Worldwide Estate and Inheritance Tax Guide

2017

EY

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Preface

The *Worldwide Estate and Inheritance Tax Guide 2017* (*WEITG*) — formerly published as the *International Estate and Inheritance Tax Guide* — is published by EY Private Client Services network, which comprises professionals from EY member firms.

The 2017 edition summarizes the gift, estate and inheritance tax systems and describes wealth transfer planning considerations in 37 jurisdictions and territories. It is relevant to the owners of family businesses and private companies, managers of private capital enterprises, executives of multinational companies and other entrepreneurial and internationally mobile high-net-worth individuals.

The content is based on information current as of June 2017, unless otherwise indicated in the text of the chapter. Changes to the tax laws and other applicable rules in various countries covered by this publication may be proposed. Therefore, readers should contact their local EY office to obtain updated information.

Tax information

The chapters in the *WEITG* provide information on the taxation of accumulation and transfer of wealth (e.g., by gift, trust, bequest or inheritance) in each jurisdiction, including sections on who is liable, domicile, residence, types of transfers, rates, payment dates and filing procedures, inheritance and gift taxes, sourcing of income, private purpose funds, exemptions and reliefs, gifts, pre-owned assets charges, valuations, trusts and foundations, settlements, succession, statutory and forced heirship, matrimonial regimes, testamentary documents and intestacy rules, and estate tax treaty partners. The "Inheritance and gift taxes at a glance" table on page 378 highlights inheritance and gift taxes in all 37 jurisdictions and territories.

For the reader's reference, the names and symbols of the foreign currencies that are mentioned in the guide are listed at the end of the publication.

This publication should not be regarded as offering a complete explanation of the tax matters referred to and is subject to changes in the law and other applicable rules. Local publications of a more detailed nature are frequently available. Readers are advised to consult their local EY professionals for further information.

EY Private Client Services has also published the *2017 Global Family Business Tax Monitor*, a study carried out by EY and the University of St. Gallen that compares 69 jurisdictions' inheritance rules with regard to family business succession to identify the economies that offer appropriate conditions for family business transfer.

The *WEITG* is published alongside three companion guides on broad-based taxes: the *Worldwide Corporate Tax Guide*, the *Worldwide Personal Tax and Immigration Guide* and the *Worldwide VAT, GST and Sales Tax Guide*. In recent years, those three have been joined by additional tax guides on more specialized topics, including the *Worldwide R&D Incentives Reference Guide*, the *Worldwide Transfer Pricing Reference Guide*, the *Global Oil and Gas Tax Guide*, the *Worldwide Digital Tax Guide* and the *Worldwide Capital and Fixed Assets Guide*.

Each guide represents thousands of hours of tax research. The entire suite is available without charge online, along with timely *Global Tax Alerts* and other insightful publications on ey.com or in our EY Global Tax Guides app for tablets.

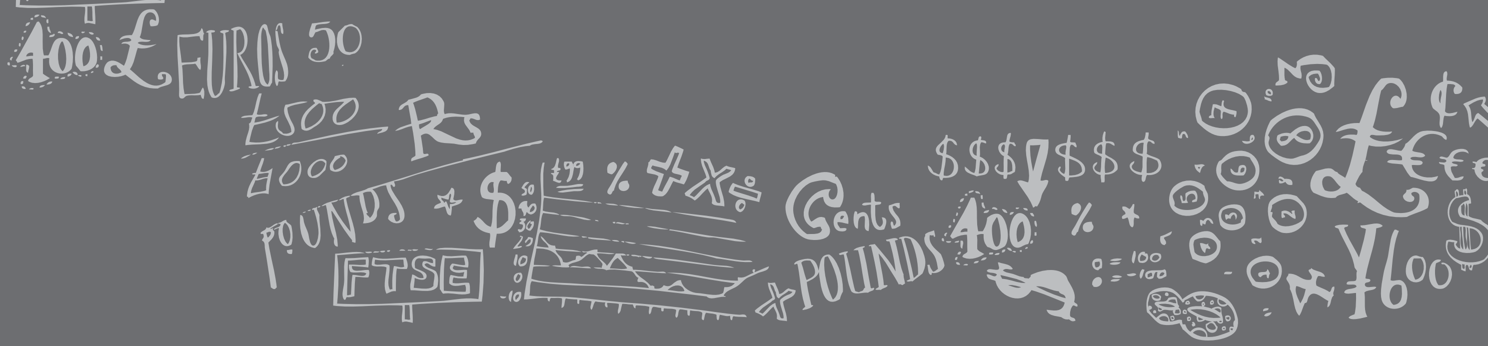
Directory

Office addresses and telephone numbers, as well as names and email addresses of relevant tax contacts, are provided for the EY member firm in each jurisdiction. The listing for each tax contact includes an office telephone number, which is a direct-dial number, where available.

The international telephone country code is listed in each jurisdiction heading. Telephone numbers are presented with the city or area code, but without the domestic prefix (1, 9 or 0) sometimes used within a jurisdiction.

Internet site

Further information concerning EY may be found at ey.com.

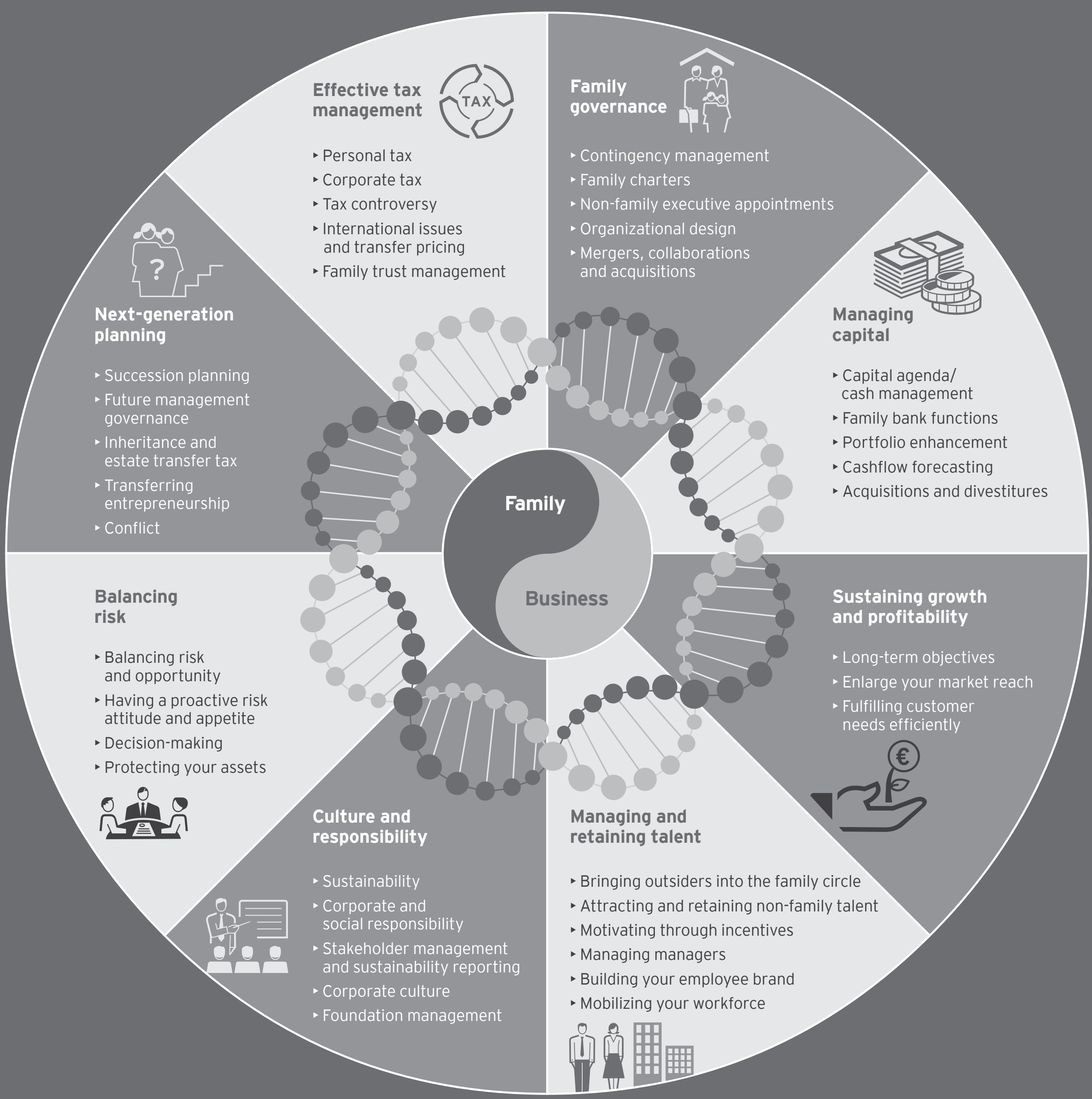


Online resources

The EY Global Family Business Center of Excellence builds on over 100 years of EY experience working with and helping family businesses succeed for generations. The Center provides the latest thinking on family business with the regular publication of exclusive reports and thought leadership, as well as surveys compiled in collaboration with other internationally renowned organizations in the family business arena.

EY is globally recognized as the leading trusted advisor to the world's largest family businesses, and we serve 75% of the world's top 500 family businesses (**familybusinessindex.com**). We designed the Center to bring together our market-leading advisors from across our global network to share knowledge and insights that will address family business challenges and provide a seamless service for globally based family-led businesses, wherever they operate in the world.

To access the Center and find your local contact, visit **ey.com/familybusiness**.



The EY Growth DNA model of Family Businesses highlights the interlinked nature of the eight characteristics of a successful family business.

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1. Types of tax

1.1 Inheritance tax

There is no inheritance tax in Australia.

1.2 Gift tax

There is no gift tax in Australia.

1.3 Real estate transfer tax

There is no real estate transfer tax in Australia.

1.4 Endowment tax

There is no endowment tax in Australia.

1.5 Transfer duty

In all states and territories, there is an exemption from stamp duty (or only nominal duty) regarding the vesting of dutiable property in the executor of a deceased person. This also applies to the transfer of assets to the beneficiary of a deceased estate.

1.6 Net wealth tax

There is no net wealth tax in Australia.

1.7 Others

In some circumstances, an immediate income tax liability can arise upon death, including:

- Asset transfers on death to a charity, superfund or foreign resident can have capital gains tax (CGT) costs.
- Immediate CGT liability can arise when a discretionary trust deed provides that the trust is to vest on a specific date or on the death of the specified individual (often the parents).
- When benefits in an Australian complying superannuation fund are paid to non-dependents on death, tax of 17% is payable on the taxable component.
- Earnings in a foreign superannuation or retirement fund that have accumulated since the member became an Australian resident may be taxable on payment to nominated beneficiaries.

2. Who is liable?

There is no inheritance tax in Australia so this is inapplicable.

3. Rates

Although Australia does not have an inheritance or gift tax, there are certain circumstances where tax can be paid by an individual as a result of death as described above. Listed below are adult income tax rates for the 2016–2017 income year (1 July 2016 to 30 June 2017).

Taxable income	Tax payable thereon
A$0–A$18,200	None
A$18,201–A$37,000	19% in excess of A$18,200
A$37,001–A$87,000	A$3,572 plus 32.5% in excess of A$37,000
A$87,001–A$180,000	A$19,822 plus 37% in excess of A$87,000
More than A$180,000	A$54,232 plus 45% in excess of A$180,000

A Medicare levy of 2.0% of taxable income applies to residents plus a 2.0% Temporary Budget Repair Levy. The Temporary Budget Repair Levy is payable for taxable incomes over A$180,000 for the 2014–15, 2015–16 and 2016–17 income years. This is reduced for low-income levels of family income.

Individual tax returns are generally due between 31 March and 15 May of the year following year-end (30 June each year) with tax payable broadly five weeks post-lodgment.

4. Exemptions and reliefs

There are no inheritance or gift taxes in Australia. There are also exemptions from income tax and capital gains tax.

5. Filing procedures

The executor of a deceased estate is responsible for filing the deceased's final year income tax return. During the administration of the estate, the executor must file income tax returns for the deceased estate.

6. Assessments and valuations

As Australia does not have an inheritance tax on death, this is not applicable.

7. Trusts, foundations and private purpose funds

In addition to assets held in an individual's own name, it is common for high-net-worth individuals (HNWIs) in Australia to hold considerable wealth in discretionary trusts, a superannuation fund (particularly nearing and post-retirement) and in private ancillary funds (PAFs).

7.1 Trusts

Assets held within a discretionary trust cannot be dealt with in an individual's will. Discretionary trusts are commonly used in Australia for HNWIs to hold the family's wealth, particularly investment assets (with the relevant drivers being tax efficiency and asset protection advantages).

The major estate planning consideration for discretionary trusts is the ongoing control of the trust. This involves a consideration of whom the individual wishes to control the trust on his or her death (on the assumption that the individual controlled the trust pre-death) and during any period he or she is incapacitated. In the context of control, it is necessary to consider the appointor or guardian (and their successors) and the trustee (including the ownership thereof if a corporate entity). The Trust Deed will determine whether the role of the appointor or guardian is considered to be the "ultimate controller" of the trust.

In selecting the successor appointor and guardian, it is important to ensure that the chosen successor (and his or her controlled entities) is not precluded from being a beneficiary of the trust as a result of the successor position.

Where an HNWI has multiple discretionary trusts, consideration should be given as to whether a corporate appointor or guardian is appropriate, as this enables the successor appointor or guardian role to be handled more efficiently and consistently.

Family members often have unpaid present entitlements, e.g., rights to draw on prior trust distributions where the cash has not been paid to the beneficiary from discretionary trusts. It is important to take unpaid present entitlements into account in the context of an individual's estate plan, particularly when treating family members equally and for asset protection.

It is necessary to review the vesting date of discretionary trusts during an estate planning review. Some deeds may provide for a specified period to be the vesting date or that the death of the specified individuals (often this will be the parents) results in the trust vesting. This effectively means that the trust ends and can result in the crystallization of CGT liabilities on CGT assets held within the trust and transfer duty in respect of properties owned by the trust. The tax liability in respect of the crystallization of the CGT liabilities and transfer duty will either be paid at the trustee level or by the beneficiaries of the trust in the relevant year of income.

7.2 Superannuation funds

Monies held within a superannuation fund can assist with asset protection, and generous tax concessions are available in respect of contributions and earnings derived by the fund.

Monies held within superannuation are primarily dealt with outside of a person's will (although the will can assist in ensuring the benefit is taxed in the most efficient manner where the fund pays the death benefit to the estate of the individual). The estate planning issues for superannuation are dependent on whether the individual has set up a personal fund or has placed funds in a public fund. It is most common for HNWIs to have a personal fund.

If a personal fund has been established with a corporate trustee, a key issue that requires addressing is the ongoing control of the corporate trustee of the fund to ensure that benefits paid on the death of the individual are distributed in the most tax-efficient manner with asset protection in mind. The use of "reversionary pensions" and "binding death benefit nominations" are also common means of ensuring the tax-efficient transfer of superannuation proceeds to desired beneficiaries.

7.3 Private ancillary funds

Private ancillary funds (a private fund established that is entitled to receive tax-deductible donations) continue after the death of the founder.

8. Grants

With regard to estate taxes, there are no specific rules regarding grants in Australia.

9. Life insurance

Life insurance payments are generally exempt from tax when received by the nominated beneficiary.

10. Civil law on succession

10.1 Estate planning

Australia does not have an inheritance or gift tax. However, there are tax consequences that can arise at the time of death and estate planning measures that should be undertaken.

Considerations and strategies relevant for individuals include:

- Should a discretionary testamentary trust be established? A testamentary trust can provide asset protection advantages and access to the CGT discount, and minors are not subject to punitive tax rates on income distributions. In certain circumstances, family law protection and bankruptcy protection from creditors can be enhanced with the establishment of a testamentary trust. The use of a testamentary trust is a common strategy for funding the maintenance and education costs of minor children and grandchildren. The testamentary trust is established in the individual's will and only comes into existence on the death of the individual. The expected level of the individual's wealth on death will be a factor, as there are ongoing compliance costs with the maintenance of a testamentary trust.
- To what extent should an older individual transfer assets to intended beneficiaries prior to death? This often assists in the reduction of post-death family disputes and is effective when the individual has unused capital losses (as capital losses that would otherwise be lost on death can be offset on assets that have appreciated since acquisition and are transferred).

- There are various strategies regarding donations, including the timing thereof. For example, it can be more tax-effective to make donations pre-death instead of post-death.
- Where the individual has a desire to ensure equity between family members, it is necessary to ensure that the will (and testamentary trust if established) provides for the split of assets between family members to be on a post-tax basis (i.e., after the CGT cost bases that the beneficiaries will inherit have been taken into account).
- It is also necessary to ensure that a family member's will does not undo asset protection strategies put in place during the individual's lifetime. For example, if the will of the spouse of an at-risk individual provides that on the death of the spouse the at-risk person will be the beneficiary of assets, then asset protection is lost. It is also important in the context of asset protection that potential inheritances and control of assets that cannot be dealt with in an individual's will are considered.

An estate planning review of an individual's personal assets and assets that cannot be dealt with in an individual's will (including regular review thereof and the taking of future actions cognizant of the estate plan) will ensure:

- There is a tax-effective transfer of assets to nominated beneficiaries.
- The incapacity of the individual is addressed at all stages, including whom is given the responsibility to control the individual's entities upon the death of the individual.
- Asset protection implications for the individual and his or her beneficiaries are considered.

10.2 Succession

This is not applicable to individuals in Australia.

10.3 Forced heirship

This is not applicable in Australia.

10.4 Matrimonial regimes and civil partnerships

This is not applicable in Australia.

10.5 Intestacy

If a person dies without making a will, his or her assets will be dealt with in accordance with the laws of intestacy in that state or territory. One of the relevant factors is whether the deceased had a spouse or children.

10.6 Probate or letters of administration

The basic procedures of administration and probate for deceased persons' estates are generally the same in each state or territory of Australia.

A grant can be either a grant of probate of a will or a grant of letters of administration when the individual dies without a will. In either case, the grant of probate or letters of administration is effectively the official recognition of the will (i.e., for a grant of probate) or appointment by a court of an administrator (i.e., for a grant of letters of administration) and the right of the executor or administrator to administer the estate. There is no statutory requirement that a grant be obtained in every case.

Generally, a grant is obtained in the jurisdiction or place in which the deceased left assets or where the deceased resides. If assets are held outside Australia, the grant obtained in Australia may be "recognized" or "resealed" in a foreign jurisdiction subject to the laws of that jurisdiction being able to "recognize" or "reseal" the grant. The "resealing" of the grant has the effect that the original grant obtained in Australia has been obtained in that foreign jurisdiction.

When a grant has been obtained, the executor or administrator obtains legal title to the assets of the deceased estate. After administration of the deceased estate is completed, the executor or administrator holds the assets on trust for the beneficiaries, subject to distribution to the beneficiaries.

11. Estate tax treaties

11.1 Unilateral rules

This is not applicable in Australia.

11.2 Double-taxation treaties

There is no gift or estate tax treaty currently in Australia. However, the US continues to recognize the gift and estate tax treaties previously entered into with Australia (please refer to the United States chapter of this guide).

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1. Types of tax

1.1 Inheritance and gift tax

The Austrian Constitutional Court abolished the basic provisions of the inheritance tax on 31 July 2008.

Gift Registration Act

Austria introduced the Gift Registration Act (*Schenkungsmeldegesetz*), applicable as of 1 August 2008. The Gift Registration Act introduced a new information system for gifts. This information system is, in general, an instrument to monitor asset transfers without taxing those transfers.

General

The Gift Registration Act requires notifying certain transfers of assets arising from gifts, where one of the parties is a resident in Austria. The gift registration requirement (by filing form) applies for securities, cash, shares in companies, and tangible and intangible assets transferred as of 1 August 2008.

1.2 Real estate transfer tax

A real estate transfer tax (RETT) is levied on real estate assets and the transfer of property to the successor. The non-paid transfer of real estate (by gift or heritage) is subject to a real estate transfer tax of 0.5% for the initial €250,000, 2% for the next €150,000 and 3.5% for all subsequent amounts. Since 1 January 2016, the RETT on real estate transfers between close relatives without consideration is based on the assessed value of the real estate.

Two simplified methods for the assessment of the respective value are applicable. Both methods should deliver a tax base lower than the actual fair market value of the property. However, in any case an assessment of the fair market value through expert opinion is available and will be accepted instead of the value derived from the (less favorable) simplified methods.

Additionally, an intabulation fee of 1.1% of the fair market value (FMV) of the property applies. However, for real estate transfers to related parties, three times the assessed value or a maximum of 30% of the FMV is the basis of the fee.

1.3 Endowment tax

Austrian inheritance and gift taxes were abolished as of 1 August 2008. However, a new endowment tax was introduced, which can apply for donations to trusts and foundations.

1.4 Transfer duty

There is no transfer duty in Austria.

1.5 Net wealth tax

There is no net wealth tax in Austria.

2. Who is liable?

2.1 Residency and domicile

Individuals are considered ordinary residents in Austria if:

- They live in Austria for more than six months during the year (habitual place of abode).

  Or

- They have a residence available in Austria.

The Austrian authorities consider residence to be "accommodations" available to the individual that the individual actually uses. The use of the accommodation does not need to be uninterrupted, although it is understood that it is sufficient to use it for a number of weeks in a year.

As it is only necessary to meet one of the aforementioned requirements, it is possible under Austrian domestic law to be an Austrian resident by having a residence available for use despite Austria being the principal place of residence (i.e., by spending less than six months in Austria).

Furthermore, for Austrian residency purposes, a married couple is seen as one unit; therefore, if one spouse is resident in Austria, the other is also deemed a resident in Austria, regardless of the second spouse's movements or ownership of property.

3. Rates

As Austria does not have an inheritance tax on death, this is not applicable.

4. Exemptions and reliefs

Certain transfers are exempt from notification:

- Transfers between close relatives up to an FMV of €50,000 per year are exempt. Relatives include spouses, children, parents, grandparents, sisters, brothers, cousins and also common-law partners. Where a person receives several gifts within a year, the aggregate value is used in determining whether the threshold has been exceeded. All gift transactions within that year have to be registered (by filing a form).
- For transfers between non-relatives, the threshold is €15,000 for transfers within five years.
- The exemption limit for everyday gifts is up to €1,000 per asset.

Inheritances do not need to be registered with the tax authority.

5. Filing procedures

Registration needs to be made electronically with the relevant tax authority within three months after the transfer. Both the donor and the donee are obliged to register as lawyers and notaries (i.e., by setting up the contract).

In cases where the registration is not made within three months, the tax authorities may impose a penalty of up to 10% of the net gift value, although a voluntary report is possible.

Non-paid transfers of real estate need not be reported to the tax authorities. This is due to the fact that such transfers will go in the land register.

6. Assessments and valuations

As Austria does not have an inheritance tax on death, this is not applicable.

7. Trust, foundations and private purpose funds

When inheritance and gift taxes were abolished, an endowment tax was introduced that applies for non-paid transfers and inheritances to trusts and foundations. The endowment tax can apply to the transfer of assets by an Austrian resident to a trust (regardless of whether the trust is Austrian and the property being transferred is an Austrian property) and by a non-Austrian resident to an Austrian foundation. The applicable rates are either 2.5% (reduced rate) or 25%.

Austrian foundations

In general, the reduced rate of 2.5% applies for endowments to Austrian foundations (*Privatstiftungen*) regardless of who is contributing; for example, the founder or any third party (i.e., another person or legal entity).

However, the reduced tax rate of 2.5% is only granted on transfers if all required documents (foundation constitution) are filed with tax authorities at the time when the endowment tax becomes due. Otherwise, it is not the reduced rate but the general rate of 25% that applies. For the endowment of Austrian real estate, a real estate transfer tax of 3.5% of the assessed value of the real estate applies. Additionally, there is an endowment tax of 2.5% of the same tax base. In addition, an intabulation fee of 1.1% of the FMV applies. The endowment of foreign real estate is no longer subject to Austrian endowment tax.

International trusts

Donations to non-transparent international trusts, foundations and comparable legal estates by Austrian residents might be subject to endowment tax at either the reduced rate of 2.5% or at the general rate of 25%.

The reduced rate of 2.5% applies on endowments to international trusts and other legal estates, provided they are comparable to Austrian private foundations. The comparability test is crucial and mainly refers to certain characteristics of the Austrian private foundations regime. Otherwise, the general rate of 25% applies. This is also true for non-paid transfers of assets to a trust that is established in countries with which Austria has no agreement on full legal and administrative cooperation.

An Austrian endowment tax would not arise on an endowment to a trust if the trust is transparent for Austrian tax purposes. If the trust is transparent, there is no transfer for tax purposes, as the assets continue to be attributable to the founder.

Whether a trust is transparent for Austrian tax purposes depends on a number of criteria.

8. Grants

This is not applicable in Austria.

9. Life insurance

This is not applicable in Austria.

10. Civil law on succession

This is not applicable in Austria.

10.1 Estate planning

This is not applicable in Austria.

10.2 Succession

This is not applicable in Austria.

10.3 Forced heirship

In Austria, spouses and children have automatic inheritance rights regardless of the provisions in a will. A child, grandchild or spouse has the right to receive half of the share of the deceased person's estate that he or she would have received in the case of an intestate succession (see Section 10.5). These persons who are entitled to an obligatory share in the estate will have a monetary claim against the testamentary heirs, if such provision has not been made for them.

10.4 Matrimonial regimes and civil partnerships

A husband and wife may enter into a contractual succession pact. They may agree to leave up to three-quarters (75%) of their property in their spouse's favor. One-quarter (25%) of the property must remain freely disposable by the deceased person (free quarter). Once made, such a contract cannot be withdrawn by one spouse and must be notarized. Besides this, the spouse has the right of intestate inheritance if there is no will or an existing will is deemed invalid. If there is a valid will, as noted above, the spouse is entitled to an obligatory share in the estate (half of the intestate inheritance).

10.5 Intestacy

A will is a legal document that regulates an individual's estate after death. If it is handwritten, witnesses are not necessary, but in other cases three witnesses are needed to a written will. For oral wills, which are possible only in certain cases, there are special regulations concerning the witnesses.

A will can be revoked or replaced by a new one at any time.

The four lines of intestacy

If there is no valid will, the rules of intestate succession will apply. Subject to the caveat made below where there is a surviving spouse, Austria has the following intestacy rules for the remaining part of the estate as follows:

1. First line: children and their descendants

   If the deceased person has children, they are entitled to inherit the entire estate. All children receive an equal share. Where children are still alive, the grandchildren do not inherit, but if a child has died before the deceased person, his or her children (grandchildren) inherit their share of the estate. This process continues until there are no more descendants.

2. Second line: parents and their descendants

   Parents and their descendants will inherit if the deceased person has neither children nor grandchildren. If both parents are still living, they receive equal shares. If only one parent is living, the descendants of the deceased parent inherit the share attributed to this parent. If both parents are deceased, their children or grandchildren (sisters, brothers, nieces and nephews of the deceased person) receive the inheritance of their parents.

3. Third line: grandparents and their descendants

   If the parents died without leaving any descendants, the grandparents and their descendants receive the inheritance. The deceased estate is divided equally among the father's parents and his descendants and the mother's parents and her descendants. So, each grandparent receives one-quarter of the deceased person's estate. If the grandparents are deceased, their descendants inherit their part.

4. Fourth line: great-grandparents (without descendants)

   If there are no grandparents and no descendants of the grandparents, the great-grandparents are entitled to inherit.

Intestate succession of the spouse

The spouse is entitled to inherit one-third of the estate, and where there are surviving children or their descendants, the children inherit two-thirds. Where there are no children or their descendants, but parents, grandparents and their descendants survive, they receive one-third and the spouse is entitled to inherit two-thirds of the intestate succession. If there are no children, parents or grandparents with descendants, the spouse receives the entire inheritance. In the overall division of the estate, assets that the spouse received under any contractual succession pact will be taken into account.

No heirs

If there are no heirs at all, the Republic of Austria is entitled to inherit the estate of the deceased.

10.6 Probate

This is not applicable in Austria.

11. Estate tax treaties

Double-taxation issues

Potential double-taxation issues may arise in certain cases, such as:

- Non-paid transfer of assets by a non-Austrian founder (non-Austrian resident) to an Austrian private foundation
- Non-paid transfer of assets by an Austrian founder (Austrian resident) to an international trust
- Non-paid transfer of foreign assets (i.e., foreign real estate) to an Austrian private foundation to an international trust by an Austrian founder

In any of those cases, double taxation may arise if the foreign state (i.e., the residence state of the founder) imposes tax on such transfer of assets (by donation or inheritance).

11.1 Unilateral rules

This is not applicable in Austria.

11.2 Double-taxation treaties

Austria has concluded estate tax treaties with the following countries listed below. However, potential double-taxation issues on endowment tax should be examined as part of endowment tax planning in each specific case.

Inheritance tax treaties

Austria maintains inheritance tax treaties with the following countries: Czech Republic, France, Hungary, Liechtenstein, the Netherlands, Sweden, Switzerland and the United States.

Gift tax treaties

Austria maintains gift tax treaties with the following countries: Czech Republic, France, the Netherlands and the United States.

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1. Types of tax

According to Belgian law, the transfer of property is subject to either inheritance tax or gift tax, depending on whether the transfer takes place before or after the death of the testator.

1.1 Inheritance tax

The Belgian inheritance tax is levied on the transfer of property after the testator's death. It consists of two types of tax: succession and transfer.

Succession tax

Succession tax (*successierechten* or *droits de succession*) is levied on an inheritance received from a Belgian resident. Whether or not a person is considered to be a Belgian resident is a factual matter that requires careful evaluation in every single case. The nonresident status of the beneficiary of the inheritance is irrelevant to determining whether the inheritance is subject to Belgian succession tax.

Transfer tax

Transfer tax (*recht van overgang bij overlijden* or *droit de mutation par décès*) is levied on the transfer of Belgian real estate upon death, when the deceased is not a resident of Belgium. Transfer tax is only applicable to Belgian immovable goods. The nonresident status of the beneficiary of the transfer is irrelevant to determining whether or not the transfer is subject to Belgian transfer tax.

1.2 Gift tax

Gift tax (*schenkingsrecht* or *droit de donation*) is levied in the form of registration duties (*registratierecht* or *droit d'enregistrement*) on the donation of movable or immovable property during the lifetime of the donor.

Registration is only required for donations made by virtue of a Belgian notarial deed. Unlike the donation of movable property, the donation of Belgian immovable property inevitably needs to be established in a notarial deed.

Registration for tax purposes is not required for the donation of real estate located outside Belgian territory or the donation of movable property if the donation is not made by virtue of a Belgian notarial deed. In such a case, the gift tax is due only when the gift is voluntarily submitted to be registered for tax purposes.

It is important to note that donations that took place within a three-year period prior to the donor's death will be subject to higher inheritance taxes if the donations have not been registered in Belgium and thus no gift tax has been paid, as long as the donor is a Belgian resident for tax purposes at the time of his or her death.

1.3 Real estate transfer duty

In case of transfer of Belgian real estate by donation or upon death, no real estate transfer duty is levied above the gift or inheritance tax due.

The transfer of Belgian real estate in return for payment, as well as the transfer of most of the real estate rights in return for payment is, in principle, subject to a real estate transfer duty.

The transfer of real estate located abroad by or to a Belgian resident, as a donation or in return for payment, is not subject to Belgian taxation.

1.4 Endowment tax

There is no endowment tax in Belgium.

1.5 Net wealth tax

There is no net wealth tax in Belgium.

2. Who is liable?

Succession tax

In principle, the beneficiary of the inheritance is liable for the succession tax, whether or not he or she is a resident of Belgium.

Succession tax is due on the inheritance of the worldwide property of the testator after his or her death if the deceased is considered to be a Belgian resident for tax purposes at the time of his or her death.

Under Belgian law, the deceased person is to be considered a resident if he or she has his or her effective residence in Belgium immediately prior to his or her death. However, if one is registered in the civil register of a Belgian city, he or she will be deemed a Belgian resident. Proof of the contrary is still possible. In that case, the place of residence is generally considered to be the place where an individual has his or her permanent home (i.e., where the family is living) or where an individual has his or her center of economic interest (i.e., place from where an individual manages bank accounts, investments, business and properties).

Transfer tax

Transfer tax is due on the transfer of Belgian immovable property of the testator after his or her death if the deceased is considered to be a nonresident for tax purposes at the time of his or her death.

The beneficiary of the Belgian real estate is liable, in principle, for the transfer tax whether or not he or she is a resident of Belgium.

Gift tax

Gift tax is due, in principle, by the beneficiary of the gift. However, it is accepted in certain cases that the donor pays the gift tax.

Real estate transfer duty

Real estate transfer duty is, in principle, due by the purchaser.

3. Rates

Succession tax

The applicable tax rates vary depending on the region, the beneficiary and the taxable amount.

Brussels capital region

For spouse, legal cohabitant and direct ascendant or descendant of the deceased		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01–€50,000	3%	€0
€50,000.01–€100,000	8%	€1,500
€100,000.01–€175,000	9%	€5,500
€175,000.01–€250,000	18%	€12,250
€250,000.01–€500,000	24%	€25,750
€500,000.01 and above	30%	€85,750

For brothers and sisters of the deceased		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01–€12,500	20%	€0
€12,500.01–€25,000	25%	€2,500
€25,000.01–€50,000	30%	€5,625
€50,000.01–€100,000	40%	€13,125
€100,000.01–€175,000	55%	€33,125
€175,000.01–€250,000	60%	€74,375
€250,000.01 and above	65%	€119,375

For uncles, aunts, nieces and nephews of the deceased		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01–€50,000	35%	€0
€50,000.01–€100,000	50%	€17,500
€100,000.01–€175,000	60%	€42,500
€175,000.01 and above	70%	€87,500

Any other persons		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01–€50,000	40%	€0
€50,000.01–€75,000	55%	€20,000
€75,000.01–€175,000	65%	€33,750
€175,000.01 and above	80%	€98,750

Flemish region

For spouse, cohabitant and direct ascendant or descendant of the deceased		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01–€50,000	3%	€0
€50,000.01–€250,000	9%	€1,500
€250,000.01 and above	27%	€19,500

For brothers and sisters of the deceased		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€75,000	30%	€0
€75,000.01-€125,000	55%	€22,500
€125,000.01 and above	65%	€50,000

Any other persons		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€75,000	45%	€0
€75,000.01-€125,000	55%	€33,750
€125,000.01 and above	65%	€61,250

Walloon region

For spouse, legal cohabitant and direct ascendant or descendant of the deceased		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500	3%	€0
€12,500.01-€25,000	4%	€375
€25,000.01-€50,000	5%	€875
€50,000.01-€100,000	7%	€2,125
€100,000.01-€150,000	10%	€5,625
€150,000.01-€200,000	14%	€10,625
€200,000.01-€250,000	18%	€17,625
€250,000.01-€500,000	24%	€26,625
€500,000.01 and above	30%	€86,625

For brothers and sisters of the deceased		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500	20%	€0
€12,500.01-€25,000	25%	€2,500
€25,000.01-€75,000	35%	€5,625
€75,000.01-€175,000	50%	€23,125
€175,000.01 and above	65%	€73,125

For uncles, aunts, nieces and nephews of the deceased		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01–€12,500	25%	€0
€12,500.01–€25,000	30%	€3,125
€25,000.01–€75,000	40%	€6,875
€75,000.01–€175,000	55%	€26,875
€175,000.01 and above	70%	€81,875

Any other persons		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01–€12,500	30%	€0
€12,500.01–€25,000	35%	€3,750
€25,000.01–€75,000	60%	€8,125
€75,000.01 and above	80%	€38,125

Transfer tax

The transfer tax rates are similar to the succession tax rates that are applicable in the region at hand.

Gift tax

The gift tax rates vary within the different regions in Belgium, depending on whether movable or immovable property is concerned.

As mentioned above, donations of movable property are subject to gift tax only when the gift deed was passed before a Belgian notary or the gift has been voluntarily submitted to registration for tax purposes.

Donations of immovable property located outside Belgium are subject only to a fixed taxation of €50 if the gift deed is voluntarily submitted to registration for tax purposes.

Brussels capital region

Immovable property

The Brussels gift tax rates for immovable property will be applicable if the donor is a resident of the Brussels capital region or if a nonresident donates immovable property located within the Brussels capital region.

For spouse, cohabitant and direct ascendant or descendant of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01–€150,000	3%	€0
€150,001–€250,000	9%	€4,500
€250,000.01–€450,000	18%	€13,500

For spouse, cohabitant and direct ascendant or descendant of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€450,000.01 and above	27%	€49,500

Any other persons		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01–€150,000	10%	€0
€150,001–€250,000	20%	€15,000
€250,000.01–€450,000	30%	€55,000
€450,000.01 and above	40%	€115,000

Movable property

Upon registration of a gift of movable property, a fixed tax rate shall apply. This tax rate amounts to 3% for donations to a spouse, a legal cohabitant or a direct ascendant or descendant. Donations to all other people are subject to a fixed tax rate of 7%.

Flemish region

Immovable property

The Flemish gift tax rates for immovable property will be applicable if the donor is a resident of the Flemish region or if a nonresident donates immovable property located within the Flemish region. The Flemish tax code provides for different tax rates to the gift of real estate on the one hand and to a gift of housing land on the other hand. To make things even more complicated, the applicable tax rate on real estate can be decreased if some ecological investments will be made within a period of five years following the gift of the real estate.

Real estate

For spouse, cohabitant and direct ascendant or descendant of the donor		
Taxable amount	Tax rate (normal/ecological investments)	Gift tax due on the previous amount(s) (normal/ecological investments)
€0.01–€150,000	3%/3%	€0
€150,000.01–€250,000	9%/6%	€4,500/€4,500
€250,000.01–€450,000	18%/12%	€13,500/€10,500
€450,000.01 and above	27%/18%	€49,500/€34,500

Any other persons		
Taxable amount	Tax rate (normal/ecological investments)	Gift tax due on the previous amount(s) (normal/ecological investments)
€0.01-€150,000	10%/9%	€0
€150,000.01-€250,000	20%/17%	€13,500
€250,000.01-€450,000	30%/24%	€30,500
€450,000.01 and above	40%/31%	€78,500

Housing land

For spouse, cohabitant and direct ascendant or descendant of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€12,500	1%	€0
€12,500.01-€25,000	2%	€125
€25,000.01-€50,000	3%	€375
€50,000.01-€100,000	5%	€1,125
€100,000.01-€150,000	8%	€3,625
€150,000.01-€200,000	14%	€7,625
€200,000.01-€250,000	18%	€14,625
€250,000.01-€500,000	24%	€23,625
€500,000.01 and above	30%	€83,625

For brothers and sisters of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€150,000	10%	€0
€150,000.01-€175,000	50%	€15,000
€175,000.01 and above	65%	€27,500

For uncles, aunts, nieces and nephews of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€150,000	10%	€0
€150,000.01-€175,000	55%	€15,000
€175,000.01 and above	70%	€28,750

Any other persons		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€150,000	10%	€0
€150,000.01-€175,000	65%	€15,000
€175,000.01 and above	80%	€31,250

Movable property

Movable property is subject to a fixed tax rate. This tax rate amounts to 3% for donations to a spouse, a cohabitant or direct ascendant or descendant. Donations to all other people are subject to a fixed tax rate of 7%.

Walloon region

Immovable property

The Walloon gift tax rates for immovable property will be applicable if the donor is a resident of the Walloon region or if a nonresident donates immovable property located within the Walloon region.

For spouse, cohabitant and direct ascendant or descendant of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€25,000	3%	€0
€25,000.01-€100,000	4%	€750
€100,000.01-€175,000	9%	€3,750
€175,000.01-€200,000	12%	€10,500
€200,000.01-€400,000	18%	€13,500
€400,000.01-€500,000	24%	€49,500
€500,000.01 and above	30%	€73,500

For brothers and sisters of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€75,000	10%	€0
€75,000.01-€175,000	20%	€7,500
€175,000.01-€350,000	30%	€27,500
€350,000.01 and above	40%	€80,000

For uncles, aunts, nieces and nephews of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01–€50,000	10%	€0
€50,000.01–€150,000	20%	€5,000
€150,000.01–€300,000	30%	€25,000
€300,000.01–€450,000	40%	€70,000
€450,000.01 and above	50%	€130,000

Any other persons		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01–€50,000	20%	€0
€50,000.01–€150,000	30%	€10,000
€150,000.01–€300,000	40%	€40,000
€300,000.01 and above	50%	€100,000

However, the donation of (a part) of the family dwelling to a spouse, a legal cohabitant or direct descendant or ascendant is subject to the more favorable progressive tax rates mentioned below.

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01–€25,000	1%	€0
€25,000.01–€50,000	2%	€250
€50,000.01–€100,000	4%	€750
€100,000.01–€175,000	5%	€2,750
€175,000.01–€250,000	9%	€6,500
€250,000.01–€400,000	18%	€13,250
€400,000.01–€500,000	24%	€40,250
€500,000.01 and above	30%	€64,250

Movable property

Most donations of movable property are subject to a flat tax rate. This flat rate amounts to 3.3% for donations to a spouse, a legal cohabitant, or a direct ascendant or descendant; 5.5% for donations to brothers, sisters, uncles, aunts, nieces and nephews; and 7.7% for donations to any other person.

Real estate transfer duty

The transfer of Belgian real estate in return for payment, as well as the transfer of most of the real estate rights in return for payment is, in principle, subject to a real estate transfer duty at a rate of 12.5% in the Walloon and Brussels capital regions and 10% in the Flemish region.

Note that under specific conditions, a reduced rate of 1% in the Walloon and Brussels capital regions or 2.5% in the Flemish region can apply to the transfer of Belgian real estate rights between joint owners.

4. Exemptions and reliefs

Inheritance tax

Brussels capital region

For the Brussels capital region, the first €15,000 that a direct descendant or ascendant, a spouse or a legal cohabitant receives is exempted. For the deceased's child, this exemption is increased by €2,500 for each full year remaining before the child reaches the age of 21. A surviving spouse with children who are younger than 21 is allowed an additional exemption, equal to half the exemption that is granted to the children who are younger than 21. In computing the taxable amount, these exemptions are deducted from the first bracket, at the lowest tax rates.

For beneficiaries other than those mentioned above, a full exemption is granted if the net amount of the inheritance does not exceed €1,250.

The Brussels capital region also foresees an inheritance tax-exemption for the inheritance by a spouse or legal cohabitant of the family dwelling and lower inheritance tax rates for the inheritance of the family dwelling in direct line (ascendants and descendants).

Flemish region

For the Flemish region, the part of the estate passing on to a direct ascendant is split up into movable property and real estate (both are taxed separately). Several small general reliefs exist in the Flemish region, depending on the relationship between the beneficiary and the testator. Aside from those relatively small tax reliefs, the Flemish region also foresees a more substantial inheritance tax relief for severely handicapped beneficiaries and even inheritance tax-exemptions for the inheritance of unbuilt immovable property situated within the Flemish Ecological Network and the inheritance of woodland. The inheritance by a spouse or cohabitant of the family dwelling is tax-exempt. The reduction of inheritance tax on the transfer of family-owned businesses is discussed below.

Walloon region

In the Walloon region, a reduced tax rate of 0% is applicable on the first taxable bracket of €160,000 inherited by the surviving spouse or the surviving legal cohabitant in the family dwelling located in the Walloon region.

Several reliefs exist in the Walloon region, depending on the relationship between the beneficiary and the testator and/or the value of the assets transferred.

Among other reliefs, this region foresees an exemption of the first €12,500 that a direct descendant or ascendant, a spouse or a legal cohabitant receives. This exemption increases by €12,500 when the net value of the beneficiary's share in the estate does not exceed €125,000. Furthermore, for the deceased's child, the exemption is increased by €2,500 for each full year remaining before the child reaches age 21. A surviving spouse with children who are younger than 21 is entitled to an additional exemption, equal to half the exemption that is granted to the children who are younger than 21. In computing the taxable amount, these exemptions are deducted from the first bracket rather than the last.

For beneficiaries other than those mentioned above, a full exemption is granted when the net amount of the inheritance does not exceed €620.

Hereditary transfer of businesses and companies

In the Walloon region, a hereditary transfer of family businesses and companies is exempted from succession tax when certain conditions are met. The Flemish region foresees an applicable inheritance tax rate of 3% or 7% and a gift tax-exemption if certain conditions are met. As of 1 January 2017, the Brussels capital region also foresees an applicable inheritance tax rate of 3% or 7% and a gift tax-exemption if certain conditions are met.

The conditions that need to be fulfilled vary depending on the region (Flanders, Brussels, Wallonia) whose legislation applies.

Flemish region

The Flemish Tax Code provides a reduced inheritance tax rate of 3% (for the spouse, legal cohabitant and direct ascendant or descendant of the deceased) or 7% (in all other cases) instead of the normal progressive inheritance tax rates up to 27% (for the spouse, cohabitant and direct ascendant or descendant) or 65% (in all other cases) for the transfer of family-owned businesses. The registration of a transfer of family-owned businesses via a gift is tax-exempt (0%). For both the aforementioned beneficial regimes for transferring family-owned businesses, the following conditions apply:

- A family-owned company is a company that has its actual management inside the European Economic Area (EEA) and whose purpose is to exercise an industrial, commercial, craft or agricultural activity or a liberal profession. In order to determine the presence of the required activity, the statutory objective of the company will be taken into account.
- A company qualifies as a family-owned company if the donor/testator (and his family) holds at least the full ownership of 50% of the shares in the company. An exception to the participation condition is made for companies held by two or three families. In those cases, the donor/testator (himself or herself together with his or her family) needs to hold the full ownership of at least 30% of the shares. This exception is only applicable if 70% of the shares (if two entrepreneurial families hold the majority of the shares) or 90% of the shares (if three entrepreneurial families hold the majority of the shares) is owned by the entrepreneurial families together.
- The Flemish Government explicitly wanted to limit the application of this favorable regime to companies that provide an added value to the Flemish economy. Therefore, companies that are not engaged in a "genuine economic activity" are explicitly excluded from this regime. A company is deemed not to have a "genuine economic activity" if the annual accounts of the last three years reveal that:
  - The total amount paid on wages, social charges and pensions is lower or equal to 1.5% of the total assets of the company
  - The value of the buildings and land owned by the company exceeds 50% of the total assets of the company

However, even if both criteria are met, the taxpayer may still prove it operates a family-owned company that performs a business that provides an added value to the economy.

Given that holding companies may often not meet the activity condition as set out above, a specific exception for holding companies is foreseen. A holding company may qualify as a family-owned company if the company directly holds at least 30% of the shares of at least one subsidiary that is situated within the EEA and that performs a "genuine economic activity."

When it concerns a passive holding company that meets the exception and thus qualifies via its subsidiary, solely the value on which the favorable tax regime is applicable is limited to the value of the shares of all the active (sub)subsidiary companies situated within the EEA. It is, however, possible to prove that the holding company itself performs a "genuine economic activity" (e.g., management activities or intragroup activities such as bookkeeping, information technology or intellectual property). If so, the total value of the holding company will be taken into account, irrespective of the activities of the underlying companies.

Only the shares that represent a part of the capital and that have voting rights will qualify for the favorable tax regime.

This tax regime does not apply to debt claims on family-owned businesses.

Following the acquisition of the shares of the family-owned company, an activity must be maintained during a period of three years. This does not mean that the company cannot be sold during this three-year period. As long as an activity is continued (even by a third person), no harm is done. Note that a capital decrease performed during the period of three years will trigger normal gift tax (3% or 7%) or inheritance tax (up to 27% or up to 65%).

Please note that no gift tax on the donation of shares in a company is due when performing the donation in front of a foreign (e.g., Dutch) notary. The only risk that has to be taken into account is the fact that the donation would still be subject to inheritance tax if the donor were to die within a "suspicious" period of three years following the date of the gift. Given that the risk of a death within three years could in most cases easily be covered with a life insurance policy, it is common to have such donations passed before a foreign notary. The transfer, however, of family-owned businesses and companies is subject to a seven-year "suspicious period," which makes it a lot more expensive to cover the risk with a life insurance policy.

For donations that have been made before 1 January 2012, the suspicious period remains three years.

Walloon region

In the Walloon region, the net value of a family business can also be exempted from inheritance tax. However, note that different rules apply from the Flemish region.

The following conditions must be met for family-owned businesses having their registered office in the EEA:

- Economic activity condition: The company and its subsidiaries must conduct their main business in an industrial, commercial or agricultural activity, a craft industry, forestry or a liberal profession, on a consolidated basis for the current financial year of the company at the time of death, as well as for each of the last two financial years of the company prior to the financial year of the person's death.
- Participation condition: The deceased and his or her spouse should own at least 10% of the voting rights of the company's shares. If their voting rights do not reach 50% of the totality of all voting rights, in addition to the 10% condition, there will have to be a shareholders' agreement in which at least 50% of the totality of all voting rights participates, which ensures the continuation of the business for at least five years after the person's death.
- Employment condition: The company must have employees in the EEA on its payroll; however, one employee is sufficient, regardless of the amount of salary that has been paid out.

In order to fully maintain the exemption, the following conditions should be met during a period of five years following the person's death:

- Economic activity condition: The company must continue one of the accepted businesses.
- Employment condition: The number of employees should never be less than 75% of the number of employees at the time of death.
- The equity of the business or the capital of the company should be maintained.

Brussels capital region

As of 1 January 2017, the Brussels Tax Code has adopted a regime similar to the Flemish Tax Code. In cases involving the transfer of family-owned businesses, a reduced inheritance tax rate of 3% (for the spouse, legal cohabitant and direct ascendant or descendant of the deceased) or 7% (in all other cases) applies instead of the normal progressive inheritance tax rates of up to 30% (for the spouse, cohabitant and direct ascendant or descendant) or 65%, 70% and 80% (in all other cases). The registration of a transfer of family-owned businesses via a gift is tax-exempt (0%). For both the aforementioned beneficial regimes for transferring family-owned businesses, the following conditions apply:

- The owner/shareholder of the family business has been domiciled in the Brussels capital region for at least 2.5 during the 5 years preceding the death/gift.
- The family-owned company has its actual management inside the EEA and exercises an industrial, commercial, craft or agricultural activity or a liberal profession.
- The donor/testator (and his family) holds at least the full ownership of 50% of the shares in the company. An exception to the participation condition is made for companies held by two or three families. In those cases, the donor/testator (himself or herself together with his or her family) needs to hold the full ownership of at least 30% of the shares. This exception is only applicable if 70% of the shares (if two entrepreneurial families hold the majority of the shares) or 90% of the shares (if three entrepreneurial families hold the majority of the shares) is owned by the entrepreneurial families together.
- A passive holding company may qualify as a family-owned company if the company directly holds at least 30% of the shares of at least one active subsidiary that is situated within the EEA.
- Similar to the Flemish region, the application of the favorable regime is limited to companies that are engaged in a "genuine economic activity." A company is deemed not to have a "genuine economic activity" if at least one of the annual accounts of the last three years reveals that:
  - The total amount paid on wages, social charges and pensions is lower or equal to 1.5% of the total assets of the company.
  - The value of the buildings and land owned by the company exceeds 50% of the total assets of the company.
- The application of this favorable regime necessarily requires a certificate delivered by the Brussels tax authorities.

In order to fully maintain the exemption, the following conditions should be met during a period of three years following the person's death or gift:

- The company must maintain a genuine economic activity.
- The company stays within the EEA.
- The equity of the business or the capital of the company should be maintained.

Please note that no gift tax on the donation of shares in a company is due when performing the donation in front of a foreign notary. The only risk that has to be taken into account is the fact that the donation would still be subject to inheritance tax if the donor were to die within a "suspicious" period of three years following the date of the gift.

5. Filing procedures

Income tax obligations

Income is subject to Belgian income tax on a calendar-year basis. The beneficiaries of the inheritance or the personal representative will be responsible for filing the tax return of the deceased in the following terms:

- Prior-year income tax return: If an individual passes away between 1 January and the usual filing date for the preceding year (normally 30 June), an income tax return should be filed for him or her within the five months following his or her death.
- Income tax return for year of death: This tax return is called an "income tax return special" and should be filed within five months following the death.

Inheritance tax

The filing procedures as described hereafter are applicable for Belgium in general (for the three regions).

In Belgium, the heirs or beneficiaries of the inheritance have to file an inheritance tax return. The region where this tax return has to be filed depends on the following:

- For a Belgian resident: His or her last place of residency. If the deceased moved his or her place of residency within Belgium in the period of five years before his or her death, the competent region for filing the tax return, as well as the applicable tax rules (e.g., rates, exemptions), is the region where the deceased resided the longest within this five-year period.
- For a Belgian nonresident: The inheritance tax will be calculated based on where his or her real estate is situated in Belgium. The inheritance tax return should be filed in the region where the real estate is situated, and the inheritance tax rules of that region will be applicable.

The deadline for filing the inheritance tax return is four months if the deceased passed away in Belgium. If the deceased passed away in another European country, the period is extended to five months, and if he or she passed away outside of Europe, it is six months.

Gift tax

Registration is only required for donations made in virtue of a Belgian notarial deed. The registration of a notarial deed should be done within 15 days following the date of the setup of the notarial deed.

6. Assessments and valuations

Gift tax — taxable base and progression method

The gift tax is levied on the fair market value (FMV) of the assets. Specific valuation methods of the FMV are required for certain assets (shares listed on the stock exchange, usufruct or bare ownership of movable or immovable property).

In determining the tax rate applicable to the donation of immovable property, all donations of immovable property from the same donor to the same beneficiary during the three years preceding the gift in question are taken into account. For the Walloon region, the same rule also applies to donations of movable property to which the progressive rates are applicable.

Transfer tax — taxable base

For the Walloon region, transfer tax is chargeable on the value of the Belgian immovable property of the deceased after deduction of all debt specifically contracted by the deceased for his or her Belgian immovable property.

For the Brussels capital and Flemish regions, the same rule applies, as long as the deceased was a resident of the EEA. If not, the transfer tax will be due on the gross value of the Belgian immovable property of the deceased.

The value that needs to be taken into account for this calculation is the FMV at the time of death.

Succession tax — taxable base

The estate consists of all of the assets and liabilities in and outside of Belgium at the time of a person's death. The taxable base of the estate in respect of succession tax is the difference between the assets and the liabilities, also known as the net value of the estate. For purposes of taxation, the value of an asset is its FMV or sale value (*verkoopwaarde* or *valeur vénale*) at the time of death.

In the Flemish region, succession tax is levied separately on the net value of the movable property going to each beneficiary and separately on the net value of the immovable property going to each beneficiary, not on the estate as a whole, for the category of the direct line ascendants or descendants and partners. That distinction between movable and immovable property is not made if the Brussels or Walloon inheritance tax is due. In both regions, succession tax due by direct line heirs and partners is levied on the net value of the movable and immovable property inherited by each beneficiary.

For the category of brothers and sisters, the succession tax is levied on the net value of the property (movable and immovable) going to each beneficiary, in all three regions.

Succession tax on legacies between uncles and aunts, nieces and nephews or between strangers is levied on the whole that's been inherited in that category if the deceased was a resident of the Flemish region or the Brussels capital region at the time of his or her death. If the deceased was a resident of the Walloon region at the time of his or her death, succession tax on legacies between uncles and aunts, nieces and nephews or between strangers is levied on the net value of the property (movable and immovable) going to each beneficiary. This is an important aspect given the fact that the inheritance tax rates in Belgium are progressive.

