



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 6 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 nontaxable minimum (i.e., UAH0.85 or €0.08 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 2 nontaxable minimums (i.e., UAH34 or €3.3 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 (€85 at the current exchange rate) must be notarized. The state duty in such a case amounts to 1% of the contractual price, but not less than 1 nontaxable minimum (i.e., UAH17/€1.7) per contract.

The state duty on verification of succession agreements amounts to 1% of the value of the transferred property, but not less than 1 nontaxable minimum (i.e., UAH17/€1.7) 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 the Ukraine within the calendar year is considered the main criterion for determination of the tax residence status.

Ukrainian tax residents are taxed on their worldwide income, while Ukrainian tax nonresidents are taxed on the Ukrainian-source income only, that is, on the inherited assets located on the Ukrainian territory or that have their source there. In the Ukraine, income tax on inheritance and/or gifts depend on the relationship that the heir, legatee and/or donee has to Ukraine. Tax residents have to pay income tax on inheritance and/or gifts, irrespective of the location of the acquired assets.



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 as described in 2.1 above.

3. Rates

The general personal income tax rate in the 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 (UAH 11,470 or EUR 1,099 in 2013 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 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 (i.e., 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.

Ukrainian tax residents who intend to leave the Ukraine permanently are liable to file departure tax returns 2 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., jewellery, 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.

7. Trusts, foundations and private purpose funds

Ukrainian law does not clearly define what trust is. What the world defines as “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 as described in Section 3 above.

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 the 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 the 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 the 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 the 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 the 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 2 main types of succession: intestate (by-law) succession and testament succession.

By the general rule, individuals specified in the will have the right to succession. The law therefore determines by-law succession as a secondary type of succession (after 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.

A heir who accepts an inheritance that includes real estate must obtain a certificate on right to the inheritance.

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 6 months after the inheritance begins. The heir becomes the owner of the real estate at the moment of its state registration.

Testate succession

According to Ukrainian law, a will represents an individual's personal instructions in the event of his or her death. The individual must draft the will himself or herself as representation is not allowed. The testator can include either the entire estate or a part of it in the will.

The testator may institute as heir any individual or legal entity, Ukraine as a state, the autonomous Republic of Crimea, local authorities, foreign countries and other subjects of public law. He or she can also divest any of the by-law heirs of the right to succession without specifying reasons for doing so.

According to the law, people who intentionally hinder the testator in making, changing or canceling the will in order to become legatees or to increase their shares or other people's shares are divested of the right to succession.



The testator may institute a bequest in favor of an individual or a legal entity and designate a legatee who shall grant to the bequestee a certain scope of the ownership rights with respect to the inherited assets (e.g., the right to inhabit a real estate for a lifetime). The bequestee can claim his or her rights with respect to the estate, starting from the moment of commencement of the inheritance and retain these rights in the event of any changes of the real estate owner.

The testator may grant easements to individuals or entities under the will, authorizing them to use the real estate for certain defined purposes. The testator may also define certain criteria that have to be met before an individual can inherit the estate.

Succession agreement

According to Ukrainian law, individuals or married couples can conclude succession agreements regarding their property. Under such agreements an acquirer is obliged to undertake actions specified by the alienator(s) in return for ownership rights to the assets after the owner's death. The alienator(s) can appoint an individual to control the execution of the agreement after his or her death.

10.3 Forced heirship

The law states that some categories of by-law heirs have the right to succession irrespective of the will. These include the testator's children under 18 years of age, grown-up disabled children, disabled spouses and parents. Such heirs inherit half of the shares in the decedent's estate that would have belonged to them in case of by-law succession. Shares of the aforementioned individuals in inheritance can be reduced by a court's decision (e.g., if they failed to provide necessary care for the deceased before his or her death).

10.4 Matrimonial regimes and civil partnerships

According to Ukrainian law, a property acquired by a married couple during the time of being married comprises their joint property, unless otherwise prescribed by the law or agreement. The spouse's share in the joint property is subject to inheritance on the general grounds. However, the law provides for an opportunity for the couple to make a marital will covering their joint property. According to the marital will, the spouse who outlived the other inherits the share the deceased had in joint property. The notary imposes a restraint on alienation of the joint property after the death of one of the spouses. Upon death of the second spouse, the estate is distributed among the legatees according to the provisions of the will.

