legatees and creditors about the commencement of the inheritance
3. To claim fulfillment of obligations by the testator's debtors
4. To administer the inheritance
5. To ensure that each legatee receives the shares that the will determines
6. To ensure that forced heirs receive their portions of inheritance; furthermore, the executor shall ensure that the legatees perform the actions to which they are obliged according to the will

Under the succession agreement the alienator can appoint a person to control the execution of the agreement after his or her death. If no one is appointed, a notary controls it.

11. Estate tax treaties

11.1 Unilateral rules

There are two methods for avoiding double taxation in Ukraine. The first, and the main one, is a foreign tax credit, which is applicable to Ukrainian residents. The second is a tax exemption, which may technically apply to Ukrainian nonresidents.

A foreign tax credit

Taxes that a Ukrainian tax resident pays abroad may be credited against his or her Ukrainian tax liability, provided that a double tax treaty exists between Ukraine and the relevant foreign state.

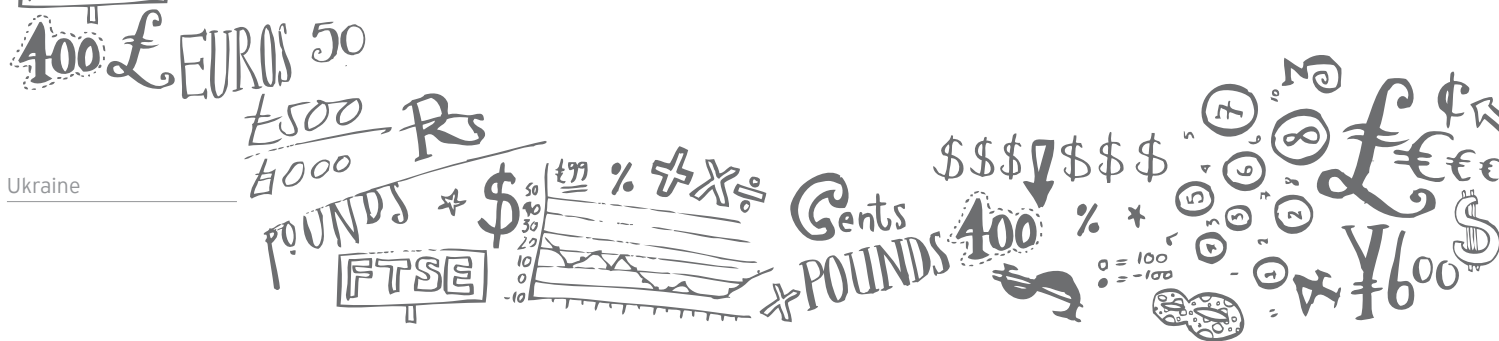
Should an individual taxpayer be eligible for a foreign tax credit, he or she should state the amount of foreign taxes that demand credit in his or her annual Ukrainian tax return.

Generally, using a foreign tax credit to relieve double taxation is possible if all of the following conditions are met:

- ▶ A double tax treaty between the states in question is available and effective
- ▶ The nature of the taxes paid abroad and to be paid in Ukraine (for example, an income tax) is the same
- ▶ A taxable base is the same
- ▶ A reporting period is the same
- ▶ A taxpayer is the same
- ▶ A certificate from the foreign tax authorities, duly legalized or apostilled and officially translated into Ukrainian, is available

According to the credit method, the total of the foreign taxes credited in Ukraine cannot exceed the tax liability payable in Ukraine.

Should the individual have double citizenship, which the Ukrainian law forbids, he or she is treated for tax purposes as a Ukrainian citizen who is ineligible for a foreign tax credit.



As mentioned above, avoidance of double taxation is possible, provided that all the numerous conditions are met, which significantly decreases the feasibility of getting a relief. These conditions create complications related to:

- ▶ Diverging nature of taxes. There are a lot of countries that levy either inheritance or estate taxes on inheritance, while in Ukraine a personal income tax applies to an inheritance.
- ▶ Diverging taxable person. Ukraine does not levy taxes either on estate in the meaning of a taxable person or on a deceased. In Ukraine only an heir/legatee may be considered a taxpayer.
- ▶ Diverging methodology for valuation of assets and conditions to deduct debts and expenses. In Ukraine, debts and expenses are not deductible for taxation purposes and the gross value of inherited assets is subject to taxation.
- ▶ Diverging taxable events. In Ukraine a taxable event occurs at the moment of obtaining of a certificate on the right to inheritance in contrast to many other countries, which, consider the moment of death as a taxable event. This may cause a situation in which a taxable event in Ukraine will take place in another reporting period, giving no chance for a relief.

Failing to meet even one condition makes getting a foreign tax credit impossible. Therefore, a unilateral relief is insufficient for overcoming double taxation problems in Ukraine.

In addition, the Ukrainian tax law clearly prescribes that the following foreign taxes cannot be credited against Ukrainian income tax:

- ▶ Capital gains taxes, estate taxes
- ▶ Post taxes
- ▶ Sales taxes and other indirect taxes irrespective of whether they fall under the profit tax category or should legally be considered separate types of taxes

Considering the above, the foreign tax credit method of avoiding double taxation of property received via gifts or as an inheritance in the majority of cases will not be applicable in Ukraine.

Tax exemption

Ukrainian tax nonresidents may be eligible for exemption from taxation of a Ukrainian-source income if a relevant double-tax treaty envisages it. Applying for a tax exemption involves filing a certificate substantiating that the individual concerned is a resident of a foreign state.

Just as in the case of a foreign tax credit, a tax exemption may be granted provided that the nature of taxes paid abroad and in Ukraine are the same. However, as a tax residence certificate (which has to be issued by the foreign tax authorities and subsequently duly legalized and officially translated into Ukrainian) does not make a reference to the types of foreign taxes in question, but only confirms an individual's residency in a foreign state, technically a tax exemption may be possible even if the nature of the taxes being paid differed.

Envisaged by the law, such a tax exemption is thus, theoretically possible. In reality, however, tax authorities have never applied it to individuals. Its feasibility for a Ukrainian nonresident individual is therefore questionable.

In addition, in case of tax payment deferrals in a foreign state, neither exemption nor credit applies in Ukraine.



11.2 Double-taxation treaties

There are no inheritance and estate taxes in Ukraine. Thus, Ukraine has not concluded any tax treaties for avoiding double taxation on estate, inheritance and gift taxes.

The income tax on inheritance and gifts in Ukraine falls within the scope of treaties for avoiding double taxation on income and capital. The double-tax treaties address all the types of double taxation, such as residence source, dual residence, dual source, and in most cases apply to the personal income tax from the Ukrainian side.

Double tax treaties with the following countries are currently in effect for Ukraine: Algeria, Armenia, Austria, Azerbaijan, Belarus, Belgium, Brazil, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Cuba, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Macedonia, Malaysia, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Syria, Tajikistan, Thailand, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, United States, Uzbekistan, Vietnam and former Yugoslavia.

Generally, the method for avoiding double taxation under a treaty follows the pattern that the domestic law envisages for a unilateral relief. That method is, therefore, insufficient given the diverging nature of taxes, taxable person, taxable base and taxable event.

Given the above, avoidance of double taxation is almost impossible due to the fact that there are no double tax treaties on inheritance and gift taxes in Ukraine and the fact that most of the countries levy inheritance or estate taxes on inheritance, while Ukraine levies income tax on inheritance. The relief may be sufficient only in those rare cases, in which the nature of taxes imposed on inheritance in Ukraine and in a foreign country coincide.