Real estate tax — taxable base

The tax, is in principle, computed at the FMV of the real estate rights transferred. If the transfer is limited to the bare ownership and the owner keeps the usufruct, the real estate transfer tax due will be computed at the FMV of the full ownership.

Note that other rules can apply in cases of a transfer of Belgian real estate rights between joint owners.

7. Trusts, foundations and private purpose funds

Belgian law does not acknowledge the concept of trust. Foreign trusts are recognized in the Belgian international private law code under strict conditions. On no account is a trust applicable to Belgian immovable property.

The Belgian tax implications of a distribution by a trust during the lifetime of the settlor or after his death are uncertain. In different decisions, the Belgian tax authorities confirmed that they were of the opinion that gift tax or inheritance tax may be due on distributions by a trust settled by a Belgian resident following the death of the settlor.

Belgian law does acknowledge the concept of foundation. Gifts as well as legacies to certain kinds of foundations are subject to favorable inheritance tax and gift tax regimes.

8. Grants

There are no specific estate tax rules in Belgium.

9. Life insurance

Distributions by an insurance company relating to a life insurance policy held by a deceased are subject to inheritance tax if the deceased is still a Belgian resident at the time of death and the benefit is paid to the beneficiary at the time of death, after death or within the three-year period prior to death.

Note, however, that some exemptions or reductions can apply, among others for group insurance entered into by the deceased's employer if some specific conditions are met.

10. Civil law on succession

10.1 Succession and forced heirship

Belgian civil law on succession

Note that the Belgian civil law on succession will probably be reformed by the end of 2017. The new law will probably be enforced by the beginning of 2019. During the period between the approval of the new bill and its enforcement, transitional measures will be applicable. The current Belgian civil law on succession is explained below.

Certain heirs (the surviving spouse, descendants and if the deceased had no descendants, his or her ascendants) are automatically entitled to a statutory share of the estate, even if the provisions of a will are to the contrary.

This statutory share of the estate is called the reserved portion (*het voorbehouden erfdeel* or *la réserve héréditaire*).

The deceased may benefit other parties, however limited, up to the disposable portion of the estate.

Family situation at the time of death	Reserved portion of the children	Reserved portion of the ascendants	Disposable portion
No children, ascendants on father's and mother's sides	None	1/2	1/2
No children, ascendants on either father's or mother's side	None	1/4	3/4
One child	1/2	None	1/2
Two children	2/3	None	1/3
Three children or more	3/4	None	1/4

The statutory share of the surviving spouse is limited to the usufruct of half of the estate. However, the surviving spouse is entitled to at least the usufruct over the entire family dwelling and the furniture in it, even if the value of the family dwelling and the furniture exceeds the value of half of the estate.

Family situation at the time of death	Reserved portion of the children	Reserved portion of the ascendants	Reserved portion of the spouse	Disposable portion
No children, descendants on father's and mother's sides	None	1/4 bare ownership and 1/4 full ownership	1/2 usufruct	1/4 bare ownership and 1/4 full ownership
No children, descendants on either father's or mother's side	None	1/8 bare ownership and 1/8 full ownership	1/2 usufruct	3/8 bare ownership and 3/8 full ownership
One child	1/4 bare ownership and 1/4 full ownership	None	1/2 usufruct	1/4 bare ownership and 1/4 full ownership
Two children	1/3 bare ownership and 1/3 full ownership	None	1/2 usufruct	1/6 bare ownership and 1/6 full ownership
Three children or more	3/8 bare ownership and 3/8 full ownership	None	1/2 usufruct	1/8 bare ownership and 1/8 full ownership

The surviving spouse can be disinherited if the spouses were separated. In such a case, specific conditions need to be fulfilled.

If one of the spouses has children from a previous relationship and if specific conditions are met, the spouses may agree to disinherit each other or only one of them.

The testator can even decide by will that his or her surviving ascendants should be refused their reserved portion in favor of the spouse or legal cohabitant, but only if the testator were to die without any descendants.

10.2 Matrimonial regimes

Marriage settlement

The situation of the surviving spouse will notably depend on the matrimonial regime chosen by the couple. The main marital regimes available in Belgium are the legal regime of communal estate, the regime of universal communal estate and the regime of separation of goods:

- The default regime laid down by law is the regime of legal communal estate (*gemeenschap van aanwinsten* or *communauté réduite aux acquêts*). The communal estate, in principle, comprises only property acquired after marriage. Assets that are acquired before the marriage and assets that are acquired during the marriage through inheritance and donations remain, in principle, separately owned.
- The regime of universal communal estate (*algehele gemeenschap van goederen* or *communauté universelle*) stipulates that all assets are, in principle, owned in common by both spouses, regardless of whether the assets were acquired before or during the marriage.
- In the regime of separation of goods (*scheiding van goederen* or *séparation de biens*) each spouse retains the sole title to the assets and wealth he or she acquired before and during the marriage.

The regimes of universal communal estate and separation of goods can only be opted for by the spouses if they agree on it by means of a marriage agreement.

The regime of legal communal estate is applicable to the spouses in default of a marriage agreement, as far as Belgian law is applicable to their matrimonial settlement. The spouses can freely opt for the regime of legal communal estate and still foresee some exemptions in a marriage agreement.

In every regime of communal estate (legal or universal), the spouses can agree, by virtue of their marriage agreement, how the communal estate will be divided in case of separation. They can also define the rights of the surviving spouse regarding the communal estate after the death of one of them.

The transfer of the communal estate (or a part of it) to the surviving spouse in accordance to a marriage agreement is, in principle, not regarded as a donation or a legacy and, therefore, is not subject to the forced heirship rules of the descendants. However, such a transfer of more than half of the communal estate to the surviving spouse is subject to inheritance tax.

An attribution clause needs to be tailor-made in order to fully reflect the wishes and desires of the spouses.

10.3 Intestacy

A will is a written unilateral legal document that regulates the attribution of the different elements of an individual's estate after his or her death. Since the European Succession Regulation entered into force on 17 August 2015, one can opt in his will that the law applicable to his succession should be that of his last habitual residence or that of his nationality. Since Belgium agreed on the Regulation, it will accept the choice that has been made. Note that there is some uncertainty concerning the consequences of the Belgian reserved portion (point 10.1) if one has opted for a foreign law whereby the Belgian reserved portion is not respected. However, recently the majority of the doctrine agrees that the Belgian reserved portion can be disabled.

Belgian civil law recognizes three different forms of a will:

- A holographic will (handwritten)
- An authentic will (before a notary public)
- An international will (before a notary public)

Each type of will has its own legal form of wordings, advantages and disadvantages.

If there is no valid will at the time of death, the deceased's estate shall pass on according to predetermined rules known as the intestate succession. The intestate succession should not be confused with the forced heirship rules; the intestate succession governs the division and the settlement of the estate between legal heirs in the absence of a will, while the forced heirship rules aim at the protection of some of these legal heirs (see above). In other words, not all legal heirs are forced heirs.

The intestate succession is governed by a system that divides the possible intestate heirs into different orders depending on how they relate to the deceased. The closest applicable order excludes the more distant orders.

First order	Children and other descendants
Second order	Parents together with brothers and sisters
Third order	Ascendants (parents, grandparents, great-grandparents)
Fourth order	All other collateral heirs (uncles, aunts and their descendants)
Further heirs	More remote relatives and descendants
No heirs	The Belgian state

Within the same order, the closest heir, in principle, excludes the rest of the heirs (for example, the children exclude the grandchildren). However, the civil code contains several exceptions to this rule.

In Belgium, the surviving spouse is a legally recognized heir, notwithstanding that the surviving spouse is not included in one of the above orders; special rules govern his or her position.

The succession rights of the surviving spouse will depend on the other heirs of the deceased.

	The surviving spouse receives	The other heirs receive
If there are descendants	The usufruct of the total estate	The bare ownership of the total estate
If there are other heirs than descendants	The full ownership of the deceased's part in the communal estate of the spouses (if any) and the usufruct of the deceased's estate	The bare ownership of the estate of the deceased
If there are no heirs	The full ownership of the total estate	

Also, the legal cohabitant has the usufruct over the entire family dwelling and the furniture in it.

10.4 Estate planning

Belgium has several interesting estate planning opportunities:

Donations

In the three regions of the country, it is possible to donate movable property without any gift tax by means of:

- Gifts by hand or informal donations (only advisable if the full ownership is donated, not in cases where the donation is limited to the bare ownership or the usufruct)
- Donations before a foreign notary (e.g., a Dutch or Swiss notary)

An important disadvantage of informal gifts or gifts before a foreign notary is that the transferred ownership will be subject to succession tax if (1) the donor dies within a period of three years (in some cases seven years) following the date of the gift and (2) the gift has not been registered in Belgium for tax purposes (see above).

However, it is possible to limit this risk by means of insurance or a specific "in extremis" backup plan allowing for these donations to be registered in time, should the donor's life come to an end within the three-year period following the donation.

The Flemish authorities have recently decided that whenever securities or cash investments are donated by a donor who reserves the usufruct, either inheritance tax (up to 27% in the direct line) or gift tax (3% in the direct line) must be paid. Technically, the Flemish Tax Administration relies on a tax fiction under which the donated goods are considered to have never left the estate of the donor.

The new decision of the Flemish Tax Administration is rather severe, and it is possible that the decision will not survive a judicial review – but it will be a number of years before this is determined. In the meantime, the Flemish Tax Administration will, in any case, claim inheritance tax on unregistered donations with reservation of usufruct that are made from 1 June 2016. Donations that took place before 1 June 2016 fall outside the scope of the new position.

The fiction only applies when a donation is made with reservation of usufruct. When full ownership is donated to the children or third parties, the fiction is not relevant. When a donation is made before a Belgian notary, the new position is not relevant either. The new decision is relevant only to residents in the Flemish region.

Note that it is possible to make a donation subject to different conditions and burdens.

The civil partnership

The civil partnership is a planning instrument that is frequently used for the transfer of movable property to the next generation while maintaining control over the proceeds of the assets.

The civil partnership agreement is entered into by the *paterfamilias* and his spouse or his children with whom they will pool the property or cash that they want to transfer. The civil partnership can easily be used for the transfer of shares of companies but also portfolios.

In exchange for pooling the property, the parties receive shares in the partnership in proportion to the value of their contributions.

The control will arise from the fact that the *paterfamilias* (and potentially the spouse upon his death) will be appointed in the articles of association as the manager of the partnership. Given the fact that unanimity is required to make any changes to the articles of association, it will be impossible to discharge the *paterfamilias* without his consent. The agreement will be effective, in principle, until the death of the *paterfamilias* and his spouse.

The bare ownership of the shares of the civil partnership can be donated to the children before the office of a notary. The parents will keep the usufruct.

If the deed recording the donation is passed before a Belgian notary, Belgian gift tax will be due (see Section 1.2).

However, should a foreign (e.g., Dutch or Swiss) notary be used, no gift tax will be due in Belgium or abroad (depending on the country, but certainly not for the Netherlands or Switzerland). One must also take into account that the donor must stay alive for a period of three years following the date of the gift (in some cases seven years); if not, there will still be inheritance tax due on the amount donated. If the gift was passed before a foreign (Dutch or Swiss) notary, it is still possible to voluntarily pay gift taxes in Belgium via registration of the notarial deed with the tax authorities in order to avoid succession tax in the event of changing circumstances (e.g., serious illness). However, this is not possible in the event of a sudden death. It is useful to note that it is possible to ensure the succession tax due as a result of a death within a three-year period.

The Flemish authorities have recently decided that whenever shares of a civil partnership that holds securities or cash investments are donated by a donor who reserves the usufruct, either inheritance tax (up to 27% in the direct line) or gift tax (3% in the direct line) must be paid. Technically, the Flemish Tax Administration relies on a tax fiction under which the donated goods are considered to have never left the estate of the donor.

The new decision of the Flemish Tax Administration is rather severe, and it is possible that the decision will not survive a judicial review – but it will be a number of years before this is determined. In the meantime, the Flemish Tax Administration will, in any case, claim inheritance tax on unregistered donations with reservation of usufruct that are made from 1 June 2017. Donations that took place before 1 June 2017 fall outside the scope of the new position.

The fiction only applies when a donation of shares of a civil partnership is made with reservation of usufruct. When full ownership is donated to the children or third parties, the fiction is not relevant. When a donation is made before a Belgian notary, the new position is not relevant either. The new decision is relevant only to residents in the Flemish region.

The consequences of succession planning by means of a civil partnership are as follows:

- The *paterfamilias* would retain the income generated by the donated assets.
- In the event of sale of any of the pooled assets, the value of the sale will be reinvested in other assets, which will still be subject to the civil partnership regime.
- The *paterfamilias* and his spouse will be in charge of the management of the assets.
- In principle, the civil partnership would be dissolved after the death of the manager(s) (the *paterfamilias* and his spouse) in accordance with the statutory provisions. At that time, the assets will automatically flow to the children without being subject to succession tax.

11. Estate tax treaties

Belgium has entered into a treaty regarding succession tax with France and Sweden. Negotiations have started with the United States regarding an estate tax treaty.

Belgium has not entered into any international agreements regarding gift tax.

12. Abuse of tax law

The tax authorities published an administrative circular on the anti-abuse provision for registration duties and inheritance tax purposes.

The circular lists examples of transactions indicating whether or not they constitute abuse of tax law.

Non-exhaustive lists

It should be noted that the assessment of the existence of abuse of tax law must be done on a case-by-case basis. As a result, it is not possible for the tax authorities to provide for an exhaustive list of safe, e.g., suspicious, transactions.

However, the administrative circular lists some transactions that, in principle, do or do not constitute abuse of tax law according to the tax authorities.

Abuse of tax law

For example, the following transactions are considered to constitute abuse of tax law (unless the taxpayer is able to prove the existence of non-tax motives):

- Distribution clause of a matrimonial community property to one specific spouse
- Long-term lease constructions between affiliated companies

No abuse of tax law

The following transactions (among others) are considered not to constitute abuse of tax law (unless they are part of a broader abusive construction):

- Gift by hand/donation made by a bank transfer between accounts
- Donation executed before a foreign notary (Please note that as of 1 June 2016, the Flemish tax authorities will no longer accept donations with usufruct executed before a foreign notary. Notwithstanding the donation, inheritance taxes will still be due.)
- Successive partial donations of immovable property
- Donations with retention of usufruct or any other lifetime right

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1. Types of tax

From a domestic perspective, taxation on donation and inheritance is regulated at the state level. Rates might vary depending on the location where the donor is domiciled and/or the transaction is concluded.

As a general rule, the conflict-of-law principle should regulate transactions involving estate rights, but Brazilian courts could keep exclusive jurisdiction to conduct the estate proceedings and to distribute the deceased's assets located in Brazil.

1.1 Inheritance tax

State tax on *causa mortis* wealth transfer and donation (ITCMD)

Inheritance rights should be exempted from income taxation in the country of residence. However, state tax on *causa mortis* wealth transfer (ITCMD) should be enforceable to surviving family members residing in Brazil or to the donee (the state law that regulates the ITCMD taxation may also indicate the donor as jointly responsible to pay the ITCMD in case the donee fails to pay the tax due). The ITCMD is a state tax levied on transfers of goods on death-related inventories or donations (in case of living individuals), which is payable on movable and immovable property (e.g., real estate or cash lump sums). Nevertheless, it is important to note that the maximum applicable rate is currently capped at 8% (however, an increase in the rate is expected up to 20%).

Tax assessment

The procedures, deadlines and rates vary between the Brazilian states. For a general overview, we have listed below information about São Paulo and Rio de Janeiro.

In São Paulo, the ITCMD should be levied on:

- *Causa mortis* transfers: Tax should be paid within 30 days after the decision that ratifies the calculation or after the order that determines its payment. The deadline for payment of the tax shall not exceed 180 days from the start of the succession process.

- Gift transfers: Tax should be collected before the conclusion of the act or contract. In the case of sharing or division of common property, the tax must be paid within 15 days of decision *res judicata* or prior to the issuance of the notary registration.
- The ITCMD rate is currently 4% in São Paulo.

In Rio de Janeiro, the ITCMD should be levied on:

- *Causa mortis* transfers: Tax should be paid within 60 days after the taxpayer was made aware of the tax posting, or in four equal and successive monthly installments, without extra charge (the latter option expires the first 30 days after the taxpayer was made aware of the posting).
- Tax computed by a tax notice: 30 days from the notification.
- Regarding property donations and related rights, even if the donation instrument is drawn up in another state, the ITCMD must be paid prior to the taxable event within the legal term.

The ITCMD rate in Rio de Janeiro is currently 4.5% (for amounts up to BRL1,279,960) or 5% (for amounts above BRL1,279,960).

Determination of the tax basis

The tax legislation of the 27 federal states (including the Federal District) contains specific provisions on the valuation of assets transferred, as well as on the applicable tax rates. Reference needs to be made to the local state rules in any particular case.

1.2 Gift tax

See Section 1.1.

1.3 Real estate transfer tax

Municipal tax on real estate transfer (ITBI)

While alive, the owner may transfer Brazilian property to anyone, through a donation (in this case, he must observe the mandatory portion of 50% of his assets that are destined to his forced heirs) or through a pecuniary interest. When the transfer occurs through a donation, this transfer is subject to ITCMD (please refer to Section 1.1). When the transfer occurs through a pecuniary interest (purchase or sale), the transfer of real estate between people or land is subject to the *Imposto de Transmissão de Bens Imóveis por Ato Oneroso Inter Vivos* (ITBI), which is a municipal tax levied on transfers of real estate and rights to real estate. The rates that should apply on such taxation vary from city to city in Brazil, and the ITBI should be calculated based on the assessed value. However, the rates must respect the principle of non-confiscation, stipulating non-abusive rates (e.g., the rate in Rio de Janeiro is 2% of the real estate value). In São Paulo, the maximum tax rate is 3% of the real estate value.

Tax assessment

The procedures, deadlines and rates vary between the Brazilian cities. For a general overview, we have listed below information about São Paulo and Rio de Janeiro.

In São Paulo, ITBI should be levied:

- Before the conclusion of the act or contract, if it is a public instrument
- Within 10 days if the act or contract is effected by a private instrument, or, in the transmission made by a court decision, as of the *res judicata* of this decision, or as of the date that the calculation is ratified, whichever happens first

- Within 15 days in case of auction, adjudication and award redemption, before the signing of the respective letter, even if it is not extracted

In Rio de Janeiro, the ITBI should be levied:

- Before the conclusion of the act or contract, if it is a public or private instrument
- Within 60 days in case of incorporation of real estate in a legal entity
- Within 30 days in case of judicial acts, counted from the date the taxpayer was made aware

Determination of the tax basis

The tax legislation of all the municipalities (including the Federal District) contains specific provisions on the valuation of assets transferred, as well as on the applicable tax rates. Reference needs to be made to the local municipal rules in any particular case.

1.4 Endowment tax

There is no endowment tax in Brazil.

1.5 Transfer duty

There is no transfer duty in Brazil.

1.6 Net wealth tax

There is no net wealth tax in Brazil.

2. Who is liable?

2.1 Residency

For ITCMD and ITBI, please see Sections 1.1 and 1.3.

2.2 Domicile

For ITCMD and ITBI, please see Sections 1.1 and 1.3.

3. Rates

The rates of ITCMD and ITBI vary depending on each of the 27 states and cities.

4. Exemptions and reliefs

State and municipal legislations should be observed regarding the possibility of tax exemption from ITCMD and ITBI. In some cases, there may be no tax incidence (ITCMD) depending on the value of the property to be transferred or even the conditions under which the will is transmitted and who is the beneficiary.

5. Filing procedures

The filing procedures for ITCMD and ITBI vary among each of the 27 states and cities.

6. Assessments and valuations

Assessments and valuations for ITCMD and ITBI purposes vary depending on each of the 27 states and cities.

7. Trusts, foundations and private purpose funds

A trust is an arrangement whereby ownership of private assets and rights (cash, liquid assets, real estate properties and movable rights) is transferred from an original owner (grantor) to a third party (trustee), who assumes full responsibility of managing those assets under the exclusive best interest of persons (beneficiaries or *cestui que* trust) expressly indicated by the grantor or by the trustee in the trust deed.

The wealth given in trust is protected by mandatory fiduciary obligations (management and loyalty) to be performed by the trustee. Moreover, it does not include the trustee's personal wealth, and therefore, is not subject to the trustee's private judicial demands in the case of insolvency.

First, it is important to highlight that even though trusts are widely used in common law jurisdictions, the trust concept does not exist in Brazil, as its system adopts the civil law regime. Although there are no express restrictions in Brazil regarding the use of a trust or its constitution for Brazilian tax residents, there are no clear rules on how to report trusts in Brazil or on how to tax the income generated by a trust.

There is still a gray area on the tax impacts to resident taxpayers who participate or get nominated to benefit from investments held outside Brazil, in relation to trust arrangements incorporated outside Brazil. To this extent, even the performance of tax reporting obligations (i.e., the Brazilian annual income tax return and the Declaration of Brazilian Capital Abroad (DCBE) that must be submitted to the Brazilian Central Bank whenever the resident individual holds more than US$100,000 outside of Brazil) is unclear. As a general rule, property, income and gains on assets held in a revocable trust tend to be taxed upon the settlor, while property, income and gains arising from an irrevocable trust tend to be taxed upon the beneficiaries when available to them.

It should be noted that non-Brazilian assets are usually reported on the Brazilian annual income tax return and the DCBE.

However, despite the fact that trusts are not specifically regulated in Brazil, there is formal guidance from the Brazilian Central Bank, which provides that the beneficiary (tax resident in Brazil) must report the trust in his DCBE.

Due to the lack of legislation and guidance, we recommend a case-by-case analysis so that Brazilian tax residents are comfortable with the reporting and taxation of trusts in Brazil, both for income tax purposes and Central Bank requirements in Brazil.

Beneficiary taxation

Due to the fact that trusts are not regulated in Brazil, there is a lack of clarity about the nature of the revenue and the taxation of distributions made by the trust — mainly as to whether such distributions would be considered as ordinary income (subject to income tax up to 27.5%) or as donations (subject to ITCMD) to the beneficiaries.

It is important to note that taxation on donations and inheritance is regulated by the Brazilian Federal Constitution. According to Article 155, paragraph 1, item III, only complementary law should provide for the incidence of tax on donations when the donor resides outside of Brazil, or when the deceased had assets abroad or lived outside of Brazil. However, such complementary law has not been enacted yet.

Whenever due, the responsible party for collecting the ITCMD is the donee (resident taxpayer). The payment should be made on the date the donation is received. Late payment or noncompliance will trigger fines of 20% on the balance due in cases of insufficient compliance.

It is also important to mention the Brazilian amnesty program for undisclosed overseas assets (RERCT). The RERCT, which was implemented in January 2016, enabled holders of previously undeclared offshore assets to report those assets to the Brazilian tax authorities (the program closed on 31 October 2016). With regard to trust structures, the Brazilian tax authorities advised that the trust must be reported by the beneficiary and, in specific cases, by the settlor.

A new version of the RERCT is currently in force and applies to all assets acquired abroad by a Brazilian tax resident until 30 June 2016. The deadline to join this new amnesty program and pay the applicable taxes is 31 July 2017.

8. Grants

Grantor taxation

From a tax perspective, a different tax treatment would be applicable to revocable and irrevocable trusts involving a settlor/grantor who is tax resident in Brazil. When considering the setup of an irrevocable trust abroad, in principle there is no obligation to declare the assets under the trust in Brazil, as they do not seem to remain with the settlor/grantor, since there was a perfect donation of the assets to the trust fund. In this sense, such constitution should trigger the taxation of ITCMD.

When considering a revocable trust, the settlor/grantor would have, in principle, the obligation to report to the Brazilian Internal Revenue Service and Brazilian Central Bank the assets under the trust in Brazil since the trust would be considered transparent from a Brazilian perspective. As a consequence, the settlor/grantor would be obliged to report the underlying assets as they were directly held by him or her, and to recognize and pay tax in Brazil on the income (at rates of up to 27.5%) or gains (15%) associated with or generated by them.

Due to the lack of specific legislation on this in Brazil, we recommend a case-by-case analysis.

9. Life insurance

Life insurance is a contract between a person (the insured) and an insurance company. The insured agrees to pay periodic values (the premium), and in return, the insurer guarantees the payment of compensation to persons appointed by the insured in the insurance proposal. This compensation is paid only in the case of the death of the insured. The person who is nominated for this value is called the beneficiary.

The right to receive payment arising from life insurance is not part of the assets that comprise the estate of the insured, by express provision of the Brazilian Civil Code (Article 794).

Also, there are no income or inheritance taxes on the life insurance premium received in Brazil.

10. Civil law on succession

10.1 Succession

When an individual dies, his or her assets must be immediately transferred to his or her heirs. Inventory is a procedure that formalizes the division and transfer of assets to heirs; this procedure can be done judicially or extra-judicially. The inventory procedure applies when an individual has assets located in Brazil, even if the deceased was a foreigner and was not a tax resident of Brazil. Under Brazilian law, the inventory procedure must be held in Brazil if the deceased had tax residence in Brazil.

The inventory procedure must be established within a period of 60 days after the death; if it is not, penalties may apply.

Extra-judicial inventory

An extra-judicial inventory is carried out in the notarial office when the deceased is not a minor (i.e., 18 years of age or older) and left no will. This kind of inventory is usually faster and less expensive. However, it does need the support of a lawyer.

Judicial inventory

A judicial inventory is mandatory when:

(i) There are minors or disabled heirs

(ii) The parties do not agree with the division of assets

(iii) There is a will

A lawyer is also required for a judicial inventory.

10.2 Will

A will is a legal document that establishes that after the death of the individual, the division of assets to heirs shall be according to his last wishes. Brazilian law provides three types of wills: (i) public; (ii) closed; and (iii) private. A public will is the most commonly used will. If, at the time of death, there is no valid will, the inventory process will follow the general rules for the distribution of assets (see Section 10.3). Through a will, the individual is free to dispose of 50% of his estate. The other 50% should follow the general rules of succession (see Section 10.3), being distributed to the forced heirs in equal shares.

10.3 Forced heirship rules

Brazilian law respects the rights of the deceased's forced heirs. At the time the inventory is opened, the rights of the children and surviving spouse or life partner must be respected. If the individual does not leave descendants, the individual's parents and his spouse will be entitled to inheritance. If there are no descendants and no ascendants, the surviving spouse will become the sole heir. If there are no descendants, no ascendants and no surviving spouse, then collateral relatives (i.e., brothers, sisters, uncles, aunts, cousins, nephews and nieces) will inherit.

It is important to note that the governing marital regime can influence the size of the estate subject to the forced heirship rules (see Section 10.4).

10.4 Matrimonial regimes and civil partnership

The matrimonial regime chosen by the couple has a direct impact on the division of assets following an individual's death.

In Brazil, there are three main matrimonial regimes:

- Community property: The property of both partners, whether acquired before or after the marriage, is treated as joint property (except for gifts received with an incommunicability clause, i.e., a clause stating that the gift belongs solely to its receiver).
- Partial community property: This is the default regime. Only the property acquired during the marriage is treated as joint property. This does not apply to any property purchased during the marriage using funds or rights that date to before the marriage (such as an inheritance).
- Separate property regime: All property acquired either before or after marriage remains the property of the individual.

Brazil also has a "stable union" that is defined as a living relationship between two individuals that is enduring and has the purpose of constituting a family. Under this type of relationship, the partial community property regime will prevail (unless there is an agreement that stipulates other rules).

It is important to note that Brazil's Supreme Court has recently decided that a life partner shall have the same inheritance rights that a spouse would have if they were officially married. In other words, the partner in a stable union has been equated to a spouse, throughout the Brazilian territory, for succession/inheritance purposes.

As always, we recommend a case-by-case analysis.

11. Estate tax treaties

Brazil has not concluded any estate tax treaties with other countries in connection with inheritance tax.

Bulgaria

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1. Types of tax

Under Bulgarian law, transfer of property might be subject to inheritance, gift or transfer tax, depending on whether the transfer takes place before or after the death of the testator, as well as on the availability of consideration or the lack thereof.

1.1 Inheritance tax

Bulgarian inheritance tax relates to the taxation of estate left by the deceased. Inheritance tax is levied on the estate located in Bulgaria or abroad if the deceased was a Bulgarian citizen and on the estate located in Bulgaria when the deceased was a foreign citizen. The inheritance estate incorporates movable and immovable property owned by the deceased and the rights to such, as well as other property rights belonging to the deceased prior to the death, receivables and liabilities existing at the time of death.

1.2 Gift tax

Subject to gift tax are free of charge transfers of property, debt forgiveness and acquisition of immovable property and rights in rem by prescription.

1.3 Real estate transfer tax

Subject to real estate transfer tax is the sale of immovable property (buildings and land) and rights in rem.

1.4 Individual income tax

Inheritance and estate taxes are not part of personal income tax (PIT) in Bulgaria.

1.5 Business tax

There is no business tax in Bulgaria apart from income taxes.

1.6 Deed tax

There is no deed tax in Bulgaria. However, notary fees apply to deeds that need notary certification.

1.7 Stamp duty

There is no stamp duty in Bulgaria.

1.8 Land appreciation tax

There is no land appreciation tax in Bulgaria.

1.9 Endowment tax

There is no endowment tax in Bulgaria but endowments are taxed as gifts (see comments under Section 1.2).

1.10 Transfer duty

Besides real estate transfer tax, motor vehicles registered in Bulgaria are subject to transfer tax as are transfers against consideration.

1.11 Net wealth tax

There is no net wealth tax in Bulgaria.

2. Who is liable?

2.1 Inheritance tax

The heir is liable to inheritance tax except where exemptions apply.

2.2 Gift tax

The beneficiary of the gift is responsible for its gift tax, except where exemptions apply.

2.3 Transfer tax

Transfer tax is generally the responsibility of the purchaser, unless specific rules apply.

3. Rates

3.1 Inheritance tax

The tax rates are determined by each municipality within ranges determined in the law.

- For siblings and their children: from 0.4% to 0.8% per inheritance share above BGN250,000 (€128,000)
- For any other persons: from 3.3% to 6.6% per inheritance share above BGN250,000 (€128,000)

3.2 Gift tax

Gift tax is charged on the assessed value of the transferred property in an amount determined by each municipality within ranges provided in the law:

- From 0.4% to 0.8%: applicable to donations between siblings and their children
- From 3.3% to 6.6%: applicable to donations between any persons other than the persons referred to

3.3 Transfer tax

Transfer tax is determined by each municipality within the range of 0.1% to 3% as set in the law.

4. Exemptions and reliefs

4.1 Inheritance tax

The following are examples of inheritance tax exemptions:

- The deceased's spouse and lineal decedents and ascendants
- The estate left to the state and the municipalities
- The estate left to the Bulgarian Red Cross and/or the lawfully registered religious denominations in Bulgaria
- Any ordinary household furnishings
- Any small farm implements
- Libraries and musical instruments
- Immovable properties that are owned by Bulgarian citizens and located outside of Bulgaria, so long as the foreign inheritance tax on the property is duly paid in the foreign jurisdiction

Ordinary household furnishings, small farm implements, libraries and musical instruments are exempt from tax subject to the condition that the estate devolves to lineal relatives, a spouse or siblings.

4.2 Gift tax

The following are exempt from tax:

- Any properties acquired by:
  - The spouse and lineal decedents and ascendants
  - The state and the municipalities
  - Any public-financed educational, cultural and scientific research organizations, as well as any specialized institutions for provision of social services and any medical and social child care homes
  - The Bulgarian Red Cross
  - The nationally representative organizations of people with disabilities and for people with disabilities

  - Any funds providing relief to victims of natural disasters and financing the conservation and restoration of historical and cultural landmarks
  - The medical-treatment facilities covered under the Medical Treatment Facilities Law
- Any donations for medical treatment of citizens of a Member State of the European Union or of another state that is a Contracting Party to the Agreement on the European Economic Area, as well as of technical aids for people with disabilities
- Any humanitarian donations to persons who have lost between 50% and 100% of their working capacity and to socially disadvantaged individuals
- Any donations for not-for-profit legal entities that receive subsidies from the central-government budget, and any not-for-profit legal entities, registered in the Central Register of Not-for-Profit Legal Entities designated for pursuit of public-benefit activities, in respect of any donations received and provided
- Any customary gifts (no definition on customary gift, in practice the value of the gift is decisive)
- Any donations in favor of community centers
- Any assistance provided gratuitously under the terms and according to the procedure established by the Financial Support for Culture Law

4.3 Transfer tax

The following are examples of exemptions from transfer tax:

- The state and the municipalities
- Any public-financed educational, cultural and scientific research organizations, as well as any specialized institutions for provision of social services and any medical and social child care homes
- The Bulgarian Red Cross
- The nationally representative organizations of people with disabilities and for people with disabilities
- Any funds providing relief to victims of natural disasters and financing the conservation and restoration of historical and cultural landmarks
- The medical treatment facilities covered under the Medical Treatment Facilities Law

5. Filing procedures

5.1 Inheritance tax

Within six months following the grantor's death, either the lineal descendants, the parents and spouse or the siblings of the deceased who are eligible to acquire the estate should submit a declaration to the municipality providing the last residence of the deceased. The start date for any other beneficiary is six months from learning about the grantor's death.

In the declaration, heirs must itemize the grantor's estate as inherited by type, location and value. The competent municipality should determine the tax due and send a notification to each of the heirs about their portion of tax due. The tax should be paid within two months of receipt of the notification.

5.2 Gift tax

The acquirer must submit a declaration to report the acquisition and pay the gift tax within two months of the transfer to the municipality in which the real estate is located or where the acquirer resides in other cases.

5.3 Transfer tax

The tax should be paid upon the transfer of the property. When the transaction should be certified by a public notary, the latter supervises for the timely payment of the transfer tax before certifying the contract.

6. Assessments and valuations

Inheritance tax

Special rules apply for the evaluation of each asset from the estate. For example:

- Immovable property: at tax value determined by special rules in the law
- Foreign currency and precious metals: at the central exchange rate of the Bulgarian National Bank
- Securities: at market value or, where the market value cannot be established without considerable cost or difficulty, at nominal value
- Transport vehicles: at the insured value
- Any other movable property and rights: at market value
- Enterprises or participating interests in commercial corporations or cooperatives: at market value or, where determination of the market value requires considerable expense or causes difficulties, according to accounting data

The municipal authorities notify the beneficiaries *ex officio* about the tax due.

Gift tax

The taxable base for levying gift tax is determined in the same way as the taxable base for inheritance tax elaborated above.

6.1 Transfer tax

The taxable base is the value of the transferred property at the time of the transfer.

The property value is determined as follows:

- Immovable property: at the price agreed or, if it is lower than the tax value, the latter is used as a taxable base
- Motor vehicles: at the insured value

7. Trusts, foundations and private purpose funds

There are no specific taxation rules regarding trusts, foundations and private purpose funds in Bulgaria.

8. Grants

There are no specific rules for grants with regard to estate and inheritance tax. In general, such are exempt from personal income tax as well.

9. Life insurance

Life insurance premiums are not subject to inheritance tax because they do not fall within the definition of inheritance estate to be succeeded.

10. Civil law on succession

Succession

Bulgarian law recognizes two types of succession: testamentary succession (when the deceased left a will) and intestacy (which applies in the absence of a will). The deceased's estate includes all properties, rights and obligations that he or she owned as of the moment of death except for rights that are inseparable from the personality of the deceased, such as the right to alimony.

The inheritance can be accepted by means of a written application to the court or tacitly through an action that undoubtedly suggests the heir's intention to accept the inheritance. There is no statutory time limit to accept the inheritance. Still, any interested party may request from the court to define a time limit for the heirs to accept it. If the heirs fail to do so, they will lose their right to the inheritance.

By general rule, once accepted, the inheritance becomes a part of the heir's property. Heirs may also accept the inheritance by inventory, in which case the inherited property will be separate from the heir's own property and the deceased's obligations will be paid up to the amount of the inherited property only. The inheritance may also be refused by a written application to the court.

Testamentary succession

A will is a written document that regulates an individual's property after his or her death. Under Bulgarian legislation, a person can dispose of property by means of a will as long as the statutory reserve of the by-law heirs is not affected.

Bulgarian civil law recognizes two types of a will: a handwritten will and a notarized one. The two types have equal validity at law, and neither has precedence over the other. The law prescribes specific requirements for the validity of the two types of will.

Matrimonial regimes and civil partnership

There are three matrimonial regimes in Bulgaria: matrimonial community property, regime of separate ownership and matrimonial agreement. The preferred regime can be chosen upon the conclusion of the marriage or afterwards by means of an agreement between the spouses. The choice of matrimonial regime has to be registered with the Register of Property Relations between Spouses in order to take effect.

The default regime of matrimonial community property will always apply unless another regime is chosen by the spouses. Under this regime, all property acquired by the spouses after the marriage is subject to a joint title, except for:

- Bank deposits
- Property needed for the professional activities of a spouse
- Assets acquired through inheritance and donations by one of the spouses

Under the regime of separate ownership, each spouse retains the sole title to all assets he or she acquires before and during the marriage.

By a matrimonial agreement the spouses can make arrangements about their property relationships. Arrangements aimed to regulate the property of a spouse after death cannot be included in a matrimonial agreement as these have to be stipulated in a will.

The surviving spouse is always an heir of the deceased unless the spouses divorced before the death.

Civil partnerships are not recognized in Bulgaria, and there is no common property or other financial consequences of them.

Intestacy

In the absence of a will of the deceased, the regime of intestacy will apply. In Bulgaria, only private individuals can be heirs by law. All children of the deceased, including adopted ones, have equal inheritance rights.

Intestacy is performed in turns. Bulgarian law stipulates four priority turns of heirs by law.

First priority turn	Children and other descendants
Second priority turn	Parents or the surviving one
Third priority turn	Ancestors of second or higher degree, brothers and sisters
Fourth priority turn	Collateral relatives of up to sixth degree

Each priority turn excludes the ones following it. For instance, heirs from the first priority turn inherit the deceased's property on their own and heirs from the following priority turns can inherit only if there are no heirs of the first priority turn or all of them refused the inheritance.

If there is a surviving spouse, he or she inherits together with the heirs from first to third priority turn and excludes the fourth turn, in which case the surviving spouse inherits solely by himself or herself.

In case there are no heirs or all the heirs refuse the inheritance, the latter is acquired by the state, except for the movables and residential property, which become property of the municipality.

Forced heirship

Some categories of by-law heirs (descendants, parents and the surviving spouse) cannot be disinherited by testamentary dispositions, as a part of the testator's property is reserved for them (the legal reserve). Still, the testator can freely grant the rest of the property to persons different from the by-law heirs (disposable portion).

If the testator has disposed of property within the legal reserve, the by-law heirs have the right to claim reduction of the testamentary dispositions and the donations made during the testator's lifetime.

The proportion of the legal reserve and the disposable portion varies according to the heirs by law.

By-law heirs	Legal reserve	Disposable portion
Only one child or his or her descendants	1/2	1/2
Only two or more children (or their descendants)	2/3	1/3
Only surviving spouse	1/2	1/2
Only parents or one parent	1/3	2/3
Surviving spouse and parent/parents	1/3 1/3	1/3
One child and surviving spouse	1/3 1/3	1/3
Two children and surviving spouse	1/4 (each child) 1/4	1/4
Three or more children and surviving spouse	5/24 (each child, in case there are three children) 5/24	1/6 (4/24)

Probate

The procedure of execution of the will commences with the announcement of the will by a notary public. The will is executed by a person who manages the inheritance but has no power to dispose of it (executor). The testator may have in advance chosen the executor of his or her testamentary dispositions.

11. Estate tax treaties

Bulgaria has not entered into any international agreements regarding inheritance or gift tax.

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1. Types of tax

While there are no estate taxes in Canada, there is a deemed disposition of all capital property owned by an individual at the time of death. In general, this disposition is deemed to take place at the fair market value (FMV) immediately prior to death. It usually results in the recognition of some amount of gain or loss and is included in computing income in the year of death. In all cases, the estate or the beneficiaries, as the case may be, will acquire the property at a cost equal to the deceased's proceeds from the deemed disposition. Additionally, the FMV of any registered retirement savings plan (RRSP) or registered retirement income fund (RRIF) is fully taxable in the year of death unless it is bequeathed to the individual's spouse or a dependent minor child.

Because the deemed disposition of capital property can result in significant tax liabilities, the Canadian Tax Act provides relief in some circumstances. For example, there are exceptions for transfers to spouses and certain transfers of farm and/or fishing property to children. These are discussed below.

1.1 Inheritance tax

There are no inheritance taxes in Canada.

1.2 Gift and endowment tax

Neither Canada nor its provinces have a separate gift or endowment tax regime. However, under the Canadian Tax Act, a disposition at FMV will arise when any property is gifted by a Canadian resident. In the case of Canadian residents, the deemed disposition rules apply to any property that is gifted. There are exceptions for transfers during their lifetimes to a spouse or qualified spouse trusts as discussed below, and special trusts created by an individual who is more than 65 years old for the benefit of themselves (an alter ego trust) or themselves and their spouse (a joint partner trust). For nonresidents, the rules will apply to gifts of taxable Canadian property, as defined in the next section.

1.3 Real estate transfer tax

Several provinces levy a tax on the transfer of real property, referred to as either a land transfer tax or real property transfer tax. For tax purposes, real property generally includes land, buildings or structures on land and any rights or interests in land. As a general rule, the tax applies to the property's FMV, which is normally based on the value of the consideration or sale price. Tax is paid when a person registers a transfer of land at a provincial land title office.

Provinces levying the tax generally exempt certain transactions from the tax. Some of the more commonly exempted transactions include:

- Transfers where the value of the land does not exceed a minimum threshold
- Transfers for nominal consideration
- Transfers between family members
- Transfers of farmland

In addition, many provinces provide an exemption for first-time home buyers.

The table below summarizes the land transfer tax rates by province and territory.

Province or territory	Tax or duty	Statute
Alberta	There is no land transfer tax; however, registration fees may apply.	N/A
British Columbia	Total of: ‣ 1% of the first C$200,000 of the taxable transaction's FMV ‣ 2% of the land's FMV over C$200,000 ‣ 3% of the land's FMV over C$2,000,000 An additional 15% on transfers to foreign entities of residential property located in Greater Vancouver Regional District	Property Transfer Tax Act
Manitoba	Total of: ‣ 0.5% of the excess of the land's FMV over C$30,000 ‣ 1% of the excess of the land's FMV over C$90,000 ‣ 1.5% of the excess of the land's FMV over C$150,000 ‣ 2% of the excess of the land's FMV over C$200,000	Part III (Land Transfer Tax) of The Tax Administration and Miscellaneous Taxes Act
New Brunswick	1% of the greater of: ‣ Consideration for the transfer ‣ Real property's assessed value	Real Property Transfer Tax Act
Newfoundland and Labrador	There is no land transfer tax; however, registration fees may apply.	N/A
Northwest Territories	There is no land transfer tax; however, registration fees may apply.	N/A

Province or territory	Tax or duty	Statute
Nova Scotia	The tax is determined by each municipality and applied to the sale price of every property that is transferred by deed with the maximum being 1.5% of the value of the property transferred.	Part V (Deed Transfers) of the Municipal Government Act
Nunavut	There is no land transfer tax; however, registration fees may apply.	N/A
Ontario	Total of: ‣ 0.5% of the value of the conveyance's consideration up to and including C$55,000 ‣ 1% of the value of the conveyance's consideration exceeding C$55,000 up to and including C$250,000 ‣ 1.5% of the value of the conveyance's consideration exceeding C$250,000 ‣ 2% of the value of the conveyance's consideration exceeding C$400,000 ‣ 2.5% of the value of the conveyance's consideration exceeding C$2 million (only where the conveyance of land contains at least one and not more than two single family residences) The City of Toronto also levies a municipal land transfer tax at the same rates as the province. An additional 15% tax is levied on transfers to foreign entities of residential property located in the Golden Horseshoe Region of Southern Ontario (effective 21 April 2017).	Land Transfer Tax Act
Prince Edward Island	1% of the greater of: ‣ Consideration for the transfer ‣ Real property's assessed value Land transfer tax is not applied when the greater of the consideration or assessed value does not exceed C$30,000.	Real Property Transfer Tax Act
Quebec	Total of: ‣ 0.5% of the basis of imposition up to and including C$50,000 ‣ 1% of the basis of imposition exceeding C$50,000 up to and including C$250,000 ‣ 1.5% of the value of the basis of imposition exceeding C$250,000 The basis of imposition being the greater of: ‣ Consideration furnished for the transfer ‣ Consideration stipulated for the transfer ‣ The immovable's market value at the time of the transfer	An Act Respecting Duties on Transfers of Immovables
Saskatchewan	There is no land transfer tax; however, registration fees may apply.	N/A
Yukon	There is no land transfer tax; however, registration fees may apply.	N/A

1.4 Transfer duty

The only transfer taxes in Canada are on real estate as noted above.

1.5 Net wealth tax

Canada does not have a net wealth tax.

2. Who is liable?

The taxation of individuals in Canada is determined by residence. The deemed disposition at death applies to the worldwide assets of all Canadian residents at the time of death. Nonresidents may also be liable for tax at the time of death if they own taxable Canadian property.

2.1 Residency

Canadian residents

The Canadian courts have developed various principles to determine whether a person is a Canadian resident. The following considerations are used for determination:

- The amount of time spent by a person in Canada
- The motives or reasons for a person being present in or absent from Canada during the year
- Whether the person maintains a dwelling in Canada
- The person's origin and background
- The person's general mode or routine of life
- Other connections that the person has with Canada, such as ownership of property, membership in clubs and presence of relatives

A person may be a resident of more than one country during the same period of time. Where an individual is considered to be a resident of Canada and also a resident of a treaty country, the applicable treaty will normally determine the country of residence under the "tiebreaker" rules.

In addition to the judicially developed tests, the Canadian Tax Act has provided statutory tests that may deem a person to be a Canadian resident. In the case of an individual, the key rule is that a person is deemed to be a resident for any tax year in which he or she spends 183 or more days in Canada.

Nonresidents who hold taxable Canadian property

The Canadian Tax Act establishes procedures for collecting tax from nonresidents on the disposition of taxable Canadian property as defined in the Canadian Tax Act.

In general, the definition of taxable Canadian property will limit the taxation of capital gains realized by nonresidents to direct and indirect interests in Canadian real estate, Canadian resource properties or timber resource properties (the specified assets). It should be noted that while the rules are very similar to the rules in the United States, there is a significant difference, such that the shares of any corporation, even if it is nonresident, will be considered taxable Canadian property if more than 50% of the fair market value of the shares was derived, directly or indirectly, from the specified assets at any time during the prior 60 months.

A nonresident must obtain a certificate of compliance and furnish acceptable security (normally 25% of the expected gain on account of any potential Canadian income tax liability arising on the disposition of a taxable Canadian property). These rules do not apply to a deemed disposition on death. However, the executor acting on behalf of a nonresident decedent must file an income tax return for the year of death and pay any tax that may be necessary on the deemed disposition.

2.2 Domicile

Canada only taxes individuals based on residency and does not consider the domicile of taxpayers for the calculation of tax.

3. Rates

Canadian maximum personal marginal income tax rates – 2017[1]				
	Ordinary income (%)[2]	Eligible dividends (%)[3]	Ordinary dividends (%)[3]	Capital gains (%)
Alberta	48.00	31.71	41.24	24.00
British Columbia	47.70	31.30	40.61	23.85
Manitoba	50.40	37.78	45.74	25.20
New Brunswick	53.30	33.51	45.96	29.65
Newfoundland and Labrador	51.30	42.61	43.62	25.65
Northwest Territories	47.05	28.33	35.72	23.53
Nova Scotia	54.00	41.58	46.97	27.00
Nunavut	44.50	33.08	36.35	22.25
Ontario	53.53	39.34	45.30	26.76
Prince Edward Island	51.37	34.22	43.87	25.69
Quebec	53.31	39.83	43.84	26.65
Saskatchewan	48.00	30.33	39.91	24.00
Yukon	48.00	24.81	40.17	24.00

[1] The rates shown are the 2017 maximum combined federal and provincial marginal tax rates, including surtaxes where applicable, based on known rates as of 15 January 2017.

[2] Ordinary income includes such items as salary, interest, business income and income from other sources, but excludes Canadian dividends and capital gains.

[3] The rates apply to the actual amount of taxable dividends received in the year. Eligible dividends are those paid by public corporations and private companies out of earnings that have been taxed at the general corporate tax rate (the dividend must be designated by the payor corporation as an eligible dividend).

	Rate	Bracket	
Nonresidents	22.20%	C$0	
	30.34%	C$45,917	
	38.48%	C$91,832	
	42.92%	C$142,354	
	48.84%	C$202,801	

4. Exemptions and reliefs

Transfers to a spouse or qualifying spouse trust

In certain family situations, taxation resulting from the deemed disposition at death can be deferred either totally or partially. If the property is transferred to the Canadian resident spouse of the testator or to a qualifying spouse trust, there is total deferral. For purposes of the Canadian Tax Act and many other statutes, a spouse includes a common law partner of either the opposite or same sex. The spouse or spouse trust, as the case may be, acquires the property at the deceased's cost, and any gain is deferred until the spouse or spouse trust disposes of it. Any income from the property or any gain upon its ultimate disposition will be taxed in the hands of the transferee. In order for a trust to be considered a qualifying spouse trust and eligible for the deferral of capital gains tax (CGT), the following criteria must be met:

- The deceased transferor must have been a resident in Canada at the time of death.
- The trust must be a resident in Canada when the property vests in the trust (spouse could be nonresident).
- The trust must be created in the deceased's will.
- The terms of the trust must note that the spouse of the deceased is exclusively entitled to all of the income generated by the property in the trust during the spouse's lifetime.
- The terms of the trust must note that no one other than the spouse is entitled to either income or capital of the trust while the spouse beneficiary is alive.

Capital gains exemption

Where the deceased owns shares of a qualifying small business corporation (QSBC) or qualified farm and/or fishing property, CGT will be minimized if the deceased's C$835,714 (C$1 million for farm/fishing property) lifetime capital gains exemption can be claimed on the terminal return. This will depend on whether all or a portion of this exemption remains unclaimed at death and whether the shares of the QSBC or farm and/or fishing property qualify for the exemption. Where shares of a QSBC or farm and/or fishing property are left to a surviving spouse, the personal representative may choose to elect out of the automatic rollover to trigger a portion of the capital gain that can be sheltered by the deceased's available exemption.

Note that the application of this exemption is fairly limited in scope:

- It is not available to nonresidents.
- To qualify for QSBC, the corporation must be a Canadian-controlled private corporation and must meet certain tests with respect to the use of its assets in Canada, and the shareholder has to meet a holding period test.

Using capital losses

In most cases, net capital losses can be used to offset net capital gains only. However, the Canadian Tax Act includes a relieving provision whereby net capital losses incurred on a deemed disposition at death can be applied to reduce income from any source in the year of death or the preceding year. This provision also applies to any net capital losses carried forward from previous years (to the extent that they exceed amounts previously claimed as capital gains exemption by the deceased) and net capital gains realized in the year of death.

In addition to a capital gain or loss, the disposition of depreciable property on the death of the testator may give rise to recapture of depreciation or terminal losses. For each item of depreciable property, the testator is deemed on death to receive proceeds equal to FMV. When the deemed proceeds exceed the appreciated capital cost of the property, there will generally be a recapture of depreciation. This recapture must be included as part of the income of the testator in his or her terminal year's return. On the other hand, when the appreciated capital cost of the property exceeds the deemed proceeds, a terminal loss will occur. In this case, the terminal loss can be deducted from income in the terminal year's return.

Transfer of farm and/or fishing property to children or grandchildren

If the property to be transferred during the lifetime or under the will is a farm and/or fishing property, an interest in a farm and/or fishing partnership or shares in a farm and/or fishing corporation, there can be a complete deferral of tax liability if the property is being transferred to the children or the grandchildren of the deceased and certain conditions regarding the use of the farm and/or fishing property are met. As the personal representative can elect to transfer the property to a child at any value between cost and fair value, it will also be possible to elect to realize sufficient gain to use the remaining capital gains exemption so that the child will have a higher cost for his or her future disposition.

5. Filing procedures

Canada taxes income as earned on the calendar year basis. The personal representative will be responsible for filing one or more of the following returns:

- Prior year return: If an individual dies between 1 January and the usual filing date for the preceding year, he or she will often not have filed his or her tax return for the preceding year. In this situation, the filing deadline for the preceding year is the later of six months after the date of death, or the normal due date of the return (30 April or, if the individual had business income, 15 June).
- Terminal return — year of death: The return for the year of death, also referred to as the terminal return, will be due on 30 April of the subsequent year or, if the deceased had business income, 15 June of the subsequent year. However, if the death occurs between 1 November and 31 December of the current year, the deceased taxpayer's representative has until the later of the normal filing date or six months after the date of death to file the current year's return.
- Elective return — rights or things: In the event that the deceased had any "rights or things" at death, these may be included in a separate tax return with a separate set of graduated tax rates. Rights or things generally mean amounts of income that were not paid at the time of death and that, had the person not died, would have been included in the person's income for the year in which they were paid. Examples include such items as matured but unclipped bond coupons, dividends declared but unpaid and unpaid compensation. This special return is due the later of one year from the date of death or 90 days after the mailing date of the notice of assessment of the final return.
- Elective return — testamentary trust beneficiary: If the deceased is an income beneficiary of a testamentary trust, the representative may elect to file a separate return for the period between the end of the trust's fiscal year and the date of the taxpayer's death. The filing deadline is the same as the one applicable to the final return.

In terms of planning, there are two basic reasons for filing as many tax returns as possible. The first relates to the fact that the income tax rates are progressive and income starts at zero in each return. If multiple returns are not filed, there may be amounts taxed at higher rates than would have been the case if multiple returns had been filed.

The second advantage of filing multiple returns is that some personal tax credits can be deducted in each return. This could reduce the deceased taxpayer's estate total tax liability.

Date for payment of tax

Generally, tax is due when the relevant returns are required to be filed. However, where the deceased individual is deemed to have disposed of capital property, resource property, land inventory or was entitled to a right or thing at death, the executor can elect to defer payment of a portion of the tax arising on such deemed dispositions or rights or things. Provided that acceptable security is posted with the Canada Revenue Agency (CRA), the tax may be paid in as many as 10 equal annual installments, with the first payment due on the balance due date for the return. Each subsequent payment is due on the anniversary of the balance due date. Interest, calculated using the prescribed rate in effect plus 4%, will apply to the outstanding amount, commencing at the balance due date until the full amount of the tax is paid. The accrued interest must also be paid at the due date for each installment.

6. Assessments and valuations

The CRA has not altered its official policy with respect to valuation issues since the issuance of IC 89-3 Policy Statement of Business Equity Valuations in 1989, which defines FMV as:

"The highest price, expressed in terms of money or money's worth, obtainable in an open market between knowledgeable, informed and prudent parties acting at arm's length, neither party being under any compulsion to transact."