Ukrainian law does not recognize same-sex marriages and civil partnerships. However, individuals who live as part of the testator's family for at least 5 years before the inheritance commences are granted the right to inherit the assets of the deceased (see 10.5).

10.5 Intestacy

According to Ukrainian law, the by-law heirs inherit the assets if:

- There is no will
- The will is void
- The will comprises only part of the testator's estate
- The legatees failed to accept the inheritance (for any reason)
- The legatees renounce succession
- The legatees died before the commencement of the inheritance
- The legatees are divested of the inheritance



Only private individuals can be heirs by law. To execute the right to succession, a by-law heir should provide documented evidence of his or her family or matrimonial relations with the testator and perform all the actions necessary to register ownership rights to the inheritance.

The law states that some categories of heirs are divested of the right to succession, such as individuals who intentionally murdered or attempted to murder the testator or any of the potential heirs or parents divested parental rights to a child (the testator). Moreover, people whose marriages have been declared invalid cannot inherit one another's property. A court can also divest of the right to succession parents (adopters), grown-up children (adoptees) and other individuals who did not take care of or support a testator who was helpless as the result of age, illness or mutilation.

By-law succession is performed in turns. Ukrainian law provides for 5 turns of priority of heirs by law.

First priority	Testator's children (including children conceived during the lifetime and born after the death of the testator), spouse and parents
Second priority	Testator's brothers and sisters and both paternal and maternal grandparents
Third priority	Testator's aunt and uncle
Fourth priority	Individuals who lived as part of the testator's family for at least 5 years before the inheritance commenced
Fifth priority	Other relatives of the testator up to the sixth degree of kinship (note: The tax law provides for only 2 degrees of kinship) and the testator's dependents other than his or her family members

In general, every next turn of by-law heirs inherit the property when (1) there are no heirs of the previous priority turn; (2) the heirs of the previous priority turn have been divested of the right to succession; and/or (3) the heirs of the previous priority turn do not accept or refuse to accept the inheritance.

An heir can renounce succession within 6 months of the date of commencement of the inheritance. If he or she does, the other by-law heirs of the same priority divide his or her share in equal parts. An heir can also refuse his or her share in favor of any of the by-law heirs, irrespective of the priority turn.

If no legatee or by-law heir accepts the inheritance within a year of its commencement, a court can cede the escheat inheritance to the relevant local government.

10.6 Probate

The concept of probate is not applied in the Ukraine. However, the inheritance procedure in Ukraine bears some resemblance to the probate process.

In particular, the law establishes a 6-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) protect the inheritance; (2) inform heirs, legatees and creditors about the commencement of the inheritance; (3) claim fulfillment of obligations by the testator's debtors; (4) administer the inheritance; (5) ensure that each legatee receives the shares that the will determines; and (6) 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 2 methods for avoiding double taxation in the Ukraine. The first, and the main one, is a foreign tax credit, which is applicable to Ukrainian residents. The second is 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 the 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, is available

According to the credit method, the total of the foreign taxes credited in Ukraine cannot exceed the tax liability payable in the 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 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 a heir/legatee may be considered a taxpayer.
- ▶ Diverging methodology for valuation of assets and conditions to deduct debts and expenses. In the 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 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 the Ukraine.

In addition, 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 the 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 the Ukraine.

11.2 Double taxation treaties

There are no inheritance and estate taxes in the Ukraine. Thus, the 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 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 the Ukraine and the fact that most of the countries levy inheritance or estate taxes on inheritance, while the Ukraine levies income tax on inheritance. The relief may be sufficient only in those rare cases, in which the natures of taxes imposed on inheritance in the Ukraine and in a foreign country coincide.



Contacts

Kiev

Ernst & Young
Khreschatyk Street, 19A
Kiev
01001
Ukraine

Olga Gorbanovskaya
olga.gorbanovskaya@ua.ey.com
380 44 490 3022