



Ukraine

Contacts

Kyiv

EY
Khreschatyk Street, 19A
Kyiv
01001
Ukraine

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

Halyna Khomenko
halyna.khomenko@ua.ey.com
+380 44 490 3028

1. Types of tax

Ukraine has no specific inheritance or gift taxes. According to Ukrainian law, a transfer of property – either inherited or received as a gift – is subject to personal income tax. In addition, state duties may apply in certain cases, such as verification of testaments and issuance of certificates on the right to inheritance, and 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 clarifications from the Ukrainian tax authorities, the taxable event for the heir occurs at the moment he or she obtains a 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 nontaxable minimum (i.e., UAH0.85 or GBP0.03 at the current exchange rate¹), per each testament. It is also imposed for the issuance of the certificate on the right to inheritance at the rate of two nontaxable minimums (i.e., UAH34 or GBP1.07 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 to over UAH850 (GBP6.68 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 nontaxable minimum (i.e., UAH17 or GBP0.53) per contract.

¹ Because of constant local currency rate fluctuations in Ukraine, it is recommended that readers contact an EY advisor for correct rates.

The state duty on verification of succession agreements amounts to 1% of the value of the transferred property, but not less than one nontaxable minimum (i.e., UAH17 or GBP0.53) 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

Even though there is currently no net wealth tax in Ukraine, there is a tax for owners of motorcars manufactured no more than five years ago with an average market value exceeding 375 times the minimum wage established for 1 January of the reporting year (currently, UAH1,771,125 or GBP55,596.62). The tax is UAH25,000, or GBP784.76 per year for each motorcar that meets the above criteria.

The list of motorcars that fit the above criteria is published at the official website of the Ministry for Development of Economy, Trade and Agriculture by 1 February of the tax year.

In addition, property owners are subject to real estate tax if the area of an apartment exceeds 60 sq. m., the area of a house exceeds 120 sq. m. or the total area of various types of property exceeds 180 sq. m. The excess over the specified area is subject to real estate tax at a rate not exceeding 1.5% of the minimum wage established for 1 January of the reporting tax year (currently, UAH70.85 or GBP2.22) per square meter.

Owners of apartments with total area exceeding 300 sq. m. and owners of houses with total area exceeding 500 sq. m. must annually pay an additional tax of UAH25,000, or GBP784.76 for each residential real estate object.

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, 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 more 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 the determination of tax residence status.

Ukrainian tax residents are taxed on their worldwide income, while Ukrainian tax nonresidents are taxed only on Ukrainian-source income, that is, on the inherited assets located on Ukrainian territory or that have their source there. In Ukraine, income tax on inheritance and/or gifts depends on the relationship that the heir, legatee and/or donee has to the testator/donor and on the tax residency status of both parties. 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. See Section 2.1.

3. Rates

The general personal income tax rate in Ukraine is 18%. Ukrainian tax law provides for special tax rates applicable to income received in the form of gift or inheritance, which are as follows:

| | First degree of kinship (spouse, parents and children) and second degree of kinship (siblings, grandparents and grandchildren) (%) | Other family members and all other Ukrainian tax residents (%) | Disabled individual of the first category or an orphaned child (%) | Ukrainian tax nonresident (%) |
|---|--|--|--|-------------------------------|
| Real estate | 0 | 5 | 0 | 18 |
| Movable property | 0 | 5 | 0 | 18 |
| Commercial property* | 0 | 5 | 5 | 18 |
| Insurance payouts | 0 | 5 | 5 | 18 |
| Monetary assets | 0 | 5 | 0 | 18 |
| Property owned by a Ukrainian tax nonresident | 18 | 18 | 18 | 18 |

* 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.

Additionally, the military levy at the rate of 1.5% of gross value of the received assets applies to any income subject to personal income tax (i.e., taxed at rates other than 0%).

4. Exemptions and reliefs

According to 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 and second 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 orphaned 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. A filing exemption applies to 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 current Ukrainian tax law, an annual tax return has to be filed by 30 April of the year following the reporting year. The deadline for settlement of personal income tax liability is 31 July of the year following the reporting year.

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

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 they are not obliged to file the annual tax return with respect to the inherited assets (provided that there was no other income, which triggers filing obligations 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 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 in 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 asset. The valuation process is aimed to verify the fair market value (FMV) of a particular piece of property. For movable property such as motorcars and motorcycles, the law provides for the possibility of determining the value of inherited/donated assets based on mid-market prices for the same kind of property published quarterly by Ukraine's Cabinet of Ministers.

In case the assets were received in the form of an inheritance or a gift taxable at 0% tax rate, the assessment value for such object should not be determined.

7. Trusts, foundations and private purpose funds

Ukrainian law does not clearly define what a 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 his or her 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 an 18% flat tax rate. See Section 3.

Under an estate administration agreement, a transfer of the 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 a general rule, an amount of life insurance payout is included in a decedent's estate. Such compensation is payable once an heir or a 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 in 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 by withholding personal income tax and military levy 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 fixed tax rates, irrespective of the type of property. Transfer of property among individuals in Ukraine is mostly executed through sale-purchase agreements, gift agreements or an inheritance, and 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 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 non-residents). 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.

However, it is worth mentioning that property acquired via succession agreement is subject to taxation at a rate of 19.5%, which is higher than that for property inherited by testament or by law (i.e., 0% or 5% tax rate, as described in the table in Section 3).

10.2 Succession

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

As a 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.

As a 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 or encumbered immovable or other property shall obtain 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.

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 an 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 cancelling 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 beneficiary 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 beneficiary 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 create 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 marriage comprises their joint property, unless otherwise prescribed by the law or an agreement. The spouse's share in the joint property is subject to by-law inheritance on general grounds. However, Ukrainian law provides an opportunity for the couple to make a marital will covering their joint property. According to the marital will, the spouse who outlives the other inherits the deceased share in the joint property. The notary imposes a restraint on alienation of the joint property after the death of one of the spouses. Upon the 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 five years before the inheritance commences are granted the right to inherit the assets of the deceased (see Section 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 covers only a 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 of 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 five turns of priority of heirs by law.

| | |
|----------------------------|---|
| The first priority | The testator's children (including children conceived during the lifetime and born after the death of the testator), spouse and parents |
| The second priority | The testator's brothers and sisters and both paternal and maternal grandparents |
| The third priority | The testator's aunts and uncles |
| The fourth priority | Individuals who lived as part of the testator's family for at least five years before the inheritance commenced |
| The fifth priority | Other relatives of the testator up to the sixth degree of kinship (note: the tax law provides for only two degrees of kinship) and the testator's dependents other than his or her family members |

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

An heir can renounce succession within six 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 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 be either 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-taxation 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-taxation 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 dual citizenship, which Ukrainian law does not recognize, 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 many countries that levy either inheritance or estate taxes, 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 person. 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 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

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

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

- ▶ Capital gains taxes and 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 their Ukrainian-source income if a relevant double-taxation treaty envisages it. Applying for a tax exemption involves filing a certificate substantiating that the individual concerned is a resident of a foreign state.

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 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 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.