7. Trusts, foundations and private purpose funds

From an estate planning point of view, trusts are often used as a means of making lifetime gifts to enable the donor to place constraints on the donee. Property will normally be gifted at a time when it does not attract a tax liability, and any growth in value of assets held by the trust is outside of the donor's estate.

For example, *inter vivos* trusts are commonly used to hold participating shares of a holding company established as part of an estate freezing plan so that the growth in the value of the business or investments transferred to the company will accrue to the next generation. The transferor may be one of the trustees and, consequently, will be in a position to influence if and when distributions from the trust will be made.

The Canadian Tax Act deems trusts to dispose of capital properties at FMV at certain specified times. In most cases, a trust will be deemed to dispose of its capital properties on the 21st anniversary of the date on which the trust was originally settled.

Generally, in situations in which the beneficiaries of a trust are residents of Canada, planning can be implemented that results in a deferral of CGT that the trust would otherwise pay as a result of the application of the 21-year rule. That planning often involves transferring the assets of the trust to its beneficiaries at the adjusted cost base amounts of the assets. The beneficiaries then pay CGT when they ultimately dispose of the assets that they have acquired from the trust.

Capital properties cannot be distributed by a trust to beneficiaries on a tax-deferred basis if the beneficiaries are nonresidents of Canada.

8. Grants

If an individual has paid into the Canada Pension Plan during their lifetime, their estate may file a claim to recover up to C$2,500 of the cost of the funeral. This "death benefit" is taxable to the recipient and not reported on the final tax return of the decedent.

9. Life insurance

The receipt of life insurance proceeds is not taxable in Canada but could be subject to probate if the estate is named as the beneficiary of the insurance policy.

If a private company is the beneficiary of a life insurance policy, the insurance proceeds (net of the adjusted cost base of the policy if the company is the owner of the policy) is added to the company's capital dividend account and a tax-free capital dividend can be paid to any Canadian resident shareholder. A capital dividend paid to a nonresident would be subject to the nonresident withholding tax applicable for taxable dividends.

10. Civil law on succession

Most of the Canadian legal system has its foundation in the British common law system, but Quebec still has a civil law system for issues of private law.

10.1 Estate planning

Estate planning in Canada can include implementing an estate freeze either by gifting assets directly to the next generation (resulting in a deemed disposition) or by transferring the assets to a holding company on a tax-deferred basis by taking back fixed value preferred shares and having the next generation subscribe for the future growth shares either directly or through a discretionary family trust for their benefit (see discussion above). An estate freeze using a family trust can also have the benefit of allowing the family access to multiple capital gains exemptions provided the trust holds and disposes of shares of a QSBC and the trustees allocate the gain to the beneficiaries so they can use their capital gains exemption.

10.2 Succession

This is not applicable to individuals in Canada.

10.3 Forced heirship

See comments below with respect to matrimonial regimes, as Canada does not have compulsory succession rules or forced heirship other than the statutory rules for intestacy.

10.4 Matrimonial regimes and civil partnerships

Matrimonial regimes in Canada are governed by provincial law. Among Canadian provinces, there exists a broad spectrum of rights of dependents upon death. In some provinces, the rights of a surviving spouse or other dependents are so secure as to call the laws "forced heirship" laws. For example, Ontario's Family Law Act provides that a surviving spouse is absolutely entitled to half of the difference between the net family property of the deceased spouse and the net family property of the surviving spouse, if the former is greater. Spouses are able to contract out of these statutory rights to an equalization or division of family assets if they wish to do so.

There are other classes of people, besides spouses, who may make a claim that they should receive a greater share of the deceased's estate than was left to them in the will. Most Canadian provinces have legislation that allows dependents to claim the support and maintenance that the testator or testatrix was under a duty to provide for them, and failed to provide for them in the will. In general, this legislation gives the courts discretion to determine whether the individual is a dependent, whether adequate provision for support was made and on what terms and how much he or she should receive from the estate.

10.5 Intestacy

A will is a legal document that regulates an individual's estate after death. Canadian provinces will normally accept the formal validity of a will drawn under the laws of the deceased's place of residence at the time of making the will or at death. Whether the deceased had the personal legal capacity to make the dispositions in the will is generally governed by the law of the deceased's residence.

If there is no valid will at death, then the deceased's estate passes under predetermined rules known as intestate succession.

The intestacy rules are different depending on the province or territory in which the person was resident at his or her death. Generally, the laws of intestacy for the province of Ontario state that if the deceased had a spouse and no children, the spouse is entitled to receive the entire estate. The following table summarizes the intestacy rules for the province of Ontario. Other provinces have similar, but not identical, rules.

Survivor	Distribution
If a spouse	All to the spouse
If a spouse and one child	Preferential share (C$200,000) to the spouse, remainder split equally between the spouse and the child
If a spouse and two or more children	Preferential share (C$200,000) to the spouse plus one-third of remainder, two-thirds divided between children
If no spouse and one or more children alive	Children share equally: if one child is deceased but has children, those children get their parents' share equally (representation)
If no spouse and no children, but grandchildren	Grandchildren share equally regardless; no representation
If none of the above and a parent is alive	Parents share equally, or if only one parent, parent gets estate absolutely
If none of the above and at least one surviving brother or sister	Brothers and sisters share equally with representation
If none of the above and at least one niece or nephew	Nieces and nephews share equally with no representation
If none of the above and next of kin	Next of kin of equal degree of consanguinity to the intestate equally without representation; degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree
If none of the above	Her Majesty the Queen (escheat to the Crown)

10.6 Probate tax

Generally, all of the Canadian provinces levy some form of probate fees/taxes based on the gross value of the estate. These fees/taxes are generally payable by the estate of a decedent immediately upon issuance of an estate certificate (or letters of probate). These documents generally authenticate the appointment of the personal representatives of an estate for third parties.

The following table shows the maximum rates applicable in the various provinces and territories:

Province/territory	Fee/tax
Alberta	C$525, where property's net value exceeds C$250,000
British Columbia	C$150 + C$14 for every C$1,000 or portion thereof by which the estate's value exceeds C$50,000
Manitoba	C$70 + C$7 for every additional C$1,000 or portion thereof by which the estate's value exceeds C$10,000
New Brunswick	C$5 per C$1,000 or portion thereof, where the estate's value exceeds C$20,000
Newfoundland and Labrador	C$60 + C$0.60 for every additional C$100 of the estate's value over C$1,000
Northwest Territories	C$400, where the property's value exceeds C$250,000
Nova Scotia	C$1,002.65 + C$16.95 for every C$1,000 or portion thereof by which the estate's assets exceed C$100,000
Nunavut	C$400, where the property's value exceeds C$250,000
Ontario	C$250 + C$15 per C$1,000 or portion thereof by which the estate's value exceeds C$50,000
Prince Edward Island	C$400 + C$4 per C$1,000 or portion thereof by which the estate's value exceeds C$100,000
Quebec	No probate
Saskatchewan	C$7 per C$1,000 of the estate's value or portion thereof
Yukon	C$140, where the estate's value exceeds C$25,000

11. Estate tax treaties

Canada does not have any tax treaties dealing only with the taxation of estates. However, many provisions of its treaties will have an impact on estate planning. For example, most of Canada's international tax treaties prevent Canada from taxing gains on any property other than immovable property or property associated with a permanent establishment in Canada. For these purposes, immovable property is typically defined as real property or an interest therein, although particular tax treaties may provide expanded definitions. In addition, most tax treaties allow a country to tax gains on the disposition of an indirect interest in immovable property located in its jurisdiction. For example, under most treaties, the shares of a company or an interest in a partnership, trust or estate whose value is derived principally from immovable property will be exposed to tax in the jurisdiction in which that property is located. For these purposes, an entity is considered to derive its value principally from immovable property if that property represents more than 50% of the total FMV of the enterprise.

While Canada has no estate tax and no separate estate tax treaty with the United States, the Canada-US income tax treaty includes provisions for the application of the US estate tax to estates of Canadian citizens who are not US residents at death.

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1. Types of tax

1.1 Inheritance tax

The mainland of the People's Republic of China (China) issued a draft rule on inheritance tax in 2002 to solicit public opinion. However, as of today, no statute has been passed to provide guidance on inheritance tax.

1.2 Gift tax

No gift tax is levied in China.

1.3 Real estate transfer tax

From an estate and succession perspective, no real estate transfer tax is levied in China. However, an individual's transfer of real estate or land-use rights in China may be subject to individual income tax (IIT), value-added tax (VAT), deed tax, stamp duty and land appreciation tax.

1.3.1 Individual income tax

In accordance with the provisions of Caishui [2009] No. 78 (Circular 78), if a transfer of real estate or land use rights is made without consideration, the property received would be considered "other income" to the recipient and subject to IIT at a flat tax rate of 20%. However, according to Circular 78 and Guoshuifa [2009] No. 121, the transfer by virtue of inheritance or gift under the following circumstances will be exempted from the IIT:

- Gratuitous transfer of land-use rights or real estate to lineal relatives (i.e., spouse, children, parents, grandparents, grandchildren and siblings)
- Gratuitous transfer of land-use rights or real estate to dependents
- Gratuitous transfer of land-use rights or real estate to statutory heirs and legatees upon the death of the decedent
- Gratuitous transfer of land-use rights or real estate to a spouse by virtue of divorce

In order to claim IIT exemption on these transfers, transferees should fulfill the registration requirement with the local tax authority and obtain written approval.

If the transfer is subject to IIT, the taxable income would be determined based on the value of the real estate or land-use rights stated in the succession or gift contract, subtracting the relevant taxes and expenses paid by the transferee. However, if the value stated in the contract is obviously lower than the fair market value (FMV), or there is no price available in the contract, the relevant tax authority may deem the taxable income according to the market appraisal price or through other reasonable methods.

If the transferee later resells the land-use rights or real estate, such transfer will be subject to IIT. The tax base will be the proceeds from the sale of land-use rights or real estate, less the original purchase cost of the decedent or the donor, and the expenses and taxes paid by the heir or donee in the transfer.

IIT is required to be reported and paid upon transfer of legal title of the real estate at the real estate trading center.

1.3.2 Business tax

Pursuant to Caishui [2016] No. 36 (Circular 36), which was jointly issued by the Ministry of Finance and State Administration of Taxation on 24 March 2016, the business tax has been completely replaced by the VAT effective 1 May 2016.

1.3.3 VAT

Pursuant to Circular 36, real estate transactions are subject to VAT starting from 1 May 2016.

Circular 36 provides that individuals selling nonresidential real estate property should generally be subject to VAT at 5% on a net basis, i.e., total payment collected minus the purchasing cost of the property.

For individuals selling residential real estate property, the relevant VAT implications should be as follows:

(a) 5% VAT rate imposed on the total payment collected for selling residential property acquired within two years

(b) VAT exempted for residential property held for more than two years in cities other than Beijing, Shanghai, Shenzhen and Guangzhou

(c) Special rules apply to Beijing, Shanghai, Shenzhen and Guangzhou for the sales of residential property, i.e., the exemption applies only to "ordinary residential property" held for more than two years. If the residential property sold is considered to be "non-ordinary residential property" based on local rules, 5% VAT should be imposed on a net basis (total payment collected minus purchasing cost).

In addition, the following transfers of real properties between individuals are exempted from VAT, according to Circular 36:

- Gratuitous transfer of land-use rights or real estate to lineal relatives
- Gratuitous transfer of land-use rights or real estate to dependents
- Gratuitous transfer of land-use rights or real estate to statutory heirs and legatees upon the death of the decedent
- Transfer of land-use rights or real estate as a gift to a spouse by virtue of divorce

Individual transferors are required to comply with the relevant registration formalities of the local tax authority in order to claim the VAT exemption on the gift of real estate or land-use rights.

1.3.3 Deed tax

China levies deed tax on non-statutory successors who acquire real estate or land-use rights by virtue of inheritance or gift. However, inheritance by statutory successors is exempt from deed tax. Statutory successors include spouse, children, parents, siblings, paternal grandparents and maternal grandparents.

Deed tax rates range from 3% to 5%, depending on the location of the cities in different provinces. Effective 22 February 2016, the tax rate applicable to residential properties was reduced to 1%, 1.5% or 2%, depending on the size and utility of the housing. The tax base for deed tax calculation is deemed by the tax authority with reference to the market value of the real estate or the land-use rights.

The deed tax is required to be reported and paid upon transfer of legal title of the real estate at the real estate trading office.

1.3.4 Stamp duty

The stamp duty is imposed when a contract of property transfer is concluded. Both parties who sign the contract are liable for the stamp duty.

The tax base for the stamp duty is calculated based on the value of the property specified in the contract.

The tax rate applicable to the contract concluded for transferring property rights is 0.05%.

1.3.5 Land appreciation tax

According to the China Temporary Regulation of Land Appreciation Tax (LAT), sale or compensated transfer of real estate or land-use rights is subject to LAT. A transferor who benefits from the transfer is liable for LAT. However, transfer of real estate or land-use rights without consideration — such as inheritance by statutory successors or gratuitous transfer of LAT to lineal family members — will not realize a charge.

1.4 Endowment tax

No endowment taxes are levied in China.

1.5 Transfer duty

No transfer duty is levied in China.

1.6 Net wealth tax

No net wealth tax is levied in China.

2. Who is liable?

2.1 Real estate located in China

In general, China exercises tax jurisdiction over the transfer of real estate or land-use rights located in the territory of mainland China regardless of the holder's domicile or residency status. Please refer to the preceding paragraphs regarding the relevant taxes that may be imposed on the transfer of real estate or land-use rights.

2.2 Real estate outside China

In the event of transfer of real estate outside China, no specific tax regulation is available to guide the taxation on such transfers, except the provisions of IIT law.

IIT law and regulations stipulate that individuals who are domiciled in China are subject to IIT on their worldwide income. Individuals domiciled in China means those who by reason of permanent household registration (i.e., Hukou), family ties and economic interest habitually reside in China. Individuals who have Chinese nationality, but do not reside in China, are still considered domiciled in China and subject to IIT on their worldwide income. Foreign nationals who physically stay in China for more than five years are also considered domiciled in China for tax purposes and are liable for IIT on their worldwide income, starting from the sixth year when they are considered a full-year resident in China.

Given the above, individuals who are domiciled in China may be liable for IIT on the gain arising from the transfer of real estate located outside China.

3. Rates

Different tax rates are applicable to different types of taxes. Please refer to Section 1 for details.

4. Exemptions and reliefs

See Section 1 for details.

5. Filing procedures

See Section 1 for details.

6. Assessments and valuations

The tax base of properties that are acquired by virtue of inheritance or gift is the FMV of the property at the time of the transfer. The specific method of valuation may vary depending on the type of property.

Land-use rights and real estate

The value of land-use rights and real estate is generally determined based on the value specified in the transfer contract. The value in the transfer contract should be assessed and approved by the administration offices of land or real estate before the contract comes into effect. In most cases, the tax authority would rely on the value assessed by the administration offices of land or real estate. However, if the tax authority considers the assessed value to be far from the FMV, the tax may be levied on a deemed basis.

7. Trusts, foundations and private purpose funds

For purposes of succession and estate planning, no specific tax regulation has been issued by China for taxes on the income from trusts or foundations.

8. Grants

There is no inheritance tax in respect of death grants in China.

9. Life insurance

According to China's IIT law, life insurance proceeds are exempted from IIT.

10. Civil law on succession

This is not applicable in China.

11. Estate tax treaties

No estate tax is levied in China. Therefore, no terms regarding estate tax are available in China's double-taxation treaties.

Cyprus

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1. Types of tax

Cyprus generally does not impose inheritance taxes or wealth taxes.

1.1 Inheritance tax

There is no inheritance tax in Cyprus.

1.2 Gift tax

There is no gift tax in Cyprus.

1.3 Real estate transfer tax

There is a transfer tax payable to the Department of Land and Surveys for transfers of immovable property situated in Cyprus. See Section 2 below for the transfer tax rates.

Stamp duty on contracts for transfer of immovable property situated in Cyprus is charged at 0.15% on amounts from €5,001 up to €170,000 of the consideration and at 0.2% on any consideration above that sum up to a maximum of €20,000 per contract.

1.4 Endowment tax

There is no endowment tax in Cyprus. The income arising from a scholarship, exhibition or any other educational endowment held by an individual receiving full-time instruction at a university, college, school or other recognized establishment is exempt from income tax.

1.5 Transfer duty

There is no transfer duty in Cyprus, except for real estate transfer fees and stamp duty as explained in Section 1.3 above.

1.6 Net wealth tax

There is no net wealth tax in Cyprus.

1.7 Others

See below.

1.7.1 Personal income tax

Cyprus taxes the worldwide income of its tax residents, while non-tax residents are taxed only on certain categories of income derived from sources within Cyprus. Income from employment exercised within Cyprus is considered as Cyprus-source income in this respect.

An individual is considered to be a tax resident of Cyprus if he or she is present in Cyprus for, in aggregate, more than 183 days in any calendar year. For the purpose of calculating the days of residence in Cyprus, the day of departure from Cyprus is considered to be a day out of Cyprus, the day of arrival into Cyprus is considered to be a day in Cyprus, the arrival in Cyprus and departure from Cyprus on the same day is considered to be a day in Cyprus, and the departure from Cyprus and return to Cyprus on the same day is considered to be a day out of Cyprus.

Personal income tax (PIT) rate for employees is levied based on the so-called Pay As You Earn (PAYE) system, in which the tax rate varies depending on the amount of the net annual taxable income earned per a tax year. See Section 2 below for PIT.

Employers are required by law to withhold PIT from all employees' salaries under the PAYE system.

The Cypriot Income Tax Law allows for a number of exemptions, deductions, allowances and reliefs.

1.7.2 Immovable property tax

As of 2017, the immovable property tax has been abolished.

1.7.3 Capital gains tax

Capital gains tax (CGT) is imposed on profits from the disposal of:

- Immovable property situated in Cyprus
- Shares of companies whose property consists of, *inter alia,* immovable property situated in Cyprus
- Shares of companies that either directly or indirectly participate in a company or companies that own immovable property situated in Cyprus and at least 50% of the market value of such shares is derived from the relevant property
- Sale agreement of immovable property situated in Cyprus

Any trading profits derived from the disposal of shares of companies that directly or indirectly own immovable property in Cyprus will be subject to CGT if such profits are exempt under the Income Tax Law.

In cases involving a disposal of shares of companies that directly or indirectly hold property in Cyprus, the disposal proceeds subject to CGT are restricted to the market value of the immovable property held directly or indirectly by the company whose shares are sold.

In cases involving a disposal between related parties, the disposal proceeds subject to CGT are determined by reference to the market value of the property sold on the date of disposal.

Available exemptions:

- The disposal of shares listed on any recognized stock exchange is exempt from CGT.
- An exemption from CGT is granted on gains from the disposal of immovable property that was acquired between 17 July 2015 and 31 December 2016 provided that:
  - The property consists of land and/or building
  - It was acquired from an independent third party
  - It was not acquired through an exchange of property or donation/gift

The rest of the exemptions can be found in Section 4.5.

The tax is imposed on the net profit from disposal at the rate of 20%. The net profit is calculated as the disposal proceeds less the greater of the cost or market value on 1 January 1980 adjusted for inflation. Inflation is calculated using the official Retail Price Index. The index on 1 January 1980 was 34.96 (base year 2005).

2. Who is liable?

This is indicated throughout the chapter.

3. Rates

Transfer fees

Transfer fees paid to the Department of Land and Surveys are as follows:

Value per property	%	Fees	Accumulated fees
€0– €85,000	3%	€2,550	€2,550
€85,001–€170,000	5%	€4,250	€6,800
€170,001 and above	8%		

At the time of transfer of a title of land and buildings, land registration fees are payable by the transferee. These fees are payable on the assessed value of the land and buildings on the date of transfer or, if the property was sold at an earlier date and the sale contract has been filed with the Land Registry Office, on the assessed value on the date of the sale contract.

The land transfer fees are reduced to 50% for any purchase of immovable property.

No transfer fees are payable when the immovable property being transferred is subject to value-added tax (VAT).

Stamp duty

Stamp duty on contracts is charged as follows:

Receipts:

For amounts over €4	7 cents

Contracts:

Contract value	Stamp duty
€1–€5,000	Nil
€5,001–€170,000	€1.50 for every €1,000 or part of €1,000
Over €170,000	€2 for every €1,000 or part of €1,000 with a maximum levy of €20,000
Unspecified amount	€35

Agreements entered into in the course of an approved company reorganization are exempt from stamp duty.

Immovable property tax

Please refer to Section 1.7.2 above.

PIT

Taxable income	Tax rate	Amount of tax	Accumulated fees
€0–€19,500	0%	€0	€0
€19,501–€28,000	20%	€1,700	€1,700
€28,001–€36,300	25%	€2,075	€3,775
€36,301–€60,000	30%	€7,110	€10,885
€60,001 and above	35%		

4. Exemptions and reliefs

4.1 Educational endowment

See Section 1.4.

4.2 Lump-sum payments

Any lump sum received by way of retiring gratuity, commutation of pension, death gratuity or as consolidated compensation for death or bodily injury is exempt from PIT and is not subject to any other taxes in Cyprus.

4.3 Inheritance

Income received from individuals by way of an inheritance is not subject to any taxation in Cyprus.

4.4 Expatriate allowances

An individual who was resident outside Cyprus before the commencement of employment in Cyprus is entitled to an exemption of the lower of €8,550 or 20% of the remuneration from any office or employment exercised in Cyprus. This exemption applies for a period of five years commencing from 1 January following the year of commencement of employment (provided the employment started during or after 2012). This exemption applies for tax years up to 2020.

Furthermore, an individual with income from employment that exceeds €100,000 per annum who was not a tax resident of Cyprus prior to the commencement of employment is entitled to an exemption of 50% of the remuneration from any office or employment exercised in Cyprus. This exemption applies for the first 10 years of employment and for employment commencing as of 1 January 2012. The 50% exemption is not available to individuals whose employment commenced on or after 1 January 2015 if such individuals were:

- Tax residents of Cyprus for a period of three out of five years preceding the year of employment
- Tax residents of Cyprus in the year preceding the year of commencement of employment

In case the 50% exemption is claimed, the 20% exemption cannot be claimed.

4.5 Gifts/donations of real estate property

The following are exempt from Cyprus CGT:

- Transfer by reason of death
- Gifts to relatives within the third degree of kindred
- Gift to a company of which the shareholders are and continue to be members of the disposer's family for five years after such gift
- Gift by a company, of which all the shareholders are members of the same family, to any of its shareholders when the property gifted had been acquired by the company as a gift; the property must remain in the hands of the donee for a period of at least three years
- Gift to the Republic or to a local authority for educational or other charitable purposes or to approved charitable institutions
- Exchange or sale in accordance with the Agricultural Land (Consolidation) Laws
- Exchange of properties when the values of the immovable properties being exchanged are equal
- Gain on disposal of shares that are listed on any recognized stock exchange
- Gains from transfer of property or shares in the course of an approved company reorganization

5. Filing procedures

Although there is no estate tax, since 1 January 2000, the executor/administrator of the estate of the deceased is required by law to submit to the tax authorities a statement of assets and liabilities of the deceased person within six months from the date of death.

6. Assessments and valuations

Not applicable.

7. Trusts, foundations and private purpose funds

7.1 Trusts

In 2012, the framework of the International Trust Law was modernized with the approval by the island's House of Representatives. The new features aim to adapt to the current and future needs of investors. According to Cyprus International Trust Law 20(I)/2012 as amended, the settlor of the trust shall not be resident for tax purposes of Cyprus during the year preceding the year in which the trust is formed. In addition, at least one of the trustees must be resident for tax purposes in Cyprus. The beneficiaries of the trust can be either resident or not for Cyprus tax purposes.

In principle, non-Cypriot tax resident beneficiaries of a trust shall be subject to taxation in Cyprus only on income arising from sources in Cyprus. On the contrary, Cypriot tax resident beneficiaries shall be subject to tax in Cyprus on their worldwide income.

7.2 Private collective investment schemes

Private collective investment schemes are regulated in Cyprus by the Cyprus Securities and Exchange Commission. The income derived by a collective investment scheme is taxable unless an exemption applies under the law (e.g., dividend exemption for corporate (income) tax purposes). The distribution of profits to Cyprus tax residents and domiciled individuals is subject to a Special Defence Contribution tax at 17% (for the 2017 tax year). Furthermore, no withholding tax applies in cases involving a distribution of profits to nonresident investors or investors who, although tax residents, are not domiciled in Cyprus.

8. Grants

The income arising from educational grants is exempt from income tax. Other grants should generally not be subject to PIT in Cyprus unless they relate to revenue-nature trading activities, in which case they are treated as taxable.

9. Life insurance

Lump-sum life insurance payouts are exempt from income tax and are not subject to any other taxes in Cyprus. However, in case of cancellation of a life insurance policy within six years from the day of its issue, a percentage of the premiums, which were previously allowed, is taxable as follows:

Cancellation within three years	30%
Cancellation within four to six years	20%

10. Civil law on succession

As explained above, Cyprus does not levy any estate or inheritance taxes. Succession law issues have to be addressed by Cypriot legal counsel.

11. Estate tax treaties

Cyprus does not levy any estate taxes and, therefore, has not entered into any estate tax treaties.

11.1 Double-taxation treaties

Cyprus has concluded double-taxation treaties with over 50 jurisdictions (including EU jurisdictions such as Austria, Belgium, Germany, Greece, Malta and the United Kingdom, and jurisdictions outside the EU, such as China, India, the Russian Federation, Ukraine and the United States).

More treaties are under negotiation or awaiting ratification.

Both in accordance with the domestic tax law (unilateral relief) as well as based on the provisions of a double-tax treaty (bilateral relief), it is possible to claim double-tax relief for any foreign tax suffered on income that is taxable in Cyprus, provided that the relevant documentation supporting the incurrence of foreign tax is available. Therefore, any foreign tax incurred is creditable against the resulting tax liability arising in Cyprus on the taxation of income (on which foreign tax was suffered). However, the foreign tax relief cannot exceed the resulting Cypriot tax liability. Any excess foreign tax credits are wasted (i.e., cannot be set off against other sources of income) and cannot be carried forward to future periods.

Czech Republic

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1. Types of tax

As of 1 January 2014, the Czech Republic's tax system recognizes only immovable property acquisition tax, immovable property tax and income tax. Gift tax and inheritance tax have both been incorporated into the income tax. The former real estate transfer tax has been substituted by immovable property acquisition tax. Under certain circumstances, transition of property can also be subject to personal income tax.

1.1 Inheritance tax

Inheritance tax as it appeared until December 2013 no longer exists in the Czech Republic. Instead, it has been incorporated into the income tax.

Income from inheritance is fully tax-exempt for both legal and private persons as of 1 January 2014.

1.2 Gift tax

Gift tax as it appeared until December 2013 no longer exists in the Czech Republic. Instead, it has been incorporated into the income tax.

Income tax is imposed on any transfer of property for no consideration.

1.3 Real estate transfer tax

Real estate transfer tax as it appeared until December 2013 no longer exists in the Czech Republic. Instead, it has been replaced with immovable property acquisition tax. Real estate tax has been significantly amended and renamed as immovable property tax.

Immovable property tax

Generally, all immovable property situated in the Czech Republic is subject to immovable property tax. Currently, the tax rates depend on the type of property and its location. Therefore, this tax is not commented on in more detail.

Immovable property acquisition tax

The immovable property acquisition tax is generally imposed on any transfer of immovable property located in the Czech Republic for a consideration.

1.4 Selected personal income tax implications

Income from the sale of immovable property is generally subject to personal income tax.

If the transferor used a house or a flat as a permanent residence for a period exceeding two years prior to the sale, the income from the sale is exempt from Czech personal income tax (PIT). Otherwise, the income is exempt if the period between the acquisition and the sale of immovable property exceeds five years. Such exemption does not apply if the property was part of the business' assets.

Income from the sale of securities is usually subject to Czech PIT. However, this income can be tax-exempt under the following conditions:

- Sale of securities acquired after 1 January 2014
  - Income from the sale of securities can be tax-exempt if the period between the acquisition and the sale exceeds three years. Also, if the total annual income of a taxpayer from the sale of securities (before deducting related expenses) does not exceed CZK100,000, such income is tax-exempt. Income from the sale of other shares in a company shall be exempt if the period between the acquisition and the sale exceeds five years.
- Sale of securities acquired before 1 January 2014
  - For sales of securities acquired prior to 1 January 2014, specific temporary provisions apply. Income from the sale of securities is tax-exempt if the period between the purchase and sale of securities exceeds six months, and the direct share of a party in the registered capital or voting rights of a company does not exceed 5% in the 24 months prior to sale. The tax treatment is not specified in the legislation regarding the sale of securities representing more than 5% in the registered capital or voting rights of a company. Nevertheless, based on current interpretation confirmed also by the General Finance Directorate, the income from the sale of such securities should be tax-exempt if the period between the acquisition and the sale exceeds three years. At the same time, exemption of annual income not exceeding CZK100,000 is also applicable. Income from the sale of other shares in a company is exempt provided the period between the acquisition and the sale exceeds five years.

1.5 Endowment tax

There is no endowment tax in the Czech Republic.

1.6 Transfer duty

There is no transfer duty tax in the Czech Republic.

1.7 Net wealth tax

There is no net wealth tax in the Czech Republic.

2. Who is liable?

Persons liable to tax, as well as the transactions subject to tax, are determined separately for each of the aforementioned taxes.

2.1 Inheritance tax

Inheritance tax as it appeared until December 2013 no longer exists in the Czech Republic. Instead, it has been incorporated into the income tax.

The income from inheritance is fully tax-exempt for both legal and private persons as of 1 January 2014.

2.2 Gift tax

Gift tax as it appeared until December 2013 no longer exists in the Czech Republic. Instead, it has been incorporated into the income tax.

Generally, any person (private or legal) who acquires income of any kind other than by a transferor's death is liable to income tax.

2.3 Real estate transfer tax

Real estate transfer tax as it appeared until December 2013 no longer exists in the Czech Republic. Instead, it has been replaced with the new immovable property acquisition tax, which is generally payable on the acquisition of immovable property ownership located in the Czech Republic.

For purchase of property or exchange of properties, the tax is payable by the transferee. Alternately, the person acquiring immovable property is liable for the tax.

2.4 Residency

Czech tax residents must declare their worldwide income in the Czech Republic irrespective of its source. Potential double taxation can be avoided based on the Czech tax law and respective double tax treaty, if in place. Czech tax nonresidents are liable only for their Czech-source income within the Czech Republic.

The tax residency of a person liable to immovable property tax and immovable property acquisition tax is generally not relevant. The important factors are mainly the type and location of the property.

Special rules may apply if a particular double tax treaty includes different provisions on this subject.

3. Rates

3.1 Tax classes

As of 1 January 2014, this is not applicable in the Czech Republic.

3.2 Gift tax and inheritance tax rates

Gift tax and inheritance tax as of 1 January 2014 ceased to exist in the Czech Republic and have been combined with income tax.

The income from inheritance is fully tax-exempt for both legal and private persons as of 1 January 2014.

Gifts received in connection with employment or business activities are taxed within the framework of the tax base from employment and business activities.

The tax base is also determined by the gift value that is decreased by expenses incurred to obtain this income. The PIT flat rate is 15%, while the corporate income tax (CIT) flat rate is 19%.

Real estate transfer tax rate

The tax base for real estate acquisition tax refers to the taxable value of the property less deductible expense.

The taxable value of the property is determined based on a comparison of the contractually agreed-upon price and the tax reference value (if the Czech tax law does not specifically stipulate a different taxable value). Between the contractually agreed-upon price and the tax reference value, the higher is used as the taxable value of the property.

The tax reference value is equal to 75% of the "guiding" value or 75% of the official value of an asset according to the Czech Evaluation Act. The "guiding" value is the fair market value (FMV) of immovable property that is similar in kind at the given place and time. The exact "guiding" value calculation is stipulated by a statement of the Czech Ministry of Finance.

Deductible expenses include only costs incurred in connection with official evaluation expertise required by law for the taxable value determination.

The immovable property acquisition tax rate amounts to 4%.

4. Exemptions and reliefs

Because the number and extent of exemptions and reliefs is broad, we recommend that the possibility of exemption be checked individually for the purpose of each transaction. Significant tax savings may be achieved by proper planning of certain transactions.

We summarize below the most important types of exemptions:

- Income from the inheritance or legacy is fully exempt from personal as well as corporate taxation.
- Income related to gifts and other income obtained for no consideration is exempt from personal income tax if:

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

2. The income is obtained from a person with whom the taxpayer lived for at least one year prior to receiving the income in common household and for that reason looked after the household or was supported by this person

3. Income of value not exceeding CZK15,000 in total per year is acquired on a casual basis

- Income related to gifts and other income obtained for no consideration is exempt from corporate income tax if it is acquired by the following entities:

  1. Czech Republic or other EU Member States, Norway or Iceland

  2. Public-beneficial taxpayers with registered seats in the Czech Republic or other EU Member States established for the purpose of support and development of, for example, culture, education, health care, social services and sports

- Acquisition of immovable property is exempt from immovable property acquisition tax if acquired by the Czech Republic or other EU Member States.

As of 1 January 2015, a new administrative rule has been introduced in the Czech Republic under which the individual who receives any income exempt from the PIT higher than CZK5 million is required to report the respective income to the Czech tax authorities.

The limit of CZK5 million needs to be considered for each income or transaction individually.

The deadline for the announcement is the same as the deadline for filing of the individual's tax return.

High penalties apply if the reporting obligation is not met.

5. Filing procedures

The filing deadline for PIT return is 1 April of the following year.

The deadline can be extended to 1 July based on a power of attorney granted to a certified tax advisor (automatic extension) or based on a special written request filed with the tax authorities (extension at discretion of the tax authorities). For individuals receiving foreign-source income, the deadline can be additionally extended until 1 November based on a written request.

The deadline for filing of a corporate income tax return is 1 April of the following year. The deadline is automatically extended to 1 July for entities subject to a statutory audit or based on a power of attorney granted to a certified tax advisor. The extension may also be granted at the discretion of the tax authorities based on a special written request.

The income tax is generally payable within the tax return filing deadline. The tax authorities do not issue any tax assessment.

The immovable property acquisition tax return is generally due by the end of the third month after the immovable property ownership is entered into the Cadastral Land Registry, i.e., the database operated under the Czech Office for Surveying, Mapping and Cadastre (COSM), which is the name of the central institution. If the immovable property is not registered in the Cadastral Land Registry, the immovable property acquisition tax return is generally due by the end of the third month after the acquisition of ownership to the immovable property.

The immovable property acquisition tax is payable within the tax return filing deadline. The tax paid based on the tax return is regarded as a prepayment. The final tax liability is assessed by the tax authorities after the tax return filing. If the tax assessed by the tax authorities is higher than the prepayment amount, the remaining difference is payable within 30 days after receipt of the tax assessment.

6. Assessments and valuations

This is not applicable in the Czech Republic.

7. Trusts, foundations and private purpose funds

The New Civil Code has introduced a trust fund (*svěřenský fond*) as of 1 January 2014. A trust fund can now be created to manage the property of its founder(s).

Trust funds are considered to be corporate income taxpayers. Assets transferred into the trust fund from its founder are not subject to CIT.

8. Grants

This is not applicable in the Czech Republic.

9. Life insurance

This is not applicable in the Czech Republic.

10. Civil law on succession

This is not applicable in the Czech Republic.

11. Estate tax treaties

The Czech Republic has not concluded any tax treaties relating specifically to the taxation of real estate. However, most double-taxation treaties concluded by the Czech Republic contain provisions relating to this subject.

Denmark

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1. Types of tax

In Denmark, both gift and inheritance taxes are levied on transfer of assets at death or by gift. The tax is either 0%, 15% or 36.25%. However, gifts may be subject to ordinary income taxation of up to 52.7% (2017).

1.1 Inheritance tax

Danish inheritance tax is based on the taxation of the estate left by the deceased. The basis for the calculation of inheritance tax is the total net value of assets that are passed on to heirs of the deceased.

The Danish inheritance tax consists of an estate tax of 15% imposed on the net value exceeding DKK282,600 of the estate of the deceased together with an additional tax of 25% on the estate passed on to persons other than certain close relatives. The maximum tax burden is 36.25%, as the 15% estate tax is deducted before the 25% additional tax is calculated.

Inheritance tax is levied when a person dies. Taxation can be deferred if the surviving spouse chooses to retain undivided possession of the estate. In this case, the estate is taxed after the estate is transferred to the heirs of the first deceased spouse. The estate must be transferred to the heirs after the first deceased spouse if the surviving spouse dies or if the surviving spouse, who retained undivided possession of the estate, chooses to get married again.

1.2 Gift tax

From a Danish perspective, a gift is given when a living person transfers assets without payment to another person. This is also the case even when the person giving the gift (the donor) reserves the right to make use of the asset or claims the future income from the asset. Generally, gifts are liable to gift tax or ordinary income tax.

The gift tax is a proportional tax and is either 0% for gifts between spouses, 15% for gifts to close relatives (specified in Section 4.1) or 36.25% for gifts to stepparents and grandparents. All other persons are subject to ordinary income tax on gifts at a progressive tax rate up to 52.7% (2017).

A Ministry of Taxation proposal announced in December 2016 would introduce a reduced gift tax rate for successions in which shares in a family-owned business are transferred to the next generation. Under the proposal, the gift tax would be gradually reduced from 15% to 5% between 2017 and 2020.

1.3 Estates

In Denmark, no real estate transfer tax exists. Instead, a registration transfer duty (stamp duty) will be levied on transfers of real estate.

The stamp duty is a combination of variable and fixed duties calculated as DKK1,660 + 0.6% (2017) of the transfer sum, with the last public valuation of the estate as the minimum in relation to estates other than single and multi-family houses and holiday houses.

If the real property is a gift subject to gift tax, the variable part of the transfer duty can be deducted from the gift tax unless either the gift donor or the recipient conducts business with rental of real estate.

1.3.1 Exemption from the variable transfer duty

In the following situations, only the fixed stamp duty of DKK1,660 is applicable on transfer of real estate:

- A surviving spouse enters into the deceased spouse's rights and obligations (the spouse retains undivided possession of the estate).
- The gift recipient is an approved charitable organization, a Danish national church or a recognized religious community in Denmark.

2. Who is liable?

2.1 Gift tax

Gift tax is applicable if either the gift donor or the recipient of the gift is domiciled in Denmark. Gifts in the form of real estate situated in Denmark and assets connected to a Danish permanent establishment (Danish *situs*) are subject to Danish gift tax regardless of whether the gift donor or the recipient of the gift is domiciled in Denmark.

2.2 Inheritance tax

If the deceased person is domiciled in Denmark at the time of death, the market value of his or her worldwide net estate is subject to inheritance tax in Denmark. If the deceased person is domiciled outside of Denmark at the time of death, only the value of Danish real estate and assets with permanent establishment in Denmark (Danish *situs*) is subject to Danish inheritance tax, unless the administration of the estate happens in Denmark.

3. Rates

3.1 Gift tax

Gift tax is 15% of the value of the gift exceeding DKK62,900 (2017) per year on gifts given to:

- Children, stepchildren and their children
- Deceased child's or stepchild's surviving spouse
- Parents
- Certain individuals sharing a common residence with the gift donor, for at least two years prior to receiving the gift
- Foster children, if certain conditions are met

Gifts to the aforementioned persons are not taxed if the value of the gift to each person is below DKK62,900 (2017) and the gift is given within one calendar year. Married couples (including registered partners) are not taxed on gifts to each other.

Gifts to a child's spouse or stepchild's spouse with a value below DKK22,000 (2017) within one calendar year are not taxed. Gifts with a value exceeding DKK22,000 are taxed at 15%.

Gifts to stepparents and grandparents are taxed at 36.25%. There is a lower limit for taxation of DKK62,900 (2017).

Gifts to persons besides the aforementioned are liable to ordinary income tax. The taxation is progressive up to 52.7% (2017) depending on the person's taxable income.

The taxation of gifts can be summarized as follows:

Gift recipient	Tax	Lower limit for taxation (2017)
Spouse	0%	N/A
Closely related	15%	DKK62,900
Children-in-law	15%	DKK22,000
Stepparents and grandparents	36.25%	DKK62,900
Distant relatives and others	Income tax 0%–52.7%	Depending on income

3.2 Inheritance tax

The inheritance tax is either 0%, 15% or 36.25% depending on the person inheriting the estate. A basic allowance of DKK282,600 (2017) is deducted before the 15% estate tax is calculated.

The 15% estate tax of the total net estate value exceeding DKK282,600 (2017) is final if the estate is passed on to the following persons (close relatives):

- Children, stepchildren and their children
- Parents
- Child's or stepchild's not separated spouse
- Persons that have been living together with the deceased person for at least two years before the death
- Divorced spouse
- Foster children, if certain conditions are met

If the value of the estate is below DKK282,600 (2017), there is no inheritance tax when the estate is transferred to the aforementioned persons.

If the estate is transferred to persons other than the aforementioned, the inheritance tax is 36.25%, consisting of the 15% estate tax and the 25% additional tax.

If the value of the estate exceeds DKK2,776,800 (2017), excluding the value of the deceased person's own residence, the estate itself may be subject to ordinary income and capital gains tax.

The inheritance tax can be summarized as follows:

Heir	Inheritance tax	Lower limit for taxation (2017)
Spouse	0%	N/A
Closely related	15%	DKK272,600
Distant relatives and others	36.25%	N/A
Organization of public utility and the state	0%	N/A
Other organizations	36.25%	N/A

4. Exemptions and reliefs

4.1 Gifts

Gifts to:

- Children, stepchildren and their children
- Deceased child's or stepchild's surviving spouse
- Parents
- Certain individuals sharing a common residence with the gift donor for at least two years prior to receiving the gift
- Foster children, if certain conditions are met
- Stepparents and grandparents

These gifts are not taxed if the value is below DKK62,900 (2017) and the gift is given within one calendar year. Married couples (including registered partners) are not taxed on gifts to each other.

Gifts to a child's spouse or stepchild's spouse with a value below DKK22,000 (2017) within one calendar year are not taxed. Gifts exceeding DKK22,000 are taxed at 15%.

4.2 Inheritance tax

There is no inheritance tax if the estate is passed on to a spouse, an organization of public utility or the state.

If the value of the estate is below DKK282,600 (2017), there is no inheritance tax.

5. Filing procedures

5.1 Gifts

Gifts that are subject to gift tax must be reported to the tax authorities no later than 1 May in the year following the calendar year the gift was given. The tax is due for payment at the time the gift is registered with the tax authorities. The gift recipient is liable for paying the tax. However, the gift donor is jointly liable for the payment of gift tax.

Gifts that are subject to income taxation must be reported by the recipient on the income tax return in the year the gift was given.

5.2 Inheritance tax

If the estate of the deceased person is privately administered, the heirs must file an opening statement showing the estate's assets and liabilities at the time of death no later than six months after the estate is handed over for private administration.

Within 15 months after the time of death, the heirs must make a final estate inventory showing the estate's assets, liabilities, revenues and expenses, including the distribution between the legatees and heirs.

A copy of the estate inventory signed by all the heirs must be sent to the local Danish tax authority (SKAT) and the probate court.

6. Assessments and valuations

The calculation of gift and inheritance tax is based on the market value.

The gift value is determined as the market value at the time of the receipt of the gift.

The estate's assets and liabilities are assessed according to the market value at the time when they are transferred to the heirs. Expenses related to the administration of an estate, e.g., legal fees, can be deducted on the basis for calculation of the inheritance tax.

7. Trusts, foundations and private purpose funds

Certain charitable institutions, funds and religious communities are exempt from inheritance tax. Every year, SKAT publishes a list with the exempt institutions.

Gifts to charitable institutions are deductible for the gift donor. The maximum deductible amount per year is DKK15,600 (2017). The deduction is conditional upon the gift recipient reporting the gift and the identification of the donor to SKAT.

Trusts (as defined in, e.g., common law countries) are not recognized in Denmark as a separate juristic or tax-liable entity.

8. Grants

This does not apply.

9. Life insurance

If the deceased person had life insurance, the insured sum is paid directly to the person who is listed as the beneficiary. The insured sum is not included in the estate unless no beneficiary exists.

If the surviving spouse of the deceased person receives the insured sum, no estate tax has to be paid.

If anyone other than the surviving spouse is to receive the insured sum, the sum is subject to estate tax. The rate of the inheritance tax depends on how closely related the beneficiary is to the deceased person (see above).

The lower limit for taxation of DKK282,600 (2017) is not applicable on payments from life insurance.

10. Civil law on succession

10.1 Distribution of the estate to the heirs

When a person dies, the estate is distributed to the heirs according to specific rules in the Inheritance Act. The distribution of the inheritance depends on the deceased person's family relations. According to the Inheritance Act, the estate will be distributed as follows if the deceased person has made no other decision by will:

- If the deceased person leaves both a spouse and children, the estate must be divided between them. The spouse inherits half of the estate of the deceased person, while the rest of the estate is divided equally among the children. The surviving spouse can usually choose to retain undivided possession of the estate. In this case, the children will inherit when the surviving spouse dies or remarries.
- If the deceased person does not have any surviving children, grandchildren or other lineal descendants, the spouse will inherit the entire estate.
- If a person dies unmarried but leaves behind children, then the estate will be divided equally between the children. If a child is dead, the child's part of the estate will go to his or her lineal descendants.
- If there is no spouse, children, grandchildren or great-grandchildren, the estate will be divided equally between the deceased person's parents. If they are dead, their part will go to their lineal descendants, if there are any.
- If there are no parents, brother or sister or children of a brother or sister, the estate will be divided equally between the grandparents.
- If there are no grandparents and they leave no children, the estate will go to the state.
- If the deceased person has made a will, this may change the distribution of the estate.

10.2 Forced heirship

The Danish Inheritance Act contains provisions that limit a person's right to dispose of an estate by will to a certain extent.

The limitation regards one-quarter of a person's estate (i.e., a person can only dispose of three-quarters of an estate by will if the deceased leaves a spouse or children). This one-quarter may be reduced to DKK1,240,000 (2017) per child.

As long as this statutory limit is observed, a person may freely dispose of his or her assets by will.

10.3 Matrimonial regimes and civil partnerships

Registered partnerships are treated the same way as matrimonial regimes.

By marriage, the spouse gets community property unless he or she enters into a separate property settlement. Whether an asset is part of the community property or separate property is significant when a married person dies or if the marriage is dissolved.

When the first spouse dies, the separate property as a general rule must be distributed to the heirs, while the distribution of the assets included in the community property can be either retained with the longest living spouse or passed on to the heirs.

10.4 Probate

When a person dies, the probate court convenes the deceased person's closest heirs for a meeting to determine the administration of the estate after the deceased person. The administration may be private or public. Public administration is enforced in certain situations (e.g., if one of the heirs requests it or if the deceased person has determined it by will).

11. Estate tax treaties

11.1 Unilateral rules

Inheritance tax and gift tax paid to a foreign state, Greenland or the Faroe Islands on assets located outside Denmark can be deducted from the Danish inheritance and gift tax. The deduction cannot exceed the Danish inheritance or gift tax on the assets.

Finland

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1. Types of tax

Although there is actually only one tax that is based on the Inheritance and Gift Tax Act (1940), the tax has two clearly distinguishable tax objectives. For this reason, the taxation of inheritances and bequests and the taxation of gifts are treated separately in this section and the two names for the taxes are used accordingly. Inheritance tax and gift tax are imposed solely by the state.

1.1 Inheritance tax

Scope of application

Inheritance tax is levied on the individual share of each beneficiary and not on the estate of the deceased as a whole. Inheritance tax is levied on the following property received as an inheritance or a bequest:

- Any property if the deceased or the person who receives the property as an inheritance or a bequest was a resident in Finland at the time of death
- Real property situated in Finland and shares or other rights in a corporate body where more than 50% of the total gross assets of that corporate body consists of real property situated in Finland

Insurance claims paid out to a beneficiary or estate under a personal insurance scheme in the event of the death of the benefactor, as well as any similar economic subsidy paid by the government, a municipality or any other statutory body or a pension institution, are subject to inheritance tax only if they are not subject to income tax and the benefit or subsidy of a beneficiary or heir for a single death exceeds €35,000. Half of the total amount of such claims or economic subsidies and amounts up to €35,000 are tax-exempt for widowers and widows.

No inheritance tax is levied on the value of a right to annual income or on the value of a usufruct.

No inheritance tax is payable when, on being dissolved, the property of an association is transferred in accordance with its articles of association. If the inheritance tax should be levied on the same property on the basis of two or more deaths that have occurred within two years, the inheritance tax is levied only once and on the basis of the most remote relationship.

Credit for foreign inheritance tax

To avoid double taxation, the tax paid on an inheritance by a Finnish resident to a foreign state on property mentioned earlier in this section is credited against the inheritance tax due in Finland on the same property.

The maximum credit is the lesser of either the amount of foreign inheritance tax or an amount based on the following calculation (ordinary credit):

$$\frac{\text{Value of foreign property x Finnish inheritance tax}}{\text{Value of total property (including foreign property)}}$$

Finland does not eliminate double taxation with respect to immovable property situated in Finland or shares or other rights in a corporate entity if more than 50% of the total gross assets of the company consists of real property situated in Finland. In exceptional cases, a taxpayer may be exempted totally or partly from inheritance or gift tax liability if it is evident that the payment would be unreasonable.

1.2 Gift tax

A gift tax is levied on the following types of property received as a gift:

- Any property if the donor or the beneficiary was a resident in Finland at the time the gift was made
- Real property situated in Finland and shares or other rights in a corporate body where more than 50% of the total gross assets of that corporate body consist of real property situated in Finland

No gift tax is levied on ordinary household effects intended for the beneficiary's (or his or her family's) personal use and with a maximum value of €5,000, or on amounts used by a person for another person's (beneficiary's) education or maintenance when that other person does not have the possibility to use the donated amount for other purposes and on other gifts whose value is less than €5,000. If a person receives such gifts from the same donor within a period of three years, the gifts are aggregated for the purpose of computing the €5,000 limit and the gift tax is imposed on the exceeding amount. If a person has received one or more taxable gifts from the same donor within three years before their tax liability has begun, these gifts must be taken into account when the tax is calculated. The gift tax paid earlier is credited in such cases.

The gift tax is similar to the inheritance tax in the following areas:

- Credit for foreign gift tax
- Exempt persons
- The valuation of property

The liability to pay gift tax begins when the beneficiary takes possession of the gift. In cases where the financial consideration in a contract of sale or exchange does not exceed three-quarters of the current price of the property sold or exchanged, the difference between the current price and the consideration is regarded as a gift.

1.3 Real estate transfer tax

Transfer tax on real estate is 4% of the purchase price or value of other remuneration. The tax must be paid before seeking legal confirmation of possession or registration of the tenancy, which must be sought within six months of making said transfer contract. The local survey office of the municipality of the location will confirm possession. Applicants must present a receipt, or other documentation, to prove that the payment of transfer tax has occurred.

When real properties are exchanged, this constitutes two separate transfers, which obliges both transferees to pay the transfer tax relating to the received acquisition.

If legal confirmation of possession and registration is not sought within six months of the transfer in question, the tax will be increased by 20% for each six-month period of delay. However, the maximum total increase is 100%.

1.4 Endowment tax

In general, trusts are not recognized in the Finnish taxation system because there isn't any specific endowment tax; assets moved into trusts are taxed according to the regulations concerning gift tax (see Sections 1.2. and 7).

1.5 Securities transfer tax

Transfer tax is 1.6% of the purchase price or other remuneration of the transfer of securities. The transfer tax on shares in housing companies, mutual real estate companies and other estate companies changed on 1 January 2013. The tax rate on transfer tax of these securities is 2%.

The buyer shall pay the transfer tax and report the procedure to the tax office of his or her domicile. The tax and the report shall be made within two months of signing the transfer agreement. To report the transfer, one must use the form supplied by the tax administration. The buyer must also present a receipt of payment, as well as the conveyance or other agreement of transfer.

When trading bonds and securities, two transfers take place. Both acquiring parties must pay transfer tax and report the transfer.

1.6 Net wealth tax

Net wealth tax is no longer a part of the Finnish taxation system. Despite that, a person's net wealth with certain limitations shall be declared to tax authorities in connection with filing an annual tax return.

2. Who is liable?

Finland levies inheritance tax on the estate of a deceased person separately on each beneficiary in respect of his or her share of the estate. Similarly, Finland levies gift tax on each donee.

2.1 Residency

Inheritance or gift tax must be paid if the deceased person or donor or the beneficiary or donee was a resident of Finland at the time of death or donation. The tax liability covers all immovable and movable property situated in Finland or abroad. Inheritance or gift tax must be paid for immovable property situated in Finland and shares in a company if more than 50% of its assets comprise immovable property situated in Finland, even if neither the deceased donor nor the beneficiary donee was a resident of Finland. A double-taxation agreement may limit Finland's taxation rights (see Section 11.1).

An individual is a resident of Finland if his or her main residence is in Finland. The sole fact that an individual stays in Finland for a longer period does not constitute residence for inheritance and gift tax purposes (as it does for income tax purposes). Similarly, there are the same prerequisites for nationals and non-nationals as there are for income tax purposes. A Finnish national who recently moved abroad may be a Finnish resident for income tax purposes, but not for inheritance and gift tax purposes.

2.2 Domicile

Certain special groups of individuals are liable to pay inheritance or gift tax only on real property situated in Finland and on shares or other rights in a corporate entity if more than 50% of the total gross assets of the company consist of real property situated in Finland. This special scope of tax liability applies to persons serving in Finland at foreign diplomatic missions, other similar representations or consular posts headed by career consular officers, as well as members of their families and their private servants who are not Finnish nationals. The same scope applies to persons serving in Finland as employees of the United Nations (UN), its specialized agencies or the International Atomic Energy Association (IAEA), as well as members of their families and their private servants who are not Finnish nationals.

3. Rates

Rates of inheritance and gift tax are determined on the basis of two classes of relationships between the beneficiary (the donee) and the deceased (the donor).

Tax class I

Spouses, direct heirs in an ascending or descending line, spouses' direct heirs in a descending line and fiancé(e)s receive a certain allowance on the basis of the Code of Inheritance. The concept of direct heirs in an ascending or descending line includes persons in adoptive relationships and foster children in certain cases. Class I rates also apply if the provisions of the Income Tax Act concerning spouses are applicable for the year of death of the deceased and an individual who had lived with the deceased in free union. In other words, class I rates apply to spouses who previously have been married to each other or who have (or have had) a child together.

Tax class II

All other cases (relatives or non-relatives):

Taxable inheritance and gift	Basic tax amount	Rate within brackets
Rates of inheritance tax for class I		
€20,000–€40,000	€100	7%
€40,001–€60,000	€1,500	10%
€60,001–€200,000	€3,500	13%
€200,001–€1,000,000	€21,700	16%
€1,000,001 and above	€149,700	19%
Rates of inheritance tax for class II		
€20,000–€40,000	€100	19%

Taxable inheritance and gift	Basic tax amount	Rate within brackets
€40,001-€60,000	€3,900	25%
€60,001-€200,000	€8,900	29%
€200,001-€1,000,000	€49,500	31%
€1,000,001 and above	€297,500	33%
Rates of gift tax for class I		
€5,000–€25,000	€100	8%
€25,001–€55,000	€1,700	10%
€55,001–€200,000	€4,700	12%
€200,001-€1,000,000	€22,100	15%
€1,000,001 and above	€142,100	17%
Rates of gift tax for class II		
€5,000–€25,000	€100	19%
€25,001–€55,000	€3,900	25%
€50,001–€200,000	€11,400	29%
€200,001-€1,000,000	€53,450	31%
€1,000,001 and above	€301,450	33%

4. Exemptions and reliefs

The following persons are exempt from inheritance tax when they receive an inheritance or a bequest:

- The state and its institutions, municipalities, joint municipal authorities, religious communities and nonprofit-making organizations
- Persons serving in Finland at foreign diplomatic missions, other similar representations or consular posts headed by career consular officers and persons serving in Finland as employees of the UN, its specialized agencies or the IAEA, as well as members of their families and their private servants who are not Finnish nationals. However, these persons are liable to pay inheritance tax on real property situated in Finland and shares or other rights in a corporate body in which more than 50% of the total gross assets of the company consist of real property situated in Finland (see Section 2).

No inheritance tax is payable when a widower or widow is entitled by law to retain the undistributed estate of the deceased spouse in his or her possession.

5. Filing procedures

Inheritance taxation is based on an estate inventory deed or a tax return. The estate inventory deed must be filed in the tax office of the residence of the deceased within three months of the death. Finnish resident beneficiaries must file a tax return if the deceased person was not a resident of Finland at the time of death. The person who possesses the property in Finland must file the tax return if no beneficiary is a resident of Finland. The tax return of the estate must be filed within three months of the death in the Helsinki area tax office.

All assets and debts of the deceased should be itemized in the estate inventory deed. The tax authorities may impose punitive sanctions to the estate on income that the settlor has not reported in Finland.

With regard to gifts, the beneficiary prepares and signs the gift tax return. The gift tax return must be filed in the tax office of the residence of the donor within three months after the gift is received. If the donor does not live in Finland, the tax return is to be filed in the Helsinki area tax office. Should the gift be of less than €5,000 in value, a tax return is not needed, unless specifically required by the tax office.

6. Assessments and valuations

The basis of inheritance tax is the current value of the property at the moment of a taxable event. The current value means the probable alienation price. The value of a gift that must be taken into account in the distribution of an inheritance is included in the value subject to inheritance tax. The value of any other gift received during the last three years before the death of the benefactor is also included in the value subject to inheritance tax under the condition that it is not gift tax-exempted as:

- Ordinary household effects intended for the beneficiary's (or his or her family's) personal use and with a maximum value of €5,000

  Or

- An amount used by a person for another person's (beneficiary's) education or maintenance in such a way that the other person does not have the possibility to use the donated amount for other purposes

Previously paid gift tax is deducted from inheritance tax in these cases.

Deductions are given for previously paid transfer tax when a real property's registration title's gift tax was earlier sought and not deducted. The part of gift tax that exceeds inheritance tax is not refunded. Deductions are allowed for all debts, including taxes relating to the lifetime of the deceased, but excluding inheritance tax. It also includes funeral and tombstone costs and expenses incurred in drawing up an estate inventory, up to reasonable amounts. Expenses incurred in distributing estates are not allowed as deductions.

In addition, the spouse or any person to whom the provisions of the Income Tax Act concerning spouses are applicable for the year of death, is entitled to a deduction of €90,000 from the chargeable share of the inheritance (spouse allowance). The provisions of the Income Tax Act relating to spouses do not apply in instances in which the spouses have lived the whole tax year apart or have moved to separate dwellings during the tax year in order to live permanently apart. The same applies in the case of a married couple when either of the spouses is a nonresident.

Individuals living together in free union are, for the purposes of income taxation, considered spouses if they have been married to each other previously or if they have had or are having a child together.

Heirs in direct descending line (including adopted persons) who are under 18 years and entitled to inherit the deceased person's estate at the time of the person's death are entitled to a deduction of €60,000 (minority allowance). If the value of an heir's share of the estate or the same value after deducting the spouse allowance and minority allowance is less than €20,000, it is exempt from tax. Inheritance tax is not levied on the ordinary household effects used by the deceased or his or her family for the part that does not exceed €4,000.

7. Trusts, foundations and private purpose funds

Status as a legal person for tax purposes

Trust institutions are not recognized in the Finnish tax or civil law. In a tax practice, trusts have usually been compared to the Finnish foundations and have been taxed as separate entities. However, recognizing a trust as a separate entity for tax purposes in Finland is open to interpretation. The decision-making is based on the case-specific circumstances.

If the trust is treated as a separate legal person, the beneficiaries are taxed on distributions made by the trust. Please note that if Finnish controlled foreign company legislation applies, the annual income of the trust would be taxed as the beneficiaries' income.

Inheritance taxation

There are very few legal cases and non-established tax practices in Finland with regard to inheritance and gift taxation, as well as income taxation, when a trust is involved.

The trust's assets received by the heirs after the settlor has passed away may be regarded as part of the settlor's estate and thus subject to inheritance taxation in Finland in the hands of the beneficiaries. The inherited right to the yield of a trust (as beneficiaries) may be exempted from tax in Finland. Even if a part of the foundation's assets is not distributed to the beneficiaries, the total amount of assets in the trust may be considered subject to inheritance tax, depending on the rules of the trust and the circumstances.

The inheritance taxation is not entirely clear on whether the beneficiaries can receive the trust's assets under certain suspensive conditions. While inheritance taxation may occur if the beneficiaries receive the assets in their possession, there is also a tax practice against this position.

Income received from a trust

If the acquisition is not based on the death of the settlor, the income and assets received by the beneficiaries from the trust may be regarded as a gift from the settlor. This is because the tax authorities may consider the assets as received directly from the settlor and not from the trust as a separate entity.

If the beneficiaries are deemed to receive a gift, they may be regarded as having received the gift from the settlor already when the settlor set up the trust. However, if the beneficiaries did not have any rights or do not have any control over the assets (or income from the trust), they may be taxed once they have received the assets.

When beneficiaries receive income from a trust's assets, it is considered their personal capital income because the assets in the trust have accrued income.

Taxation as a separate legal entity

Whether a trust is treated as a separate legal person or not depends entirely on the discretion of the Finnish tax authorities.

If a trust is not treated as a separate entity, however, all income earned by the trust is taxed in the hands of the beneficiaries as if they had received the income directly.

If the trust is treated as a separate legal person and is a resident in Finland for tax purposes (i.e., registered or otherwise established under the domestic law of Finland (for example, a corporate entity that has its place of management in Finland does not make it Finnish)), it has unlimited tax liability in Finland and is thus subject to tax for its global income or both for Finnish and foreign-source income. A legal person subject to unlimited tax liability is liable to file a tax return for his or her global income. The tax treatment of foreign-source income largely corresponds to the tax treatment of the Finnish-source income. However, some foreign-source income items are taxed differently. Certain foreign-source items may be tax-exempt because of a specific domestic tax law, European Union (EU) tax law or tax treaty provision.

Legal persons subject to limited tax liability (legal persons registered abroad or otherwise established under foreign law — foreign legal persons) are subject to taxes in Finland only for Finnish-source income and need to file a tax return for their Finnish-source income. The Income Tax Act includes an exemplary list of the items regarded to be Finnish-source. Certain items may be tax-exempt according to a special provision even though they are Finnish-source items. For example, Finnish-source interest income of a nonresident is largely tax-exempt.

Taxation as the estate's or beneficiaries' income

Estates are taxed on income as a separate entity until the distribution of the estate. Beneficiary income from trusts may be taxed as the estate's income if the trust is not recognized as a separate entity for tax purposes. The estate remains until all assets of the estate have been distributed to the beneficiaries. Finland does not tax the foreign-source dividends of nonresidents.

Income taxation after the dissolution of the trust

When the trust is dissolved and all assets are distributed to the beneficiaries, capital gains tax applies if the trust is regarded as a separate legal entity. If a trust is not taxed as a separate entity, dissolution should not have any income tax effect. The estate should declare these assets on its tax return for as long as the estate is not distributed to the beneficiaries.

8. Grants

Grants are not taxable income if they are:

- Scholarships or other grants given for studies or scientific research or the arts
- Awards given for the benefit of scientific work, work in the arts or work for the public good
- Pensions or family pensions given by the state before 1 January 1984, for work mentioned in Sections 1 and 2
- Grants given for professional athletes with the purpose of encouraging training or coaching

Grants are given by public sector entities, such as the state, the municipality or the Nordic Council. (Note: The Nordic Council was formed in 1952. The Council has 87 elected members from Denmark, Finland, Iceland, Norway, Sweden, the Faroe Islands, Greenland and Åland. For more information, visit norden.org/en/nordic-council/the-nordic-council.)

Due to the university law (558/2009), as of 2010, universities are no longer seen as public entities and are therefore not treated as public entities in regard to taxation. Grants given by foreign states and public entities in foreign states are not subject to the above-mentioned regulation and are therefore taxed as income.

If a grant is paid by the employer and is regarded as compensation from work, it is considered taxable income, even if the purpose of the grant is one of those mentioned above.

A grant given by a private person is seen as taxable income when the amount, combined with the grants given by public entities or the Nordic Council, student grants and other grants, exceed the annual amount of the artist grant given by the state. In 2017, the artist grant is €20,309.40.

9. Life insurance

Paid indemnities from life insurance must be listed and accounted for in the estate inventory.

If the estate inventory is made before such payment, the beneficiary may report the indemnity to the tax authorities. Insurance companies are also obliged to inform the tax authorities of paid indemnities.

If the beneficiary is defined in the life insurance agreement, the payment does not belong to the estate. If the beneficiary is not stated in the agreement, then the payment belongs to the estate. This has led to most insurance policies being written with the inclusion of a predetermined beneficiary.

Inheritance tax must be paid if the beneficiary is the estate or another determined beneficiary. The part of the indemnity that is accounted for as income under income taxation is free from inheritance tax.

The beneficiary can either be listed as a specific beneficiary or a general beneficiary in the insurance agreement. If the beneficiary is a specific person, it means that the indemnity goes straight to him or her. If the beneficiary is generated using a more flexible term, such as "next-of-kin," then it is up to the estate to determine the beneficiaries. Payments from life insurance are free from inheritance tax up to the amount of €35,000 per beneficiary per death. If the beneficiary is the widow, the tax-free amount is half of the indemnity, or at least €35,000.

It is not a requirement of the tax-free indemnities that the beneficiary be an heir to the deceased. If the beneficiary is not a relative (for example, a friend), the entire indemnity is considered to be taxable income and no inheritance tax is imposed.

Calculating the total indemnities

The tax-free insurance payment and other economic aid comparable with life insurance payments are calculated individually for each beneficiary for each indemnity payable upon death. If the calculation proves that the beneficiary receives less than €35,000, the entire sum is tax free. The calculation in question must be incorporated in the estate inventory.

If the calculations conclude that none of the beneficiaries receives more than €35,000, this must be stated in the estate inventory. It has to be clear that said statement cannot be confused with taxable assets in the estate inventory. The most common way to go about this is to combine the statement with the statement about possible gifts that the deceased has or has not given.

Taxable indemnities

If the total sum of insurance payments and other economic aid comparable with the payment exceeds €35,000, this must be mentioned specifically in the inventory of the estate.

Taxable assets are only the sum exceeding the tax-free indemnities. A calculation of the payments from insurance and other economic aid must be attached with the inventory of the estate.

The beneficiary has to be mentioned by name since the estate may include several beneficiaries and only one may have received such a high indemnity that it exceeds the tax-free limit. The other beneficiaries' inheritance tax is determined by the assets of the estate in accordance with their relative share. If the person receiving the taxable indemnity is an heir, the lawful share and the taxable indemnity are added together when calculating the inheritance tax.

The inheritance tax exemption of life insurances is applicable until the end of the year 2017. As a result of a change in tax legislation, the exemption provision was repealed; from 1 January 2018, inherited insurance payments will be subject to inheritance tax.

10. Civil law on succession

10.1 Estate planning

The taxation of gifts and inheritance was changed on 1 January 2013. New tax brackets for the first and second tax classes regarding gift and inheritance tax were introduced (these brackets relate to gifts or inheritance exceeding €1,000,000). It is important to calculate whether it is more tax-efficient to give a gift or inheritance advance, as this varies from one case to another.

It is most common to give gifts to one's children, and these gifts are generally considered to be an inheritance advance, unless it is stated otherwise in the deed of the gift. An inheritance advance is always added to the deceased's assets, whereas a gift is only considered part of the estate if the gift is given within three years prior to the death.

10.2 Succession

Under the universal succession principles, title and possession of the estate transfers automatically at death to the heirs. The heirs' liabilities to the deceased's debts are limited to the assets of the estate, if certain conditions are met.

An heir and a universal beneficiary under a testament may transfer their shares in the estate to another estate. Such a transfer shall be effected in writing.

10.3 Forced heirship

The Finnish Code of Inheritance statutes provide forced heirship provisions for the direct heir, adoptive children of the deceased, and the descendants of the direct heir, and the children of the adoptive children or direct heir. The lawful share is one-half of the value of the share of the estate that, according to the statutory order of succession, passes down to the direct heir.

Also, persons whom the deceased has disinherited in a testament, or that for some other legal reason are not to inherit, shall be taken into account when establishing the lawful share.

When determining the lawful share, due note shall also be taken to the value of property that is to devolve from the surviving spouse to the heirs of the deceased spouse, or to be paid to the surviving spouse.

Obligations in the form of a promise of a gift to be given from the assets of the estate shall not be deducted, in addition to amounts that are to be paid for future fulfillment of the deceased's statutory maintenance obligation.

In the absence of special reasons to the contrary, advances given by the decedent and gifts given by the deceased shall be added to the assets of the estate. The value of the property shall be considered to be its value when received, unless the circumstances require otherwise.

10.4 Matrimonial regimes and civil partnerships

Chapter 3 of the Finnish Code of Inheritance regulates the inheritance of spouses and registered partners.

A spouse or registered partner has the right of possession of the estate and may possess the entire estate undivided.

If the deceased has no direct heirs, the entire estate goes to the spouse. The estate forms a common property together with the property of the surviving spouse.

If the deceased does not have secondary heirs (father, mother, brother, sister, stepbrother or stepsister, or their descendants), the spouse gets unlimited property rights to the estate.

The deceased may have either limited or extended the amount of secondary heirs using a testament. Also, institutions may be secondary heirs of an estate.

The surviving spouse may use the common property, sell it, lease it or lodge it as security without the consent of the secondary heirs. However, the surviving spouse may not include property that is due to the secondary heirs after the death of the surviving spouse in a valid testament.

10.5 Intestacy

A will is a legal document that regulates an individual's estate after death. For a will to take effect in Finland, it must be in writing and have the signatures of two witnesses. These witnesses must sign the will simultaneously and witness the testator sign the will before signing it themselves. The witnesses must know the document is a will, but it is up to the testator to decide whether they can see the contents of the will. The above-mentioned rules are to ensure that the will is made with due consideration and reflects the last will of the testator.

In the case of intestacy, the estate passes under predetermined rules known as intestate successions. The intestate succession is as follows:

- Spouse or registered partner and children inherit first
- When there are none of the above, parents and their descendants inherit
- Grandparents and their descendants are third in order
- Great-grandparents and their descendants are fourth in order

Any relatives other than the above-mentioned cannot inherit. If there are no relatives and no will, the state inherits.

10.6 Probate

After the death of the testator, the beneficiary of the will must inform the heirs and other shareholders of the estate of the will. This can be done either through a writ-server or in another verifiable way. The heirs and shareholders of the estate shall be presented with a verified copy of the will.

If the sole heir of the testator is the surviving spouse, then the secondary heirs mentioned in Section 10.5 will have to be informed of the will in the same manner as primary heirs and other shareholders of the estate. The state must be informed of the will in the same manner if the testator had no heirs.

If there are several beneficiaries of the will, the information delivered by one of these beneficiaries is binding for the others.

If an heir wishes to contest the will, he or she must bring a suit against the will within six months of receiving notice of the will. If the heir has accepted the will or has relinquished his or her rights to contest the will in a verifiable manner, the heir loses all rights to bring suit against the beneficiary of the will.

11. Estate tax treaties

11.1 Double-taxation treaties

Finland has concluded double-taxation agreements concerning taxes on inheritance with France (1958), the Netherlands (1954), Switzerland (1956) and the United States (1952).

In addition, Finland concluded double-taxation agreements concerning taxes on inheritance and gifts with the other Nordic countries (Denmark, Iceland, Norway and Sweden) in 1989. Sweden and Norway have terminated the agreement as they no longer have gift or inheritance taxes.

The Nordic treaty largely follows the Organisation for Economic Co-operation and Development's (OECD's) 1982 Model Estate, Inheritance and Gift Tax Convention. The other treaties pre-date the OECD model. However, the other treaties are also based on similar principles to the OECD model in the division of the taxing right between the contracting states. The US treaty deviates the most from the OECD model.

Under the US treaty, both the state of residence of the deceased person and the state of residence of the beneficiary have a taxing right. Each of the states must deduct in its taxation the tax paid in the other state with respect to property situated in that state.

Finland also has a tax treaty on gift taxes with Greece that was concluded in 1995. The Greece treaty requires that no gift tax be levied on real estate situated in one of the states and donated to the other state or a public body of it, for purposes of public interest.

France

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1. Types of tax

France taxes all free transfers regardless of whether there is a transfer of assets resulting from a death or a free transfer *inter vivos*.

Historically, gifts were considered early transfers from a future succession. Consequently:

- Gifts are subject to the same tax rules as estates except for certain rules that are specific to gift tax.
- Successions in general take into account gifts between the deceased and the heirs (back-tax rule) (see Section 1.1).

The inheritance and gift taxes are national and levied by the French state.

Additionally, France taxes:

- Real estate owned (property tax or *taxe foncière*) or occupied (residence tax or *taxe d'habitation*) in France
- French real estate owned anonymously (3% tax on real estate or *taxe de 3%)*
- Wealth (French wealth tax or *impôt de solidarité sur la fortune*)

France also taxes income and capital gains derived from properties located in France through personal income tax.

1.1 Inheritance tax

Inheritance taxes are due for all transfers at the time of death regardless of whether they result from a legal succession, a will or a gift due to death, such as a gift between spouses.

Subject to territoriality rules, tax must be paid in France when the deceased was a French resident, the heirs are French residents or when the assets are located in France.

Subject to the aforementioned territoriality rules and specific rules exempting certain assets, the taxable estate is, in principle, determined in accordance with French civil law rules (see Section 10).

The debts of the deceased, substantiated as of the date of death, are then deducted from the estate assets (see Section 6.1).

Inheritance tax is calculated on the net portion passing to each heir or legatee based on the devolution by law rules and any testamentary provisions of the deceased.

The net share received by each heir will be:

- Less a tax allowance whose amount depends on the kinship of the beneficiary with the deceased (see Section 3.1)
- Subject to a rate based on a scale depending on the kinship of the beneficiary with the deceased (see Section 3.1)

Before applying the allowance, any previous gifts made by the deceased to the same beneficiary should be added to the net share of the beneficiary if the gifts were given less than 15 years prior to the death (back-tax rule).

The back-tax rule concerns all forms of gifts (e.g., gifts by notarized act, hand-to-hand gifts, *inter vivos* distribution). According to this rule, estates preceded by gifts made less than 15 years prior to death are considered a single conveyance.

The back-tax rule has the effect of allowing:

- The application of allowances (see Section 3), but only after deduction of those from which the beneficiary has already benefited for the previous gifts concerned
- The application of the various bands of the rate (see Section 3) for the portion not affected by the previous gifts concerned
- The application of tax reductions, less any reductions from which the beneficiary has already benefited for the previous gifts concerned

Conversely, with gifts given more than 15 years prior to death, the inheritance tax is calculated by taking into account the full allowances, the tax rate starting with the lowest bands and any tax reductions in their entirety.

1.2 Gift tax

A tax is due in France on a gift when the donor or the donee is a French resident or when the gift concerned is an asset located in France.

Gift tax is, in principle, due from the donee. However, it may be paid by the donor without such payment being considered a supplemental gift.

In principle, gifts follow the same tax rules as estates subject to certain differences. These pertain to:

- Rules of territoriality
- Exempt gifts
- Allowances
- Rates
- Tax reductions
- The earlier-gifts rule, when at least 15 years separate two successive gifts between the same people

In principle, any liability can be deducted from the taxable base of a gift (see Section 6.2).

Particularities concerning hand-to-hand gifts

In France, hand-to-hand gifts (*don manuel*) are not taxable if they are not declared.

However, undeclared hand-to-hand gifts become taxable (Article 757, French Tax Code (FTC)):

- When spontaneously disclosed to the tax authorities either in response to a request by the latter or during a tax audit
- In relation to a later gift made by notarized act between the same persons or in relation to the death of the donor if the donee is one of the presumptive heirs

Hand-to-hand gifts must be declared and registered within one month of disclosure; the tax is computed on the value of the donated asset on the day of disclosure, but if the gift was a cash gift, it is added back at its face value at the date it was made. Payment is made at the time of declaration.

The beneficiary of a hand-to-hand gift whose value exceeds €15,000 can spontaneously opt for the disclosure of the gift with the postponement of the declaration and payment of the corresponding tax before the end of the first month following the donor's death. The tax is computed on the value of the hand-to-hand gift as of the day of the declaration or as of the day of the donation, should the second amount be higher than the first.

The triggering event for gift tax occurs on the day of disclosure. Therefore, the statute of limitations for hand-to-hand gifts does not start as of the date of the gift but as of the date of disclosure of the gift. Consequently, a tax audit is not limited in time for undisclosed gifts.

1.3 Real estate transfer tax

The transfer of real estate in return for payment, as well as the transfer of real estate rights in return for payment is, in principle, subject to a real estate registration tax (*taxe de publicité foncière*) at a rate of 5.80%.

This tax is computed at the fair market value of the real estate or real estate rights transferred. The tax is due by the purchaser.

The sale must be recorded in a notarized deed that the notary files with the territorially competent mortgage office (*bureau des hypothèques*) along with the payment of the tax.

1.4 Transfer duty

All transfers of ownership of real estate or real estate rights are subject to a registration duty at the rate of 0.70% for the registration of the transfer at the mortgage office. This duty is calculated on the market value of the property or right transferred and is due by the new owner.

1.5 Wealth tax

Subject to the application of international tax treaties, the following are liable to French wealth tax:

- French residents whose net worldwide assets are valued at or above €1.3 million
- Non-French residents whose net assets located in France (except financial investments in France, which are exempt) are valued at or above €1.3 million

The taxable worth for a year is assessed on 1 January of each year. It is the worth after deduction of debt owned by the taxpayers (see Section 6.3) and debts on which the taxpayer holds the usufruct. It includes all assets owned by the taxpayer and all assets on which the taxpayer holds the usufruct (except fully or partially exempted assets).

Furthermore, in order to limit the effects of this tax, tax exemption and tax exception (see Section 4.2) a wealth-tax capping mechanism exists, reserved for taxpayers resident in France (see Section 4.2).

The assets and liabilities are reported by the taxpayer, who is, in principle, responsible for calculating the tax and sending the payment of the tax with the declaration.

1.6 Property tax (*taxe foncière*)

Property tax is due by any owner of real estate or land located in France on 1 January of the year of taxation.

The tax is collected for the benefit of local governments (municipalities, departments and regions), which vote on the tax rate each year depending on their needs. Consequently, the amount of tax is frequently very different from one municipality to another for a similar property.

The tax base is equal to half of the cadastral rental value set by the tax administration and not to the actual rental value (which is higher). It is possible to contest the rental value attributed to a property.

Therefore, property tax does not require the filing of a declaration by the taxpayer who, at the end of the calendar year, receives a tax assessment notice stating the tax due and the basis of the calculation made by the tax administration.

1.7 Residence tax (*taxe d'habitation*)

Residence tax is payable by any occupier of a residence in France. This tax is levied on the person who occupies the residence on 1 January of a given year and is payable toward the end of the year (15 November). The tax authorities will request the payment from the person who occupies the residence on 1 January, even if that person has since moved from the residence.

This tax is levied for the benefit of the local authorities, who vote on the tax rate each year according to their needs.

Similar to property tax, the residence tax base is the cadastral rental value. The taxpayer can challenge the value used if he or she believes it is too high.

Residence tax does not require the filing of a declaration by the taxpayer. At the end of the year, the taxpayer receives a tax notice with the computations performed by the French tax authorities.

1.8 The 3% tax on the market value of real estate

French law provides for an anti-evasion tax in the form of a 3% tax computed on the market value of the real estate concerned. The purpose of the 3% tax is to prevent an individual, whether resident or nonresident, from evading wealth tax, capital gains tax or transfer tax on property (not assigned to any professional activity) in France by interposing one or more French or foreign legal entities.

The tax applies to all legal entities (corporations, trusts and foundations) regardless of the number of interposed entities.

The tax is due by the entity that is closest to the property in the shareholding chain and that cannot benefit from an exemption from this tax.

Exempted from this tax are legal entities whose real estate assets in France, not assigned to their own professional activity or to the activity of their subsidiaries, represent less than 50% of their French assets, held directly or indirectly through interposed entities.

Several other cases of exemption are provided for by French law (e.g., international organizations, governments, pension funds, listed companies).

In the case of the non-professional management of real property for an individual, complete exemption from the 3% tax is subject to two conditions:

- The interposed legal entities must have their main office in France, in the European Union (EU) or in a state that has concluded a tax treaty with France providing for administrative assistance or including a non-discrimination clause.
- All entities in the same shareholding chain annually disclose or undertake to disclose to the tax authorities the real property owned on 1 January, as well as the identities and addresses of their shareholders.

The annual return must be filed no later than 15 May of each year. The disclosure commitment must be made within two months following the acquisition of the real estate.

Therefore, a resident or a nonresident cannot anonymously hold real estate in France unless he or she pays this tax each year.

This 3% tax is calculated on the market value of properties held on 1 January without it being possible to deduct the debt incurred to acquire these properties.

2. Who is liable?

From a French tax law point of view, there is no difference between domicile and residence; both terms cover the same concept.

2.1 Liability and territoriality of French inheritance and gift taxes

Inheritance and gift taxes follow the same territoriality rules.

The territorial field of application of inheritance and gift taxes is extremely broad, as it depends on the residency of the deceased (donor), the location of the assets and the residency of the beneficiary (heir, legatee, donee). These rules apply subject to any international tax treaty rules that may override them (Article 750 ter, FTC).

The rules governing the determination of the residency of the deceased, donor or beneficiary are those applicable to income tax (Article 4 B, FTC) subject to any international tax treaties that may override them.

Rules governing the residency of the deceased (donor) and the beneficiary (donee)

People meeting the criteria below are considered as domiciled in France for tax purposes if:

- Their home or primary residence is located in France.
- They are carrying out a non-incidental professional activity in France.
- The center of their economic interests is in France.

French territoriality rules applicable to inheritance and gift taxes

When the deceased or the donor is domiciled in France, all movable and immovable properties located in France and outside France transferred free of charge are subject to tax in France.

When the deceased or the donor is domiciled outside France, only the movable and immovable assets located in France are subject to tax in France. The following are considered located in France:

- Tangible assets that are located in France
- Intangible assets, such as shares in French companies, receivables from a French debtor, patents and trademarks assigned or exploited in France, and shares in foreign companies for up to the value of real estate and real estate rights owned in France compared to total worldwide assets when the value of French real estate and real estate rights represents more than 50% of the corporate assets (real estate and real estate rights or other assets) located in France

When the deceased or the donor is domiciled outside France and the beneficiary has been domiciled in France for at least 6 years during the last 10 years prior to the death or donation, all movable and immovable property located in France or outside France is subject to tax in France. If the beneficiary does not meet the aforementioned condition regarding domiciliation for tax purposes, the inheritance or gift is taxable in the conditions described in the previous paragraph.

In the first and third of the above three cases, tax paid outside France on assets located outside France is deducted from the tax due in France (Article 784 A, FTC).

Impact of international tax treaties

France has signed 38 treaties relating to inheritance tax and 10 treaties relating to gift tax (see Section 11.2), which significantly override the rules presented below.

Most of the treaties follow these rules (e.g., Spain, Monaco):

- When the donor or the deceased is domiciled in France, all movable property located in and outside France and only immovable property located in France transferred free of charge are subject to tax in France.
- When the donor or the deceased is domiciled outside France, only the movable and immovable property located in France is subject to tax in France.
- French tax due by a beneficiary who is a French resident and who has also received assets outside France, but not taxable in France by operation of the treaty, must take into account non-French assets to calculate the tax rate applicable to the French assets received by such resident (the effective rate rule).

The most recent treaties follow other rules (Belgium, Germany, Italy, Sweden, United Kingdom and United States):

- Each state applies its own law to the succession of persons who are residents of its territory.
- The state of residence of the deceased grants a tax credit on the tax that it has calculated under its own law. This tax credit is equal to the tax levied by the other state on assets subject to double taxation.

Impact of the rules of territoriality on hand-to-hand gifts

Based on the territoriality rules described above, assets outside France escape the French conveyance fees only in the event that both the deceased or the donor and the beneficiary are not French residents at the time of the transfer.

Since the event generating the hand-to-hand gift is either its disclosure or an inheritance, it is prudent for a foreigner settling in France to disclose it upon arrival. He or she will then be exempt. Conversely, if the death of the donor occurs more than six years after the beneficiary has settled in France, the gift will then be taxed in France even if the estate is not subject to French law for back taxes.

2.2 Liability and territoriality of wealth tax

Wealth tax is due by:

- French residents whose net worldwide assets are valued at or above €1.3 million
- Non-French residents whose net assets located in France (except financial investments in France, which are exempt) are valued at or above €1.3 million

The rules governing the determination of the residency of the taxpayer are those applicable to income tax (Article 4B, FTC) subject to any international tax treaties that override them.

Non-French residents who settle in France may be temporarily exempt from wealth tax for the first five years after their establishment in France on assets that they possess outside France, provided that:

- They have been established in France since 6 August 2008.
- They have not been domiciled in France during the last five calendar years preceding the year of their establishment.

Impact of international tax treaties

France has concluded more than 50 tax treaties regarding wealth tax (see Section 11.2).

Most of these tax treaties follow the same principles (for example, Austria, Germany, Italy, Spain, Switzerland and the United States):

- Real estate is taxed in its state of location and in the state of residency of the taxpayer.
- Shares in a predominantly real estate company (that is, a company whose assets comprise a majority of real estate) when such company owns real estate in France are deemed to be real estate.
- Assets other than real estate are taxed only in the state of residency of the taxpayer.
- Double taxation is avoided through the tax credit method.

Certain other treaties (for example, Luxembourg, Netherlands and Poland) apply the method of exemption by granting to only one of the states the right to tax according to the following rules:

- For real property, only in the state of location
- For other assets, solely in the state of residence of the taxpayer
- Each state taxes the elements of wealth reserved for it at the tax rate that would be applicable to the entire fortune (effective rate rule)
- For these treaties, shares in predominantly real estate companies are not considered as real property

3. Rates

3.1 Allowances applicable to both gifts and inheritances

These allowances apply to the net share of each heir or on the gift before the application of the rate.

The main allowances are the following:

- €100,000 for direct line inheritances and gifts (scale applicable as from 1 September 2012)
- €15,932 for inheritances between siblings
- €159,325 for inheritances and gifts to disabled people (this allowance is added to the allowance to which such people are entitled within the family)

The principal allowances applicable to gifts only, in addition to those listed above, are as follows:

- €80,724 for gifts between spouses
- €31,865 per share for all gifts to grandchildren
- €5,310 per share for all gifts to great-grandchildren

The back-tax rule for gifts given less than 15 years ago is applicable. Therefore, this allowance is applicable only once every 15 years.

Rates

The rates and reduction amounts given are effective as of 1 January 2011.

Rates applicable to both gifts and inheritances

Direct line inheritances and gifts, collateral line inheritances and gifts, and inheritances and gifts among non-relatives are subject to the same rates.

Transfer in favor of ascendants and descendants:

Value transferred	Rate (%)
Up to €8,072	5%
From €8,073–€12,109	10%
From €12,110–€15,932	15%
From €15,933–€552,324	20%
From €552,325–€902,838	30%
From €902,839–€1,805,677	40%
€1,805,678 and above	45%

Transfer between siblings:

Value transferred	Rate (%)
Up to €24,430	35%
€24,431 and above	45%

Other cases	Rate (%)
Transfer between blood relatives up to the fourth degree (whatever the amount)	55%
Transfer between remote blood relatives (beyond the fourth degree) and unrelated parties (whatever the amount)	60%

Rates specific to gifts

Only inheritances between spouses are exempt. A special rate exists for gifts between spouses.

Gift between spouses

Value transferred	Rate (%)
Up to €8,072	5%
From €8,073–€12,109	10%
From €12,110–€15,932	15%
From €15,933–€552,324	20%
From €552,325–€902,838	30%
From €902,839–€1,805,677	40%
€1,805,678 and above	45%

Tax reductions

Shares in companies that benefit from an exemption of three-quarters of their value under a conservation covenant (see Section 4.1) benefit from a 50% tax reduction if the donor is under 70 years of age (Article 790, FTC).

3.2 Wealth tax scale

The scale includes six rates (from 1 January 2013):

Fraction of net taxable value of assets	Applicable rate (%)
Not exceeding €800,000	0%
Greater than €800,000 and less than or equal to €1.3 million	0.50%
Greater than €1.3 million and less than or equal to €2.57 million	0.70%
Greater than €2.57 million and less than or equal to €5 million	1%
Greater than €5 million and less than or equal to €10 million	1.25%
Greater than €10 million	1.50%

If the net taxable value of the assets is equal to or greater than €1.3 million, but less than €1.4 million, the tax is calculated according to the scale shown in the table above and is reduced by €17,500 – 1.25%P, where P is the net taxable value of the assets.

The tax is reduced by the difference between:

- The amount of wealth tax and of all the taxes due in France and outside France in respect of the revenue for the previous year
- 75% of the worldwide revenue received

4. Exemptions and reliefs

4.1 Exemptions applicable to both inheritance and gift taxes

Exemptions may affect assets or persons.

The following are exempt from inheritance and gift taxes:

- Units or shares in companies with a business activity that, prior to being part of the estate or the gift, were part of an official collective lock-up arrangement signed by the shareholders and their heirs (*Dutreil pact*) for up to three-quarters of their value (Article 787 B, FTC)
- Sole proprietorships that were part of a lock-up arrangement by the heirs made in the estate declaration or in the gift act (Article 787 C, FTC) for up to three-quarters of their value
- Woodlands and forests, as well as forest group units that are part of a sustainable management commitment for up to three-quarters of their value (Article 793, FTC)
- Rural assets under long-term leases or transferable leases, as well as shares in agricultural land groups under certain conditions, for up to three-quarters of their value (Article 793, FTC), reduced to half of their value if the amount exceeds €101,897 (Article 793 bis, FTC)
- Units in rural land groups under certain conditions (Article 848 bis, FTC)
- Buildings classified as historical or related monuments and shares in real estate companies owning such buildings under certain conditions (Article 795 A, FTC)
- Gifts and bequests to the state, public authorities, scientific and educational public institutions, certain associations or foundations recognized to be of public use acting in a charitable context, charitable organizations, environmental protection institutions, animal protection, medical or scientific research (Article 795 A, FTC)

Specific exemptions from inheritance tax

An inheritance received by the surviving spouse is fully exempt from inheritance tax (Article 796-0-bis, FTC).

There is also full exemption from inheritance tax between siblings under certain conditions related to disability or age, as well as the shared residence of the deceased with the beneficiary or beneficiaries (Article 796-0-ter, FTC).

Specific exemptions from gift tax

Certain gifts in-kind to a child, grandchild or great-grandchild are exempt from gift tax for up to €31,865 if the donor is less than 80 years old and the donee is of full age or is an emancipated minor (Article 790 G, FTC).

This exempt gift must be declared and can be renewed every 15 years.

4.2 Exemptions and reliefs from wealth tax

Exemptions

The law exempts from wealth tax certain property or rights, including:

- Antiques, works of art or collectors' items (Article 885 I, FTC)
- Industrial property rights, as well as literary and artistic property rights held by the author (but no exemption for the rights held by the heirs)
- Woodlands and forests, as well as forest group units, for three-quarters of their value, provided that they are operated according to specific standards (Article 885 H, FTC)
- Professional property needed for the exercise of a profession, including company shares under certain conditions (Article 885 N, FTC)
- Shares in joint-stock companies with a business activity held by shareholder-managers under certain conditions related to the remunerated functions performed in the company and to the extent of the stake held (at least one-quarter of the share capital) making it possible to assimilate the shares to professional property (Article 885 O bis, FTC)
- Shares in companies with a business activity that may or may not be held by shareholder-managers for up to three-quarters of their value and that are the subject of an agreement (*Pacte Jacob*) for a continuous holding period of at least eight years (Article 885 I bis, FTC)
- Rural property and shares in agricultural land groups under certain conditions (Article 885 H, FTC)
- Shares in companies characterized as small and medium-sized enterprises (SMEs) subscribed at the time of the formation of the company or of a capital increase under certain conditions (Article 885 I ter, FTC)
- Shares in operating companies for three quarters of their value, for employees and corporate officers of such companies, provided that the latter undertake individually to keep the shares for six years (Article 885 I quater, FTC)

These exemptions apply to both French property and property outside France.

French law also exempts financial investments of nonresidents. However, the following do not qualify as financial investments:

- Investment securities (*titres de participations*) (securities representing more than 10% of the capital of a company)
- Shares in companies directly or indirectly holding real estate in France

French law also temporarily exempts (for five years) all assets located outside France owned by a taxpayer who moves to France and becomes a French resident (see Section 2.2).

Reliefs

Several measures have been put in place to reduce the tax payable, in particular:

- Tax relief in the event of direct investment or investment via a holding company by subscription to the capital of a company characterized as an SME, equal to 50% of the payments made and capped at €45,000 depending on the amount subscribed, under certain conditions (Article 885-0 V bis, FTC)
- Tax relief in respect of gifts to certain not-for-profit organizations of general interest, equal to 75% of the payments made and capped at €50,000 (€45,000 if the taxpayer simultaneously uses the above-mentioned measure) (Article 885-0 V bis A, FTC)

Cap on wealth tax

For taxpayers resident in France, the amount of the wealth tax calculated after application of the scale above and potential tax reductions may be reduced so that the cumulated amount of wealth tax and various other taxes paid by these taxpayers does not exceed 75% of their overall revenue (Article 885 V bis, FTC).

A new anti-abuse rule was introduced by the Finance Bill for 2017 targeting taxpayers who deliberately limit their income in order to benefit from the wealth tax cap mechanism by creating an intermediary company that is subject to corporate income tax, controlled by the taxpayer and would receive the dividends that the taxpayer normally would have received directly (the so-called "cash box" scheme). From 1 January 2017, the law now provides that the tax authorities may take these dividends into account for the calculation of the cap.

5. Filing procedures

5.1 Inheritance tax

All of the beneficiaries of an estate, heirs and legatees, are required to sign an estate declaration even if no tax is due for reasons related to territoriality rules.

The estate declaration may be drafted by one of the heirs on behalf of all heirs. It must, in addition, list all the assets in the estate.

The estate declaration (Form No. 2705) must be filed within six months of the death, if the death occurred in France with the tax center of the domicile of the deceased.

If the deceased died while abroad, it must be filed within one year of the death with the nonresident tax center.

Filing a declaration is mandatory even if no tax is due. It must indicate the testamentary provisions made by the deceased, all the gifts made by the deceased, regardless of how long ago, and the description and estimate of all the assets that are part of the estate (including exempt assets).

In principle, inheritance tax must be paid in cash at the time of filing the declaration. However, under certain conditions, payment may be deferred or made in installments.

5.2 Gift tax

A gift *inter vivos* is, in principle, a notarized act that the notary must file with his or her tax center within one month from the day of the signature of the act.

The tax is paid into the hands of the notary who transfers it to his or her tax center.

Hand-to-hand gifts that are not reported at the time of the gift but are subsequently disclosed must be reported using Form No. 2735 within a month of this disclosure to the donee's tax center if the latter is a resident of France or to the nonresident tax center otherwise.

Hand-to-hand gifts exceeding €15,000 may be declared one month following the donor's death (see Section 1.2).

5.3 Wealth tax

Taxpayers subject to wealth tax whose assets are worth between €1.30 million and €2.57 million must indicate each year the amount of the gross and net taxable value of their assets in addition to their taxable income on Form No. 2042, commonly used for their income tax. The tax will be paid on receipt of a tax assessment notice.

However, taxpayers whose assets are worth more than €2.57 million must file an annual wealth tax return (Form No. 2725) each year, no later than 15 June, specifying the taxable assets and providing the documentary evidence needed, along with the payment of the amount of tax due.

5.4 Disclosure of trusts

As of 1 January 2012, a trustee must comply with several filing requirements when:

- The settlor or the beneficiaries are French residents
- An asset placed in the trust is located in France if neither the settlor nor any beneficiary is a French resident

These filing requirements are as follows:

The trustee must, within one month of the event, file a statement concerning any creation, modification or extinction of a trust, the settlor or beneficiaries of which are French residents or, if this is not the case, if the trust holds an asset in France. The statement must also include the stipulations governing the functioning of trusts (form 2181-TRUST 1).

Failure to file the statement when the trust assets have been duly declared for the purposes of income tax and wealth tax, as well as transfer tax on inheritance and gifts, may result in a fine equal to the fixed amount of €20,000 (Article 1736 IV bis, FTC).

The trustee must, no later than 15 June of each year, file an annual statement of the assets placed in the trust as of 1 January of that year, if the assets placed have not been declared within the context of the French wealth tax due by the settlor (form 2181-TRUST 2). It must describe the terms of the deed of trust and list the assets placed in the trust and their FMV on 1 January of the year of declaration. The annual return is accompanied by payment of a tax equal to 1.5% of the assets comprising the trust, if appropriate (see Section 7.1).

Tax reassessments relating to income, assets or rights linked to an undeclared trust may be subject to a specific penalty equal to 80% of additional tax assessments, with a minimum penalty of €20,000 (Article 1729-OA, FTC).

These forms must be completed in French.

5.5 Declaration of funds held outside France

When declaring their annual income, individuals resident in France must declare any bank accounts that they hold abroad and any insurance policies taken out abroad.

A taxpayer who fails to make this declaration will be liable to a tax fine of €1,500 per undeclared item (€10,000 if the account is in a country that does not accept the exchange of information), provided that the assets have been duly declared for the purposes of income tax and wealth tax, as well as transfer tax on inheritance and gifts.

However, if said assets have not been declared for the purposes of the above-mentioned taxes, all additional tax assessments related to the amounts or income recorded in bank accounts or life insurance policies may give rise to an 80% increase (Article 1729-0A, FTC).

6. Assessments and valuations

6.1 Inheritance tax

Inheritance tax is based on the value of the assets transferred and taxable, which are, in principle, appraised at their actual market value as of the day of death (economic value of the asset based on its particularities, without taking into account any conventional value).

However, certain assets are subject to specific legal rules of appraisal, including the following:

- The primary residence of the deceased is subject to a 20% deduction from the market value.
- Furnishings are appraised at 5% of the estate assets, except when an inventory is prepared by a civil law notary.
- The listed marketable securities are appraised at the price as of the date of death or based on the average of the last 30 prices prior to the death.
- The debts owed to the deceased as at the date of death are taken into account for their nominal amount plus interest due not yet paid and interest accrued as at that date.
- Life tenancy and bare ownership transferred through the estate have the value set by a scale established by law (Article 669, FTC).
- Lifetime usufruct: regarding assets of which the bare ownership or usufruct is transferred, the value varies with the age of the usufructuary as shown in the table below.

Age of the usufructuary	Value of the usufruct	Bare ownership value
Up to 20	90%	10%
From 21-30	80%	20%
From 31-40	70%	30%
From 41-50	60%	40%
From 51-60	50%	50%
From 61-70	40%	60%
From 71-80	30%	70%
From 81-90	20%	80%
91 and over	10%	90%

When the usufruct is settled with a fixed term, it is estimated at 23% of bare ownership for each 10-year period, or part thereof, of the usufruct, without regard to the age of the usufructuary.

The use of the fixed-term usufruct cannot give a usufruct value exceeding that of the lifetime usufruct.

Inheritance tax is calculated on the share of each heir, after deduction of the deceased's debts existing as at the date of death. Debts for which the deceased is not liable as at the date of death are not deductible. The same applies to certain debts such as those of contractual origin for the benefit of an heir, except in some cases. In addition, debts concerning exempt assets are charged as a priority against the value of these assets.

6.2 Gift tax

In principle, gifts follow the same rules as estates, but the 20% deduction for the primary residence, the 5% flat fee for furniture and the listed marketable securities based on the average of the last 30 prices are not applicable.

Debts concerning gifted assets are not deductible from the tax base of the gift tax.

6.3 Wealth tax

The assets must be valued at their market value on 1 January of the year of taxation under the same rules as those relating to inheritance tax described above. The taxpayer's principal residence, however, benefits from a 30% deduction from its market value instead of 20%.

Property or rights that are subject to the division of ownership rights (usufruct or right of use) must be declared for their value under unrestricted ownership.

The valuation of the shares of a company whose assets are mainly French real estate (whether owned directly or indirectly) must be performed according to specific rules. The valuation is based on the value of the assets as of the day of the valuation, minus current liabilities, but excluding any liabilities represented by debts held, directly or indirectly, through interposed companies by a nonresident shareholder of the company.

Wealth tax is calculated on the value of the taxable assets after deduction of debts against the taxpayer's assets.

Deductible debts are debts of any kind that exist on 1 January and for which the taxpayer is personally liable. They include:

- Due taxes (income tax, property tax (*taxe foncière*) and housing tax (*taxe d'habitation*), wealth tax, etc.)
- Loans
- Bank overdrafts

Debts concerning assets that are not included in the taxable estate or are exempt from wealth tax are not deductible.

7. Trusts and *fiducie*

7.1 Trusts

Trusts are institutions that do not exist under French law. However, French jurisprudence recognizes the validity of trusts set up abroad and recognizes the effects that those trusts may produce in France, provided that:

- They respect the laws in effect in the country in which they were created.
- They do not infringe the mandatory rules of French law (in particular those relating to the reserved portions of a deceased person's estate).

Thus, a trust established abroad seeking to circumvent the mandatory rules under French law protecting the heirs statutorily entitled to a reserved portion of the estate in France may be considered null and void in France or as having limited effect.

Furthermore, the greatest uncertainty exists regarding the possibility of placing French assets in a trust. It is practically certain that placing French immovable property in a trust is not possible. Conversely, the validity of a trust relative to French movable property is more controversial. Case law has indeed approved a testamentary trust relative to an estate, including French movable property, which is governed by the law of the deceased's domicile outside France.

The answers provided by French jurisprudence in civil matters to the various situations involving trusts are incomplete.

However, from a French tax law point of view, Law No. 2011-900 of 29 July 2011 establishes a treatment obviously intended to fight against any possibility of tax evasion.

These provisions do not reflect the various distinctive characteristics that may affect trusts (revocable or irrevocable trusts, discretionary or not). They define a single tax regime by denying the effects of foreign law related to any particular form of trust.

The purpose of these provisions is to:

- Subject the assets owned by the trust to the duty on transfers without valuable consideration (*droit de mutation à titre gratuit*) as if the trust did not exist, upon the death of the initial settlor and upon the death of the successive beneficiaries when the assets are kept by the trust (the successive beneficiaries are then treated as the initial settlor) according to territoriality rules similar to those relating to inheritance tax (see Section 2.1)
- Subject the assets owned by the trust to wealth tax as if the trust did not exist, according to territoriality rules similar to those relating to wealth tax (see Section 2.2)
- Create new declarative requirements for disclosure of the trusts under the responsibility of the trustees (see Section 5.4)

Taxation of transfers made by means of trusts

The rules described below apply to gifts and deaths occurring as of 30 July 2011.

Duty on transfers without valuable consideration is due:

- On the entirety of the assets of the trust, regardless of their location, when the settlor is a French resident or when the beneficiary(ies) has (have) been domiciled in France for at least 6 years during the last 10 years, at the time of the transfer
- Only on the assets of the trust located in France, if neither the settlor nor the beneficiaries (as defined above) are French residents

The properties or rights that come under the territoriality rules described above are subject to different taxation rules depending on whether the transfer can or cannot be classified as a gift or an inheritance:

- Should such classification be possible, the transfer of properties or rights is subject to the ordinary law taxation rules on inheritance and gifts, according to the relationship existing between the settlor and the beneficiaries.
- Should such classification not be possible, the transfer of properties or rights, whether maintained in the trust or distributed to the beneficiaries outside the context of a succession, is taxable under the specific rule according to the case at hand:
  - If, at the time of the death, the share due to a beneficiary is determined, this share will be subject to inheritance tax at a rate according to the relationship existing between the settlor and the beneficiary.
  - If, at the time of the death, a share is allocated globally to the settlor's descendants, that share will be subject to inheritance tax at the rate of 45%.
  - If, at the time of the death, a share is neither globally allocated nor attributed to a determined beneficiary, that share is subject to inheritance tax at the rate of 60%.

It should be noted that a transfer is always taxed at 60%:

- When the trustee is established in a tax haven
- When the trust was established after 11 May 2011, by a settlor who was a French resident at the time of the constitution of the trust

Wealth tax on the assets of a trust

Subject to the application of international tax treaties, the settlor (or after his or her death, the beneficiaries treated as the initial settlor) is subject to net wealth tax on:

- The assets placed in the trust, regardless of the location of such assets, if the settlor is a French resident
- The assets placed in the trust located in France (except for financial investments) if the settlor is not a French resident

In the event of non-disclosure of assets placed in a trust for the purposes of wealth tax, a new tax has been created at the rate of 1.5% in order to replace wealth tax as a penalty for such non-disclosure (applicable as of 1 January 2012):

- On assets located in France or outside France if the settlor and the beneficiaries are French residents
- Only on the assets located in France (except for financial investments) if the settlor and the beneficiaries are not French residents

This 1.5% tax would not be due on assets:

- Included in the settlor's wealth tax base
- Officially disclosed but not liable to wealth tax

Those liable for the 1.5% tax are the settlor and the beneficiaries of the trust jointly. However, this 1.5% tax must be computed and paid by the trustee by means of a declaration to be filed on 15 June each year.

7.2 *Fiducie*

In 2007, French law created a new institution called *fiducie*, governed by articles 2011 to 2031 of the French Civil Code.

In some ways, the *fiducie* resembles a trust. Indeed, it allows a settlor to transfer property and rights to a *fiduciaire* (trustee) who will act for the benefit of a beneficiary.

The *fiducie* may be useful for the management of the assets of minor orphans or legally disqualified persons.

However, contrary to a trust, the *fiducie* cannot, according to the law (Article 2013 of the French Civil Code), be used for the purpose of donation at the risk of it being rendered null and void.

For the purposes of this guide, the *fiducie* is therefore of little interest, and its tax regime will not be further developed here.

8. Grants

With regard to estate taxes, there are no specific rules in France on grants.

9. Life insurance

Money paid by an insurance company under a life insurance policy held by the deceased and whose beneficiary is a third party is theoretically not subject to the rules governing successions. Consequently, this method, with its related tax advantages, is popular in France for carrying out asset transfers that the application of civil law rules (affecting the reserved portion) or tax rules (cost) could prevent.

Under civil law, the situation of the beneficiary of the contract is as follows:

- The money paid by the insurer is outside the succession; consequently, the money is neither subject to hotchpot (the process of returning to the mass of the succession any properties that a beneficiary has received in advance of his or her share so as to achieve equal division between beneficiaries) nor reducible through action for abatement.

- Furthermore, the premiums paid by the policyholder are not subject to hotchpot or abatement and may not be considered as forming a voluntary disposition subject to hotchpot or action for abatement unless the premiums paid were clearly exaggerated compared to the person's income or assets.
- From a fiscal viewpoint, money paid by the insurance company is not, in principle, part of the taxable estate.

However, this money may be partially taxable in application of specific tax rules for policies taken out since 21 November 1991:

- Premiums paid by the insured after age 70 will be subject to inheritance tax for the portion exceeding €30,500 (Article 757 B, FTC); conversely, interest generated by these premiums remains non-taxable (Article 757 B, FTC).
- A special 20% tax is levied on money paid by the insurance company in excess of €152,500 per beneficiary on the amounts corresponding to the premiums paid prior to the insured's 70th birthday (Article 757 B, FTC).

The tax rate is 31.25% on the portion of the net taxable profit exceeding €700,000.

Currently, only policies taken out before 21 November 1991 and whose premiums were paid before 13 October 1998 give entitlement to full exemption for death benefits.

10. Civil law on succession

10.1 Estate planning

The purpose of estate planning is to achieve two main objectives:

- A civil objective: to make it possible to anticipate the transfer of one's assets according to one's wishes, in order, for instance, to favor one's spouse
- A tax objective: to limit the taxation impact of the transfer of assets

Civil objective

The objective may be to give the surviving spouse more than he or she is normally entitled to receive, and in such cases, it will be possible to modify the matrimonial property regime or to provide for marital benefits. In these contexts, unlike in the case of donations and wills, the transfer of wealth is performed free of tax in France.

The objective may also be to give a person outside the family a part of the wealth, and in such cases, it will be possible to use a hand-to-hand gift (*don manuel*), a life insurance contract or a joint tenancy (*pacte Tontinier*).

Finally, it should be noted that within the context of estate planning, two vehicles are often used in France:

- A French non-trading company (*société civile française*), which is a company with a wide corporate purpose and a simple method of functioning, facilitating the transfer of wealth. This type of company is frequently used by nonresidents to hold real property in France (*société civile immobilière* or SCI).
- Separation of the attributes of ownership of an asset by separating temporarily, on the one hand, the right to use and the right to benefit from the revenue of those rights and, on the other hand, the right to dispose of such an asset (sale, modification, transfer). This separation makes it possible:
  - From a French civil law point of view, to split the powers of the assets between different people
  - From a French tax point of view, to reduce the impact of the taxation on the transfer

Tax objective

The main objective will be to limit the tax burden, especially in the case of transfers.

Among the most commonly used estate planning vehicles are the non-trading company and the separation of attributes of ownership (*démembrement de propriété*).

The objective may be for a parent to transfer to their children only the bare ownership of property by a donation, which reduces the tax base accordingly. Upon the death of the usufructuary, the usufruct ends and the bare ownership of the property is reconstituted in the hands of the children, free of tax.

The objective may also be for a parent to acquire an asset through a non-trading company and to transfer the shares to his or her children every 15 years to allow the application of the lower rates of the tax scale.

French law includes provisions to limit the use of the separation of attributes of ownership and the use by nonresidents of real estate companies with a view to avoiding wealth tax or inheritance tax. These provisions include, in particular:

- The measure against the separation of attributes of ownership performed other than by a donation of bare ownership between a parent and his or her bare-owner children whereby, in the event of the death of the usufructuary, the value of the asset subject to unrestricted ownership must be added to the inheritance as if it had not previously been transferred by donation (Article 751, FTC)
- The measure — relating to wealth tax — against the undervaluation of shares held by a nonresident in a non-trading real estate investment company (SCI) by means of recourse to heavy indebtedness towards the SCI's own shareholders who have granted it advances (treated, in accordance with French law, as exempt debts, see Section 4.2). In such a case, such advances are not taken into account for the valuation of the SCI's shares (see Section 6.3).

Abuse of law

In the presence of a tax-saving scheme, the tax authorities may use the procedure for the prevention of abuse of law (Article L64, *Livre des Procédures Fiscales*) when the scheme appears to be legitimate and difficult to dispute.

The authorities may call the scheme into question, arguing that it is:

- Fictitious and it conceals another operation (for example, a sale at a very low price concealing a donation)

  Or
- Has been carried out solely for tax purposes, without any economic, legal, financial or family justification

In the event of acknowledgement of abuse, the penalty is equal to 80% of the tax evaded.

10.2 Succession

The fundamental principles of estate law and voluntary dispositions are as follows:

- The law classifies presumptive heirs by category and degree starting with the category of descendants. If there are heirs in the first category, they supplant the next category; furthermore, within one category, the inheritance goes to the heirs that are the closest relatives (see Section 10.5).
- The heirs become owners of the assets of the deceased upon the death thereof without formalities except when an administrator is appointed.
- The heirs, considered as successors of the deceased person, are liable for the debts of the estate even in excess of the amount of the assets, unless they have filed an official declaration with the regional court (*tribunal de grande instance*) stating that they accept the inheritance only to the extent of net assets.
- The right for a person to dispose of his or her estate free of charge is limited in order to guarantee that the heirs receive a part of the estate considered as intangible (the reserved portion of the estate of the deceased).
- There is a ban on the heir disposing of a future estate beforehand or waiving it before the opening of the succession (ban on future estate pacts), except for gifts between spouses and agreements as to future successions for waiver of action for abatement.
- Gifts are generally irrevocable.

- It is impossible to disinherit a descendant.
- There is a principle of equality among heirs of the same degree (except for the disposable portion).

Transfer of property

French law provides for specific rules regarding the transfer of property. However, a person may want to organize his or her own succession to favor a certain member of his or her family. To achieve this goal, the following may be used:

- With respect to the person's spouse, marital benefits or a gift between spouses and a will
- With respect to the person's children or any other person, gifts or a will

The freedom to dispose of one's assets is limited by the rights of the descendants of the deceased and the deceased's spouse on an intangible portion of the estate known as the reserved portion. The available portion is called the disposable portion.

The portion reserved for the children of the deceased is equal to half of the estate if the deceased is survived by only one child. It is equal to two-thirds of the estate if the deceased is survived by two children and three-quarters if the deceased is survived by three or more children. The portion reserved for the spouse is one-quarter of the estate and only exists if there are no descendants.

A person may freely dispose of the disposable portion and specifically benefit his or her spouse (through a gift between spouses or through a will) (see below) by choosing between:

- Usufruct of the entire estate
- Unrestricted ownership of the disposable portion
- Ownership of one-quarter of the estate and usufruct of three-quarters

To ensure compliance with the reserved portion and equality among heirs, at the opening of the succession, the voluntary dispositions and bequests made must be verified (through the hotchpot process) in order to limit them if necessary (a process known as action for abatement, i.e., where heirs claim back part of an excessive lifetime gift by the deceased that has detracted from their legal share of the inheritance).

Transfer and division of the estate

Heirs may simply accept the estate, which would make them the owners of all of the assets and liabilities of the deceased.

They may accept it up to the net assets in order to limit their liability on the estate debts, or they may waive their right to the inheritance.

The heirs, as a result of the sole fact of the death, have the ownership and can administer the estate of the deceased. However, a person may, by means of a notarized act, designate during his or her lifetime one or more administrators of the estate (posthumous mandate).

To determine the portions of each heir, the following is done:

- The matrimonial regime of the deceased is cancelled so that the spouse can be attributed the portion of joint assets to which he or she is entitled.
- A statement of the deceased's assets is drawn up as if at the time of the division the deceased had never made any voluntary distributions; this ensures that the reserved and disposable portions are calculated.
- Action for abatement of excessive voluntary dispositions is brought by the forced heirs entitled to the reserved portion against the beneficiaries of these dispositions; however, the heirs may waive this action for abatement by notarized act (agreement as to future succession) prior to the opening of the succession.

- Voluntary dispositions already made are brought into hotchpot provided that the heir that has received them is presumed to have received a portion of his or her future inheritance in advance (except, among other things, divided gifts (*donation-partage*) not subject to the hotchpot process).

Other gifts, free conveyances and voluntary dispositions

To offset the rules of devolution by law, French law offers several legal mechanisms that become effective either immediately and irrevocably (gifts) or at the time of death of the trustee (gift between spouses of future assets or bequests by will).

It would be impossible to address here the various types of gifts or bequests or their conditions of validity and system. We will simply cite the principal ones along with their fundamental features.

Gifts

A gift *inter vivos* is, in principle, a notarized act by which the donor transfers an asset immediately and irrevocably to the beneficiary. In principle, it is subject to hotchpot unless otherwise directed by the donor.

It may also carry obligations imposed by the donor on the donee (gift with a condition attached) such as gradual gifts (gifts made to a person who would transfer the assets received upon his or her death to another person designated by the donor) and residual gifts (gifts made to a person who would then transfer what is left from the assets at his or her death to another person designated by the donor).

Bequests

Bequests are provisions that become effective upon the donor's death as part of a will. They may pertain to the entire succession (universal bequest), or to a share of a succession (legacy by general title) or private assets (specific bequest). They may be gradual or residual, similar to gifts, and are set up through a will.

Under French law, four types of wills are authorized:

- The authentic will received by two civil law notaries or a notary and two witnesses
- The holographic will written entirely by the testator by his or her own hand
- The secret will prepared by the testator and given in an envelope to a civil law notary
- The international will

A will is freely revocable by the testator at any time.

Gifts of future assets between spouses

By will or by a notarized gift act (gift to the last survivor), it is possible to give one's spouse specific assets or a portion of one's assets. The effective date of the gift (as in the case of a bequest) is the date of death of the donor. This type of act may always be revoked. The maximum that may be transferred to the spouse is the disposable portion between spouses.

Impact of private international law

As from 17 August 2015, France has applied European Regulation No. 650/2012 of 4 July 2012.

In the case of deaths occurring after 16 August 2015, new conflict-of-law rules are going to apply for the European Community States (except for Denmark, Ireland and the United Kingdom) and will concern all residents of the European Community, regardless of their nationality. In the European Community, the law applicable henceforth to a succession will be the law of the last habitual residence of the deceased and will concern real estate as well as movable assets. However, the deceased may choose, by will, to designate his or her national law as the applicable law. This choice may already be exercised, but will only take effect for deaths occurring after 16 August 2015 (*professio juris*).

The EU Regulation is of a universal nature and is, in principle, also applicable to successions that include assets outside the European Community, as well as Denmark, Ireland and the United Kingdom.

Testate successions are also subject to rules regarding the law applicable to the succession presented above.

When the European Regulation designates the law of a non-EU state as the applicable law, referral may be implemented and the conflict rule for that state taken into account.

To illustrate referral, we will use the example of a French person who dies in an apartment that he owns in Tangiers, which is his domicile. French law designates Moroccan law as the competent jurisdiction to manage the succession. Nevertheless, Moroccan law designates the deceased's national law to be solely competent. The entire estate will be subject to French law.

However, in the case of succession concerning a state not governed by this Regulation, the latter may refuse the designation of its law as the applicable law and refer to the law of another Member State of the EU or to another state, which may result in a new scission in the settlement of the succession.

For example, suppose a British national is domiciled in the United Kingdom and owns a house in France. The EU Regulation designates English law for the transmission of this house in France. However, the United Kingdom is a state that is not governed by the EU Regulation. English law refers to French law for this house. The entire succession of this British national will be governed by English law except for the house in France, which will be governed by French law. To avoid this scission, the British national should stipulate in his will that he chooses English law for this property (according to the principle of *professio juris*), but it is not certain that English law will accept the effects of such designation.

The defined law applicable to the succession determines the presumptive heirs and establishes links of kinship, presumptive heirs who are forced heirs, the amount of the reserved and disposable portions of the estate, the succession rights of the surviving spouse (although there may be some interferences with the rights of the spouse derived from the matrimonial system), the transfer of the administration of the estate and its distribution.

The European Regulation also provides that, in the event of conflict, the competent courts shall be those of the state of residence of the deceased, if this residence is in an EU Member State. If the *professio juris* option has been exercised in favor of an EU Member State other than that of the deceased's residence, jurisdiction may be assigned to the chosen state (if the heirs so request or if the courts of the place of residence consider the choice to be relevant).

10.3 Forced heirship

The portion reserved for the children of the deceased is equal to half of the estate if the deceased is survived by only one child. It is two-thirds of the estate if the deceased is survived by two children and three-quarters if the deceased is survived by three or more children. The portion reserved for the spouse is one-quarter and only exists if there is no descendant.

10.4 Matrimonial systems and civil partnership

In France, spouses who marry without a marriage contract have a joint estate by law.

The spouses may also, by contract:

- Adjust the community system
- Adopt the system of sharing after-acquired property
- Adopt the system of separation of property

Community of marital property

In the community property system, the assets are divided into three groups:

- The separate property of each of the spouses, including assets that the spouses had prior to their marriage, assets received through a succession, gift or bequest, or assets acquired through reinvestment of private property or separate property of the spouse by accessory (for example, a house built on the spouse's separate property land).
- Joint assets that include acquisitions made together by the spouses with their gains, salaries, savings and revenues from their own separate property.
- At the end of the contract (by death, divorce or change of system), each of the spouses receives the separate property assets and proceeds and then the joint assets are shared. When the community property is shared out, the transfers of wealth that have occurred during the marriage between the two spouses' separate property assets and the joint assets must be determined in order to indemnify any assets that have increased in value at the expense of the others.

Adjustment to community property — marital benefits

Under the community property system, the spouses may, by means of a prenuptial agreement, make changes to the content and rules of sharing the community property as they see fit.

Some of the most frequently used clauses are:

- Universal community, by which all of the assets, even those that are a spouse's separate property, are considered joint assets
- The *préciput* clause, which sets forth that the surviving spouse, prior to any division, has the right to receive a predefined item from the community property
- The clause of allocation in full of all of the joint assets to the surviving spouse

It should be noted that all of these clauses, called marital benefits, even if they are intended to benefit a spouse, are not considered gifts from a civil law viewpoint (no possible challenging for the heirs) or from a tax viewpoint.

The marital benefits method is used very frequently in order to favor one's spouse in the event of future succession.

Separation of property

Each of the spouses is the sole owner of his or her assets and revenues. If an asset is acquired with the other spouse, that asset is owned jointly by the spouses. In the event of dissolution of this system, each spouse would reclaim his or her assets and the undivided property based on the contribution of the spouses for their acquisition.

Sharing after-acquired property

This system is inspired by German law. While the system is in force, it functions as a separate property system. After it ends, each of the spouses has the right to enjoy half of the value of the enrichment that has occurred in the assets of the other spouse.

Aspects of private international law relating to matrimonial systems

On 1 September 1992, France adopted the law from the Hague Convention of 14 March 1978, applicable to matrimonial property regimes.

The spouses may choose the domestic law that will govern their matrimonial property regime either by applying:

- The laws of the country of which one of the spouses is a national
- The laws of the country in which one of the spouses has his or her habitual residence
- The laws of the country in which one of the spouses establishes his or her habitual residence after the marriage

The law thus chosen applies to all the assets of spouses, but it is possible to choose to have immovables governed by the law applicable to the place where the immovables are located.

If the spouses have not designated the law applicable to their matrimonial property regime, the latter will be subject to the domestic law of the country in which they established their first habitual residence. If there is no such shared residence, the applicable law shall be that of their common nationality. The spouses may, during marriage, voluntarily choose to modify their matrimonial property regime and the law that will be applicable thereto, regardless of whether they had initially selected the domestic law and matrimonial system. However, this choice is limited to the laws described above.

If the two spouses have not voluntarily chosen the domestic law applicable to their matrimonial system and have been subject to the law of their first habitual residence, in the event that they then change their country of residence, the law applicable to them will automatically change, unless they express their objection to such change.

The two principal cases of such change are:

- When the spouses establish their habitual residence in the country of which they are both nationals
- When the spouses have been residents in a country for more than 10 years

Two new EU regulations concerning matrimonial property regimes and civil partnerships were published on 24 June 2016: Council Regulation (EU) 2016/1103 and Council Regulation (EU) 2016/1104.

The Hague Convention will no longer apply in France as from 29 January 2019, and as from that date, 17 other EU Member States will adopt the same new rules concerning conflict of laws and of jurisdiction with regard to matrimonial property regimes and civil partnerships. In terms of matrimonial property regimes, the EU regulation includes the main principles of the Hague Convention, but it does not include the automatic change of law described above.

Civil partnership

From the point of view of personal asset management, a civil partnership registered in France creates neither a marital regime nor inheritance rights between the partners. The partners' asset regime only applies to the assets acquired during the civil partnership, which are assumed to be in joint ownership, unless a clause in the civil partnership agreement provides for another option. The transfer of property between partners can only be settled by donations, wills and joint acquisition (notably with the use of a non-trading company).

French law recognizes the consequences on the estate in France of a civil partnership registered under foreign law only for the movable or immovable assets owned in France.

However, from a tax point of view, deductions and the tax scale are the same for married spouses as for the partners of a French registered civil partnership. Thus, a partner of a French registered civil partnership is exempt from any inheritance tax.

Partners of a civil partnership registered in another country cannot benefit from the tax advantages of French civil partnership legislation, even if the gift or succession is made under the French tax system. In order to benefit from the French tax legislation, it would therefore be necessary to enter into a French civil partnership.

10.5 Intestacy

When the deceased has not organized the succession by will, by adjustment to the marital property system or by gift to his or her spouse, the heirs and their rights can only be determined by law.

The law organizes succession by designating as heirs the surviving spouse, if any, and the members of the deceased's family, which it classifies according to four groups depending on how closely related they are to the deceased (descendants, mother and father with the brothers and sisters, grandparents, uncles and aunts with the cousins). If there are no members in the group most closely related to the deceased, then the next group in line becomes eligible.

The rights of the heirs to the succession are different depending on whether the deceased is survived by a living spouse or not.

The following are the principal cases that could occur:

- If the deceased is survived by his or her spouse and children they had together, the spouse may choose between usufruct of the entire succession or full ownership of one-fourth of such succession. If the deceased has one or more children from a different relationship, the spouse can only inherit one-fourth in full ownership.
- If the deceased is survived by his or her spouse but has no descendants, father or mother, the spouse inherits the entire succession except for half the assets still listed in the succession that the ascendants would have given to the deceased and to which the siblings of the deceased or their descendants are entitled.
- If the deceased is survived by his or her spouse with no descendant but with an ascendant, the spouse inherits half and the father and mother of the deceased each inherit one-fourth. In addition, the father and mother are entitled to have the assets that they had previously given to the deceased returned to them. If the deceased is not survived by a spouse but by descendants, such descendants are entitled to the succession in equal shares.
- If the deceased is not survived by a descendant or by a spouse, the parents of the deceased as well as his or her siblings are all entitled to the estate.
- If the deceased does not leave any descendant, father or mother, brother or sister or their children, the surviving spouse inherits everything.

It should be noted that in all the aforementioned situations in which there is a surviving spouse, the latter is entitled to enjoy for life the primary residence of the spouses and a preferential allotment of that home at the time of distribution of the estate.

10.6 Probate

Probate proceedings do not apply under French law because the inheritance passes to the heirs by way of universal succession.

11. Estate tax treaties

11.1 Unilateral rules

In case of the absence of a tax treaty, when a French resident transfers any assets free of charge (*transmission à titre gratuit*), or when a beneficiary who is a French resident receives an inheritance or a gift, double taxation is avoided in France by the application of a unilateral rule.

The tax paid in another state can be offset against the tax due in France (Article 784 A, FTC).

This rule may also be applied for wealth tax when a French resident is liable for this tax on assets located in a foreign country. In the case of the absence of a tax treaty, wealth tax paid to another state on assets located outside France may be offset against French wealth tax.

11.2 Double-taxation treaties

France has concluded inheritance tax treaties with the following countries and territories:

- Algeria, Austria, Bahrain, Belgium, Benin, Burkina Faso, Cameroon, Canada, Central African Republic, Congo, Finland, Gabon, Germany, Guinea, Italy, Ivory Coast, Kuwait, Lebanon, Mali, Mauritania, Mayotte, Monaco, Morocco, New Caledonia, Niger, Oman, Portugal, Qatar, Saint-Pierre-et-Miquelon, Saudi Arabia, Senegal, Spain, Sweden, Togo, Tunisia, the United Arab Emirates, the United Kingdom and the United States.

France has concluded gift tax treaties with the following countries and territories:

- Austria, Canada, Germany, Guinea, Italy, New Caledonia, Portugal, Saint-Pierre-et-Miquelon, Sweden and the United States.

France has concluded wealth tax treaties with the following jurisdictions:

- Albania, Algeria, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Bolivia, Canada, Chile, Cyprus, Czech Republic, Egypt, Estonia, Finland, Gabon, Georgia, Germany, Guinea, Hong Kong, Hungary, India, Indonesia, Israel, Italy, Ivory Coast, Kazakhstan, Kuwait, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mauritius, Mongolia, Namibia, the Netherlands, New Caledonia, Norway, Oman, Poland, Qatar, Romania, Russia, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Ukraine, the United Arab Emirates, the United States, Uzbekistan, Vietnam and Zimbabwe.

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1. Types of tax

1.1 Inheritance and gift tax

Germany has a unified inheritance and gift tax called "*Erbschaft- und Schenkungsteuer*" (*ErbSt*). *ErbSt* is imposed on any transfer of property at death or by gift (or by deemed gift). The basis of assessment is the benefit accruing to the transferee (beneficiary or donee), not the estate itself. The *ErbSt* is regulated on a federal level, although the tax revenue is assigned to the federal states (*Bundesländer*) of Germany.

The Federal Constitutional Court (*Bundesverfassungsgericht*) decided by judgment of 17 December 2014 (1 BvL 21/12) that the German Inheritance and Gift Tax Act (*Erbschaft- und Schenkungsteuergesetz, (ErbStG)*) and especially the regulations relating to exemptions and reliefs for business assets (see Section 4) violated German constitutional law. The legislature was required to amend the existing rules; new legislation was enacted in October 2016 and entered into force with retroactive effect from 1 July 2016. The former regulations are applicable for inheritances and donations until 30 June 2016.

Note that in the case of German family foundations, there is a deemed taxable transfer of property every 30 years, which is subject to unlimited German *ErbSt* (recurrent charge). The 30-year period starts on the date of the first transfer of property to the German family foundation.

1.2 Real estate transfer tax

The (direct or indirect) transfer of German real estate is basically subject to real estate transfer tax of between 3.5% and 6.5%, depending on the federal state in which the real estate is located. But a transfer by inheritance or gift is usually exempt from real estate transfer tax.

2. Who is liable?

2.1 Unlimited liability

Any transfer of worldwide net property either at death or by gift (or by deemed gift) is generally subject to unlimited taxation if either the decedent (donor) or the beneficiary (donee) is considered to be resident in Germany for tax purposes. German tax residence exists if any of the following conditions apply:

- An individual has a residence or his or her habitual place of abode in Germany.
- A nonresident German citizen has been resident for tax purposes in Germany at any time within the last five years prior to a transfer at death or by gift.
- A nonresident German citizen is employed by a legal entity organized under German public law. In this case the dependents who live in the household of such German citizen have a German tax domicile as well.
- A corporation or any other legal entity or estate has its place of management or legal seat in Germany.

2.2 Limited liability

Any individual or legal entity who is not resident as aforementioned will be subject to *ErbSt* only upon the transfer of net property, which is regarded as German-situated according to German national tax law. German-situated property means:

- Real estate, agricultural and forestry property situated in Germany
- Assets pertaining to a permanent establishment of a commercial business located in Germany
- Shareholdings in German resident corporations if the shareholder owns (individually or jointly with other persons closely related to the shareholder) directly or indirectly at least 10% of the registered share capital
- Inventions, designs and topographies recorded in a German register as far as assets of a German permanent establishment
- Assets that have been leased to a commercial business operated in Germany
- Mortgages or any other receivables secured by German-situated real estate or by German-registered ships, except for such receivables for which negotiable bonds have been issued
- Claims arising from silent partnerships and profit participating loans if the debtor is situated in Germany
- Any beneficial interests (e.g., right of usufruct) in the aforementioned assets

A nonresident individual as decedent (donor) is subject to an extended limited tax liability (e.g., with regard to capital claims vis-à-vis domestic debtors or with regard to movable property abroad), provided the following conditions are met:

1. Such individual was subject to unlimited income tax liability in Germany within the last 10 years prior to a transfer at death or by gift.
2. Such individual was cumulatively a German national and subject to unlimited German income tax liability for a combined period of 5 years within a 10-year time period prior to the end of the unlimited income tax liability.
3. Such individual is resident of a low-tax jurisdiction according to the German controlled foreign company (CFC) legislation.
4. Such individual has substantial economic interests in Germany within the meaning of the German CFC legislation.

Also, if the decedent, the donor or the beneficiary is a resident of the European Union (EU) or the European Economic Area (EEA), he can choose to be treated for purposes of German inheritance and gift taxation of the respective acquisition as a German tax resident so that he can claim certain maintenance allowances that are available only to German tax residents. The Court of Justice of the European Union decided on 8 June 2016 that the availability of those maintenance allowances to only German tax residents is not in line with the EU fundamental freedoms. An amendment of these rules is subject to a current legislative procedure.

2.3 Residency

Place of residence

Under German tax law, an individual's place of residence is the place (dwelling or domicile) that he or she occupies under circumstances that indicate that he or she will retain and use it on more than a temporary basis. Residence requires an intent to stay, which must be evidenced by objective criteria. The German tax authorities' interpretation of intent to stay is quite broad: such intent will be presumed if an owned or rented dwelling is held available for the exclusive use by the owner, even if it is used only from time to time. Therefore, an individual can be resident in different places at the same time.

Habitual place of abode

The term habitual place of abode implies the location where a person is physically present under circumstances that indicate that his or her presence in that particular place is not merely temporary. As a general rule, a habitual place of abode, and thus tax residence, is deemed to exist if the individual's stay in Germany exceeds six months. In this case, he or she will be deemed resident for the entire period of his or her stay in Germany, including any brief interruptions.

Residency and double-taxation treaties

Special rules on the consequences of dual residency apply with regard to certain double-tax treaties (DTTs). For example, according to the German-US DTT, an individual who is considered a resident in both contracting states pursuant to national tax law but who is a citizen of only one of the contracting states will be deemed to have its place of residence for purposes of the DTT in that state for a period of 10 years after becoming a resident for inheritance- and gift-tax purposes in the other state.

3. Rates

The applicable tax rate depends on the tax class of the acquirer (see below) and the value of the taxable acquisition. The tax assessment basis is the taxable value of the assets transferred after exemptions and reliefs.

Taxable value of the acquisition exceeds	Acquirer in		
	Tax class I	Tax class II	Tax class III
€0	7%	15%	30%
€75,000	11%	20%	30%
€300,000	15%	25%	30%
€600,000	19%	30%	30%
€6 million	23%	35%	50%
€13 million	27%	40%	50%
€26 million	30%	43%	50%

Note that the taxable value of assets, which is excluded from tax under German *ErbSt* pursuant to a DTT, must be added to the taxable value of the transfer in order to determine the applicable tax rate (progression reserve). Thus, it is not taxable but affects the overall rate.

The tax rate and the tax to be assessed are calculated on the basis of a rolling 10-year period. All acquisitions from the same person through gift or inheritance within the last 10 years are combined to calculate the basis for the tax due, and the tax on the earlier acquisitions is credited against the tax due.

Donees or heirs not in tax class I who acquire agricultural or forestry or other business assets, interests in a partnership and substantial shareholdings (direct participation of more than 25% of the registered share capital) in a corporation resident in Germany, in the EU or in the EEA can, under certain conditions, benefit from a reduction of the tax rate. This reduction is the difference between the amounts of inheritance tax calculated on the basis of the tax class to be applied pursuant to the actual relationship to the donor (decedent) and on the basis of tax class I. Note that, with regard to this benefit, the anti-abuse rules mentioned below also apply (see Section 4.2 below).

The applicable tax rate depends on both the relationship of the donee to the donor (decedent) and the value of the taxable acquisition. Donees are divided into three tax classes:

Tax class I:
- Spouse and partners of a registered same-sex partnership under German law
- Children and stepchildren
- Descendants of children and stepchildren
- Parents and ancestors (acquisition by death only)

Tax class II:
- Parents and ancestors (acquisition by gift)
- Siblings
- Nephews and nieces
- Stepparents
- Sons-in-law and daughters-in-law
- Parents-in-law
- Divorced spouse and partners of a dissolved registered same-sex partnership

Tax class III:
- All other individuals and legal entities (including donations to foundations)

4. Exemptions and reliefs

There are several asset and purpose-related exemptions and personal exemptions. Furthermore, there are certain categories of tax-favored assets.

4.1 Asset and purpose-related exemptions

- Household and personal effects up to a value of €41,000 and other movable property up to a value of €12,000 if acquired by a person in tax class I (see Section 3)
- Household, personal effects and other movable property up to a value of €12,000 if acquired by a person in tax classes II or III (see Section 3)
- Real estate (including parts of real estate), art items, collections of art and scientific items, archives or libraries, if there is a public interest in preserving such items because of their importance to art, history or science, and if the annual costs associated with those items normally exceed the income generated from such items. It also helps to make assets accessible to the public. The tax exemption for collections of art and scientific items is 60%, and includes parts of real estate. It amounts to 85% of the market value or total exemption if further conditions are met.
- Donations for a commonly acknowledged purpose (such as birthday presents, wedding, Christmas), but only if at an appropriate value with respect to the occasion
- Donations to registered religious communities, to Jewish cultural communities and to charitable organizations
- Donations to political parties
- Donations to the Federal Republic of Germany, the German states or municipalities and certain charitable foundations
- The acquisition of the family home for the owner's use is tax free if it is gifted to the spouse or to the partner of a registered same-sex partnership *inter vivos*. The tax exemption also applies if the family home is passed to the aforementioned acquirers upon death, provided that the acquirer uses the family home for his or her own purposes for a period of 10 years after the acquisition. If there are pressing reasons why the acquirer cannot use the real estate for his or her own purposes (e.g., in the event that the acquirer requires health care), this tax-free status remains unaffected.
- Children and stepchildren, as well as children of deceased children or stepchildren, can acquire the testator's family home by reason of death without paying tax if the acquirer uses the family home for his or her own use immediately and as far as the living space does not exceed 200 square meters. The portion exceeding 200 square meters is liable to tax. The exemption is lost if the acquirer does not use the family home for his or her own purposes for a period of 10 years after the acquisition.

4.2 Agricultural, forestry or business assets

A tax exemption can be claimed for certain tax-privileged assets in transfers of agricultural, forestry or other businesses, interests in trading or professional partnerships or substantial shareholdings (direct participation of more than 25% of the registered share capital) in corporations resident in Germany, in the EU or in the EEA (in the following eligible assets). The privilege amounts to 85% or 100% of the fair market value or FMV (*gemeiner Wert*) of the tax-privileged assets. For smaller business properties, an allowance of up to €150,000 can be granted additionally to the privilege of 85% on the tax-privileged assets. Under certain conditions, which are difficult to meet, family businesses can apply for a further 30% reduction of the tax base.

To gain the 85% privilege, the beneficiary or the donee has to keep the eligible assets during a five-year period after the inheritance or donation, and the direct wage costs during this period have to amount to 400% of the average wage costs in the last five years before the tax accrues. To gain the privilege of 100%, the assets have to be kept for seven years and the direct wage costs during this seven-year period have to amount to 700%. Facilitations for smaller businesses apply.

If the prerequisites for tax-privileged treatment are no longer met, the 85% or 100% privileges are abolished with retroactive effect on a *pro rata* basis that triggers supplementary taxation.

However, the 85% privilege is only granted if eligible assets are transferred and the ratio of the value of non-privileged, non-operating assets (*Verwaltungsvermögen*) to the total value of the eligible assets (*Verwaltungsvermögensquote*) at the time of the transfer does not exceed 90%. In the case of the 100% privilege, such ratio may not exceed 20%. Furthermore, the privilege of 85% or 100% is not applied in view of non-operating assets (*Verwaltungsvermögen*) that have been kept for a period of less than two years (*Junges Verwaltungsvermögen*).

Tax-privileged assets, in principle, include the following assets, so long as they are not expressly defined as non-operating assets (see below):

- Operating assets in Germany (individual companies or interests in partnerships) or foreign operating assets that serve a permanent establishment in the EU and EEA
- Proportionate operating assets of German corporations and corporations in the EU and EEA in which the decedent or donor held a direct share of more than 25% or — in the event that these are shareholdings of less than 25% — if the shares are subject to a pooling agreement and can only be disposed of according to certain rules set out in such pooling agreement or can only be transferred to other shareholders being or becoming pool members upon the share transfer, and the voting rights vis-à-vis shareholders not bound by the pooling agreement can only be exercised unanimously
- German operating assets of agricultural or forestry businesses, as well as corresponding foreign assets that serve a permanent establishment in the EU and EEA

Non-operating assets (*Verwaltungsvermögen*) include the following assets, so long as they exceed 10% of the eligible assets:

- Real estate, portions of real estate, rights equivalent to real estate rights and buildings provided to third parties for use
- Shares of 25% or less in a subsidiary corporation
- Securities and comparable receivables
- The FMV of the amount of currency, (bank) money and other claims if it exceeds 15% of the FMV of the business assets after deduction of liabilities (regulation is not applicable for finance companies within groups and for certain assets of other financial institutions)
- Collections of art, art items, precious metals, precious stones (gems), coin collections, libraries, archives, scientific collections and other items serving a private lifestyle

In the case of group structures, the ratio of privileged to non-privileged assets for calculating the tax-exempt amount and the thresholds mentioned above is determined on a consolidated basis.

In the case of an acquisition by death, non-operating assets can become privileged assets retroactively on the basis of a reinvestment into privileged assets within two years.

The exemption is, in general, limited to a value of transfers from one donor (decedent) to one acquirer of €26 million in a rolling 10-year period. Acquisitions above €26 million are subject to a decreasing exemption reaching 0% at an acquisition value of €90 million.

Alternatively, for acquisitions above a value of €26 million, the acquirer can file for an assessment of "need for tax relief," in which he or she only has to pay inheritance or gift tax in the amount of 50% of the non-privileged assets acquired, plus 50% of the assets owned by him or her before the acquisition, which would not be subject to a tax privilege if transferred. However, in the case of a further acquisition by gift or inheritance of non-privileged assets within the next 10 years, the relief is cancelled. Then a new filing for a relief is possible, taking into account an additional 50% of the non-privileged assets acquired by the further gift or inheritance.

4.3 Personal exemptions

In addition to the asset- and purpose-related exemptions, personal allowances as described below are available upon taxable acquisitions. Please note that these allowances will be granted only once within a 10-year period in each transferor/transferee relationship.

Beneficiary or donee	Allowance
Spouse and the partner of a registered same-sex partnership	€500,000
Children, stepchildren and children of deceased children	€400,000
Children of living children	€200,000
Other persons in tax class I	€100,000
Persons in tax class II	€20,000
Other persons and entities in tax class III	€20,000

An additional allowance of up to €256,000 is granted to the surviving spouse and the surviving partner of a registered same-sex partnership, provided that the surviving spouse or the surviving partner of a same-sex partnership is not entitled to pension payments upon the death of the spouse or the partner of a registered same-sex partnership. If so, the allowance is reduced by the net present value of such pension claims. An additional allowance of up to €52,000 is granted to surviving children (up to age 27) depending on their age. Any entitlement to pension and similar payments reduces the allowance in the same way as described for the spouse or the partner of a registered same-sex partnership.

For any transfer that is subject only to limited tax liability, a restricted personal allowance of only €2,000 is granted once every 10 years in each transferor/transferee relationship, regardless of the personal relationship between the transferor and transferee. As a reaction to a judgment of the Court of Justice of the European Union, an option to choose unlimited taxation under *ErbSt* has been implemented. Making use of this option leads to an unlimited taxation of all assets and liabilities being transferred along with the assets subject to limited taxation, including transfers within a time period beginning 10 years prior to the transfer for which the option has been used and ending 10 years after such transfer. On the other hand, personal allowances are determined on the basis of the actual personal relationship between the parties. An amendment of these rules is subject to a current legislative procedure.

5. Filing procedures

Generally, on any transfer of property subject to *ErbSt*, the German financial authorities must be notified within three months of the transfer by the recipient. In the case of *inter vivos* transfers, the transferor also has a reporting obligation. There are, however, certain exceptions to this notification obligation if, for example, the acquisition is evidenced by a deed certified by a German court or by a German notary public. In the case of a donation certified by a German notary public, a notification is not required.

Upon notification of a transfer subject to *ErbSt*, the German financial authorities may request the filing of an inheritance- or gift-tax return from any person involved in the transfer. The time frame for the filing must be at least one month, but an extension is generally granted upon request.

An assessment is subsequently sent to the taxpayer for any tax due, which is then normally payable within one month after receipt.

Tax due on the acquisition by death of tax-privileged agricultural, forestry or other business assets may, under certain conditions, be deferred up to seven years (interest-free in the first year) upon request.

Tax due on the acquisition by death of real estate used for residential purposes may, under certain conditions, be deferred up to 10 years (interest-free in the first year) upon request.

6. Assessments and valuations

The tax assessment basis for the German *ErbSt* is the FMV of the transferred asset. The key principles are set out below.

Real estate

The decisive factor in the valuation of real estate is the type of land to be valued. The value of undeveloped real estate is based on the real estate value, considering the plot size and the most recent standard land values issued by the local committee of experts (*Gutachterausschuss*).

The value of developed real estate is determined using the following methods:

- Sales comparison approach (for apartments, part-ownership, semi-detached and detached houses): The sales comparison approach involves determining the market value of real estate based on actual purchase prices paid for real estate that is comparable in terms of location, use, layout, type and age of the building.
- Capitalized earnings method (for rented residential property, commercial and mixed-use real estate): The value includes both the value calculated for the buildings on the basis of the earnings (building earnings value) and the land value, which is calculated in the same way as for undeveloped real estate. The building earnings value is calculated using the net annual rent less facility management costs and the interest on the real estate value multiplied by a factor that depends on the property yield and the remaining useful life.
- Cost approach (for apartments, part-ownership, semi-detached and detached houses in the absence of comparative values): Using the cost approach, the value comprises the total production costs for the installation on the real estate, as well as the real estate value (plot size × standard land value).

Business assets and company shares

Business assets are valued using uniform valuation methods, regardless of the legal form of the business. The FMV of listed shares is generally calculated based on the share price. Unlisted shares are valued using the following methods, which also have to be used to value partnerships and individual companies.

Sales comparison approach

The FMV of operating assets is derived primarily from sales among third parties that have taken place no earlier than one year before the date of taxation.

Capitalized earnings method

If there are no sales within the last year before the date of taxation, the fair market value must be estimated by taking into account earnings prospects or another recognized method that is also customary in ordinary business for non-tax purposes. The method used should be the one that an acquirer would use as a basis for assessing the purchase price. A frequently used capitalized earning method is laid out in IDW S1, issued by the Institute of Public Auditors in Düsseldorf, Germany (*Institut der Wirtschaftsprüfer in Deutschland e.V.* or IDW).

If the capitalized earnings method is used, the companies can also choose the simplified capitalized earnings method, which is set out in the German Tax Valuation Act (*Bewertungsgesetz*).

The business value calculated using the simplified capitalized earnings value breaks down as follows:

- Capitalized earnings value of the operating assets
  + FMV of the non-operating assets less the economically related liabilities
  + FMV of interests in partnerships and shares in corporations
  + FMV of the assets contributed within the two years prior to the transfer less the economically related liabilities

The capitalized earnings value of the operating assets is calculated using the following formula:

- Annual earnings that can be achieved on a long-term basis × the discount factor.
- The annual earnings that can be achieved on a long-term basis are derived from the average earnings over the last three fiscal years prior to the valuation date. The discount factor has been set to 13.75 in 2016 and can be adjusted by the Federal Ministry of Finance in accordance with the development of the term structure of interest rates.
- Intrinsic value method: The minimum value disclosed is the FMV of all individual assets less the liabilities.

7. Trusts, foundations and private purpose funds

7.1 Trusts

German civil law does not contain specific provisions for trusts, and Germany has not ratified the Hague Convention on the Recognition of Trusts dated 20 October 1984.

For example, a foreign trust with German-situated property set up by a will is invalid from a German civil law perspective. Any trust that is created will be assimilated to the legal arrangement under German civil law that most closely resembles the provisions of the trust (e.g., foundation, aggregation of property, nominee agreement, execution of a last will).

Taxation of the trust

The German tax authorities classify a trust basically on the basis of the following criteria:

- *Revocable trust:* The ownership of the assets is regarded as not being transferred to the trust. Income and assets of the trust remain taxable in the hands of the settlor.
- *Irrevocable trust:* The ownership of the assets is regarded as being transferred to the trust. The trust itself with its income and assets is subject to tax.

Taxation of the endowment with capital — inheritance and gift tax

The German tax treatment of a trust created under a foreign jurisdiction depends mainly on the economic substance of the foreign settlement. The basic criterion for determining whether the formation of a trust does constitute a taxable event under German tax law depends on whether the settlement involves a final and irrevocable disposal of ownership of the transferred assets. The transfer of assets to a trust is only subject to gift tax if the trust is then factually and legally able to freely dispose of the assets. According to the German Supreme Tax Court, the review of this criterion should be limited to the civil law position. The ruling stated that the party to whom the assets are attributable from an economic perspective is irrelevant. Consequently, the structure must be deemed a revocable trust and not constitute a transaction subject to gift tax if the settlor has reserved the following rights under the trust's constitution:

- To amend the constitution at any time
- To revoke the trust at any time
- To issue instructions to the trustee

Accordingly, the creation of a grantor's trust is, as a rule, not subject to gift tax if the settlor of a grantor's trust reserves the right to issue wide-ranging instructions to the trustee that extend to revoking the trust.

Tax class III is applied to foreign trust transfers and subjected to gift tax.

Taxation of the beneficiaries

Establishing a foreign trust leads to income tax consequences. There are certain risks with regard to pre-immigration trusts, as follows:

- If it is possible for the settlor to revoke the trust and unconditionally reclaim the assets (a revocable trust), and if the settlor has substantial influence on the investment decisions of the trustee, then the items of income (*Einkünfte*) and assets of the trust will most likely be taxed as items of income and assets of the settlor (viewed as a nominee arrangement).
- Irrevocable trusts of which more than 50% of the beneficiaries or remaindermen are relatives of the settlor are treated as foreign "family foundations" and are subject to the German CFC legislation, i.e., if the settlor is a resident in Germany, the items of income of the trust will be directly attributed to him or her and be subject to German income tax irrespective of whether there is a distribution to the beneficiaries.
- If the settlor is a nonresident, but one beneficiary or remainderman is resident in Germany, the items of income and assets of such an irrevocable trust will be attributed proportionally to such beneficiary or remainderman and will be subject to German income tax irrespective of whether there is a distribution to such person.
- If the income from the trust fund is kept in a lower-tier company in which the trust (if applicable with a related party) holds more than 50% (1% in the case of certain investment income), and on which the general CFC rules apply, the items of income of such company will be attributed to the settlors or beneficiaries proportionally as well.
- The aforesaid rules do not apply if the trust or its management is domiciled in an EU/EEA Member State. Nevertheless, the beneficiaries of the income of the trust must additionally provide evidence that they have legally and factually been deprived of the power of disposal over the trust assets.
- If the income from an irrevocable trust is distributed to beneficiaries residing in Germany, it is taxable in Germany provided that there has been no taxation according to German CFC legislation. Thus, the German CFC law takes priority over the German income tax law.

Furthermore, any distribution by a trust to a German tax resident is subject to German gift tax.

This tax impact can be mitigated by the use of alternative entities or vehicles familiar to German civil law, which may achieve the intended economic result. For example:

- *Provisional and reversionary heirs* (*Vor- und Nacherbschaft*): Appointment of a spouse as the provisional heir (broadly speaking, giving full ownership for their remaining lifetime, but subject to certain safeguards that can partially be released by the testator) and children as reversionary heirs (full ownership at the death of the provisional heir).
- *Usufruct/life interest* (*Nießbrauch*): The donor can either retain the usufruct and transfer the asset subject to the usufruct, or retain the asset subject to the usufruct and transfer the usufruct. If an asset subject to a usufruct is transferred, only the value of the asset reduced by the value of the usufruct is subject to tax. If the usufruct ends upon the death of the usufructuary, this is not subject to tax.

7.2 Foundations

According to German civil law, a foundation (*Stiftung*) is an organization whose assets are dedicated to promoting a special purpose set by the founder. Usually, the capital of the foundation needs to be preserved and only the income is spent for the defined purpose. A foundation has its own statutes regulating its organizational structure and codifying the purposes set by the founder. A foundation has no members or shareholders and is formed as a legal entity.

The foundation is formed as a legal entity by way of a unilateral declaration of intent (*Stiftungsgeschäft*) of the founder and the approval of the supervising local authority (*Stiftungsaufsichtsbehörde*). The founder declares to establish the foundation, gives the statutes and endows the original capitalization. The statutes set out the purpose and regulations for the organization of the foundation.

It is also possible to set up a so-called dependent foundation, which is not a legal entity but based on a fiduciary arrangement. The following does not apply to a dependent foundation.

Taxation of the foundation

The foundation itself is subject to tax. Charitable foundations exclusively pursue special charitable purposes according to the German General Fiscal Code and enjoy tax shelter. If the only purpose of the foundation is the provision of benefits to the founder's family members (*Familienstiftung*), the foundation is not tax privileged.

Taxation of the endowment with capital — inheritance and gift tax

The endowment with capital of a foundation — either by the first endowment or by an external donation — is a gift because the founder or donor does not receive anything in return (like a share or membership right). If a foundation inherits capital, the inheritance is regarded as an acquirement by reason of death according to the German Inheritance and Gift Tax Act. Such endowments are generally subject to inheritance and gift tax provided that the foundation is factually and legally able to freely dispose of the assets endowed to it by the founder.

If the endowment with capital is subject to inheritance and gift tax, the higher tax rate of tax class III is applicable. For a foundation that is established mainly to foster the interests of one family or specific families in Germany, tax class I or tax class II applies depending on the degree of relationship of the furthermost beneficiary and the founder according to the deed of foundation. In addition, these foundations (*Familienstiftung*) are subject to a special inheritance tax every 30 years (*Erbersatzsteuer*).

The endowment with capital of a charitable foundation in Germany by the founder or donor is tax-exempt from inheritance and gift tax provided that the foundation maintains its charitable status for at least 10 years.

Taxation of the founder — tax deduction of donations

Donations made to charitable foundations are tax deductible up to 20% of the taxable income of the donor or up to 4% of the total of his or her sales, wages and salaries, always within the respective tax year. The precondition for a tax deduction of donations is that the income of the donor is subject to income tax and assessed to taxation.

The first endowment with capital of a foundation or an external donation to the capital of such a foundation entitles the founder or the donor to a tax deduction under the condition that the founder is not the beneficiary to the capital in case the foundation is dissolved.

This means that the founder is obliged to deprive himself or herself of the assets for good in favor of charitable purposes. Donations of individuals to the capital reserve (*Vermögensstock*) of a charitable foundation may be deductible for income or trade tax purposes up to a maximum amount of €1 million in addition to the general tax deduction for donations. Spouses who made an endowment or a donation to a charitable foundation and who are assessed jointly can together deduct up to an amount of €2 million for donations. Donations or endowments to the capital reserve of a charitable foundation can be deducted in the year of payment or in the nine years following. During this 10-year period, the maximum tax deduction of €1 million (€2 million for spouses) can only be requested once.

Taxation of the beneficiaries

The provision of benefits to the beneficiaries (*Destinatäre*) of the foundation is subject to income tax for the beneficiaries. If the benefits are, from an economic point of view, comparable to dividends distributed by a corporation, they are subject to a flat rate withholding tax (*Abgeltungssteuer*) for the beneficiaries. Under certain conditions, German law allows a tax-sheltered charitable foundation to distribute a certain amount of its profit to the founder or his or her family as (appropriate) alimony (with a maximum 30% of the foundation's annual income). These recurring payments are subject to income tax for the beneficiaries with a progressive tax rate.

Furthermore, the distribution of the funds of the foundation when it is dissolved is subject to German gift tax.

8. Grants

Grants to individuals (e.g., for maintenance) can be subject to German Income Tax and to German Inheritance and Gift Tax. Specific tax exemptions can apply.

9. Life insurance

Income from life insurance is, under certain conditions, exempt from German Income Tax. Acquisitions by the beneficiary of life insurance are regarded as a gift or inheritance from the insurance holder, if applicable.

10. Civil law on succession

10.1 Succession

Under the universal succession principle, title and possession transfers automatically at death to the heirs:

- This includes unlimited personal liability for the deceased's debts (limitation may be reached by the use of special legal provisions).
- Legatees under a will have only a personal claim against the heirs with no personal liability of the heirs and only to the extent of the disposable estate.
- The estate is not regarded as a separate legal entity.
- An appointed executor may have the sole right of disposal with regard to the estate for up to 30 years.

Heirs may refuse an inheritance via a disclaimer within six weeks from the date the heir learns of his or her inheritance.

10.2 Forced heirship

The German Civil Code provides strict forced heirship rules enabling certain persons to claim a share of an estate if they are excluded from succession by the decedent's last will.

The descendants, the spouse, the partner of a registered same-sex partnership and the parents of the decedent may claim an amount of up to one-half of their intestacy share (see Section 10.5). Please note that the claim is for cash only and will not entitle the (partially) excluded claimant to any property *in specie* that forms part of the estate.

The forced heirship claim amounts to a cash value equivalent to the share of the FMV of the estate on intestacy:

- Less the FMV of any *inter vivos* gifts from the decedent to the claimant, if at the time of donation the donor stipulated that the gift should be credited against the mandatory share.

- Plus the FMV of any *inter vivos* gift from the decedent to a third person within the 10-year period prior to the death of the decedent. The addition is reduced by one-tenth for each year following the earlier bequest provided the succession takes place on or after 1 January 2010.

According to a ruling of the German Supreme Court with regard to a previous version of the respective provision, the 10-year period will not begin unless the donor gives up any economic use with respect to the gift (e.g., the 10-year period will not begin if a right of usufruct is retained by the donor).

German citizens can avoid these rules only by a pre-death waiver by the potential claimant. Such waiver may, in some events, require separate counsel for the claimant and will be valid only if performed by notarial deed.

10.3 Matrimonial regimes and civil partnerships

German family law distinguishes between three marital property regimes:

- Statutory marital property regime (*Zugewinngemeinschaft* — community of accrued gain): According to this regime, spouses and partners of a registered same-sex partnership hold their assets as separate property during their marriage or partnership, although there are partial restraints on management and disposal. Upon divorce or death, the gain accrued on the property of the spouses or the partners of a registered same-sex partnership during the marriage or the partnership is to be shared. Note that the determination of the claim for such division is subject to a rather complex procedure, which is beyond the scope of this publication. The statutory regime may be modified (within certain limits) by a marriage contract or by a contract between the partners of a registered same-sex partnership (see Section 10.4).

  Upon formal agreement (by marriage contract or by a contract between the partners of a registered same-sex partnership), which has to be implemented by notarial deed, the spouses and the partners of a registered same-sex partnership may elect one of two contractual matrimonial property regimes, which may be further modified (within certain limits) by the contract as well.
- Separation of property (*Gütertrennung*): Under this regime, each spouse or partner of a registered same-sex partnership holds his or her property independently in separate ownership. Management and disposal are not subject to any limitations deriving from the marital status.
- Community of property (*Gütergemeinschaft*): Under this regime, all assets become the joint property of the spouses or the partners of a registered same-sex partnership (common property). Immediate joint ownership is also presumed for any assets acquired by each spouse or partner of a registered same-sex partnership during the marriage or the partnership while this property regime is in force. Assets that cannot be transferred by legal transaction do not become common property (*Sondergut*). Within the marriage contract or the contract between partners of a registered same-sex partnership, the spouses or the partners can agree to exclude certain assets from common property (*Vorbehaltsgut*). Assets acquired on inheritance at death or by gift are also excluded if so stipulated by the decedent or the donor.

10.4 Intestacy

A will is a legal document that regulates an individual's estate after his or her death. Germany will normally accept the formal validity of a will drawn up under the laws of the deceased's domicile, nationality and place of residence at the time the will is made or at the time of death. Whether an individual has the personal legal capacity to make the dispositions in a will is generally governed by the law of the deceased's citizenship.

If there is no valid will at his or her death, the deceased's estate passes under predetermined rules known as intestate succession. Where there are cross-border issues, the conflicts-of-law provisions will be relevant.

A system of succession *per stirpes* governs intestate succession that divides the possible intestate heirs into different orders depending on the relation to the decedent, while the closest applicable order excludes the more distant orders.

1st order	Spouse or partner of a registered same-sex partnership and children
2nd order	Parents and their descendants
3rd order	Grandparents and their descendants
4th order	Great-grandparents and their descendants
Further heirs	More distant relatives and descendants
No heirs	State

Within the first three orders, a system of *per stirpes* distribution and lineal heirs applies. Note that the intestacy rules are partially influenced by the matrimonial property regime. To simplify the depiction, "spouse" refers to "spouse or partner of a registered same-sex partnership" in the following table.

Statutory regime	Spouse and 1 child* survives	Spouse and 2 children* survive	Spouse and 3 children* survive
Community of accrued gain	Spouse: one-quarter + one quarter	Spouse: one-quarter + one quarter	Spouse: one-quarter + one quarter
	Child: one-half	Children: one-quarter each	Children: one-sixth each
Separate property	Spouse: one-half	Spouse: one-third	Spouse: one-quarter
	Child: one-half	Children: one-third each	Children: one-quarter each
Community of property	Spouse: one-quarter	Spouse: one-quarter	Spouse: one-quarter
		Children: three-eighths each	Children: one-quarter each

**Children of a predeceased child of the intestate parent take their parent's share.*

In the event that only the spouse or the partner of a registered same-sex partnership survives (no children), the surviving spouse or the partner of a registered same-sex partnership is entitled to one-half of the estate if relatives of the second order or grandparents of the decedent are still alive at that time, and is entitled to the whole estate if only more distant relatives of the decedent are alive.

10.5 The EU Succession Regulation (EU-*Erbrechtsverordnung*)

Succession planning for people who take up residences abroad and own assets that are located in various jurisdictions is a very complex subject because of the diversity of both the substantive inheritance law rules and the conflict-of-law rules.

The EU Succession Regulation, which is binding for Germany, subject to very few exemptions, harmonizes the conflict-of-law rules on cross-border successions of 24 EU Member States and is by law directly applicable to all deaths on or after 17 August 2015. The United Kingdom, Denmark and Ireland, along with Switzerland and other countries which are not part of the EU, are not directly bound by it but may also be affected.

The regulation aims to enable EU citizens to organize succession matters in advance.

From a German perspective, the applicable law on successions on or after 17 August 2015 is basically the law of the state in which the deceased had his or her habitual residence at the time of death.

Testators are entitled to make a choice of law and determine the law applicable to their succession. This choice of law is, however, restricted to the law of nationality of the deceased at the time of making the choice or at the time of death and should be made expressly in the form of a disposition of property upon death.

11. Estate tax treaties

11.1 Unilateral rules

Foreign tax on the acquisition of certain foreign assets by death or gift, which is comparable to the German Inheritance and Gift Tax, can be credited against the *ErbSt* falling to the acquisition of these assets.

11.2 Double-taxation treaties

Germany has concluded estate, inheritance and gift tax treaties with the following countries: Denmark, France, Greece (applies only to inheritance tax regarding movable property), Sweden, Switzerland (applies only to inheritance tax; corresponding application to gift tax only for business assets and very specific cases) and the United States.

Gibraltar

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1. Types of tax

1.1 Inheritance tax

There is no inheritance tax in Gibraltar.

1.2 Gift tax

There is no gift tax in Gibraltar.

1.3 Real estate transfer tax

Stamp duty is payable on the change in ownership of property located in Gibraltar (see Section 1.5). There is no other real estate transfer tax.

1.4 Deed tax

There is no deed tax in Gibraltar.

1.5 Stamp duty

Stamp duty is payable on the change in ownership of real estate property located in Gibraltar and on instruments relating to certain capital transactions, pursuant to the Stamp Duties Act 2005. The following are the principal rates:

- On initial authorized share capital and increases thereof — flat rate of £10 per transaction
- On loan capital (on each issue, e.g., debenture stock) — flat rate of £10 per transaction

On conveyance or transfer of real estate property as follows:

First- and second-time buyers:

- First £260,000 of purchase price — zero
- Balance above £260,000 to £350,000 — 5.5%
- Balance above £350,000 — 3.5%

Other buyers:

- Where purchase price does not exceed £200,000 — zero
- Purchase price of between £200,001 and £350,000 — 2% on first £250,000 and 5.5% on balance
- Purchase price of over £350,000 — 3% on first £350,000 and 3.5% on balance

There is no stamp duty when the property is being transferred between spouses or following the dissolution of a marriage between former spouses.

Stamp duty on mortgages as follows:

- Mortgages not exceeding £200,000 — 0.13%
- Mortgages over £200,000 — 0.2%

1.6 Land appreciation tax

There is no land appreciation tax in Gibraltar.

1.7 Endowment tax

There is no endowment tax in Gibraltar.

1.8 Transfer duty

There is no transfer duty in Gibraltar (but see Section 1.5).

1.9 Net wealth tax

There is no wealth tax in Gibraltar.

2. Who is liable?

There is no inheritance tax, estate duty, wealth tax or similar taxes in Gibraltar.

Stamp duty is payable on the change in ownership of real estate property located in Gibraltar, irrespective of the residency or domicile of the owner of the property. Similarly, stamp duty is payable on relevant capital transactions irrespective of the residency or domicile of the beneficial owner of the shares or loan instrument.

3. Rates

There is no inheritance tax, gift tax, estate duty or equivalent taxes in Gibraltar.

4. Exemptions and reliefs

There are no exemptions and reliefs in Gibraltar.

5. Filing procedures

There are no filing procedures in Gibraltar.

6. Assessments and valuations

This does not apply.

7. Trusts, foundations and private purpose funds

Gibraltar trust law is based on Anglo-Saxon legal concepts, which recognizes and gives full legal effect to the concept of a trust. The Trustee Act, the main legislation governing trusts, is based on the English legislation incorporated in the Trustee Act 1893.

There have been certain amendments to the legislation, such as the introduction of the Variation of Trusts Act 1958 under the English Law (Application) Act.

Discretionary trust is known and widely applied in Gibraltar and the provisions of the Perpetuities and Accumulations Act 1964 in England apply with some amendments. The perpetuity period and the accumulation period now stand at 100 years.

The Registered Trust Act 1999 provides a facility for the registration of a trust deed (where registration is required by the trust deed) and for the keeping of an index of the names of such trusts. A registration fee is payable (£100) together with the submission of a form of Short Particulars and the Deed of Trust. The Deed of Trust is simply endorsed with the date of registration and returned; no copy is retained. The register will thereafter contain only the following details for public inspection:

- The name and date of creation of the trust
- The amount of the initial settlement
- The name of the trustee(s)
- A Gibraltar address for service
- The date on which registration was made

The capital of a trust is not liable to tax in Gibraltar.

Asset protection trusts

This type of trust seeks to protect the assets of a settlor from such situations as political strife, forced repatriation, confiscatory taxes, exchange controls and, most recently, risks associated with litigation arising out of malpractice or negligence suits or from vexatious litigants.

Such a trust may be invaded by the settlor's creditor if it can be shown that transfers into the trust lacked legal propriety. Gibraltar has sought to reduce the uncertainties that can arise when determining propriety by shifting the focus to the objective test of solvency contained in the Insolvency Act 2011, section 419A.

Under provisions contained in the Bankruptcy (Register of Dispositions) Regulations 1990, an application may be made to register the trust by an approved trustee who has demonstrated adequate financial and administrative resources and professional indemnity insurance. Thereafter, the trustee must be able to show that due and sufficient inquiry was made to establish the propriety of the disposition and the solvency of the settlor at the time it was made. The registration of the disposition is renewable annually on payment of an annual fee (currently £113). This higher degree of certainty makes Gibraltar a favorable location for setting up asset protection trusts.

Purpose trusts

The Purpose Trusts Act 2015 provides for the creation and enforcement of trusts whereby the trustees hold property on trust to carry out a specific purpose that is not of a charitable nature. Under this legislation, a purpose trust must be established with purposes for which there is sufficient certainty that those purposes are capable of being carried out. At least one trustee must be a licensed trustee. The legislation sets up powers that a trustee will need, such as the discretion to formulate the means by which to give effect to, and achieve the purpose or purposes of the trust. The bill also provides for the disapplication of the rule against perpetuities.

Taxation of trusts in Gibraltar

As from 1 January 2011, a trust is tax resident in Gibraltar if one or more of the beneficiaries are ordinarily resident in Gibraltar, or the class of beneficiaries may include an ordinarily resident person or the issue of an ordinarily resident person. The residency status of the trustees or settlor is, in itself, not relevant.

An individual who has "Category 2" tax status, or the spouse or child of such an individual (provided the individual has elected to include their spouse or child under the Category 2 rules), is not deemed to be tax resident in Gibraltar for the purposes of determining the taxation of a trust or of the beneficiaries.

A trust that is not tax resident in Gibraltar is taxable only on income that accrues in or is derived from Gibraltar. By contrast, a trust that is ordinarily resident in Gibraltar is taxable on its worldwide income. As for individuals, non-trading interest income, dividends from listed companies, non-Gibraltar property-based rental income and capital gains are not taxable in Gibraltar.

The capital of the trust is not liable to tax in Gibraltar.

Trusts of a public nature are completely exempt from income tax provided that the profits from any trade or business are only used for the purposes of the trust, and either this trade or business is exercised in the cause of carrying out a primary purpose of the trust, or the work is mainly carried out by the beneficiaries of the trust.

Trusts are taxed at the rate of 10% on any taxable income.

Payment of tax

The trustees of a trust are required to pay any tax due from the trust under self-assessment. Payments on account are due by 31 January and 30 June, respectively, in the year of assessment. Any remaining balance is payable by 30 November following the end of the tax year.

Filing requirements

The trustees of a trust with assessable income are required to file a trusts tax return by 30 November. Trusts with assessable income must draw up their accounts to 30 June each year.

Private foundations

The Private Foundations Act 2017, which was enacted in April 2017, provides a legal framework for foundations in Gibraltar. The act also provides a mechanism for overseas foundations to be registered in Gibraltar. Provisions of the act include the following:

- A foundation is an entity with a separate legal personality. As such, it can hold and deal with property in its own name as the absolute and beneficial owner.
- The Foundation Charter and Foundation Rules establish the foundation, set out its purposes and rules for its administration and provide details of the beneficiaries and guardian.
- Details of the foundation are filed at Companies House Gibraltar, which is to maintain a Register of Foundations.
- The Founder provides the initial assets as an irrevocable endowment. He or she may reserve certain powers for himself or herself, such as the ability to appoint or remove the Guardian or Councillors or to amend the Constitution of the foundation.

- The Foundation Council manages the foundation and makes distributions to the beneficiaries.
- The Council comprises a number of Councillors, which must include a Gibraltar resident company that is licensed as a Professional Trustee in Gibraltar.
- Beneficiaries may either be enfranchised or disenfranchised. The former are entitled to copies of the accounts and other documents relating to the foundation.
- A guardian may be appointed to provide protection for the beneficiaries. In certain cases — for example, if there are no designated beneficiaries or there are more than 50 beneficiaries — a guardian is required to be appointed.

Taxation of foundations and beneficiaries

Recent amendments to the Income Tax Act 2010 set out the basis for the taxation of foundations and their beneficiaries. The tax treatment in Gibraltar closely follows the principles applied to the taxation of trusts and their beneficiaries:

- A foundation registered under the Private Foundations Act 2017 is resident in Gibraltar, unless persons who are ordinarily resident in Gibraltar and the issue of such persons are irrevocably excluded from benefit in respect of the foundation.
- A foundation resident in Gibraltar is generally taxable on a worldwide basis (although, in any case, most savings-type income and rental income from overseas property is not taxable in Gibraltar).
- The applicable tax rate for foundations is 10%, which is in line with the rate for trusts and companies.
- A foundation that is not resident in Gibraltar is taxable only on chargeable income that is accrued in or derived from Gibraltar (most savings-type income is, in any case, not taxable).
- Nonresidents of Gibraltar are not taxed in Gibraltar on their income as a beneficiary of a foundation.
- Beneficiaries who are ordinarily resident in Gibraltar are taxable on:

  a. Distributions received from the foundation when the underlying income was taxable on the foundation (a tax credit will be given in respect of the tax suffered by the foundation on that income)

  b. The benefit derived by the beneficiary from the use of assets that are owned or leased by the foundation or by a person controlled by the foundation

  c. Any loan made by the foundation to a beneficiary or to any person connected with the beneficiary

8. Grants

There are no grants in Gibraltar.

9. Life insurance

The proceeds to an individual from a life insurance policy are not assessable to tax in Gibraltar.

Life insurance relief is available to taxpayers who are taxed under the allowance-based system,[1] as follows: Premiums or contributions (or both) payable during the year of assessment are allowable as a deduction subject to certain restrictions.

The deduction is given with respect to premiums payable by the claimant for an insurance contract on the claimant's or spouse's life. However, relief is restricted to:

- One-seventh of the assessable income of the taxpayer
- 7% of the capital sum assured at death

[1] Individual taxpayers may choose between either the gross-income-based system or the allowance-based system of taxation. Under the latter, higher tax rates generally apply, but there are more allowances available. Life insurance relief is not available to taxpayers who choose the gross-income-based system.

With respect to policies purchased on or after 3 June 2008 (or policies whose term, value or premium are increased after that date), the relief was limited to a tax rate of 17% for tax year 2014–15. This restriction was removed for tax year 2015–16.

10. Civil law on succession

Succession

Legislation on succession within Gibraltar is covered by the Wills Act 2009 (modeled upon the United Kingdom Wills Act 1963) and by the Gibraltar Administration of Estates Act.

Forced heirship

There are no compulsory inheritance rules, nor forced heirship rules in Gibraltar. However, in the event of an intestacy, statutory provisions of the Gibraltar Administration of Estates Act will apply.

Matrimonial regulations and civil partnerships

There is no concept of matrimonial or community property in Gibraltar.

Intestacy

A deceased person will be deemed to have died intestate if he/she has not made any will, or if an attempted will is deemed to be invalid/incapable of being proved. In such instances, the statutory rules of intestate succession contained in the Administration of Estates Act will automatically apply. In such an event, usually the next of kin (or, if they decline, an appropriate person appointed by the Supreme Court) may apply for a grant of Letters of Administration so as to collect in assets, settle liabilities and administer the estate. Note that an appropriate person is dictated by reference to the legislation, but could be a creditor when an estate is insolvent or, for example, when cooperation is needed in realizing the assets of a complex estate with significant liabilities. There is a scale of fees payable upon application, although no fee is payable upon an estate with a value of less than £20,000. Net assets must thereafter be distributed in accordance with the sequential criteria laid down within the Administration of Estates Act.

Generally upon intestacy, a surviving spouse and children will share the estate. In the absence of immediate next of kin, the act proscribes the entitled persons and the proportions they will share if several.

Probate

If a deceased person has left a will, this must be submitted with an application for Grant of Probate to the Supreme Court for formal validation. The court will issue a Grant of Probate appointing one or more executors; either the persons named in the will or, if they decline, an appropriate person — usually a lawyer, trustee or family member. The same fee scale as an application to the Court for the administration of an intestacy will apply.

It should be noted that presently there are no death duties payable on estates in Gibraltar.

11. Estate tax treaties

Gibraltar has no tax treaties with any other jurisdiction.

India

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1. Types of tax

1.1 Inheritance tax

There is no estate duty (inheritance tax) payable in India. Estate duty on property that is passed on to the legal heirs on death of a person was removed in 1985. Prior to removal, estate duty was payable on a slab basis ranging from 7.5% to 40% of the principal value of the estate. In 2012, this topic had gained prominence as there were news reports that the Indian Government was thinking of reintroducing this levy, but no formal proposal has been tabled before the Parliament.

1.2 Gift tax

Until 1998, gift tax was levied on donors in India on transfer of any existing movable or immovable property without consideration, at the rate of 30%. In 2004, taxation on transfer without consideration or inadequate consideration (together referred to as gift) was reintroduced in the form of income tax in the donee's hands on receipt of gift, albeit with certain exceptions. However, the tax exemption on transfer of property by way of gift to the transferor continues. The following specified gifts when received by an individual are taxable in his or her hands at the rate applicable to him or her (see Section 3):

- Any sum of money received without consideration
- Any other property as mentioned below, received without consideration or for consideration less than its fair value:
  - Immovable property
  - Shares and securities
  - Jewelry
  - Archaeological collections
  - Drawings
  - Paintings

- Sculptures
- Any work of art
- Bullion

Prior to the enactment of Finance Act 2017, receipt of shares of closely held companies without consideration or inadequate consideration by a closely held company or partnership, firm or limited liability partnership was also subject to taxation in the hands of the recipient. However, the Finance Act 2017 has widened the scope of the taxation of gifts to include specified gifts (as mentioned above) received by any person to be taxable in the hands of the recipient.

In cases involving gifts of property, the difference between the fair value and the consideration paid by the donee, if any, is taxable for the donee. The methodology for determining the fair value of the property has also been specified under income tax law.

As mentioned above, certain categories of gifts are exempt for the donee from such income tax, which are listed below:

- Gift received of value not exceeding INR50,000
- Gift received from relatives (such as spouse, brother or sister of individual, parents of individual or spouse, etc.)
- Gift received on occasion of marriage
- Gift received from will or inheritance
- Gift received in contemplation of death of the donor
- Gift received from an individual by a trust created solely for the benefit of the relatives of such individual

On the subsequent transfer of the asset received by the donee as a gift, the difference between the sale consideration and the cost of such asset is taxable in the hands of the donee as capital gains. The cost of acquisition would differ in the following two scenarios:

- *Where the donee had paid income tax on receipt of gift* — The cost of acquisition would be the fair market value (FMV) of such asset on which the donee had paid income tax.
- *Where the donee had not paid income tax on account of such gift being exempt* — The cost of acquisition would be the same as the cost of acquisition of such asset in the hands of the previous owner (i.e., the donor).

There is a specific exemption from long-term capital gains tax on transfers of listed company shares (which are a long-term capital asset) on a stock exchange if the securities transaction tax (STT) has been paid. The Finance Act 2017 restricts this exemption to transfers of only those listed company shares that were acquired prior to 1 October 2004 or for which the STT has been paid or which are notified by the Central Government.

The Finance Act 2017 also provides for notional taxation if non-quoted shares are transferred for less than the prescribed FMV.

1.3 Real estate transfer tax

From the estate and succession perspective, no real estate transfer tax is levied in India. However, transfer of real estate in India may be subject to income tax and stamp duty (discussed below in greater detail).

1.4 Endowment tax

India does not levy endowment tax.

1.5 Transfer duty

Transfer of movable and immovable property is subject to following duty and tax:

Stamp duty

Stamp duty is paid in respect of a transaction executed through a document or instrument under the provisions of the Indian Stamp Act of 1899 (central law governing the country) or the State Stamp Acts. Stamp duty is applicable on transfer of movable and immovable property and also on various other transactions, e.g., lease, conveyance, mortgage, partitions, transfers and order passed by the National Company Law Tribunal (NCLT) to sanction a scheme of arrangement.

Payment of accurate stamp duty on instruments gives them legality. Such instruments have evidentiary value and can be admitted as evidence in a court of law.

The rate of duty is generally calculated on an *ad valorem* basis depending on the nature of the instrument and the state where it is executed. Typically for immovable property, this duty is payable in the state where the property is located. The rates of stamp duty on instruments related to the transfer of immovable property vary from 3% to 10% on the FMV of the property.

Stamp duty on transfer of shares of an Indian company is levied at 0.25% of the value of the transaction. However, if the shares are transferred under the depository mechanism, no stamp duty is payable on such transfer of shares.

No stamp duty is required to be paid for executing a will or a codicil. Also, no stamp duty is levied on inheritance of property by the legal heirs. Generally, stamp duty is payable on settlement of property into a trust and distribution of the assets of the trust to the beneficiaries.

1.6 Net wealth tax

The Finance Act 2015 abolished the levy of wealth tax in India with effect from 1 April 2016. This means that the return of wealth need not be filed for the financial year 2015–16 and thereafter.

Prior to its abolishment, wealth tax in India was payable at 1% if the taxable value of an individual's net worldwide wealth exceeded INR3 million. Such tax was levied on net wealth as calculated on 31 March of every year. However, if the individual was a foreign citizen, nonresident or resident but not ordinarily resident (see Section 2.1 for rules of residency), exemption from wealth tax was available on assets located outside India.

2. Who is liable?

As mentioned above, there is no inheritance tax in India. Regarding income tax, the extent and scope of Indian income tax liability depends on the residential status of the individual. For income tax purposes, an individual may be resident, nonresident or not ordinarily resident.

2.1 Residency

An individual is treated as resident in a year if present in India:

- For 182 days during the year (1 April to 31 March)

  Or

- For 60 days during the year and 365 days during the preceding four years

Individuals fulfilling neither are nonresidents. (The rules are slightly more liberal for Indian citizens residing abroad or leaving India for employment abroad.) A resident who was not present in India for 730 days during the preceding seven years or who was nonresident in 9 out of 10 preceding years is treated as not ordinarily resident. Residents are taxable on worldwide income. Nonresidents are taxed only on income that is received in India or that arises or is deemed to arise in India. A person not ordinarily resident is taxed like a nonresident but is also liable for tax on income accruing abroad if it is from a business controlled in or a profession set up in India.

2.2 Domicile

Taxation in India is not governed by rules of domicile.

3. Rates

Individuals are taxed on income arising in a financial year (1 April to 31 March) at the specified slab rates, with the highest slab being 30%. When the total income of such individual exceeds INR10 million, a 15% surcharge on the total tax liability of the individual is applicable. Under the Finance Act 2017, a surcharge of 10% is levied on the total income of an individual that is more than INR5 million but less than INR10 million. An additional levy of 3% on the total tax liability is applicable on income tax toward education cess.

There is an additional levy of 10% on receipt of a dividend exceeding INR1 million declared by a company in the hands of shareholders who are individuals, a Hindu Undivided Family, firms or limited liability partnerships. The Finance Act 2017 has widened the applicability of the additional tax on dividends exceeding INR1 million to all resident persons (except domestic companies and specified institutions), including discretionary trusts.

4. Exemptions and reliefs

India does not have any inheritance tax.

5. Filing procedures

As mentioned above, there is no inheritance tax in India. With respect to income tax, all income is taxed using a fiscal tax year from 1 April to 31 March. All taxpayers, including nonresidents, must file a return of income in India if they have income that is chargeable to tax in India.

Resident and ordinarily resident individuals who have an asset (including a financial interest in an entity) located outside India or signing authority in an account outside India must file a return even if they do not have any taxable income. They are also required to provide details of foreign bank accounts and assets located outside India in their return of income.

Nonresidents are subject to the same filing requirements as residents. However, nonresident citizens (including persons of Indian origin) who have only certain types of investment income need not file returns if the required tax is withheld at source. Nonresidents are subject to assessment procedures in the same manner as residents.

6. Assessments and valuations

Upon the death of an individual, his or her income is taxable for his or her legal representative as it would have been taxable for the deceased had he or she not died. The liability of a legal representative is limited to the extent to which the estate is capable of meeting the liability.

The income from the estate of a deceased person is also chargeable to tax in the hands of the executor(s) as a representative assessee, prior to its distribution to the legal heirs. Such tax paid can be recovered by the executor from the estate of the deceased.

7. Trusts, foundations and private purpose funds

The Indian Trusts Act of 1882 governs the constitution of trusts, which can be set up as either:

- Discretionary trust: where the trustee has discretion with respect to income or corpus on how to distribute (whether, when and how much) and to decide on the extent of distribution to each beneficiary

  Or
- Determinate trust: where the settlor fixes the entitlement of the beneficiaries, and the trustees have little or no discretion

Taxation of trust

The rules governing taxation of a trust are quite complex. The taxability of a trust is dependent on the residential status of a trust, which is a fact-specific exercise.

The income of a trust is taxable for the trustee as a representative assessee of the beneficiary. However, in certain cases, tax authorities may tax either the trustees or the individual beneficiary directly.

Taxability on settlement of property in a trust

Settlement of property in a trust is not taxable for the settlor. Since Indian tax law envisages taxability in the hands of the recipient on receipt of a gift, there may be tax implications for the trust or beneficiary on settlement of property in a trust, depending on the facts of the case.

Taxability of income earned or generated by a trust

The Indian tax law governing taxability of income earned by a trust depends on the nature of trust.

Nature of trust	Tax rate
Discretionary trust	Income is taxable at the maximum marginal rate. *If the beneficiaries are individuals*: ▸ 30.9% (if the individuals earn less than INR5 million) or 33.99% (if the individuals earn more than INR5 million but less than INR10 million) or 35.53% (if the individuals earn more than INR10 million). *If the beneficiaries are domestic companies*: ▸ 33.06% (if the domestic companies earn more than INR10 million but less than INR100 million) or 34.61% (if the domestic companies earn more than INR100 million)
Determinate trust	Income is generally taxable at the tax rates applicable to each beneficiary, except when it includes income from business (in which case it is taxable at maximum marginal rate).

Taxability on distribution by a trust to the beneficiaries

Typically, at the time of distribution by the trust to the beneficiaries, no tax should arise. However, that depends on the facts of the case. There could, for example, be taxation in the hands of beneficiaries on receipt of a trust fund/corpus.

Exchange control regulations governing trust

While India allows current account convertibility, full capital account convertibility is not allowed. Various restrictions are imposed on cross-border transactions. Due to possible complexity, attention should be given to settlement of trusts involving a nonresident.

8. Grants

There are no death grants in India.

9. Life insurance

Premiums paid for securing a life insurance policy for oneself, his or her spouse or his or her child of an amount not exceeding INR150,000 are allowed as deductions while computing the taxable income of an individual. Any sum received under a life insurance policy on death of a person is tax-exempt.

10. Civil law on succession[1]

10.1 Estate planning

Trusts are often used as estate and wealth planning and asset protection vehicles. India recognizes testamentary and living trusts. Trusts can be oral or written. However, a trust in which immovable property is settled has to be compulsorily written and registered.

Wealthy or internationally mobile Indian families use trusts in addition to conventional wills to facilitate the devolution of assets and to mitigate *inter alia* issues of probate and asset protection.

10.2 Succession

The rules of succession differ for different religions:

- Succession to the property of Hindus is governed by the provisions of the Hindu Succession Act 1956.
- Succession to property of Muslims is governed by Muslim law, which is not yet codified but is based on religious texts (Sunni and Shia laws).
- Succession of persons other than Hindus, Muslims, Buddhists, Sikhs or Jains is governed by the Indian Succession Act 1925.

10.3 Forced heirship

There is no concept of forced heirship in Indian succession laws in respect of self-acquired properties. However, certain laws such as Muslim law, are exceptions to this rule.

10.4 Matrimonial regimes and civil partnerships

The Indian law does not recognize civil partnership. Matrimonial rules vary depending on religion. Generally, prenuptial agreements are not recognized under the Indian legal system.

10.5 Intestacy

Under the Indian Succession Act, the order of succession that is prescribed for distribution of property upon death of the deceased who dies intestate is as follows:

- If there is no spouse or lineal descendant, the estate passes to the state according to the doctrine of escheat.
- If the deceased leaves behind a spouse and lineal descendants, the spouse will be entitled to one-third of the estate, while the remaining two-thirds will be divided between the lineal descendants.
- If the deceased leaves a spouse and persons who are kindred to him or her, but no lineal descendant, the spouse inherits half of the estate and those who are kindred shall inherit the other half.
- If the deceased leaves behind a spouse, but no lineal descendants or persons who are related to him or her, then the whole estate passes to the spouse.

Similarly, the Hindu Succession Act 1956 and Muslim law also contain rules for distribution of property where a person dies intestate.

[1] Based on information available in the public domain.

10.6 Probate

A will for which no probate has been obtained cannot be used to prove that any person named therein is entitled to the estate of the testator. However, the absence of probate does not debar the executor from dealing with the property of the deceased, e.g., collecting assets or selling property to pay debts.

11. Estate tax treaties

India has entered into an inheritance tax treaty only with the United Kingdom. Under the treaty, inheritance tax would not be imposed in the United Kingdom on the death of an individual who is not domiciled in the United Kingdom at the time of his death but is domiciled in India, in respect of his assets situated outside the United Kingdom.

Indonesia

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1. Types of tax

1.1 Inheritance tax and tax on gifts

Indonesia does not levy inheritance or gift tax.

Regarding tax on gifts, Indonesian income tax law stipulates that grants or gifts from the parent directly to the children (or vice versa) or gifts received are not taxable as long as there is no business or employment relationship.

1.2 Gift tax

There is no gift tax in Indonesia (but see Section 1.1 regarding when gifts from the parent given directly to the children or vice versa may be taxable under the income tax law).

1.3 Real estate transfer tax

Starting 7 September 2016, the transfer of real estate (i.e., land and building) is subject to a final tax of 2.5% of the gross proceeds (i.e., the higher of the actual transfer price or the tax object sale value for land and building tax assessment purpose (NJOP)). The transfer of a basic house (*rumah sederhana*) and basic flat (*rumah susun sederhana*) by a taxpayer whose main business is the transfer of land and/or building is subject to a final tax of 1%. The transfer of real estate for public interest by the government is subject to a final tax of 0%.

1.4 Endowment tax

There is no endowment tax in Indonesia.

1.5 Acquisition duty

A land and building acquisition duty of 5% is payable on the gross proceeds when a person obtains rights to land or a building with a value greater than IDR60 million. A number of exemptions may apply to certain transactions or events. The acquisition duty is governed by regional tax regulation.

1.6 Net wealth tax

There is no net wealth tax. However, Indonesian income tax law states that an increment in wealth originating in income not yet subject to tax is taxable. In the Indonesian individual income tax return, the individual taxpayer is required to declare assets and liabilities. The tax office may assess additional income tax should there be any increment of the assets, such as from income not yet reported on the tax return.

2. Who is liable?

2.1 Residency/domicile

Resident taxpayer

Under Indonesian tax law, an individual is qualified as an Indonesian tax resident if the individual:

- Domiciles in Indonesia
- Is present in Indonesia for more than 183 days within a 12-month period

  Or
- Is present in Indonesia during a calendar year with the intention to reside in Indonesia

Resident taxpayers are taxed on their worldwide income.

Nonresident taxpayer

Nonresident taxpayers are taxed only on Indonesian-sourced income.

3. Rates

As Indonesia does not have any inheritance, gift, endowment and net wealth tax, this is not applicable.

For real estate transfer tax, the final tax rate for resident taxpayers is as follows:

- 1% for the transfer of a basic house (*rumah sederhana*) and basic flat (*rumah susun sederhana*) by a taxpayer whose main business engages in the transfer of land or building
- 2.5% for the transfer of land and/or building
- 0% for the transfer of land and/or building for public interest by the government

The table below shows the statutory income tax rate for a resident taxpayer who receives other taxable income.

Taxable income bracket (IDR)	Tax rate
Up to 50 million	5%
Over 50 million but not exceeding 250 million	15%
Over 250 million but not exceeding 500 million	25%
Over 500 million	30%

The tax rate for a nonresident taxpayer who receives Indonesian-sourced income is 20% (final).

4. Exemptions and reliefs

For real estate transfer tax, an exemption is available under the following conditions:

- The transfer of land and/or building as part of the gift by parent directly to children (or vice versa)
- The transfer of land and/or building as part of inheritance
- The transfer of land and/or building when the transfer value is less than IDR60 million by an individual whose annual income is less than the threshold of non-taxable income (i.e., IDR54 million)
- The transfer of land and/or building as part of a gift by an individual or corporate to a religious organization, education foundation and social organization
- The transfer of land and/or building in the case of a tax-neutral merger or a tax-neutral spin-off granted by the Minister of Finance

5. Filing procedures

The due date of the payment for the land and building transfer tax is before the deed of transfer is signed by the authorized official. If the transfer of the land and building is done by a taxpayer engaged in the business of sale and purchase of land and building, the tax payment is due before the deed of transfer is signed by the authorized official or by the 15th of the following month after payment is received.

Late payment of tax will be subject to a penalty of 2% per month on the tax due, which is calculated from the due date until the date when the tax is paid, for a maximum of 24 months. The penalty is payable upon issuance of a tax collection notice from the tax authority.

The due date for filing is by the 20th of the following month after the transfer is incurred or the payment is received. Late filing of the monthly tax return is subject to a penalty of IDR100,000, payable upon issuance of a tax collection notice from the tax authority.

Furthermore, the individual is required to report the transactions above in his or her individual income tax return. Please note that it is for reporting purposes only; there will be no additional tax on the transfer of real estate. The annual filing due date is 31 March of the following year. Late filing of the annual tax return is subject to a penalty of IDR100,000, payable upon issuance of a tax collection notice from the tax authority.

6. Assessments and valuations

See Section 1.3.

7. Trusts, foundations and private purpose funds

Not applicable. Indonesia does not recognize the trust concept, and there is no specific tax regulation concerning trusts, foundations and private purpose funds.

8. Grants

The granting of assets received by immediate descendants and blood relatives (e.g., parents to children or children to parents) or by any religious institution or educational institution, social charity institution, including a foundation, cooperative or individual running a micro or small-scale business, as stipulated by the Minister of Finance, to the extent that there is no linkage of business, employment, ownership and control between the parties, is not taxable.

9. Life insurance

An insurance premium paid by an Indonesian employer to an insurance company is taxable income (i.e., subject to employee income tax withholding: the progressive tax rate is applied, i.e., 5% to 30%). If it is paid by the individual, the premium paid is not deductible when calculating the tax. Further, when there is a claim for a life insurance benefit, the amount received is not taxable to the beneficiary.

10. Civil law on succession

10.1 Estate planning

This may not be applicable in Indonesia because there is no inheritance tax.

10.2 Succession

Under Indonesian law, there are two ways to receive an inheritance: as heirs based on the laws or appointed in a testament.

10.3 Forced heirship

This would depend on the rules that are followed when distributing the inheritance, which can be based on religion (Islamic inheritance rule), culture (many Indonesian tribes have their own rule in inheritance) or Indonesian inheritance law.

10.4 Matrimonial regimes and civil partnerships

The assets acquired during marriage become the property of the spouses equally. For assets owned before the marriage, the right is fully with the spouse who brought the assets. For assets granted to a spouse during marriage, the right is also fully with the spouse who received the grant (gift), unless he or she agreed otherwise.

A prenuptial agreement to separate the ownership of the assets acquired during the marriage is possible.

10.5 Intestacy

Under Indonesian law, there are two ways to receive an inheritance: as heirs based on the laws or appointed in a testament.

11. Estate tax treaties

Indonesia does not have any estate tax treaties.

Ireland

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1. Types of tax

1.1 Inheritance tax

Inheritances in Ireland are liable to capital acquisitions tax (CAT), which is the tax levied on inheritances and gifts. There is no estate tax in Ireland; instead, CAT is levied on each beneficiary who takes an inheritance that falls within the charge to CAT. An inheritance falls within the charge to CAT if either the disponer or the beneficiary is Irish tax resident or ordinarily resident, or the property comprised within the inheritance is situated in Ireland. The beneficiary is accountable for the tax liability and tax return filing obligations.

Stamp duty and capital gains tax should not arise on an inheritance.

1.2 Gift tax

CAT is also chargeable on gifts and is calculated in the same manner as inheritances. The beneficiary is accountable for the tax liability and tax return filing obligations. The first €3,000 of the total taxable value of all taxable gifts taken by a beneficiary from the same disponer in any year is exempt from CAT. In contrast to inheritances, gifts can also be liable to capital gains tax (CGT) and stamp duty.

1.3 Real estate transfer tax

Stamp duty is payable on the transfer of property including real estate. Therefore, a gift of real estate property would be liable to stamp duty. The rate applicable is 2% on nonresidential property and 1% on residential property up to a value of €1 million and 2% on the excess over this value. There is no stamp duty on an inheritance of real estate taken by a beneficiary.

1.4 Endowment tax

There is no endowment tax in Ireland.

1.5 Transfer duty

A gift of chargeable assets (generally most property that is non-euro cash) to a connected party is a disposal for CGT purposes. The tax is levied on the gain, which is the difference between the cost of acquiring and enhancing the asset (less any debt written off in respect of such costs) and the market value (less expenses) on the date of disposal. The gain is taxed at 33%. The disponer of the asset is the person accountable to pay the CGT liability and file a return. When CGT and CAT arise on the same property and on the same event, the beneficiary can claim a credit in respect of the CGT paid against his or her CAT liability. When CGT/CAT credit relief is claimed, the beneficiary cannot dispose of the asset for two years, or else the relief would be withdrawn.

If an instrument is executed to give legal effect to the gift, a charge to stamp duty would arise if the instrument transfers Irish situs property, it is executed in Ireland or otherwise relates to a matter or thing done or to be done in Ireland. Stamp duty is calculated on the market value of the property on the date of the gift. Stamp duty is charged at 1% on shares and marketable securities and 2% on other property types, including nonresidential real estate property. Residential real estate property is liable to stamp duty at 1% up to the first €1 million and 2% on the excess market value.

1.6 Net wealth tax

There is no net wealth tax in Ireland.

2. Who is liable?

- Inheritance tax: The beneficiary (i.e., the person who takes the inheritance)
- Gift tax: The beneficiary (i.e., the person who takes the gift)
- CGT: The disponer (i.e., the person transferring the property by gift)
- Stamp duty: The beneficiary (i.e., the person who takes the gift)

The tax residence, ordinary residence and domicile of both the disponer and beneficiary, as well as the situs of the property comprised within the gift or inheritance, determines the charge to CAT.

The tax residence, ordinary residence and domicile of the disponer, as well as whether the property comprised within the gift or inheritance constitutes a specified asset, determines the charge to CGT.

Only certain instruments that are either executed in Ireland or otherwise relate to Irish situs property, or relate to a matter or thing done or to be done in Ireland, come within the charge to stamp duty.

2.1 Residency

Tax residence

An individual is Irish tax resident for a year if present in Ireland for a total of 183 days or more in the year under review, or 280 days or more in aggregate in the year under review and the preceding year. This test does not apply when an individual was present in Ireland for 30 days or less in a year. That person will not be treated as resident for that year unless he or she elects to be resident. From 1 January 2009, an individual is considered as present for a day if he or she is present in the country at any time during that day.

A "tax year" is the same as the calendar year.

Ordinarily resident

An individual becomes ordinarily Irish tax resident from the commencement of the fourth tax year after being Irish tax resident for three consecutive tax years.

An individual who is ordinarily Irish tax resident will not cease to be ordinarily Irish tax resident until he or she has been non-Irish tax resident for three consecutive tax years.

2.2 Domicile

An individual is born with a domicile of origin, which is usually the domicile of his or her father. A person never loses his or her domicile of origin; however, he or she can acquire a domicile of choice that takes precedence. Acquiring a domicile of choice requires "a final and deliberate intention." In practice, this means severing almost all connections with the country of origin and establishing a permanent relationship in the country of choice. If the individual abandons his or her domicile of choice, then he or she reverts back to his or her domicile of origin unless and until he or she acquires a new domicile of choice.

2.3 Charge to CAT

With respect to gifts and inheritances received on or after 1 December 1999, a charge to CAT arises when:

- The disponer is resident or ordinarily resident in Ireland.
- The beneficiary is resident or ordinarily resident in Ireland.
- The gift or inheritance consists of Irish-situated property.

If any one of these conditions is fulfilled, the gift or inheritance is within the charge to CAT.

From December 2004, a disponer or beneficiary who is non-Irish domiciled will not be treated as Irish resident or ordinarily resident unless they have been resident in Ireland for five consecutive years immediately preceding the year of the gift or inheritance and have also been Irish resident or ordinarily resident in that year.

For example, non-Irish domiciled individuals living in Ireland can gift non-Irish assets to non-Irish resident beneficiaries without a charge to gift tax, provided they have not been continuously resident in Ireland for the five years prior to the gift. Non-domiciled individuals may decide to break Irish residency every five years, so that the inheritance of their non-Irish estate by non-Irish resident beneficiaries does not fall within the charge to Irish CAT on their death.

With respect to gifts or inheritances received prior to 1 December 1999, a charge to CAT arises when either:

- The disponer was domiciled in Ireland on the date of the disposition under which the gift or inheritance was taken.

  Or
- The gift or inheritance consisted of Irish-situated property.

Specific rules apply to trusts and appointments from certain trusts settled prior to 1 December 1999 that remain chargeable under the pre-December 1999 charging provisions.

3. Rates

CAT is charged on the value of the inheritance or gift (collectively the "benefit") that exceeds a tax-free threshold amount. The tax-free threshold amount is divided into three tax-free groups. The applicable group depends on the relationship between the disponer and the beneficiary. In determining the amount of the tax-free threshold available, prior gifts and inheritances received since 5 December 1991 from disponers within the same group are aggregated with the current gift or inheritance. The aggregate determines the available tax-free threshold amount (if any). The excess benefit received above the available tax-free threshold amount is subject to CAT, currently charged at 33%.

The table below shows the three tax-free group threshold amounts.

Group	Relationship to disponer	Group threshold from 12 October 2016
A	Applies when the beneficiary is a child (including adopted child, stepchild, child of a civil partner and certain foster children) or minor child of a predeceased child or that predeceased child's civil partner. Parents also fall within this threshold when they take an inheritance of an absolute interest from a child.	€310,000
B	Applies when the beneficiary is a brother, sister, child of a brother or child of a sister, child of the civil partner of a brother or sister or lineal ancestor or lineal descendant of the disponer	€32,500
C	Applies in all other cases	€16,250

For example, an individual who received a prior gift of €100,000 from his or her mother in the year 2014, and receives an inheritance from his or her father's estate of €750,000 in 2017, would have a Group A tax-free threshold of €213,000 available to reduce the taxable value of his or her inheritance liable to CAT. The annual small gift exemption of €3,000 reduces the taxable value of the prior gift of €100,000 to €97,000. The 2017 inheritance would be taxed as follows:

2017 inheritance	€750,000
2017 Group A	€310,000
Less prior taxable gift	(€97,000)
Available Group A threshold	€213,000
Current inheritance	€750,000
Less available threshold	(€213,000)
Taxable excess	€537,000
CAT charged at 33%	€177,210

If the 2014 gift was from an uncle instead of the individual's mother, then the prior gift would be a Group B prior gift and, therefore, would not be aggregated with the current inheritance for the purposes of calculating the CAT liability on the inheritance.

The tax on the 2017 inheritance would be:

2017 inheritance	€750,000
Available Group A threshold	€310,000
Taxable excess	€440,000
CAT charged at 33%	€145,200

4. Exemptions and reliefs

Exemptions

- A gift or inheritance received from a spouse or civil partner
- First €3,000 of all gifts taken from each disponer in any one calendar year
- An inheritance taken by a parent on the death of a child to whom either parent had made a taxable gift or inheritance in the previous five years
- A gift or inheritance for public or charitable purposes
- An inheritance of a dwelling house that the disponer had occupied as his or her main residence at the date of his or her death, but only if the beneficiary also occupied the dwelling house as his or her main residence continuously for three years prior to the inheritance, does not have an interest in any other dwelling house on the date of the inheritance and also continues to own and occupy the dwelling house as his or her main residence for a further six years
- Maintenance payments to minor children or children up to the age of 25 years in full-time education for support, maintenance or education
- Heritage property, subject to conditions
- Government securities (subject to conditions) when the donee is neither domiciled nor resident in Ireland

Reliefs

- When a gift or inheritance consists of business property of a family-owned business, subject to meeting certain qualifying conditions, the value of the business may be reduced by 90% for the purposes of calculating the tax liability. Clawback conditions apply. A nephew or niece who worked substantially in the family business with the disponer over a period of five years may, subject to meeting certain qualifying conditions, avail of the Group A tax-free threshold in respect of the business assets for the purposes of calculating his or her tax liability.
- When a gift or inheritance consists of agricultural property, subject to meeting certain qualifying conditions, the value of the agricultural property may be reduced by 90% for the purpose of calculating the tax liability. To qualify, the beneficiary must be an "active farmer." That is, at the time of taking the gift or inheritance of agricultural property, not less than 80% of the beneficiary's assets must consist of agricultural assets, and the beneficiary must actively farm the agricultural property. That is, the beneficiary must have certain farming qualifications and farm the lands on a commercial basis for a period of at least six years or spend at least 50% of his or her normal working hours farming the lands on a commercial basis for a period of at least six years, or otherwise lease the lands to a farmer who satisfies these conditions. Clawback conditions apply. A nephew or niece who worked substantially on the family farm with the disponer over a period of five years may, subject to meeting certain qualifying conditions, avail of the Group A tax-free threshold in respect of the agricultural assets for the purposes of calculating his or her tax liability.
- When CGT and CAT arise on the same property on the same event, the CGT paid can be credited against the CAT liability. The beneficiary must not dispose of the property for a period of two years commencing on the date of the gift or else a clawback of the relief would arise.

5. Filing procedures

The beneficiary is accountable to pay the CAT liability and file a return. When beneficiaries of an estate are non-Irish resident, the personal representative and/or solicitor acting in the estate are also accountable to pay and file.

The valuation date for a benefit determines when the CAT becomes payable. The valuation date for a gift is the date of gift. In the case of an inheritance, the valuation date depends on the circumstances, but is generally no earlier than the date of the grant of probate or administration intestate. In the case of a share of a residue, it is the date when it is possible to ascertain the value of the net residue available for distribution. When property passes by survivorship, the valuation date is the date of the disponer's death.

When the valuation date falls between 1 January and 31 August, CAT must be paid and a return filed by 31 October of the same year. When the valuation date falls between 1 September and 31 December, CAT must be paid and a return filed by 31 October of the following year. Failure to deliver a return and discharge a CAT liability by the specified pay-and-file date will give rise to interest and a surcharge.

6. Assessments and valuations

CAT is a self-assessment tax. That is, the beneficiary must calculate and pay the liability and also file a return. The revenue commissioners can raise assessments when a return has not been filed or the return is incorrect. The commissioners have a four-year time limit to issue a correcting or additional assessment from when they receive the return. This time limit does not apply in the case of fraud or neglect. CAT is calculated on the market value of the property comprised within the gift or inheritance. That is, the price the property would fetch if sold on the open market. Discounts can be applied in the case of minority shareholdings in private companies. Discounts do not apply when a beneficiary is "deemed" to have control of a private family-controlled company. A surcharge will be imposed in the case of a substantial undervaluation.

7. Trusts, foundations and private purpose funds

Trust structures can be used to protect assets and pass wealth to the next generation. Trusts are often used in conjunction with other legal structures, such as companies or partnerships, as property investment vehicles.

The settlement of property on trust, the administration of the trust property during the life of the trust, the appointment out of trust property and the winding-up of the trust will all have myriad tax implications, including capital acquisitions tax, CGT, discretionary trust tax (DTT), stamp duty and income tax. Special anti-avoidance tax rules apply in the case of trusts settled for minor children in the lifetime of the settlor.

Bare, fixed and discretionary trusts are the main types of trusts to consider for tax purposes.

Bare trusts

A bare trust is akin to a nomineeship, when for legal reasons or convenience, assets are held by persons who do not own those assets beneficially.

Limited interest trusts

A limited interest trust is a settlement in which the beneficial interest taken by a beneficiary is not absolute and is limited by either time or by a condition. An example is a trust for a person for life or until he or she reaches a certain age or for a particular number of years.

In the case of a life interest trust, the life tenant is entitled to the income from the trust for the duration of his or her life, and on his or her death the absolute interest in the property passes to the remainderman.

Discretionary trusts

Under a discretionary trust, assets are given to trustees to hold on trust to apply the income or capital, or both, for the benefit of a class of beneficiaries who are listed in the trust deed in such proportions as the trustees, by exercising their absolute discretion, decide. The trustees have an absolute discretion as to which beneficiary or beneficiaries from a class of beneficiaries will benefit from the trust property, as well as when and to what extent. A beneficiary of a discretionary trust has no right to any of the trust assets, and a beneficiary will not receive any trust assets unless and until the trustees exercise their discretion in favor of that beneficiary.

A discretionary trust structure should allow trustees sufficient flexibility to manage the trust assets and use their discretion and expertise to make provisions for the beneficiaries in the best way possible, taking into account the legal and tax implications and ensuring the passing of assets in an orderly manner while also avoiding dissipation of trust assets. A discretionary trust is generally the vehicle of choice to protect minor and incapacitated children.

In addition to having other tax implications, discretionary trusts are also liable to DTT. This tax arises when the settlor (i.e., the individual who sets up the trust and settles assets on trust) has died and all of the principal objects are over 21 years of age. The principal objects of a discretionary trust for these purposes include the spouse or civil partner of the settlor, the children of the settlor, or his or her civil partner, or, if these children are predeceased, their children and their civil partner's children.

DTT is payable as a one-time initial charge of 6% on the value of the assets in the trust and thereafter as an annual charge of 1%. If all the assets of the trust are appointed out within five years, a refund of 3% of the initial charge is given.

Discretionary trusts are exempt from DTT if they are created exclusively for:

- Purposes that, in accordance with the laws of Ireland, are public or charitable
- The purpose of a superannuation or unit trust scheme
- The benefit of improvident or incapacitated individuals
- The upkeep of heritage houses or gardens

DTT also applies to foundations that are similar to discretionary trusts.

Foundations

Setting up a foundation is usually the best option for those seeking maximum flexibility and control over their philanthropic investment, for those wishing to involve their family and future generations in giving and for businesses wanting to adopt a more structured and strategic approach to giving. The majority of philanthropic organizations in Ireland are established either as a charitable trust or as a company limited by guarantee and not having a share capital.

Tax exemptions may apply to foundations established exclusively for a charitable purpose.

8. Grants

There are no estate taxes in Ireland. Beneficiaries are taxed on gifts or inheritances.

9. Life insurance

Payments of life insurance policies are taxable on beneficiaries on the basis that they take a benefit where insufficient or no consideration was provided. These benefits may come within the charge to CAT. Certain life insurance policies that are specifically taken out to pay gift or inheritance tax and/or approved retirement fund tax will be exempt from CAT when they are used for the purpose of paying that tax.

10. Law on succession

10.1 Estate planning

For Irish resident and Irish domiciliaries

Full use of reliefs and thresholds are important, as is ensuring that the conditions of significant reliefs, such as agricultural and business relief, are fully complied with so that the reliefs are available.

Using the annual small gift exemption can pass significant wealth over a period.

Dwelling house relief can be significant depending on the circumstances, because there is no limit to the value of the dwelling house that the relief applies to.

Increases in the value (for gift and inheritance tax purposes) of family businesses and investments may vary depending on the entity used to hold them.

Non-Irish domiciliaries

A non-Irish domiciled individual who becomes non-Irish resident for one year out of five can mean that a gift or inheritance of non-Irish property would not be liable to CAT.

10.2 Succession

The Succession Act 1965 governs the law of succession in Ireland. This Act provides the law applicable to wills, including what constitutes a valid will, as well as the rules of succession and intestacy.

Certain property of a testator may not pass under the terms of his or her will. This would include property that the testator jointly owns with another and/or others. Depending on the legal title, this property could pass by "survivorship" on death, i.e., automatically pass on to the surviving joint owner, which may not be under the terms of the will.

Assets held in trust would also pass under the terms of the trust and not under the terms of a will. This can apply also to life policies that pass under the terms of the policy and not under the terms of a will.

10.3 Forced heirship

Under the Succession Act 1965, a spouse or civil partner is entitled to a "legal right share" in the deceased's estate, which overrides the provisions of the testator's will. When there are no children, the spouse or civil partner is entitled to one-half of the estate. When the testator has children, then the spouse or civil partner is entitled to one-third of the estate. If the testator has made no provision in his or her will for his or her spouse, then this entitlement is automatic.

Children do not have any automatic entitlement, but they have a right to apply to court under the Succession Act 1965 for a share of the estate when they believe that "proper provision" was not made under the terms of the deceased parent's will. The court will look at all factors before deciding whether "proper provision" was made, including the extent to which proper provision was made during the testator's lifetime and the financial situation of the testator and the child. The onus of proof is on the child making the claim to prove a positive failure in the moral duty of the deceased parent. The court has power to alter the terms of a will and make provision for a child from the estate. However, the court order cannot affect the legal right share of the surviving spouse.

10.4 Matrimonial regimes and civil partnerships

There is no matrimonial regime in Ireland. However, spouses and civil partners get an automatic share of the estate of a deceased spouse or civil partner.

Civil partnerships became law in Ireland with effect from 1 January 2011. The legislation gives registered civil partners similar legal rights as spouses. Tax legislation has been amended to reflect this, so registered civil partners get the same exemptions and reliefs afforded to spouses.

Same-sex marriage has been legal in Ireland since 16 November 2015.

10.5 Intestacy

When a deceased person fails to make a valid and effective will, the estate is distributed according to the rules on intestacy, as provided for in the Succession Act 1965.

These rules determine how the estate is distributed based on the degree of relationship of surviving relatives to the testator, as shown in the table below:

Surviving close relatives	Share in estate
Spouse or civil partner and no children	Spouse or civil partner inherits all of estate
Spouse or civil partner and children	Spouse or civil partner two-thirds, children one-third (and special provisions for children of deceased children)
No spouse or civil partner or children	Parents inherit entire estate
No spouse or civil partner, children or parents	Surviving brothers and sisters in equal shares with children of predeceased brothers and sisters taking their parents share equally

The rules continue to divide assets among more distant relatives with the State as the ultimate successor.

10.6 Probate

Before the assets of an estate in Ireland can be administered, an application must be made to the probate office, a division of the High Court, for a grant of probate in the case of a valid will or a grant of administration intestate in the case of an intestacy. The process of the application and who is entitled to apply is governed by the Succession Act 1965. The grant gives the personal representatives the power to administer the estate of the deceased and deal with the assets of the estate.

11. Estate tax treaties

11.1 Unilateral rules

Unilateral rules apply to allow a credit for foreign tax on a gift or inheritance against the Irish CAT liability when the taxes arise on the same event, and when the double-tax treaties do not provide for a relief.

11.2 Double-taxation treaties

Ireland has two double-taxation treaties in place that provide for relief for the double taxation of gifts and inheritances. The treaty with the United States covers only inheritance taxes and not gift tax. The second treaty is with the United Kingdom.

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1. Types of tax

1.1 Inheritance and gift tax

Law 286/2006 and Law 296/2006 have reintroduced inheritance tax and gift tax. The new legislation brought back into force the inheritance rules (effective 3 October 2006), the gift rules (effective 29 November 2006) and most of the provisions of Law Decree 346/1990 (Inheritance and Gift Tax Code), which previously regulated inheritance and gift matters until late October 2001 (as of 25 October 2001, the inheritance and gift tax were repealed).

Law 286 introduced changes to the application of the inheritance and gift tax and the applicable tax rates. Law 296 then introduced some further minor changes.

Both inheritance and gift taxes apply to the worldwide estate when the deceased (donor) is resident in Italy at the time of death (donation). Taxation will apply only to Italian assets if the deceased was not resident in Italy.

The tax is levied on the net share of the inheritance or donation passing to the beneficiary (e.g., net of liabilities and deductible expenses, debts of the deceased, funeral and medical expenses), taking into consideration non-taxable threshold amounts that depend on the relationship between the transferor and recipient. These allowances are lifetime amounts, and a running total must be kept if an individual receives more than one gift, or a gift as well as an inheritance, from one donor.

The law provides specific rules for the determination of the taxable base for each kind of transferred asset (e.g., real estate, shares, bonds, investment funds and movable goods).

1.2 Real estate transfer tax

In addition to inheritance and gift taxes, if the inheritance or the endowment includes real estate or real estate rights, the following taxes are also due:

- Mortgage tax, which is 2% of the value of the property (this is necessary to proceed with the registration of the deed in the public registers of property).
- Cadastral tax, which is 1% of the value of the property (required for the registration of the transfer deed).

Instead of applying the aforementioned percentages on the value of the property in cases of inheritance or endowment of the "first house," the beneficiary pays a fixed rate of €200 for mortgage and €200 for cadastral taxes.

1.3 Transfer duty

A transfer tax (register tax) is levied only on the transfer of real estate (in cases where there was no inheritance or endowment). The tax rate ranges from a fixed amount of €200 up to 9% of the value of the real estate depending on the specific features of the transfer and the specific kind of real estate subject to transfer (i.e., different rules are applied with reference to luxury real estate).

1.4 Net wealth tax

As of 2011, a wealth tax on financial assets held abroad by individuals resident in Italy applies at the rate of 0.1% per year on the value of the financial asset. Starting from 2014, this rate is 0.20%.

The Italian Government also introduced, starting from tax year 2012, a wealth tax for real estate properties held abroad by Italian tax residents. This wealth tax is applied at a rate of 0.76% per year on the value of the property. Taxable value is equal to the purchase cost or, in the absence of this, to the fair market value (FMV) of the property, or, in some cases, a notional value determined according to both Italian law and foreign law. It should be noted that different rules apply to real estate located in the European Union (EU) and some European Economic Area (EEA) countries, and properties held in other countries.

Under certain circumstances, taxpayers are entitled to claim a tax credit equal to the amount of wealth tax already paid in the country in which the property is located; a case-by-case analysis needs to be performed.

Italy has recently introduced a "new resident" regime that is applicable to individuals that transfer residency for tax purposes in Italy, provided that other conditions are met and a ruling is issued by Italian tax authorities. Under this new regime, Italian "new resident" taxpayers are not subject to wealth taxation on financial assets and real estate held outside of Italy. In addition, reporting obligations are not applicable to "new resident" Italian taxpayers.

1.5 Others

Nonresident

In tax year 2012, a new tax on real estate held in Italy replaced the ICI tax (the Italian acronym for the municipal tax on real estate). This new tax, called IMU (Unified Municipal Tax) is applied at a rate of 0.76% per year on the value of the real estate. The taxable value for IMU is calculated based on the cadastral value (i.e., a notional value) attributed to each property by the local municipal offices.

Effective from the 2014 tax year, Italian real estate properties are subject to "TASI" (the Italian acronym for the municipal service tax). The new tax is generally applied using the IMU rules, even in cases of IMU exemption. The applicable tax rates vary from 0.08% to 0.25%; however, when the property is already subject to IMU, the Italian tax rules state that TASI has to be applied using the lower rate.

The IMU and TASI taxable basis are subject to a reduction of 50% if the real estate property falls under the category of a site of cultural interest (for historical and/or artistic purposes). Because some legal conditions need to be met and a further analysis performed to apply this reduction, a case-by-case approach is recommended.

2. Who is liable?

Inheritance tax applies to the worldwide assets of Italian residents. Assets existing only in Italy are subject to tax if the deceased was not an Italian resident at the moment of death.

In practice, when the deceased person is a resident abroad, taxation in Italy is restricted to the property and rights located in Italy. On the contrary, when the deceased person is a resident in Italy, Italian inheritance tax is governed by the principle of territoriality, meaning that the taxable estate consists of all of the property and rights transferred *mortis causa*, including those located abroad.

However, the general rule stated above has been changed as a result of the special "new resident" regime. For individuals who qualify for this regime, only assets located in Italy are subject to inheritance and gift taxes. Therefore, the worldwide principle is not applicable to "new resident" taxpayers, and any assets held abroad do not fall under inheritance and gift taxation rules.

Similar to inheritance tax, gift tax applies to the worldwide assets of Italian residents, while assets existing only in Italy are subject to tax if the donor was not an Italian resident at the time of the donation.

2.1 Residency

An individual is considered to be a resident in Italy for tax purposes if, for the greater part of the tax period (more than 183 days in any calendar year), at least one of the following conditions is met:

- He or she is registered under the Italian Office of the Resident Population (*anagrafe della popolazione residente*).
- He or she has his or her domicile in Italy, according to the Italian Civil Code (i.e., where an individual has established his or her place of business and family life).
- He or she has established his or her residence in Italy according to the Italian Civil Code (i.e., the place where the individual has his or her habitual abode).

The Italian tax authorities may take the following into account in order to define whether an individual is a resident in Italy or not:

- Moving to Italy with the family
- Transactions effected through bank accounts opened in Italy
- Renting a home for the entire year with normal levels of consumption of electricity, gas and telephone services that demonstrate a substantial period of presence in Italy
- Membership in social or sports clubs

The Italian tax authorities use a special intelligence group of the tax police to collect evidence to establish whether residence in Italy has been established. This group's main purpose is to demonstrate:

- The presence of an individual's business interests in Italy
- The presence of family life in Italy
- An individual's remittance to Italy of funds earned abroad

3. Rates

The new legislation has introduced new tax rates that are common to inheritance and gift taxes and mainly depend on the relationship between the deceased and the beneficiary.

As a general rule, the closer the relationship, the lower the tax rate applicable; these rates may vary from 4% to 8% and apply to the total value of the legacy or the gift, with some tax-exempt thresholds.

4. Exemptions and reliefs

The tax rates currently applicable and the tax-exempt thresholds are listed in the table below.

Beneficiary	Inheritance and gift tax and tax-exempt threshold
Spouse or linear relatives (descendant, ascendant)	4% on the total assets' value with a tax-exempt threshold of €1 million for each heir or beneficiary
Brother or sister	6% on the total assets' value with a tax-exempt threshold of €100,000 for each heir or beneficiary
Other relatives (including uncles, aunts, nephews, nieces and cousins) and certain relatives by marriage	6% on the total assets' value with no tax-exempt threshold
Other persons or entities different from the ones listed above	8% on the total assets' value with no tax-exempt threshold
Persons with critical disablements within the meaning provided by the applicable Italian law	There is a tax-exempt threshold of €1.5 million for each heir or beneficiary, and over this threshold the same rates listed above apply depending on the relationship with the deceased

In addition to inheritance and gift taxes, immovable properties are subject to mortgage tax and cadastral tax, which range from €200 to 3% of the property value.

Beneficiary	Mortgage tax	Cadastral tax
Spouse or linear relatives (descendant, ascendant)	‣ €200 for the main dwelling ‣ 2% on the value* of other immovable properties	‣ €200 for the main dwelling ‣ 1% on the value of other immovable properties
Brother or sister		
Other relatives (including uncles, aunts, nephews, nieces and cousins) and certain relatives by marriage		
Other persons or entities different from the ones listed above		
Persons with critical disablements within the meaning provided by the applicable Italian law		

**Value is determined according to a specific formula established by the tax authorities.*

It must be noted that, for the applicability of the aforementioned tax-exempt thresholds with regard to inheritance rules, it is necessary to consider the donations made by the deceased person to the heirs during his or her life. This means that the value of the donations made to an heir that were not subject to taxation at the time of the donation need to be added to the value of the legacy of the considered heir, and the inheritance tax would apply to the difference between this total value and the tax-exempt threshold applicable (if any).

With Law 130/2013 (so-called European Law 2013-bis), the Italian Government has modified the taxable base of the Italian Inheritance and Gift Tax. On the basis of new rules that entered into force as of 25 November 2014, two new exemptions have been introduced. First, transfers of assets to EU and EEA public entities, foundations or associations are expressly exempted from the Inheritance and Gift Tax. Moreover, the new provision established that the complete exclusion from the taxable base (already provided regarding Italian public securities) is now applicable even in cases of EU and EEA public security transfers.

5. Filing procedures

An inheritance declaration must be submitted within one year from the date of the start of the inheritance, which usually coincides with the date of the taxpayer's death.

The appropriate form can be obtained from any local inland revenue office, or it can be downloaded from the inland revenue website (www.agenziaentrate.gov.it) and submitted at the local inland revenue office where the deceased had his or her last residence. On 23 January 2017, the Italian tax authorities launched an online platform that enables the declaration to be filed electronically. The declaration is null and void if any other form is used.

Regarding inheritance declarations, Law Decree 175/2014 has established an exemption from filing requirements for spouses and linear relatives. More precisely, when the total asset value is lower than €100,000 and there are no rights on the real estate property, an inheritance declaration is not required.

If the deceased was not resident in Italy, the inheritance must be reported at the local area office where the deceased last had residence in Italy.

If there is real estate in the inheritance, mortgage and cadastral taxes as well as stamp duty must be paid using a specific form before submitting the declaration of inheritance. Furthermore, within 30 days of the submission of the inheritance declaration, a request for transfer of the property must be submitted to the Inland Revenue office. Even if more than one person is obliged to submit the declaration, it is sufficient if it is submitted by just one of these persons.

Endowment deeds and other voluntary deeds must be registered electronically within 30 days of the stipulation of the deed if they are done through a public deed or an authenticated private agreement.

6. Assessments and valuations

The taxable base is determined by the heirs and legatees according to the specific rules provided by the inheritance law. For example:

- Real estate and rights from real estate: The evaluation of the property is done by multiplying the cadastral revenue by the relevant updated coefficients.[1]
- Shares in the capital of a company: The value is given by the net equity.
- Companies: The value is given by the net equity without evaluating immovable goods and goodwill.

The taxes are self-assessed and paid by the heirs and legatees, or their legal representatives, before the filing of the inheritance declaration.

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[1] With particular reference to real estate, the value declared in the inheritance declaration cannot be challenged by the tax authorities if it has been determined by applying the so-called "cadastral value" (i.e., a notional value determined by the local land offices).

7. Trusts, foundations and private purpose funds

In 2007, for the first time, the Italian Government provided a set of rules on the tax treatment of trusts. These provisions determine the tax residency of a trust and its taxation: i.e., taxation on the trust itself vs. taxation on the identified beneficiaries of the trust.

The criteria to determine whether a trust is resident have not been affected by the recent changes in legislation, which merely introduced rebuttable presumptions of residence for trusts (presumptions apply only to certain trusts settled in a country listed as an uncooperative tax haven by the Organisation for Economic Co-operation and Development (OECD), i.e., in a country not providing for effective exchange of information with Italy). The Italian tax authorities set forth clarifications regarding the application of corporate residence criteria for trusts.

Given the recent introduction of tax rules on trusts and the relatively untested practice, there is a high degree of uncertainty in relation to the tax treatment of foreign trusts and the related distributions to resident and nonresident beneficiaries, especially with reference to indirect taxation of trust setup.

No specific provisions have been introduced with regard to distributions to beneficiaries. As suggested by most tax scholars, a distinction needs to be made, depending on whether the taxable income has been attributed to the identified beneficiaries or not.

If the taxable income has been attributed to the identified beneficiaries, the distributions should not be relevant for income tax purposes (irrespective of the application of exemption regimes when computing the taxable income to be attributed to the identified beneficiaries).

If the taxable income has not been attributed to the beneficiaries, it must be considered that no catch-all provision exists, and therefore, in order to constitute taxable income, the distribution should fall within the categories of income provided by the law. In the past, the tax authorities maintained that distributions to beneficiaries might fall within the categories of periodic payments or income from capital. However, in most cases, the distributions do not qualify as such.

Based on the above, a case-by-case analysis would be necessary to verify the correct tax treatment.

8. Grants

This does not apply to Italy.

9. Life insurance

Italian tax law provides a very complex set of rules with respect to the taxation of income deriving from life insurance. The tax treatment depends on several factors (e.g., when the individual bought the insurance, specific terms and conditions of the contract, and how the proceeds are paid out).

As a general rule, the policy owner is entitled to a tax credit of 19% of the premiums paid up to a certain threshold.

According to domestic tax law, financial insurance (life and capitalization insurance policies) is subject to the following tax treatment:

- If the capital is paid as a consequence of the death of the policyholder, no taxation occurs.
- If the payment of capital is linked to the policyholder's survival, Italian tax law provides two different methods of taxation, depending on when the insurance policy was purchased:

1. Insurance policy purchased before 1 January 2000: a flat tax rate of 26% applies to the difference between the payment received and the sum of the insurance premiums paid. The taxable base is reduced by 2% for each year following the tenth year from the date of stipulation.

2. Insurance policy purchased after 1 January 2000: a flat tax rate of 26% applies to the difference between the payment received and the insurance premiums paid and not deducted from the tax liability of the previous tax years.

In cases where income from the insurance policy is paid to a nonresident of Italy, it will be necessary to verify the provisions of the double tax treaty in place between the countries involved.

10. Civil law on succession

10.1 Estate planning

Italy has some interesting estate planning opportunities. Below, we briefly mention the favorable regime applicable to the transfer *inter vivos* (gift) or *mortis causa* (inheritance) of shareholdings in Italian resident corporations (in cases where the shareholding represents the majority of the voting rights in the general shareholders' meeting).

In these cases, where the beneficiaries continue the business activity (maintaining control of the company) for at least five years, no inheritance and gift tax apply. If during the five-year blocking period the above-mentioned requirement is not met (e.g., because the beneficiaries sell a line of business), taxes and penalties will apply.

10.2 Succession

The Italian succession law follows universal succession principles according to:

- The law of the deceased's nationality

  Or

- The location of real or personal property

Heirs have universal succession, and unless he or she refuses to accept the inheritance, they are personally liable for the deceased's debt plus the total taxes due. These obligations are placed upon all the heirs jointly. The heir succeeds to the decedent in all aspects. However, his or her liability is limited to the value of the inheritance received in cases where the heir accepts the inheritance with the benefit of the separation of the property of the deceased from that of the heir (Article 512 of the Italian Civil Code). In such a case, the heir is obliged to make an inventory of property and present it for creditors when relevant.

A legatee under a will has only a personal claim against a compulsory heir (subject to forced heirship laws) and is not liable for a decedent's debts, although he or she is liable for relevant taxes on any legacy.

The main connecting factor for succession purposes is the citizenship of the decedent. In contrast, residence is relevant to tax liability. As noted above, as a general rule, taxation will occur on the basis of worldwide assets if the deceased was an Italian resident, but if the deceased was considered to be a nonresident, taxes are due only for the assets located in Italy, subject to any applicable tax treaties.

10.3 Forced heirship

In the Italian legal system, according to Sec. 46§1, Law No. 218/1995, heirship of an Italian citizen is governed by Italian law.

The rules governing hereditary succession in Italy provide that certain persons, such as spouses, children and legitimate descendants, are considered forced heirs (*heres necessarius*).

This compulsory share or forced heirship is called *legittima*. Forced heirship applies to all of the deceased's assets and to all of the inheritance rights.

If the deceased makes a disposition prejudicing the rights of any of these heirs, such dispositions can be challenged before an Italian court and the heirs can make a claim for the associated damages suffered. In the same way, lifetime gifts (donations) can be challenged before an Italian court, even if performed in favor of other legitimate heirs.

In practice, forced heirship rules restrict the ability to decide how assets should be distributed after death.

The following relatives are entitled to receive the following minimum statutory shares, it being further understood that neither burdens nor conditions can be imposed on such shares as listed in the table below.

Only one child and no spouse	One-half of the inheritance assets
Two or more children but no spouse	A total of two-thirds of the inheritance assets in equal shares
One or more *ascendenti* (ancestors)	Generally parents, but no spouse and no children — one-third of the inheritance assets
Only a surviving spouse	One-half of the inheritance assets
A surviving spouse and a child	To the surviving spouse — one-third of the inheritance assets, and to the child — one-third of the inheritance assets
A surviving spouse and children	To the spouse — one-quarter of the inheritance assets, and to the children in equal shares — one-half of the inheritance assets
A surviving spouse and *ascendenti* but no children	To the spouse — one-half of the inheritance assets, and to the *ascendenti* — one-quarter of the inheritance assets
Separated spouse not charged with separation	Same provisions applying to non-separated spouse
Separated spouse charged with separation	Living allowance if at the time of the succession the surviving spouse enjoyed support from the deceased spouse

Sec. 46§2, Law No. 218/1995 allows the person whose inheritance is at stake to opt — by express testamentary disposition — for his or her succession to be governed by the law of the country in which the latter resides, provided that he or she continues to reside in that country until he or she dies. Such a choice cannot infringe upon or jeopardize the rights of the forced heirs residing in Italy at the time of the death.

10.4 Matrimonial laws and civil partnerships

The Italian matrimonial law normally applicable to all property acquired during marriage is joint ownership. However, at any time the spouses can draw up an agreement (in the form of a public deed or specific declaration in case the choice is made on the day of the marriage) in order to elect for separation of property acquired during the marriage. Assets acquired before the marriage remain the separate (individual) property of each spouse.

For estate planning purposes, it is possible to set up a patrimonial fund (*fondo patrimoniale*). This may be a unilateral declaration of trust by either of the spouses or a trust formed by a third party in favor of the family by way of a transfer of assets to the spouses as trustees.

With regard to the trust, under certain circumstances the Italian tax authorities would likely consider this kind of arrangement to be equivalent to the setting up of "*vincoli di destinazione*" (i.e., creation of encumbrances or other restrictions on the use of certain assets) and, as a consequence, they would consider it subject to gift tax. Based on the above, a case-by-case analysis would be necessary to verify whether gift tax is applicable or not to a *fondo patrimoniale*.

As far as civil partnerships are concerned, a new law (Law No. 76 of 20 May 2016) entered into force in Italy providing for civil partnerships between same-sex individuals. Following this new law, partnerships previously not recognized by law are now subject to the main rules applicable to heterosexual married couples. As a result, references in the rules to "spouse" have been changed to "partner of a civil partnership."

10.5 Intestacy

Under the Italian law of succession, a person may dispose of his or her property or estate for the time after death by will (*testamento*) or, alternatively, let the law deal with this matter.

When a person dies without a valid will, Italian law states who is going to inherit and how much (*successione legittima*). When a person dies leaving a valid will, the law will ascertain the validity of the will, provide a set of formalities to be complied with, and in some cases taxes to be paid, and ensure that the will is implemented and the relevant assets are legally transferred to the persons or beneficiaries entitled (*eredi* or *legatari*).

Italian law will also ensure that the immediate members of the deceased's family are not deprived of their minimum statutory share of the estate (see Section 10.3).

Under Italian law there are three ways to make a valid will:

1. Handwritten will (*testamento olografo*): This is a document personally handwritten by the person making the will (testator) and which is dated and signed. There is no need for witnesses and no attestation clause. It can be a very simple letter or document.

2. Formal will (*testamento pubblico*): This is a document drafted by an Italian notary upon the instructions of the testator, read by the notary to ensure that it complies with the wishes of the testator and signed by the testator in the presence of witnesses.

3. Secret will (*testamento segreto*): This is a will drafted and written by the testator and placed in a sealed envelope, which is then delivered to an Italian notary.

10.6 Probate

Italian law does not require executors to be appointed; however, when a person dies owning property (land or buildings), it may be necessary to collect documentation, organize certified translations of documents, appoint a local notary and follow special procedures.

After completing the probate procedure, it will be possible to re-register the immovable assets in the name of the heirs (the Italian legal procedure defined as *voltura*).

11. Estate tax treaties

11.1 Unilateral rules

Unilateral relief is available in Italy for residents and nonresidents with respect to foreign gift and inheritance taxes paid on assets situated abroad that are also liable to Italian inheritance and gift tax. The relief is by way of credit, up to a maximum of the Italian tax attributable to those assets.

11.2 Double-taxation treaties

Italy has concluded inheritance and gift tax treaties with Denmark, Greece, Israel, Sweden and the United Kingdom. The treaty with the United States covers only taxes due in connection with death (gift taxes are not covered).

12. Other

As mentioned above, new legislation has introduced some new rules on the scope of the application of gift tax, the main changes being that in addition to donations, the transfer of assets made without consideration (*atti di trasferimento a titolo gratuito*) and the setting up of *vincoli di destinazione* are now subject to gift tax.

The Italian tax authorities have clarified that the setting up of a trust on certain assets needs to be deemed to fall within the notion of *vincolo di destinazione*; as a consequence, the gift tax would be applicable to the trust. The same conclusions may be reached with respect to the creation of fiduciary obligations.

In the last four years, the Italian tax authorities have provided several pieces of guidance and clarifications on the taxation of trusts; however, at the same time, Italian tax courts have taken different and often contrary approaches. Thus, there is a high degree of uncertainty.

The Italian tax authorities have also confirmed that gift tax applies both to purpose trusts (i.e., where the beneficiaries are not identified) and to trusts where the beneficiaries are clearly identified by the settlor. For the purposes of applying the correct tax rates and tax-exempt thresholds, the tax authorities have clarified that when the beneficiaries are identified, gift tax applies, taking into consideration the relationship between the settlor and the beneficiaries. On the contrary, when no beneficiaries are clearly identified, the relationship between the settlor and the trustee must be considered.

A different approach is taken by most scholars and tax experts, who maintain that entering into a trust deed does not determine any actual transfer of assets (and consequent enrichment) to the trustee; therefore, in theory, this transfer would not be subject to gift tax when the trust is set up.

In accordance with the most recent decisions of the Tax Supreme Court, the approach of the Italian tax authority was recognized regarding the application of gift tax with proportional tax rate at the moment of the trust setup, since any kind of asset or real estate transaction that implies an ownership transfer falls under the tax application with reference to indirect tax.

However, it is important to note that this aspect is subject to evolution. Indeed, with reference to the so-called "*trust autodichiarati*" (i.e., a self-declared trust), the Italian Supreme Court recently repealed the previous court decisions. Under the new approach, which is contrary to the position of the Italian tax authorities, self-declared trusts are not subject to gift tax in the hands of the settlor at the moment of the setup. Gift tax will be applicable only to beneficiaries as soon as the ownership of the segregated assets is transferred to them.

Japan

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1. Types of tax

1.1 Inheritance tax

The Japanese Inheritance Tax Law (*sozoku zei ho*) covers inheritance tax (*sozoku zei*) and gift tax (*zoyo zei*). Inheritance tax is imposed on an individual who acquires property by inheritance or bequest upon the death of the decedent. Gift tax is imposed on an individual who acquires properties by gift (or economic benefit by deemed gift). Gift tax is supplementary to inheritance tax. Both taxes are national taxes and no local tax is assessed on the transfer of property due to inheritance or a gift.

Computation of inheritance tax

Inheritance tax is imposed on the aggregate value of all properties acquired by inheritance or bequest. However, the individual heirs are taxed, not the estate. Inheritance tax is calculated separately for each statutory heir and legatee, regardless of how and to whom the property is to be distributed. Then, the total amount of tax calculated is allocated between those who actually received the decedent's properties in accordance with his or her will or as agreed upon by the heirs. The tax is calculated based on the statutory heirs and legatees, whereas the tax liability is attributed to those who actually acquired the properties.

Computation

The computation is based on the following steps:

- Aggregate the amount of taxable properties acquired by all heirs and legatees (net of the liabilities succeeded)
- Deduct the basic exemption of ¥30 million plus ¥6 million multiplied by the number of statutory heirs from the above "aggregated taxable estate value"
- Allocate the aggregated taxable estate value to each statutory heir according to their statutory share
- Calculate the inheritance tax separately for each statutory heir's portion allocated above, by the application of the following progressive tax rates:

Up to ¥10 million	10%
Above ¥10 million up to ¥30 million	15%
Above ¥30 million up to ¥50 million	20%
Above ¥50 million up to ¥100 million	30%
Above ¥100 million up to ¥200 million	40%
Above ¥200 million up to ¥300 million	45%
Above ¥300 million up to ¥600 million	50%
Above ¥600 million	55%

- Aggregate the inheritance tax calculated above, "aggregated inheritance tax"
- Allocate the aggregated inheritance tax to each of the heirs and legatees based on the ratio of the value of the taxable properties actually acquired by him or her against the aggregated taxable estate value
- A 20% surtax is imposed on heirs or legatees of anyone who is not the decedent's spouse, the decedent's parents or the decedent's children. Where the decedent's grandchild became the decedent's adopted child, he or she is also subject to a 20% surtax.
- Deduct applicable tax credits for each heir (see Section 4)

The property acquired by a gift from the deceased within three years of the death of the deceased is regarded as estate property, subject to inheritance tax. Any gift tax imposed on the acquisition of such property is creditable against the inheritance tax liability.

1.2 Gift tax

Gift tax is imposed on individuals who acquire property by gift during the lifetime of the donor. Gift tax is also imposed on economic benefits received by deemed gift.

Computation of gift tax

The taxable base of gift tax is determined as the value of properties obtained by a gift (or by a deemed gift) during each calendar year, after an annual basic exemption of ¥1.1 million is applied. The applicable tax rates are as follows:

Those other than the right		Where donee is 20 years of age or older and donor is his lineal ascendant/descendant	
Tax base	**Rate**	**Tax base**	**Rate**
Not more than ¥2 million	10%	Not more than ¥2 million	10%
Above ¥2 million up to ¥3 million	15%	Above ¥2 million up to ¥3 million	15%
Above ¥3 million up to ¥4 million	20%	Above ¥3 million up to ¥4 million	15%
Above ¥4 million up to ¥6 million	30%	Above ¥4 million up to ¥6 million	20%
Above ¥6 million up to ¥10 million	40%	Above ¥6 million up to ¥10 million	30%
Above ¥10 million up to ¥15 million	45%	Above ¥10 million up to ¥15 million	40%
Above ¥15 million up to ¥30 million	50%	Above ¥15 million up to ¥30 million	45%
Above ¥30 million	55%	Above ¥30 million up to ¥45 million	50%
		Above ¥45 million	55%

1.3 Real estate transfer tax

Registration and license tax

The registration of the transfer of ownership of real property by inheritance is subject to registration and license tax at the rate of 0.4% of assessed value of the land and building. The registration of the transfer of ownership by gift or sales is generally subject to registration and license tax at a standard rate of 2%.

Real estate acquisition tax

The acquisition of real property by gift or sale is generally subject to real estate acquisition tax at 4%. As a temporary measure, the acquisition of land and residential buildings is subject to real estate acquisition tax at a reduced rate of 3% until 31 March 2018. However, the acquisition of real property by inheritance is exempt from real estate acquisition tax.

1.4 Endowment tax

There is no endowment tax in Japan. As described in Section 4, if the heir makes donations of property to certain specified nonprofit organizations or foundations of the Japanese Government or a local public organization by the filing due date of the inheritance tax, the property is exempt from the inheritance tax.

1.5 Transfer duty

There is no transfer duty other than real estate transfer taxes (see Section 1.3).

1.6 Net wealth tax

There is no tax imposed on net wealth in Japan.

2. Who is liable?

2.1 Unlimited liability

Nationality and domicile

An heir or donee who is domiciled in Japan upon acquisition of property by inheritance, bequest of a decedent or by gift has unlimited liability for inheritance tax or gift tax, regardless of his or her nationality. In cases where an heir or donee has Japanese nationality but is not domiciled in Japan at the time of property acquisition, he or she will still be subject to unlimited liability if either the heir or the deceased or the donee or the donor has been domiciled in Japan at any time within 10 years immediately before the time of death of the decedent or at the time of the gift (unlimited liability taxpayer with Japanese nationality). In cases where an heir or donee without Japanese nationality is not domiciled in Japan, he or she is also subject to unlimited liability if the deceased or the donor is domiciled in Japan at the death of the decedent or at the time of the gift or had a domicile in Japan anytime within the 10 years preceding the inheritance or gift.

Unlimited liability taxpayers are subject to inheritance tax or gift tax on all of the properties acquired regardless of whether the properties are located in or outside Japan.

A person without Japanese nationality who lives temporarily in Japan is subject to inheritance tax or gift tax only on properties located in Japan (i.e., limited liability taxpayer). A person without Japanese nationality having a visa issued under table 1 of the Immigration Act is considered temporarily staying in Japan if the total period of being domiciled in Japan is, in aggregate, less than 10 years within the past 15 years before the inheritance or gift.

Domicile

For the purposes of inheritance tax and gift tax, a "domicile" is defined as the principal base of living, which is determined based on facts and circumstances. The following individuals (as heirs or donees) will be treated as being domiciled in Japan, although they are actually located outside Japan:

- An individual who is studying abroad and is treated as a dependent of a Japanese resident for Japanese income tax purposes
- An individual who is assigned to work or provide personal services outside Japan for a period of approximately one year or less

2.2 Limited liability

If a deceased or a donor has not been domiciled in Japan in the last 10 years and is: i) an heir or donee who is of Japanese nationality and has not been domiciled in Japan in the last 10 years; ii) an heir or donee who is without Japanese nationality and does not have a domicile in Japan at the time of death of the decedent or at the time of the gift, then the heir or donee is categorized as a limited liability taxpayer. The limited liability taxpayer is subject to inheritance tax or gift tax only on the properties situated in Japan.

Whether the property is situated in Japan or not is determined based on the following location rules:

Kind of property	Location
Personal property	Place where the property is located
Real property	Place where the real property is situated
Ships or aircraft	Place where they are registered
Mining or quarry rights	Location of the mine or quarry
Fishing concession rights	Place of the coast nearest to the fishing grounds
Deposits with a bank	Location of the office deposited
Insurance proceeds	Location of the head office or the principal office of the insurance company that issued the policy
Retirement allowances	Location of the head office or the principal office of the payer company
Loans	The domicile, the head office or the principal office of the debtor
Shares in a company or bond and debentures issued by a company	Place where the issuing company has the head office or the principal office
Interests in collective investment trusts or taxable trusts	Location of the trustee's office
Patents, trademarks, etc.	Place where they are registered
Copyrights or publishing rights	Location of the publisher's office
Trade receivables, goodwill and other rights related to business operation	Place of business to which they are related
Japanese Government bonds	Japan
Foreign government bonds	Country of issuance
Others	The domicile of the deceased or the donor

3. Rates

This is not applicable in Japan.

4. Exemptions and reliefs

Exemptions and tax credits

There are several asset or purpose-related exemptions and personal exemptions as well as tax credits.

Main items of exemptions

- Donations of properties to certain specified nonprofit organizations or foundations of the Japanese Government or a local public organization if the heir makes the donation by the filing due date of the inheritance tax
- ¥5 million per statutory heir for life insurance proceeds (as deemed estate property)

- ¥5 million per statutory heir for retirement allowance (as deemed estate property)
- Only a certain portion (e.g., 20%) of the acquisition of small-scale business or residential land is subject to inheritance tax. A maximum of 330 sq. meters of land used as a residence and a maximum of 400 sq. meters of land used for business qualifies for this treatment.

Main items of tax credits

- As for inheritance tax to be paid by a spouse, the portion of tax due attributed to the spouse pursuant to the statutory share (the greater amount of the spouse's statutory share or ¥160 million) is creditable against the spouse's inheritance tax due.
- For minor heirs under 20 years old, ¥100,000 x (20 – heir's age).
- For handicapped heirs, ¥100,000 (¥200,000 in the case of special disabilities) x (85 – heir's age).
- If a decedent has paid by himself or herself inheritance tax for the acquisition of property within 10 years immediately preceding his or her death, a portion of the heir's inheritance tax will be creditable according to a certain formula.
- A foreign tax credit is available in order to avoid double taxation on the inheritance.

Example

Assuming that (i) the heirs are the spouse and a child (in this case, the portion of statutory share is 50% for each); (ii) the aggregated taxable estate value is ¥1 billion and the aggregated inheritance tax due is ¥395 million, respectively; and (iii) the spouse inherits the properties in the amount of ¥500 million, no inheritance tax is payable by the spouse, since tax due attributed to the spouse is based on the statutory share (i.e., ¥197.5 million; ¥395 million x ¥500 million/¥1,000 million) and the same amount of the credit is applied. The child will have a tax liability of ¥197.5 million (i.e., ¥395 million x ¥500 million/¥1,000 million).

Gift tax exemptions

The following are exempt from gift tax:

- Gifts from a corporation, which are subject to income tax
- Gifts to dependents for living expenses and education
- Gifts of education funds up to ¥15 million to dependents, made from 1 April 2013 to 31 March 2019, subject to certain conditions
- Gifts of child-rearing and marriage funds up to ¥10 million to dependents, made from 1 April 2015 to 31 March 2019, subject to certain conditions
- Gifts to a person engaged in activities for religious, charitable, scientific, educational or social welfare purposes to be used for such activities
- Gifts of money or goods from a specified public interest trust to students or pupils to support their educational costs
- Providing a right to receive a subsidy from a local public organization to a handicapped person
- Qualified donations to a candidate for a public election campaign, which are duly reported
- Obtaining trust beneficiary rights up to ¥60 million by a special handicapped person according to a special support arrangement
- One-time exemption of up to ¥20 million of the value of a residential property transferred from a spouse where the period of marriage is 20 years or more and where the donee uses the property for residential purposes
- Exemption of up to ¥7 million (per donee) during 2017 for gifts made in cash by parents to their children of age 20 years or older to acquire a residential house

5. Filing procedures

Filing procedures

The inheritance tax return must be filed within 10 months from the time that the taxpayers become aware of the opening of the succession, with the relevant tax office having jurisdiction over the domicile of the deceased. Where two or more taxpayers are domiciled in Japan, a joint tax return will be filed. If the deceased is not domiciled in Japan at the time of death, each heir domiciled in Japan files his or her tax return with the tax office having jurisdiction over his or her domicile. If neither the decedent nor heir is domiciled in Japan, the heir may elect any tax office for filing purposes.

Tax payment

In principle, the inheritance tax must be paid in one lump sum in cash by the filing due date. A deferral of the tax payment may be allowed up to 20 years. Furthermore, if a lump-sum cash payment is not possible, inherited property for payment in kind is allowed. The advantage of payment in kind is to avoid income taxation on capital gains, if any, arising from a sale of the inherited property in order to finance the tax payment.

Gift tax settlement at time of inheritance tax

The rates for the gift tax are generally higher than those for inheritance tax. This is intended to prevent the avoidance of inheritance tax. Gift tax is in principle settled on a calendar year basis but there is an exception to this general rule, i.e., a special taxation system for settlement at the time of inheritance by election, which was introduced in 2003 in order to promote a smooth hand-down of property through gifts from living parents to their children. When a parent or grandparent who is 60 years of age or older makes a gift to an adult child or grandchild of age 20 years or older, the following can be elected:

- If the total amount of the donated properties is ¥25 million or less, no gift tax is payable.
- If the total amount of the donated properties exceeds ¥25 million, a fixed tax rate of 20% is applied to the excess portion to calculate the gift tax due.

At the time of the parent's or grandparent's death, the above properties will be added to the taxable estate assets and will be subject to inheritance tax. The child or grandchild who elected the special taxation system will credit the gift tax already paid against his or her inheritance tax due. If the already paid gift tax exceeds the inheritance tax liability, the excess portion will be refunded.

Filing procedures of gift tax

A gift tax return must be filed and gift tax must be paid by 15 March of the year following the gift.

6. Assessments and valuations

Valuation of the property

Introduction

The taxable base of properties for inheritance tax and gift tax purposes is the fair market value at the time of the transfer.

However, the Japanese tax authorities-issued Basic Property Valuation Circular introduced deals with a specific method of valuation for various properties, including land, buildings, tangible and intangible assets, shares in companies, bonds and debentures.

Land

The value of land is generally determined based on the assessed value[1] that the tax authorities annually publish.

Shares

The value of listed shares and shares traded over the counter is generally calculated based on the share price on the valuation date. However, the lowest of the monthly average prices for the month, including the valuation date and the two preceding months, may be used. The value of unlisted shares is calculated based on the size of the company depending on the number of employees, gross assets and annual sales.

- Large company — comparative value of similar company

  The value of unlisted shares in a large company is calculated based on the share price of comparable listed companies.

- Small company — net asset value method

  The value of unlisted shares in a small company is calculated based on the net asset revaluated for inheritance tax purposes.

- Medium company

  The value of unlisted shares in a medium company is calculated based on the combination of the comparative value of similar company and net asset value methods.

  However, unlisted shares acquired by a certain minority shareholder are calculated based on a dividend discount method.

7. Trusts, foundations and private purpose funds

Trusts

For Japanese tax purposes, a trust is treated as either transparent, not transparent and not a taxable entity, or a corporation, depending on its legal character. When an individual acquires trust beneficiary interests due to a death or without arm's-length consideration (i.e., by a deemed gift), inheritance tax or gift tax will be assessed on such individual.

Under a 2007 revision of the Japanese Trust Law, new types of trusts have become available:

- Trusts substituting testaments
- Trusts under which the subsequent beneficiaries can be designated in advance

By settling the latter type of trust, for example, the settlor of the trust designates his or her spouse as the beneficiary after his or her death and also designates his or her child as the beneficiary after the spouse's death. This newly introduced arrangement of designating subsequent beneficiaries cannot be done by testament. For inheritance tax purposes, the new beneficiary is regarded as obtaining a beneficiary interest from the preceding beneficiary.

Foundations and private purpose funds

The properties transferred from the heir to a non-corporate charitable organization, including foundations and private purpose funds, are subject to inheritance or gift tax, but an exemption may be available if the properties transferred from the heir to such charitable organization are to be used only for authorized charity under Japanese laws. A corporate charitable organization is not subject to inheritance or gift tax, but is subject to corporate income tax on gains by the gift. However, if the recipient of the gift is an authorized nonprofit organization and its income is derived from nonprofit activities (i.e., charity), such income is exempt from corporate income tax.

[1]Roadside value per square meter of land or *rosenka*.

8. Grants

There is no general death grant, but if a burier applies, he or she may be able to receive a payment from a Social Security benefit (i.e., health insurance) to cover the cost of the burial.

9. Life insurance

For purposes of the civil law, life insurance proceeds are considered as properties of a recipient. On the other hand, life insurance proceeds are treated as a receipt of the property upon succession for tax purposes (i.e., subject to inheritance tax).

10. Civil law on succession

10.1 Estate planning

The Japanese Civil Code prescribes the types of wills.

10.2 Japanese civil law on succession

Succession

According to the Japanese Civil Code, all rights and obligations of the decedent transfer to heirs automatically and comprehensively at the time of his or her death. For example, at the time of the decedent's death, all heirs jointly own the estate properties, which are then distributed amongst the heirs as previously agreed upon. If an heir wants to waive the inheritance or accept the inheritance to the extent of the positive assets, notification to a family court has to be made within three months from the date the heir is informed of his or her inheritance.

According to Article 36 of the Act on General Rules of Application Laws, the law of the deceased's home country (nationality) governs succession.

There are no regional rules on succession law (Civil Code) in Japan.

Statutory heirs (*houtei sozokunin*)

The Japanese Civil Code prescribes for statutory heirship. The decedent's spouse is always a successor. Other than a spouse, the Civil Code provides three priority levels for successors. The spouse always becomes a successor of equal rank to a successor in any of the priority levels. Anyone in the lower priority groups will not become a successor if a higher priority person is alive at the time of the opening of the succession.

An individual who waives an inheritance is not regarded as an heir upon waiver.

The actual allocation of estate properties is made based on agreement among the heirs. The above statutory share is applicable in the case where an agreement is not reached among the heirs.

10.3 Mandatory heirship — legally secured portion of succession (*iryubun*)

The Japanese Civil Code provides mandatory heirship rules enabling certain persons to claim a share of an estate if they are excluded from succession by the decedent's last will. Even if the deceased determines the allocation of his or her estate property by testament, his or her spouse, lineal ascendants and lineal descendants as the heirs have a right to receive the following share, as a total, of the estate under the mandatory heirship rules:

- When the heirs do not include the spouse and only lineal ascendants: one-third of the estate property
- Other cases: one-half of the estate

Brothers and sisters are not entitled to claim mandatory heirship.

Priority groups of statutory heirs and mandatory heirship

Order	Statutory heirs	Statutory shares	Mandatory heirship
1	Son(s) and daughter(s) of the deceased (if the sons and daughters are already deceased, lineal descendants of these sons and daughters)	Spouse: one-half Children: one-half in total (equally for each)	Spouse and children: one-half in total Children only: one-half in total
2	Lineal ascendants of the deceased (i.e., father, mother, grandfather, grandmother)	Spouse: two-thirds Lineal ascendants: one-third in total (equally for each)	Spouse and lineal ascendants: one-half in total Lineal ascendants only: one-third in total
3	Brother(s) and sister(s) of the deceased (if the brothers and sisters are already deceased, their sons and daughters)	Spouse: three-quarters Brother(s) and sister(s): one-quarter in total (equally for each)	Spouse, brother(s) and sister(s): one-half for spouse only; no mandatory heirship for brother(s) and sister(s)

10.4 Matrimonial regimes and civil partnerships

In Japan, the matrimonial property regime of strict separation is applied, under which each spouse holds his or her property independently in separate ownership.

10.5 Intestacy

A will is a legal document that regulates an individual's estate after death. Wills are not as commonly used in Japan as in other countries. As Japan has ratified the 1964 Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, the validity of a foreign form will may be admitted.

If there is no will, the estate properties will be allocated among the statutory heirs pursuant to their agreement on the allocation. Until such agreement is reached, the estate properties are treated as being jointly owned by the heirs. Income earned from the properties during such period is subject to income taxation and the tax liability is allocated among the statutory heirs pursuant to their respective statutory shares.

10.6 Probate

There is no probate system in Japan. All properties are comprehensibly transferred to the heirs at the death.

11. Estate tax treaties

11.1 Unilateral rules

This is not applicable in Japan.

11.2 Double-taxation treaties

Japan has concluded only one estate tax treaty; it is with the United States and was agreed in 1955. This tax treaty is not based on the Organisation for Economic Co-operation and Development's inheritance tax treaty model.

Luxembourg

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1. Types of tax

Under Luxembourg law, inheritances and gifts are subject to indirect taxes. The *Administration de l'Enregistrement et des Domaines* levies these taxes and is authorized to collect, *inter alia,* inheritance taxes and registration duties, such as gift taxes and property transfer taxes. This administration is not responsible for collecting income taxes, which are not covered in this guide.

Inheritance taxes apply to the value of an individual's estate when he or she dies. Gift tax is due on the transfer of assets made during the individual's lifetime.

1.1 Inheritance tax

Inheritance taxes are levied on the whole estate left by an inhabitant of the Grand-Duchy of Luxembourg at the time of his or her death, except real estate located abroad and movable goods located abroad that are taxed by reference to the citizenship of the deceased. Inheritance taxes are due in Luxembourg wherever the heirs are resident.

1.2 Death duty

Death duties are levied on real estate located in Luxembourg that is left by a person who is not an inhabitant of Luxembourg. No tax is due on movable property located in Luxembourg and owned by a person who is not an inhabitant of Luxembourg.

1.3 Gift tax

Tax is levied on gifts made during the individual's lifetime (*inter vivos* gifts).

A notarial deed is in principle required to evidence gifts under Luxembourg law. Gifts made in writing must be registered with the *Administration de l'Enregistrement et des Domaines* and are subject to registration duties (i.e., gift taxes). Gifts that are not required to be made in writing (e.g., gifts of movable assets transferred by hand delivery (*Dons manuels*)) are generally accepted

without notarial deed and thus without registration. However, such gifts may be subject to registration duties if another registered deed refers to them.

Gift taxes may be fixed or based on a percentage. The fixed duty is €12. The percentage duty depends on the degree of relationship between the donor and the donee. For gift tax purposes, the fiscal domicile of the donee and the donor are irrelevant. Moreover, gifts of immovable property may be subject to an additional transfer duty of 1% (*Droit de transcription*) to cover the property transfer in the public register.

Inter vivos gifts to direct line heirs, which qualify as ancestors' partition (*Partage d'ascendants*), are exempt from transfer duty. Ancestors' partition is a method through which a person can distribute his or her estate or part of it during his or her lifetime to his or her direct heirs.

2. Who is liable?

2.1 Inheritance tax and death duty

A person is deemed to be a Luxembourg inhabitant, and thus liable to inheritance tax, if he or she has his or her domicile or the center of his or her activities there. His or her tax domicile is the place where he or she has established his or her effective and permanent residence, while the center of his or her activities is the place from which he or she manages or supervises his or her assets. Otherwise, this person is liable only for death duties.

2.2 Gift taxes

Immovable property

Real estate located in Luxembourg is subject to gift tax at a percentage rate, even if the transfer deed is executed abroad.

If the real estate is located abroad, only a fixed duty of €12 is due, even if the deed is registered in Luxembourg.

Additional gift duties may be applicable by virtue of a municipal surtax of a further 50% of the tax if the real estate (except housing property or building land) is located within the municipality of Luxembourg City.

Movable property

Gifts of movable property, which are made in Luxembourg by notarial deed, are subject to percentage gift taxes wherever the movable property is located.

Gifts of movable property, which are made abroad, are not subject to percentage gift taxes if the gift is made by notarial deed and the transaction takes place entirely abroad. However, a fixed duty of €12 is due if the act is voluntarily registered in Luxembourg.

3. Rates

3.1 Inheritance tax rates

Each beneficiary is separately taxed based on the net share attributed to him or her less personal allowances available.

The tax rates differ depending on the degree of relationship between the heir and the deceased or the donee and the donor.

	Inheritance tax and death duty tax rates	
Degree of relationship	Tax rate for the statutory share	Tax rate exceeding the statutory share
Direct heirs	0%	2.5% or 5%*
Between spouses or registered partners since more than three years having common children or descendants	0%	0%
Between spouses or registered partners since more than three years having no common children or descendants	5%**	5%
Between siblings	6%	15%
Between uncles or aunts and nephews or nieces	9%	15%
Between the adopting parents and the adopted children in the case of a simple adoption (with no tax favorable treatment)	9%	15%
Between great-uncles or great-aunts and great-nephews or great-nieces	10%	15%
Between the adopting parents and the descendants of the adopted children in case of a simple adoption (with no tax-favorable treatment)	10%	15%
Between unrelated parties	15%	15%

**In cases where a direct heir receives a legacy exceeding his or her intestacy share (e.g., under a will), a tax of 2.5% is computed on the part that represents the disposable portion of the estate. If the legacy exceeds the disposable portion, the excess will be taxed at 5%.*

***This rate applies to the entire value of the transferred assets, decreased by an allowance of €38,000.*

The rates mentioned above are increased by adding the following rates to the extent that the share received by each heir exceeds a net taxable amount of €10,000.

Scale		Tax rate increase
From €	Up to €	
€10,000	€20,000	1/10
€20,000	€30,000	2/10
€30,000	€40,000	3/10
€40,000	€50,000	4/10
€50,000	€75,000	5/10
€75,000	€100,000	6/10
€100,000	€150,000	7/10
€150,000	€200,000	8/10
€200,000	€250,000	9/10
€250,000	€380,000	12/10
€380,000	€500,000	13/10
€500,000	€620,000	14/10
€620,000	€750,000	15/10

Scale		Tax rate increase
From €	Up to €	
€750,000	€870,000	16/10
€870,000	€1 million	17/10
€1 million	€1.25 million	18/10
€1.25 million	€1.5 million	19/10
€1.50 million	€1.75 million	20/10
€1.75 million	–	22/10

With reference to the table above, the inheritance tax rate can reach a maximum of 48% (i.e., 15% + (22/10 x 15%) = 48%).

3.2 *Inter vivos* gift tax rates

	Gift tax rates (including a 2/10 increase)
In favor of direct heirs, without reintegration exemption *(sans dispense de rapport)*	1.80%
In favor of direct heirs, with reintegration exemption *(avec dispense de rapport en nature ou par préciput et hors part)*	2.40%
Ancestors' partitions	
Attribution of shares without exceeding the statutory shares	1.80%
Attribution of shares exceeding the statutory shares but within the disposable portion	2.40%
Attribution of shares exceeding the statutory share and the disposable portion	3.00%
Between spouses or partners registered for at least three years without any marriage contract	4.80%
Between spouses with a marriage contract or a gift in contemplation of marriage	2.40%
Between siblings	6.00%
Between siblings through a marriage contract or a gift in contemplation of marriage	3.00%
In favor of municipalities, hospices and non-registered charities	4.80%
In favor of non-profit-making organizations	4.80%
Between uncles or aunts and nephews or nieces	8.40%
Between the adopting parents and the adopted children	8.40%
Between the father-in-law or the mother-in-law and the son-in-law or the daughter-in-law	8.40%
Between the individuals listed above if the donations are made through a marriage contract or are given in contemplation of marriage	4.20%
Between great-uncles or great-aunts and great-nephews or great-nieces	9.60%
Between the adopting parents and the adopted children's descendants	9.60%
Between the individuals listed above if the donations are made through a marriage contract or are gifts in contemplation of marriage	4.80%
Between all relatives having a lower kinship than those mentioned above	14.40%
Between the father-in-law or the mother-in-law and the son-in-law or the daughter-in-law in the case where the deceased spouse has not left any common children or descendants of them	14.40%
Between the same individuals listed above if the donations are made through a marriage contract or are gifts in contemplation of marriage	7.20%

4. Exemptions and reliefs

4.1 Inheritance tax and death duty exemptions

Inheritance tax and death duty exemptions apply in the following cases:

- Any direct heirs' inheritance (except for the share exceeding the statutory share)
- Any inheritance between spouses or civil partners who have been registered for more than three years and have at least one common child
- Any inheritance by the surviving spouse or civil partner (who has been in a civil partnership registered for more than three years) in the form of a usufruct or annuity, in cases where the decedent's children of a previous marriage inherited the property subject to such right of usufruct or having responsibility for the annuity
- Any inheritance if its net value does not exceed €1,250
- Any legacy received by certain registered charities

In order to avoid double taxation on property transfers, Luxembourg law applies unilateral exemption in the following cases:

- Real estate located abroad must be declared in Luxembourg. A proportionate part of its value will constitute a deductible liability.
- Movable goods located abroad that have been taxed abroad by reference only to the citizenship of the decedent.

4.2 Personal allowances and reliefs

For inheritance tax and death duty purposes, assets up to €38,000 in value passing to the surviving spouse or civil partner (who has been in a civil partnership registered for more than three years) in accordance with the provisions of the law dated 9 July 2004 are exempt in cases where they do not have common children.

Gift duties are reduced by 50% if gifts are made under the terms of a marriage contract or if a gift is made in view of a marriage.

5. Filing procedures

5.1 Date for payment of tax

Inheritance taxes must be paid within six weeks of receipt of the assessment issued by the local tax authorities.

The Luxembourg inheritance tax legislation foresees that the estate of nonresident heirs is frozen until they provide an additional guarantee. However, this provision does not apply for Luxembourg resident heirs or legatees and for heirs and legatees having their residence in the European Economic Area (EEA).

With respect to gift tax, registration duties are due at the date of registration.

5.2 Filing procedure

The heirs and legatees must file a detailed declaration within six months of the date of the death if the death occurs in Luxembourg. The filing deadline may be postponed if the death occurs abroad.

This procedure is mandatory even if no inheritance tax is due.

If the deceased is not domiciled in Luxembourg, an individual who inherits real estate must file a declaration at each local tax office where the real estate property is located.

6. Assessments and valuations

6.1 Valuation rules and determination of the tax basis

Inheritance taxes are levied on the fair market value (FMV) of the inherited assets less the liabilities of the deceased existing at the time of death (e.g., professional liabilities, domestic liabilities, funeral costs and unpaid taxes).

Death duties are levied on the FMV of the inherited real estate without any other deduction than the debts in relation with the Luxembourg real estate.

With respect to gift tax, no deductions are available for gift tax purposes.

The taxable amount is established on the basis of the following valuation rules:

- Real estate is valued at its FMV as of the date of death or gift (an expert valuation may be requested).
- A usufruct over movable goods or real estate is valued, as described below, under gifts with reservation.
- Shares, bonds and accrued interest are valued at their FMV at the date of death or gift.
- Stocks listed on the stock exchange are valued at their FMV at the date of death or gift.

Special valuation rules exist with respect to the valuation of long leases, life annuities, property rents and other periodical remunerations.

For the purpose of determining the inheritance tax basis, the following assets are deemed to be aggregated to the taxable asset base:

- Gifts made by the decedent within the year preceding his or her death, unless they were duly subject to gift duties
- Cash or other valuable assets a third party receives without tax, pursuant to a contract entered into by the deceased for the benefit of that third party (e.g., life insurance for the benefit of another) if no gift duties were paid at the date of the contract
- Movable goods or real estate property sold to one of the heirs within the three months preceding the death of the seller in cases where he or she reserved the usufruct over them
- Any liability written off under a testamentary document and, accordingly, treated as a legacy

6.2 Usufruct and bare ownership

A gift where the donor has transferred the bare ownership of his or her assets (reserving the usufruct) is subject to gift taxes.

The value of the bare ownership and the usufruct (life usufruct) is determined according to the age of the donor at the time the gift is made.

Donor age	Usufruct	Bare ownership
Less than 20	90%	10%
Between 20–29	80%	20%
Between 30-39	70%	30%
Between 40–49	60%	40%
Between 50–59	50%	50%
Between 60-69	40%	60%

Donor age	Usufruct	Bare ownership
Between 70-79	30%	70%
Between 80-89	20%	80%
90 and over	10%	90%

The above valuation rules are based on the law of 26 March 2014 and entered into force as of 1 April 2014.

The usufruct with a fixed duration is valued at 2/10 of the value of the full ownership per 10-year period, with the limitation that the value of the fixed duration usufruct should not exceed the value of the life usufruct as described above.

When the donor dies, the usufruct effectively ceases to exist and the bare ownership matures into full ownership. Neither gift taxes nor inheritance or death duties will apply at that time.

The above table is also applicable for inheritance tax and death duty purposes.

7. Trusts, foundations and private purpose funds

Under the law of 27 July 2003, Luxembourg ratified The Hague Convention of 1 July 1985 relating to the recognition of foreign trusts. It also revised the Luxembourg legislation regarding fiduciary agreements in order to facilitate the recognition of a Luxembourg fiduciary by other contracting states.

The same law also introduced different indirect tax measures in relation to trusts and fiduciary agreements.

Trust and fiduciary agreements are not subject to compulsory registration formalities, even if they are established by public deed, before the courts or before any other Luxembourg authority. This rule does not apply if the trust or fiduciary agreement relates to immovable property located in Luxembourg, planes, ships or boats for navigation on internal waterways registered in Luxembourg, or to any rights over such an asset that must also be transcribed, recorded or registered.

Voluntary registration is, however, possible.

Fiduciary contracts and trust deeds that relate to assets or rights that the fiduciary or the trustee must re-transfer within 30 years, are subject to a fixed registration duty of €12 when they are registered. The same applies to deeds effecting the re-transfer of the assets or rights to the fiduciant or to the settlor within that period.

In cases where the assets or the rights are definitively transferred, during or at the end of the fiduciary contract or trust agreement, to the fiduciary or the trustee and where the fiduciary contract or the trust agreement had been registered at the fixed registration duty of €12, the assets or rights transferred must be registered at the rates applicable under common law. Accordingly, the higher rates for sales are applicable, except for some specific transactions relating to the transfer of assets under pledge (which are only subject to the fixed registration duty). For real estate located in Luxembourg, property transfer tax amounts to 7% (10% if the real estate is located within the municipality of Luxembourg City). For movable property, the registration duty may vary from 1.2% to 6% upon voluntary registration. However, the transfer of movable property, other than by way of a gift or an inheritance, is not subject to compulsory registration. No percentage registration duty applies on the transfer of shares even if the transfer is registered, except for the transfer of units in partnerships owning a real estate located in Luxembourg.

In cases of a gratuitous transfer of an asset or a right owed by a fiduciary or a trustee to a third-party beneficiary, gift tax is due depending on the degree of relationship between the beneficiary and the fiduciant or the settlor.

The same applies for the calculation of inheritance tax and death duties.

8. Grants

This does not apply.

9. Life insurance

In cases of a contract made for the benefit or in favor of a third party (e.g., a life insurance contract), the cash and/or other assets that this third party is expected to receive at the moment of the decease (i.e., execution of the contract) are considered as collected as legacy by the beneficiary and thus included in the inheritance tax basis, except if the said stipulation was already subject to registration duties applicable for gifts.

If the stipulation is made by a person for the benefit of his or her partner/spouse as provided in the paragraph above, the cash and/or other assets that are received by the beneficiary are considered as a legacy for their full amount.

10. Civil law on succession

10.1 Succession

Succession occurs upon the decedent's death. The date to be taken into consideration is the day of the death. Succession opens at the last residence of the deceased and irrespective of the nationality of the deceased.

However, Regulation (EU) No. 650/2012[1] has introduced certain rules that impact the Luxembourg civil law on succession. According to the general rule of the Regulation, the law applicable to succession as a whole is the law of the state in which the deceased had his habitual residence at the time of death. However, by way of exception, when it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a state other than the state of his habitual residence, the law applicable to succession is the law of that other state. Furthermore, a person may choose as the law to govern his succession as a whole the law of the state whose nationality he possesses at the time of making the choice, or at the time of death. Therefore, Luxembourg can continue to generally apply the law of the deceased's domicile for movable assets and the law of *situs* for immovable property, since this is in line with the provisions of the Regulation. However, the decedent's will may now designate another law — the law of the country of his citizenship — to govern his succession. Therefore, the application of Luxembourg civil law to the liquidation of the succession will depend on concrete circumstances, or on the choice of the law of the country of citizenship made expressly in a will. It should be noted that this only applies with regard to the aspects of civil law; the succession will always be, from a fiscal point of view, liquidated according to the Luxembourg rules on inheritance tax and death duty.[2]

If there is a will, the succession will be liquidated in accordance with the provisions of the will.

In the absence of a will, the succession will be regulated in accordance with the legal order, i.e., a system of succession per stirpes, which divides the possible intestate heirs into different orders depending on the relation to the deceased person, while the closest applicable order excludes the more distant orders.

1st order	Children and their descendants
2nd order	Surviving spouse
3rd order	Parents and their descendants

[1] Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, applicable as from 17 August 2015.
[2] Circular No. 776 of 6 August 2015 of the *Administration de l'Enregistrement et des Domaines*.

4th order	Grandparents and ascendants
5th order	More distant relatives (e.g., uncles, aunts, cousins)
No heirs	State

10.2 Forced heirship rules

Luxembourg civil law protects the rights of the descendants of a deceased. In this respect, children are entitled to statutory shares of the estate. However, third parties may benefit from the gifts or legacies (i.e., the disposable portion), provided that the statutory compulsory shares are not denuded.

Family situation as of the death	Statutory share	Disposable portion
1 child	Half for the child	Half
2 children	Two-thirds for the two children	One-third
3 children or more	Three-quarters for the children	A quarter

If the spouses have joint children or descendants, they are allowed to make mutual donations (either through a marriage contract or during the marriage) of:

- The full ownership of the disposable portion and the usufruct of the balance of the estate

  Or
- The usufruct of the total estate

Number of children	Statutory share	Surviving spouse
1	Half in bare ownership	Half in full ownership and half in usufruct
2	Two-thirds in bare ownership	One-third in full ownership and two-thirds in usufruct
3 or more	Three-quarters in bare ownership	One-quarter in full ownership and three-quarters in usufruct

10.3 Surviving spouse

When the deceased leaves only a surviving spouse, he or she is in principle entitled to the full ownership of the estate. However, he or she can be disinherited by a testamentary document since he or she is not a protected heir.

If the decedent leaves both a spouse and children, the surviving spouse has the choice of opting either for the usufruct of the family home with furniture or a part of the estate in full ownership, depending on the disposable portion in accordance with the forced heirship rules.

10.4 Matrimonial regimes and civil partnerships

The matrimonial regime chosen by the spouse has an influence on the assets to be included in the estate. Three main marital regimes are available in Luxembourg:

- The *communauté réduite aux acquêts* (the default regime laid down by law) under which assets are owned in common, except assets acquired before the marriage and assets acquired during the marriage through inheritance and gift
- The universal co-ownership rule under which all assets are owned in common by both spouses, regardless of whether the assets were acquired before or during the marriage
- The separate ownership regime under which each spouse retains sole title to assets and wealth he or she acquired before and during the marriage

If the spouses opt for the universal co-ownership rule with attribution to the survivor, the assets will automatically pass to the surviving spouse at the death of one of them. In this case, the succession is nil and thus not subject to inheritance tax.

In the absence of a matrimonial agreement, each partner remains the owner of the assets over which he or she can provide proof of ownership. In the absence of proof, the asset is deemed to be owned in common.

Partners may also set up a patrimonial agreement without any formal requirements; the agreement only needs to be signed and dated. The partners may freely determine the property consequences of their partnership, as long as the mandatory rules applicable to each partnership are respected. The patrimonial agreement may, for example, include an inventory of the assets owned individually by each partner and those owned in common.

It should be noted that a partner is not considered to be the heir of his or her deceased partner; a will is thus necessary for partners to inherit from each other.

10.5 Intestacy

A will is a legal document that regulates an individual's estate after death.

In this respect, Luxembourg law recognizes the following three main types of wills: public will, mystic will (i.e., a will that is completed, signed and sealed in secret) and handwritten will.

If there is no valid will at death, then the deceased's estate passes under predetermined rules (see Section 10.1).

10.6 Probate

After the death, the heirs and legatees may contact the notary in charge of the formalities of the estate left by the deceased (or their own lawyer) in order to deposit the will in their possession or, if they are not aware of the existence of a will, so the notary may consult the Central Register of Wills to find out whether a will was filed with another notary.

However, for handwritten and mystic wills, the heirs or legatees will be required to submit the will either directly or via a notary to the President of the District Court who will prepare minutes of the presentation, the opening (for a mystic will, the opening should be done in the presence of the notary and witnesses who signed the subscription deed for the mystic will) and the general condition of the will. After this procedure, the President of the District Court orders the deposit of the will for execution in the hands of a notary designated by him.

This formality is not required for a public will where the notary may immediately liquidate the estate left by the deceased.

11. Estate tax treaties

11.1 Unilateral rules

Luxembourg applies unilateral measures in order to avoid double taxation as explained above.

11.2 Double-taxation treaties

Luxembourg has not yet concluded any double-taxation treaties for inheritance or for gift tax purposes with other countries.

Mexico

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1. Taxation

1.1 Inheritance

Mexico's legislation does not recognize inheritance tax. Under Mexican law, succession is the legal means through which a person substitutes another on his or her rights and obligations due to the latter's absence. For Mexican tax purposes, a process must also be observed that goes in hand with the civil process, i.e., at the beginning of the testamentary succession to distribute the assets or wealth for which a notice must be filed with the Mexican tax authority (SAT).

According to the Civil Code of the Federal District (CCDF), a succession starts at the time of the decedent's death, or when the death is presumed in the case of absences or disappearances. A testamentary succession or intestate is formed when an executor is named.

Succession is integrated in the four stages shown in the table below.

Stages	Activities
Succession	‣ The preparation of the testament (will) must be made by a notary public ‣ Only the heirs who are listed in the will have the right to an inheritance ‣ Appointment and/or removal of executor and inspector, and recognition of hereditary rights, must be made ‣ The validity of the will, capacity to inherit and preference of rights must be resolved
Inventory	‣ Inventory of the estate's assets and debts must be prepared by the executor ‣ If there is a trial regarding an individual's claim that he or she should be included in the will, the inventory must be updated to reflect the rulings and inclusion of new heirs (if necessary)
Administration	‣ While the succession process is being carried out and the heirs agree on the manner in which the assets will be distributed, an administrator must be named ‣ The administrator must ensure that all income produced by investments, rents and shares is properly accounted for and that the taxes are paid

Stages	Activities
Distribution	‣ A provisional distribution plan is prepared ‣ If there are new heirs appointed as a result of a trial, a new inventory must be prepared and the new heirs included in the distribution plan ‣ The assets are distributed ‣ Resolutions must be made regarding the application of the goods that form the inheritance

The executor is the representative of the succession against third parties, and he or she will have the following obligations:

- Submitting the will
- Securing the assets of the inheritance
- Conducting an inventory
- Managing the assets and surrendering of the accounts
- Paying the mortuary, hereditary and testamentary debts
- Dividing and awarding inheritance between the heirs and legatees
- Judging and defending the validity of the inheritance testament
- Representing the succession in all judgments promoting themselves in their name or any promotions against them

The executor or the legal representative of an estate will pay income tax each year for the accounts of the heirs or legatees. In doing so, the representative will consider the joint income, until the settlement of the estate is deemed to have concluded. Such payments will be considered definitive, unless the heirs or legatees elect to include, in their gross income, the income corresponding to them, in which case they may credit their pro-rata share of tax paid.

1.2 Gift or donation

Under the Mexican Income Tax Law (MITL), donations are tax-exempt in the following cases:

1. Between spouses or received by descendants from their lineal ascendants, whatever the amount of the donation.

2. Those received by ascendants from their direct descendants, provided that the assets received are not transferred or donated by the ascendant to another lineal descendant.

3. Other donations, provided that the total value of the donations received in a calendar year is no more than three times the annual general minimum wage in effect in the taxpayer's geographic area (MXN82,661.55 in Mexico City in 2017).[1] Income tax will be paid on the excess amount, if any.

The MITL states that Mexican resident individuals are to report in their annual tax return loans, donations and prizes that, when valued separately or jointly, exceed MXN600,000. Loans and donations not declared or reported to the tax authorities will be taxable income. Therefore, tax residents in Mexico must include the amount of donation as tax-exempt income. If this is not declared and the authorities detect the omission, the taxpayer loses the exemption.

[1] From 2017, the *Unidad de Medida y Actualización* (UMA) replaced the use of the minimum wage for this purpose. The UMA's value for 2017 is set at MXN75.49.

1.3 Real estate transfer tax — ISAI (tax on acquisition of real estate property)

Individuals and companies must pay a real estate transfer tax (ISAI) on the acquisition of real estate property (this includes any type of real estate, either land or buildings) in Mexico City, as well as in other states. Acquisition means all acts by which the property is transmitted, including the donation or the contribution to any sort of associations or corporation occurring because of death.

In cases of acquisitions due to death, a rate of 0% of ISAI will be applied if the value from the real estate property at the date of the award does not exceed the sum equivalent to 12,073 times the minimum general wage in force in the Federal District (MXN911,380 for 2017). This is the amount of the exemption.

The payment of the tax must be made via an official form within 15 days following the adjudication of the decedent's estate or, in cases when the estate is disposed of or sold to a third party, at the time of succession. In the latter case, tax is collected immediately after the estate is formally bequeathed to the third party. In cases when the legatee or heir passes away before formalizing a contract to sell off his or her inheritance, the tax burden due from the legatee/heir, as well as the tax due because of the sale of the estate, rests on the third party who is purchasing or acquiring the estate.

For acquisitions that are made in public writing, the notaries that by legal disposition have notarial functions will calculate the tax under their responsibility and will declare in the offices authorized within the 15 working days following the date the acquisition becomes formalized in public deed.

If the acquisitions are listed in the documents, it is the purchaser's responsibility to calculate the tax and pay for it. The tax is calculated by applying the total value of the building based on tariffs, as shown in the table below.

Rank	Lower limit (MXN)	Upper limit (MXN)	Fixed amount (MXN)	Percentage to be applied on the excess above the lower limit
A	0.12	94,072.57	216.22	0.01149
B	94,072.58	150,516.06	1,297.19	0.02447
C	150,516.07	225,773.88	2,678.63	0.03197
D	225,773.89	451,547.89	5,085.23	0.03730
E	451,547.90	1,128,869.71	13,507.06	0.04143
F	1,128,869.72	2,257,739.43	41,569.50	0.04526
G	2,257,739.44	4,349,334.30	92,670.93	0.04910
H	4,349,334.31	11,326,391.96	195,376.77	0.05106
I	11,326,391.97	20,887,467.14	551,662.03	0.05151
J	20,887,467.15	41,774,934.31	1,044,196.34	0.05196
K	41,774,934. 32	And above	2,129,588.57	0.05646

1.4 Endowment tax

There is no endowment tax in Mexico.

1.5 Transfer duty

There is no specific transfer duty in Mexico.

1.6 Net wealth tax

There is no net wealth tax in Mexico.

2. Who is liable?

According to the Civil Code, a testamentary or intestamentary succession occurs when the deceased has goods in his or her name for which an executor must be named. The executor will manage and divide the property of the deceased's estate and carry out the distribution of such property to the heirs. To facilitate the local procedures (such as payment of taxes and notifications to the local authorities), the executor should have a Federal Taxpayer Identification Number in Mexico and electronic signature in force.

The executor is responsible for filing the estate's tax returns until the assets are transferred to the beneficiaries.

2.1 Residency

In Mexico, residents are considered to be those who have established their home in Mexico. If individuals keep a home in another country, they are considered resident in Mexico if their center of vital interest is located in Mexico. An individual's center of vital interest is considered to be located in Mexico if at least one of the following circumstances is true:

- More than 50% of the individual's income in a calendar year is derived from Mexican sources.

  Or
- The center of the individual's professional activities is located in Mexico.

Legal entities are considered to be residents of Mexico when the principal administration of the business is located in Mexico.

In the succession, the legal representative in Mexico must fulfill the fiscal obligations of the deceased according to his tax residence status.

A trust is in charge of fulfilling the fiscal obligations of its own organization.

3. Rates

Lifetime transfers

These transfers are considered tax-exempt income if the taxpayer declares them in the annual tax return.

Transfers on death

The legal representative shall make estimated tax payments and file the relevant annual tax return, taking into account income and deductions.

Heirs and legatees may elect to include income corresponding to them from the estate in their gross income for the year. Likewise, they may credit the tax paid by the estate's legal representative in the same ratio of the estate's income that corresponds to them.

Once the estate is liquidated, the legal representative, the heirs or legatees that did not make the election referred to in the preceding paragraph may file an amended return for the five years preceding the year in which the liquidation took place, when applicable, in order to include in gross income the portion of the estate's income that corresponded to them on those years, and credit the portion of the tax paid each year by the estate's legal representative. Payment carried out in this form will be definitive, unless the heirs or legatees choose to accumulate the respective income that corresponds to them, in which case they will be able to credit the proportional part of the paid tax.

The income tax for fiscal year 2017 shall be calculated in accordance with the following schedule:

Tax rate schedule			
Lower limit (MXN)	Upper limit (MXN)	Fixed amount (MXN)	Amount to be applied on the excess above the lower limit (%)
0.01	5,952.84	0.00	1.92
5,952.85	50,524.92	114.24	6.40
50,524.93	88,793.04	2,966.76	10.88
88,793.05	103,218.00	7,130.88	16.00
103,218.01	123,580.20	9,438.60	17.92
123,580.21	249,243.48	13,087.44	21.36
249,243.49	392,841.96	39,929.04	23.52
392,841.97	750,000.00	73,703.40	30.00
750,000.01	1,000,000.00	180,850.82	32.00
1,000,000.01	3,000,000.00	260,850.81	34.00
3,000,000.01	And above	940,850.81	35.00

Date for payment of tax

Lifetime transfers

Taxpayers should include transfers in their annual tax returns, which must be filed on 30 April.

Transfers on death

The representative should file a return, including income earned by the deceased from 1 January of the year of death up to the moment of his or her death, within 90 days after the designation.

When income accrued up to the moment of the person's death was not effectively received in life, it should be declared in the following year's annual tax return on 30 April.

4. Exemptions and reliefs

Income received for inheritance or bequests are tax-exempt.

The following exemptions may be applied for each income received after the liquidation of the succession.

Retirement, pensions, retirement insurance

The MITL establishes that there is no tax due for retirement, pensions, retirement benefits (as annuities or other forms of retirement from the retirement insurance subaccount); the retirement, early retirement and old-age subaccount set forth in the Social Security Law; or the individual account of the Retirement Savings System set forth in the Law of the Government Workers' Social Security and Services Institute *(Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado)*, in cases of disability, early retirement, old age, retirement or death, if the daily amount does not exceed 15 times the annual general minimum wage (MXN413,307.75 in 2017) in effect in the taxpayer's geographic area. Income tax shall be paid on the excess amount. The transfer of these accounts to the heirs should also be considered as exempt income for income tax purposes.

Sales

The sale of a home is tax-free when the transferor demonstrates that he or she has not sold another home for which the exemption has been claimed during the three years immediately preceding the date of transfer, provided that the amount of the consideration received does not exceed 700,000 investment units (approximately MXN4,011,000 in 2017) and the transfer is executed before a person with notarial functions. Gains shall be determined on the basis of the excess. The annual tax and estimated payment shall be calculated upon such gain and considering the deductions in proportion to the ratio obtained by dividing the excess proceeds by the excess on the exemption. The person with notarial functions shall calculate and make payment of the estimated tax, in accordance with the regulations.

Personal property other than shares, ownership interest, securities and investments secured by the taxpayer in one calendar year cannot exceed the difference between total sales and the verified acquisition cost of the assets sold, and/or cannot be greater than three times the annual general minimum wage (MXN82,661.55 in Mexico City in 2017) in effect in the taxpayer's geographic area.

Shares sold or listed on a stock exchange

The tax exemption on gains derived from the sales of shares on Mexico's stock exchange has been repealed. Such exemption was granted to shareholders that held, either directly or through a group of related parties, less than 10% of the shares of the listed company, or even when they held greater amounts of stock or exercised control over the company and did not sell the related shares within a period of 24 months.

From 2014 and onward, a 10% tax is payable on the net gains derived from the sale of shares through Mexico's stock exchange. This tax is not creditable against the taxpayer's final tax liability determined in the annual income tax return. This new tax is applicable on (i) shares or securities that represent shares issued by Mexican companies sold through Mexico's stock exchange, (ii) securities traded on the Mexican Derivatives Exchange, and (iii) shares or securities that represent shares of foreign entities traded though Mexico's Stock Exchange or the Mexican Derivatives Exchange.

- The gain or loss will be determined by the broker by comparing the sales price (reduced by the commissions paid for the sale) with the average purchase price (added with the commissions paid for the purchase).
- The average purchase price and the losses incurred will be updated to reflect the inflation effects during the holding period.
- The 10% tax will be determined each tax year, adding the gains and subtracting the losses derived from the trading of each company's stock.
- In order to determine the purchase price of shares acquired before 1 January 2014, a transitional rule established that the taxpayer may opt to determine such price using the 22 closing prices listed during December 2013, or closing prices quoted during the previous six months in cases when the shares are not regularly traded.

5. Filing procedures

Once the process of succession ends, a notice of cancellation of Federal Taxpayer Identification Number or RFC (*Registro Federal de Contribuyentes*) by liquidation of the succession must be filed by the executor.

Regarding the decedent's obligation to file an annual tax return, the following shall apply:

1. Within 90 days following the date when the executor is appointed, he or she shall file a return for income earned by the deceased from 1 January of the year of death up to the moment of his death, in order to pay the relevant tax.

2. Income accrued up to the moment of the person's death that was not effectively received in life shall be subject to the following rules:

   a. Salary income and entrepreneurial income, as well as income from the provision of professional services, shall be exempt from payment of tax for the heirs or legatees, since such income is considered tax-exempt.
   Taxpayers who in the fiscal year have obtained total income in excess of MXN500,000, including income on which income tax is not required to be paid and on which the definitive tax was paid, must declare all of their income in their annual tax return. Inheritance should be reported in the Mexican annual tax return for informative purposes only.

   b. Additional income (sale of goods, interest income, dividends, as well as income from entrepreneurial activities, except income prizes) may be considered income received by the deceased person and declared under the preceding section, or when the heirs or legatees elect to include such income in their income tax return and pay the corresponding tax.

6. Assessments and valuations

For Mexican tax purposes, assets are valued at the price that they would be reasonably expected to fetch if sold in the open market.

For valuations to be considered effective (aside from a determination by the tax authority), they can only be authorized by the following:

1. Experts properly registered before the tax authority
2. Credit institutions
3. Civil or mercantile societies whose specific object is the accomplishment of valuations
4. Main directorate of real estate patrimony
5. Public broker

Experts properly registered before the tax authority will be independent. The main directorate of real estate patrimony and the public broker are the only ones who can conduct the evaluations under the direction of the civil or mercantile societies.

7. Trusts, foundations and private purpose funds

From an estate planning point of view, trusts are often used when making lifetime gifts so that the donor can place constraints on the donee. The trust can be constituted by means of the testament, i.e., the goods will be contributed until the death of the testator, or can be contributed before his or her death so that he or she can begin to regulate all aspects of protection, guarantee and administration of the affected goods.

Types of Mexico trusts

Revocable trust

A revocable trust is one in which the trustee reserves the right to revoke it, and therefore to reacquire the assets of the fiduciary.

Irrevocable trust

An irrevocable trust is one in which the assets are transferred to the trust without the possibility of reacquiring them.

Creation of trusts and transfers of assets in a trust

The creation of an interest-in-possession trust or a discretionary trust, or the transfer of property into such a trust, is, generally speaking, a chargeable lifetime transfer. Following are key benefits of the testamentary trust:

- It guarantees that the dispositions of the testator will be met.
- It protects assets from unjust claims by a third party.

- It can be formalized while the testator is still living.
- It can ensure that the assets are safe until the established term ends.
- It avoids conflicts between the heirs by stipulating to whom the inheritance belongs.
- It grants legal security to legatees and executors.

The administrator will determine the tax consequences of these activities and fulfill all tax obligations on behalf of the trustees. Cash or assets from the trust delivered by the trustee to the trust beneficiaries will be considered reimbursements of capital contributed until said capital has been recovered. In addition, these deliveries will decrease the balance of each of the individual capital contribution accounts maintained by the trustee for each beneficiary until the balance of each account has been exhausted.

Non-Mexican settlements

Trusts incorporated under Mexican legislation are subject to Mexican law regardless of the residence of the settlor or the time of their creation or the *situs* of the assets held.

When a trust beneficiary is an individual who is a Mexican resident, the portion of the taxable income or tax profit stemming from the entrepreneurial activities conducted through the trust and corresponding to the individual in accordance with the agreement will be considered income from entrepreneurial activities.

Foreign resident trust beneficiaries are considered to have a permanent establishment in Mexico because of the entrepreneurial activities conducted in the country through the trust. These permanent establishments must file annual income tax returns for the portion of the taxable income or tax profit derived from said activities corresponding to them for the fiscal year.

8. Grants

With regard to estate taxes, there are no specific rules in Mexico.

9. Life insurance

Income tax will not be due on amounts paid by insurance companies to the insured or beneficiaries for life insurance contracts when the premium was paid directly by the employer on behalf of its employees, and the benefits of the policy are paid only in the event of death, disablement, organ loss or disability of the employee, preventing him or her from performing a dependent service, in accordance with the social security laws. When a policy covers the death of the policyholder, the beneficiaries must be the spouse, the common-law spouse, or his or her lineal ascendants or descendants in order for the payments to be tax-exempt. No exemption will apply to amounts paid by insurance companies as dividends derived from the insurance policy.

10. Civil law on succession

10.1 Successions

"Succession" is generally restricted to the transfer of goods and property caused by death of the testator and is therefore considered the equivalent of inheritance. From an objective perspective, we can identify inheritance as the aggregate of goods that are transferred to another person due to death and, from a legal perspective, the transfer of rights and obligations from one person to another due to death.

Succession includes all the rights and obligations of the *decujus* (the deceased) that were not extinguished with his or her death, as per the Federal Civil Code of Mexico.

Therefore, there are three types of succession:

1. Testamentary: Determined by the personal will of the person behind the inheritance, the testator.
2. Legitimate: The civil authority's application of the will that is presumed to be that of the person behind the inheritance.
3. Mixed: This includes a combination of both types described above (i.e., part testamentary and part legitimate, or intestate), due to the person not disposing of all the rights and obligations within his legal sphere.

10.2 Testamentary succession

A testament (or will) is defined as a personal, revocable and free legal act, through which a person with full legal capacity transmits his goods and rights and declares the fulfillment of obligations for after his or her death. Three basic elements must exist in a testamentary succession:

1. The right of the testator to dispose of his or her goods while alive
2. The duty of the testator to fulfill the obligations and duties owed to his or her family members
3. The obligation to fulfill any and all obligations that the testator might have with third parties and that are considered legal

Interpretation of the will is a special aspect of legal interpretation in general, which implies that the testament is never to be considered in isolated wording or terms, but as a single act of the author's will.

Any and all persons not precluded by law can become a testator; those precluded by law are persons younger than 16 years old, persons without full legal capacity or those who generally or incidentally are not in his or her full judgment capacity.

Any person of any age, individual or collective, can be designated as an heir, unless their legal capacity is lost by any of the causes mentioned in the law: lack of legal personality, having been sentenced for the commission of a crime, presuming alterations or influence on the free will of the testator, among others.

The testator can dispose of his or her goods in full (universal disposal) or in part (particular disposal). People who inherit the total rights and obligations of the testator are designated inheritor. Inheritors or heirs are expected to respond to any credits that the inheritance has due. For example, if the inheritor succeeds the testator by becoming the legal owner of all the properties of the latter but one of them is under a mortgage, the inheritor must pay for such obligation using the rest of the properties until the debt is covered, or until the value of the received properties can cover.

Legatees may inherit parts of the testator's rights and obligations. For example, the legatee can inherit a set of paintings or works of art and nothing else.

Testaments can be classified as ordinary and special. Ordinary testaments are granted under normal circumstances and are divided into open or public testament, simplified testament or handwritten.

Special testaments are granted in times and places where it is unusual or extraordinary to do so. They include private testament, military testament and maritime testament that can be granted in another country.

Each case's applicable conditions are subject to the local valid legislation of the state where the testament is executed.

10.3 Legitimate or intestate succession

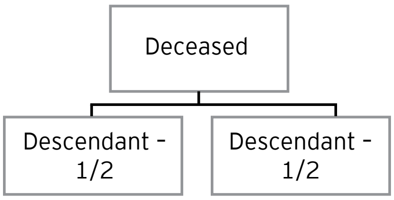
In the event an individual dies without leaving will, or if there are assets that were not referred to in the will, the Civil Codes of each state contain the rules under which such assets shall be distributed. However, there are some general rules to follow:

The following persons possess the right to inherit:

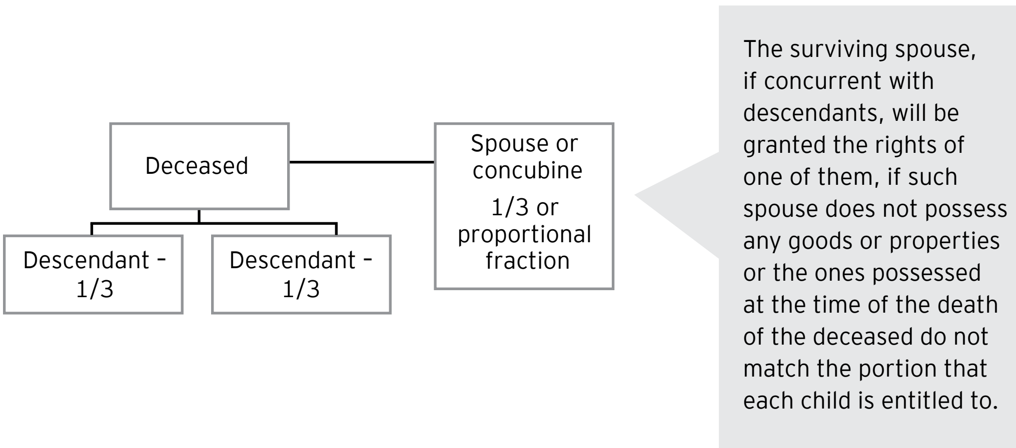
- Descendants, spouses or domestic partners
- Ancestors, in the absence of descendants, spouses or domestic partners
- In absence of all of the aforementioned, collateral relatives up to fourth degree, with preference placed on brothers or, in the absence of these, relatives in increasing degree
- In absence of these, public welfare

The specific rules bound by the criteria applicable to succession are noted in the charts below:

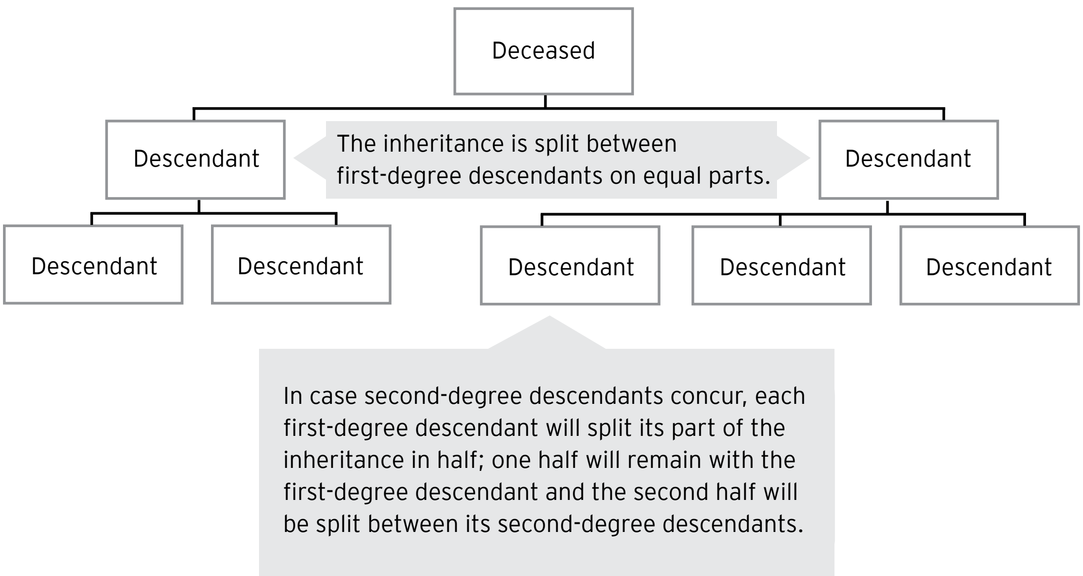
1. If only first-degree descendants



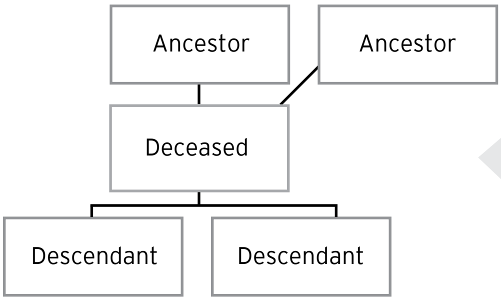
2. If spouse concurs with first-degree descendants



3. If first-degree descendants concur with second-degree descendants

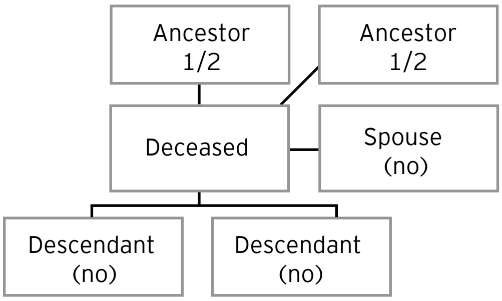


4. If first-degree descendants concur with ancestors

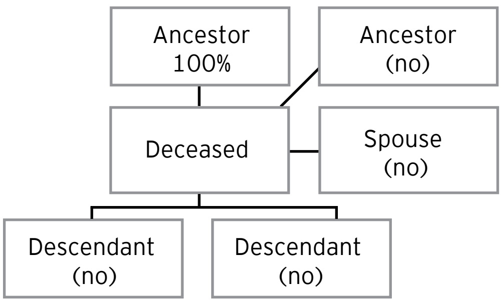


If ancestors and descendants concur, the ancestors are entitled to a fraction of the compensation not larger than one of the descendants.

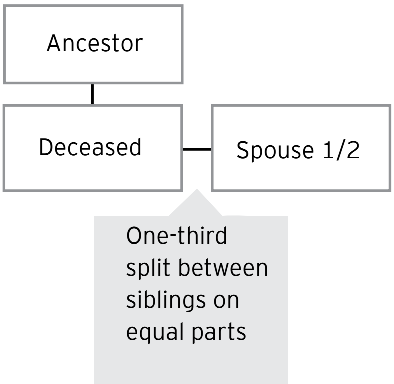
5. If only ancestors



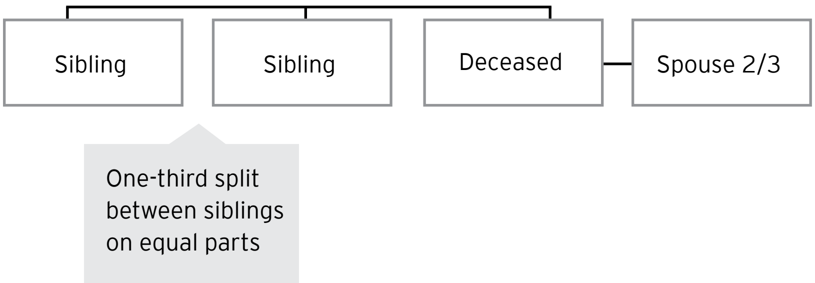
6. If only ancestor



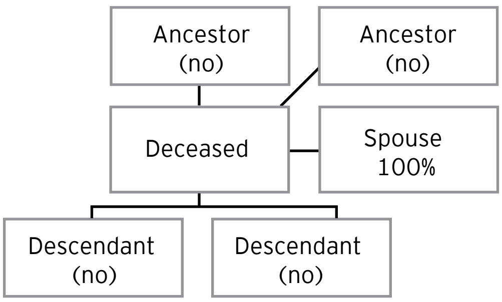
7. If ancestors concur with spouse



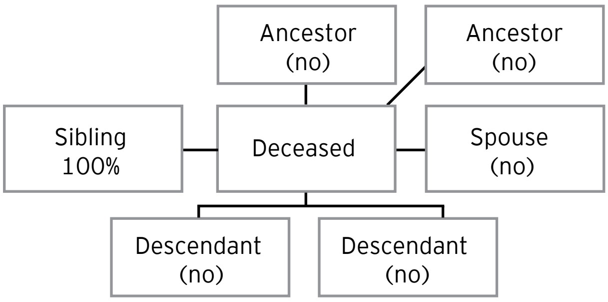
8. If spouse concurs with siblings



9. If only spouse



10. If only siblings



11. Estate tax treaties

11.1 Unilateral rules

Mexico does not have specific rules on tax credits or transfer of properties abroad.

11.2 Double-taxation treaties

Mexico has not signed any gift and inheritance tax treaties.

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1. Types of tax

Based upon the Succession Code 1956 (the Code), two types of tax are levied:

1. Gift tax
2. Inheritance tax

Before 1 January 2010, transfer duty was levied from the person who acquired Dutch *situs* property by way of gift or bequest in case the donor or the deceased was not (deemed) resident in the Netherlands at the time of the gift or at the time of the bequest. The transfer tax (gift/inheritance tax regarding Dutch *situs* property) was abolished in 2009.

Technically, neither tax is considered an estate tax because the tax is not levied on the estate as such, but each tax is levied on the person who acquires property by way of gift or bequest. Some *inter vivos* transactions may also be liable to inheritance tax. This applies to *inter vivos* transactions that actually take effect upon death (e.g., life insurance contracts and third-party contracts). This will be explained further below.

1.1 Inheritance tax

Inheritance tax (IHT) is levied on all assets (located worldwide) of a decedent who was a resident or was deemed to be a resident of the Netherlands at the time of his or her death. Whether that person was a resident of the Netherlands at the time of his or her death is based on an evaluation of all the facts and circumstances. For further explanation on the Dutch residency concept, see Section 2.

As mentioned briefly above, the Dutch Succession Code 1956 contains a number of provisions under which the results of certain *inter vivos* transactions are deemed to have occurred by the application of inheritance law. As a consequence, everything that is acquired by way of that *inter vivos* transaction is subject to IHT.

In general terms, the most important of these provisions are the following:

- Receipt of property based on a provision in a (prenuptial) agreement that provides for a transfer of the property upon death
- Receipt of property on condition that the person who receives it is alive at the time of demise of the donor
- Property transferred during the lifetime of the deceased subject to a usufruct in his or her favor that lasts until death
- Property of which the deceased acquired the usufruct when the usufruct is financed out of the property of the deceased
- All gifts received within a period of 180 days before death
- Receipt of the proceeds of life insurance if the deceased was legally obliged to contribute to the premiums paid for such insurance
- Property acquired by way of third-party contract, if the property is received at the time of death or after the death of the promisor, unless no consideration has been paid for the property received by the promisor/deceased

Another provision holds that the increase in value of the shares in a closely held company (which shares are not owned by the deceased) as a result of the demise of the deceased, is deemed a taxable acquisition for IHT purposes. This applies only to the shares owned by certain close family members of the deceased. Normally, the increase in value is caused by the fact that the company no longer has any obligations with respect to the pension rights of the deceased.

The sum subject to inheritance tax is the fair market value (FMV) of the bequest at the time of death. Generally, the heirs are obliged to pay the debts of the deceased. A sum representing the obligation of the heirs to pay the liabilities (if any) of the deceased can be subtracted from the value of the acquisition. The FMV is determined based on objective standards (i.e., the price an independent third party is willing to pay for the property concerned). Special provisions apply for the valuation of a right of usufruct, annuities and residential property.

All enforceable debts of the deceased (including funeral costs) are tax deductible.

Deferred income tax liabilities can be taken into account up to the following amounts:

- 30% of the value of the reserves of a company, made to provide for pension obligations
- 20% of the hidden reserves included in acquired business assets
- 30% of the value of an acquired right to receive periodic payments
- 6.25% of the difference between the fair market value and the acquisition price of substantial interest shares

1.2 Gift tax

Gift tax is due on the value of all gifts made by a person who was a resident or was deemed to be resident in the Netherlands at the time of the gift. As with the rules for levying inheritance tax, when determining whether the donor was a resident of the Netherlands at the time of the gift, all facts and circumstances are taken into account. Persons who do not have Dutch nationality are deemed to be a resident of the Netherlands for a one-year period after departure. The concept of a gift can be summarized as follows: every act (or probable omission) that results in an enrichment of the donee and in an impoverishment of the donor and which was caused by the intention of the donor to enrich the donee. This description not only covers the contract that is explicitly called donation in the Dutch Civil Code, but also covers transactions that are not donation contracts (i.e., a sale at an undervalue, a partition of co-owned property under which one of the co-owners is favored over the other or third-party contracts that result in an enrichment of the third-party beneficiary).

Gifts may be shaped as revocable or irrevocable.

Gifts acquired from the same donor within a calendar year are treated as one gift.

Spouses and unmarried partners are deemed to be one and the same person for gift tax purposes. Parents are considered as one donor with regard to all gifts to their children within one calendar year. These rules should be taken into account when calculating the gift tax due.

The code contains some provisions whereby a gift is deemed to have taken place. Apart from gifts received from irrevocable discretionary trusts (see hereafter), these provisions are the following:

- If an obligation (a debt) can be called in at any time and bears no interest or an interest lower than 6%, then during the time the debt is not called in by the creditor, it is assumed that the creditor gifts a usufruct of the debt to the debtor.
- For gifts under a suspensive condition (e.g., a gift by way of *fideïcommissum*), it is assumed that the gift has taken place at the time when the suspensive condition becomes fulfilled. If the donor has died when the condition becomes fulfilled, it is assumed that the donee received the donated property out of the inheritance of the donor.

1.3 Real estate transfer tax

In principle, real estate transfer tax (not an inheritance tax) is payable upon any transfer of (deemed) real estate. Acquisitions by way of inheritance and matrimonial regime are not regarded as transfers and, therefore, are tax-exempt.

1.4 Endowment tax

Endowment tax, separate from gift tax, is not part of the Dutch tax system.

1.5 Net wealth tax

Net wealth tax as such is nonexistent in the Dutch system, but income tax is levied on the value of net wealth (excluding the family home and substantial interests in companies). As of 2017, the effective rate varies from 0.86% up to 1.6 % each year, depending on the value of the net wealth on 1 January of the calendar year.

2. Who is liable?

2.1 Residency/domicile

The Dutch regulation does not make a difference between residency and domicile.

As mentioned, IHT is levied on all assets (located worldwide) of a decedent who was a resident or who was deemed to be a resident of the Netherlands at the time of his or her death.

Whether that person was a resident of the Netherlands at the time of his or her death is based on an evaluation of all the facts and circumstances. For example, such circumstances are place of work, location of a dwelling house and the center of somebody's family and social life/friends. The applicable criteria to establish a person's residence for inheritance and gift tax purposes are generally the same as the applicable criteria for establishing residence for income tax purposes.

Persons who have Dutch nationality are deemed to be resident in the Netherlands for inheritance and gift tax purposes during a period of 10 years after having emigrated from the Netherlands. The Court of Justice of the European Union (CJEU) has ruled that the "10-year rule" does not violate EU law.

Gift tax is due on the value of all gifts made by a person who was a resident or who was deemed to be resident in the Netherlands at the time of the gift. As with the rules for levying inheritance tax, when determining whether the donor was a resident of the Netherlands at the time of the gift, all facts and circumstances are taken into account (see above). Persons who do not have Dutch nationality are deemed to be a resident of the Netherlands for a one-year period after departure.

The person who acquires property by way of bequest or gift is liable to pay the taxes due. If an executor is appointed, he or she is required to fulfill all obligations imposed by the Succession Code 1956 in the same way as the heirs and the executor is liable for the inheritance tax due towards the tax authorities.

3. Rates

The rates for inheritance tax and gift tax are the same. The following rates are all based on figures that apply in 2017.

A so-called double progressive system applies. The applicable tax rate depends on the relationship in existence between the person who acquires property and the deceased person or the donor (e.g., he or she a child or a brother or sister). Furthermore, the amount of tax due also depends on the size of the acquisition.

The rates are split into three categories:

Partner and the children[1]	10% up to 20% for acquisitions above €122,269
Grandchildren	18% up to 36% for acquisitions above €122,269
Other persons	30% up to 40% for acquisitions above €122,269

[1] Only one person can be designated as the partner for purposes of the Inheritance Tax Act. This partner is:

- The spouse
- The registered partner
- The adult person with whom the adult donor or deceased had a municipally registered joint household at least six months before death (for gifts, two years at the moment of the gift) and with whom a notarial cohabitation agreement was drawn up, which contained a mutual duty of care. Persons related in a direct line cannot be partners for IHT/gift tax purposes.
- If a notarial agreement with a mutual duty of care is not available, the person with whom the donor or deceased kept a municipally registered joint household for a period of at least five years

4. Exemptions and reliefs

Several exemptions apply for inheritance tax and gift tax. The following amounts are all based on figures that apply in 2017.

The most important exemptions for inheritance tax are:

- Acquisition by the state, a province or a municipality of the Netherlands
- Acquisition by a charity (acts for 90% or more in the public interest) or an entity that contributes to the social welfare of the community

- Acquisition by the surviving partner: minimum exemption of €164,842 and maximum exemption of €638,089, depending on the value of any pension rights, half of which is subtracted from the exempt amount of €638,089 (but the mentioned minimum exemption always remains)
- For sick and disabled children: €60,621
- Exemption for children and grandchildren: €20,209
- Exemption for parents: €47,859
- Exemption in all other cases: €2,129

All exemptions apply regardless of the amount of the acquisition.

The most important exemptions for gift tax are:

- Gifts received from the King or other members of the Royal Family, from the state, a province or a municipality of the Netherlands
- Gifts from parents to their children: €5,320

  In addition, there is a general one-off exemption of €25,526 for a gift to a child whose age is between 18 and 40. This exemption may be raised to €53,176 if the gift is used to fund an expensive education.
- Other gifts up to an amount of €2,129
- Gifts received from a charity resident in the Netherlands in accordance with the statutes of the charity and gifts given to such a charity
- Gifts received by an entity that contributes to the social welfare of the community

The basic exemptions mentioned in bullet points 2, 3 and 4 may be raised to €100,000 if the gift is used for the purchase of a home or payment of a loan related to the acquisition of a home. This general one-off exemption is granted to all donees aged between 18 and 40, regardless of their relationship to the donor.

All exemptions apply regardless of the amount of the acquisition.

Exemptions and reliefs for business property

If business property is donated by way of gift or acquired by way of bequest, an important exemption applies (business succession facility). This facility also applies to the acquisition of shares that constitute (in the hands of the donor or deceased) directly or indirectly a substantial interest (5% or more) in an active trading company.

If all legal requirements for application of the business succession facility are satisfied, the value of the total business up to €1,063,479 is exempt. For the possible remainder value of the business (assets), an exemption of 83% applies. In addition, 5% of the value of the business assets is exempt when the company is holding investments to that amount that cannot be qualified as business assets.

The deceased must have been an entrepreneur during the entire year prior to his or her death, so as to avoid the situation where taxable assets are converted into exempt assets (business property) while death is imminent. For gifts, this period is five years.

After the acquisition of the business property, the acquirer must continue the business for at least five years.

When the acquisition concerns shares, the acquirer must keep the shares for at least five years.

An inheritance tax assessment will be prepared for the non-exempt acquisition only. With regard to this non-exempt acquisition, the option exists to obtain a 10-year postponement of payment of the tax. During this period, interest becomes due in regard to the tax payable in the future.

A lower Dutch court decision stated in 2013 that this business succession facility should also be applied to nonbusiness property because this facility is contrary to the principle of equality. However, the Supreme Court decided that the business succession facility does not violate this principle. The legislator is allowed to make a distinction between taxing business assets and taxing private equity, according to the Supreme Court. The judgment of the Supreme Court was confirmed by the European Court of Human Rights in 2014.

Exemptions and reliefs for country estates

A country estate qualifies as such if real estate located in the Netherlands (possibly wholly or partially covered by living accommodation) is of such a general public interest that its preservation is considered to be of importance to the natural/scenic beauty of the countryside.

In its judgment (case number C-133/13) of 18 December 2014, the CJEU held that an estate also qualifies as a country estate if the estate is located outside the Netherlands and contains an element of Dutch cultural heritage. This extension should be applied retroactively as from 18 December 2014. The judgment applies to estates located in EU Member States as well to estates located in European Economic Area (EEA) member countries and third countries, although it is limited to EEA member countries and third countries with which a treaty has been concluded regarding the exchange of information.

The status of a country estate is granted on application by the Ministries of Agriculture and Finance.

A distinction is made between property that is open to the public and property that is not open to the public. If the property is open to the public, the entire amount of inheritance or gift tax due is not collected. If the property is not open to the public, inheritance tax or gift tax will be collected with regard to a reduced tax base.

The value of the property is, in principle, determined on the basis of the FMV, although certain depreciating factors will be taken into consideration. Generally, a 20% to 40% discount on the FMV applies.

The allowances mentioned are available only if the acquirer retains ownership during at least 25 years, during which period the country estate needs to remain qualified. However, the allowances remain applicable if the qualifying country estate is transferred during the 25-year period without consideration (i.e., by way of gift or bequest).

As an anti-abuse measure, the exemption or relief is not available if the deceased buys the country estate from his or her heir(s) and dies within five years of the acquisition.

5. Filing procedures

An inheritance or a gift must be declared. For inheritance tax purposes, a tax return needs to be filed within eight months after the time of death of the deceased. For gift tax, a two-month period starting at the end of the calendar year in which the gift was made applies. After the tax return has been filed, the tax authority will impose a tax assessment stating the tax due. Payment of the tax is due six weeks after the date of the tax assessment.

6. Assessments and valuations

As mentioned earlier, the sum subject to inheritance tax is generally the FMV of the bequest at the time of death. The FMV is determined based on objective standards (i.e., the price an independent third party is willing to pay for the property concerned). Several exemptions on this general rule are mentioned hereafter.

The value of the dwellings is determined on the basis of the (Dutch) Real Estate Appraisal Act, which can differ from the FMV.

Special provisions apply for the valuation of a right of usufruct and for annuities.

The (fictitious) value of the lifetime right of usufruct is calculated considering an actuarial interest rate of 6% and the age of the acquirer.

The (fictitious) value of lifelong annuities is calculated considering the age of the acquirer and the amount of the annuity.

7. Trusts, foundations and private purpose funds

7.1 Trusts and foundations

The concept of the trust is unknown in Dutch civil law. Dutch law is familiar with the distinction between real rights and personal rights (e.g., applied in the distinction between legal ownership and economic ownership), but is unfamiliar with a distinction between legal interests in property and beneficial interests in property.

Apart from this, the way in which ownership can be split up into different legal interests differs widely from the way in which such a division occurs under Anglo-American law.

Since 1 February 1996, however, the Netherlands is a party to the 1985 Hague Treaty on the law applicable to trusts and their recognition.

In some civil law jurisdictions, foundations are widely used in family estate planning. The concept of the foundation is known in Dutch civil law; however, the opportunities to use a Dutch foundation for family estate planning are limited. This is due to a provision in the Dutch Civil Code that states that the purpose of the foundation cannot be to benefit the person who establishes the foundation or any person who belongs to the board of directors of the foundation. Other persons can only benefit from the foundation if the character of the distributions made by the foundation could be categorized as being of a social character or is acknowledged to have an idealistic tendency.

As of 1 January 2010, irrevocable discretionary trusts and other entities of functional similarity, such as family foundations, are regulated in the areas of income tax, gift tax and inheritance tax.

7.2 Private purpose funds

As of 1 January 2010, fiscal rules for private purpose funds (PPFs) entered into force. PPFs include Anglo-American trusts and family foundations. According to the law, a PPF is a fund that "serves private interests more than incidentally."

The tax rules regarding PPFs do not apply to all kinds of trusts (and foundations), but do apply to those entities that can be characterized as irrevocable and discretionary in character. When such entities are used, there is no individual that owns enforceable rights against the trust (or the foundation). When the trust (or foundation) can be qualified as fixed, these legal rules do not apply and the enforceable rights need to be qualified in accordance with Dutch tax law, and subsequently those qualified interests are as such taxable.

For income tax, IHT and gift tax purposes, the assets, liabilities, income and costs of the PPF are attributed to the settlor. When the settlor has died, the attribution is made to the heirs of the settlor. A person who is disinherited in the settlor's will, but is nevertheless a beneficiary of the PPF, is also considered as an heir. If an heir is not a beneficiary of the PPF, the heir can avoid the attribution of assets, etc., of the PPF by proving to the tax authorities that he or she is excluded as a beneficiary and has no opportunity whatsoever to become a beneficiary in the future.

Upon the death of the person to whom the assets and liabilities are attributed, the assets and liabilities of the PPF are treated as part of his inheritance. As a result, the net value is taxed with inheritance tax. Inheritance tax will only become due when this person is considered to be a (deemed) resident of the Netherlands at the time of his or her death.

When distributions are made out of the assets of the PPF to the beneficiary, the law assumes they are a gift by the settlor to the beneficiaries. If the settlor has passed away, the law assumes they are a gift from the heirs of the settlor to the beneficiaries.

The law contains provisions that give the tax authorities power to execute PPF assets for a tax debt of the person to whom the property of the PPF is attributed. The code also provides for a possibility for the tax authorities to execute assets that belong to a legal entity in the Netherlands of which the PPF owns more than 5% of its shares. This means that when the holding of the PPF amounts to, say, 5%, the tax authorities are empowered to execute assets of the company directly or indirectly held by the PPF that correspond to the value of the 5% holding.

8. Grants

There is no specific concept of grants under Dutch tax law.

9. Life insurance

As mentioned earlier, the receipt of the proceeds from a life insurance is taxable as if it were an acquisition by way of inheritance if the deceased was legally obliged to contribute to the premiums paid for such insurance. This rule does not apply if the premiums are financed out of the private property of the beneficiary.

10. Civil law on succession

10.1 Estate planning

Generally speaking, estate planning concerns the practice in which civil law concepts and tax law are combined to achieve an optimal tax situation in regard to the transfer of family wealth between the members of a family.

10.2 Succession

Normally the succession is regulated by way of a will. Mutual wills are void in the Netherlands. The same applies in regard to agreements on succession. Although the possibility of a holographic will exists, normally wills are made by notarized deed. To the extent the deceased had not disposed of the inheritance, the intestacy rules apply.

10.3 Intestacy

If a person dies without a will, the decedent's estate passes under the rules set out in the Civil Code. The order of succession is based on four groups whereby the persons that belong to a subsequent group do not benefit until all the members of a preceding group are exhausted. The heirs are classified in the following order:

- The surviving spouse together with the deceased's children and further descendants
- The parents together with the deceased's brothers and sisters and their descendants
- The grandparents of the deceased
- The great-grandparents of the deceased

Descendants of children, brothers, sisters, grandparents and great-grandparents benefit per stirpes. All heirs of a group are entitled to equal shares.

If a deceased leaves a spouse and one or more children as heirs, the law provides that all assets in the estate pass to the surviving spouse absolutely. However, the children as heirs then receive a monetary claim equal to their portion (statutory partition). Under certain circumstances (e.g., remarriage of the surviving spouse), the children can call in their monetary claim. The statutory partition is applicable automatically, unless the deceased excluded this by means of a last will.

10.4 Forced heirship

As of 2003 the inheritance law provides for a compulsory share for the descendants of the deceased, but the persons entitled to the compulsory share are not considered as heirs but as creditors of the heirs.

The compulsory share of a child is half of the share that the child would acquire according to the rules that apply to intestate succession. In order to calculate this share, the value of the estate plus gifts made within five years of death are taken into account. However, older gifts are taken into consideration when those gifts were made to persons who are entitled to a compulsory share.

The surviving spouse does not have a compulsory share, but when the surviving spouse is left behind without any means, the Civil Code provides for certain maintenance provisions.

10.5 Matrimonial regimes and civil partnerships

If the couple did not conclude a prenuptial agreement prior to the marriage, the Dutch regime of the universal community of property becomes applicable at the moment the marriage is concluded. Under this regime, all assets and all debts of both spouses become part of the community of property regime. Both spouses participate equally in the community. Gifts and inheritances also become part of the community regime regardless of whether they were acquired before or during the marriage. An exception applies only to a gift or bequest that was made subject to an exclusion clause. In that case, the donor or the deceased explicitly provides that the acquired property will not become a part of the community of property regime of the couple.

In the field of matrimonial property, freedom of contract is an important principle. Almost any arrangement the parties desire is possible. It is also possible to change an existing regime during the marriage. When parties are married under separation of property and opt for a form of community of property regime or another arrangement, it is to some extent accepted that no gift tax or inheritance tax becomes due. This opens up possibilities for tax planning between spouses. This can be of importance because only a limited exemption applies to inheritance tax, and only the general exemption of €2,129 applies to gift tax.

A legislative proposal for a new matrimonial property regime was adopted by the parliament on 28 March 2017 and enters into force on 1 January 2018. The measure provides for a system in which property acquired before marriage, gifts and inheritances no longer become part of the community of property.

10.6 Probate

Probate proceedings do not apply under Dutch law because the inheritance passes to the heirs by way of universal succession.

10.7 EU Regulation 650/2012

As of 17 August 2015, the EU Succession Regulation (known as Brussels IV), which provides uniform rules on jurisdiction, applicable law, recognition and enforcement of decision and acceptance and enforcement of authentic instruments in matters of succession, and includes the creation of a European Certificate of Succession, entered into force.

11. Estate tax treaties

11.1 Unilateral rules

When no tax treaty applies (see hereinafter), Dutch unilateral law for the avoidance of double taxation applies. Double taxation, however, is not always completely avoided.

As was previously mentioned, transfer duty (inheritance and gift tax based exclusively on the principle of *situs*) was abolished per the first of January 2010. Hereafter we describe the Dutch *situs* concept because it can still be relevant in applying Dutch unilateral law to avoid double taxation. The following assets are considered as *situs* assets:

- The value of a domestic enterprise or a part of a domestic enterprise (which is determined by a permanent establishment)
- Real estate and limited rights over real estate
- Economic ownership of real estate and economic ownership of limited rights over real estate
- Shares in a real estate company (where real estate makes up 50% of the assets in the year of acquisition or the preceding year)

11.2 Estate tax treaties

The Netherlands has concluded estate tax treaties with the following countries: Austria, Finland, Israel, Sweden, Switzerland, the United Kingdom and the United States. Furthermore, a tax arrangement applies between the Netherlands and the Caribbean islands of Curaçao, Aruba and St. Maarten.

All treaties cover inheritance tax and transfer duty with respect to bequests. Dutch transfer duty was abolished on 1 January 2010.

The only treaties that cover gift tax are the treaties with the United Kingdom and Austria. The tax arrangement that applies between the Netherlands and Curaçao, Aruba and St. Maarten also applies to gifts.

New Zealand

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1. Types of tax

1.1 Inheritance tax

New Zealand abolished estate tax with effect for persons dying on or after 17 December 1992 and currently has no form of estate duty, inheritance tax or capital transfer tax.

1.2 Gift tax

Gift tax has been abolished for gifts made on or after 1 October 2011.

1.3 Real estate transfer tax

New Zealand has no form of real estate transfer tax.

1.4 Endowment tax

New Zealand has no form of endowment tax.

1.5 Transfer duty

New Zealand has no form of transfer duty.

1.6 Net wealth tax

New Zealand has no net wealth tax.

1.7 Income tax

Income tax liabilities may arise in relation to assets that are gifted, that transfer to executors or administrators on an individual's death, that are distributed to beneficiaries under a will or the intestacy rules, or that are distributed by trustees. The general rule deems the assets to have been disposed of and acquired at market value, which may result in income tax liabilities in relation to assets within the tax base, although exclusions and rollover relief may apply in some circumstances when transferees are spouses, civil union or *de facto* partners or close relatives. Rollover relief generally applies in relation to assets that are transferred under relationship property agreements or court orders.

1.8 Goods and services tax

Goods and services tax (GST) is similar to a value-added tax (VAT) and is imposed on supplies of goods or services in New Zealand by persons who are formally GST-registered or who are liable to be so registered (because the level of their supplies of a GST-taxable nature in the current and preceding 11 months has exceeded NZ$60,000 or is expected to exceed that amount over the current and subsequent 11 months). GST may also be levied on goods imported into New Zealand, regardless of the GST status of the importer, and may apply by way of a reverse charge in relation to imported services in some circumstances. As of 1 October 2016, GST is imposed on supplies of digital and other remote services by nonresidents to New Zealand residents (other than GST-registered business customers).

GST-exempt activities include supplies of financial services (although some may be zero-rated in certain circumstances, which enables suppliers to claim related GST input tax credits), supplies of certain fine metals and certain supplies of residential dwelling accommodation (other than in relation to commercial dwellings) and related land.

2. Who is liable?

Income tax

New Zealand residents are generally subject to income tax on their worldwide income and may be taxed on attributed income in relation to interests in controlled foreign companies or foreign investment funds. Nonresidents are subject to income tax only on New Zealand-sourced income. Transitional resident individuals (please see below) may be exempt from New Zealand income tax for a four-year period (sometimes slightly longer) on foreign-sourced and attributed income other than foreign-sourced employment or services income.

New Zealand-sourced income may arise, for instance, when:

- A business is carried on wholly or partly in New Zealand.
- Contracts are made or wholly or partly performed in New Zealand.
- Employment income is earned in New Zealand.
- Income is derived by the owner of land in New Zealand.
- Income is derived from shares in or membership of New Zealand-resident companies.
- Income is derived from the disposal of depreciable or revenue account property situated in New Zealand.

The New Zealand income tax treatment of trusts (and the estates of deceased individuals) can be complex (please see further below). The treatment of income derived through trusts and of distributions (other than of current year income) generally depends on whether any New Zealand residents have made any settlements on the trusts and whether there is New Zealand-sourced income.

Double tax treaties may modify the above treatment for individuals (and other entities) to whom they apply.

GST

Any business entity or individual who makes supplies of goods or services of a GST-taxable nature in New Zealand may choose to register for GST or may be liable to register if the value of their annual supplies exceeds NZ$60,000 (as outlined above).

Supplies made to associated persons for less than market value are generally treated as being made at open market value, with GST-registered suppliers liable to return GST at the appropriate fraction (currently 3/23 for standard-rated supplies) of that value. Such deemed supplies may affect a supplier's liability to register for GST. Exceptions may apply if recipients are already GST-registered and would be able to claim input tax credits for any GST charged or if they would be applying items acquired for no consideration for the purpose of making GST-taxable supplies from the time of acquisition, which may be the case, for instance, in respect of assets distributed to beneficiaries by trusts or deceased estates.

On the death of a GST-registered individual, their executor or administrator is generally regarded as carrying on their GST-taxable activity as a specified agent. He or she must notify the Commissioner of Inland Revenue, make GST returns and account for GST on relevant assets sold or supplied to beneficiaries.

Situation of property — income tax

The income tax legislation does not specify where property is situated for the purposes of the source rules. Common law principles may therefore apply so that land and tangible personal assets will generally be treated as situated according to their physical location, and company shares may be treated as situated where the share register is kept.

Situation of supplies — GST

Supplies of goods and services are treated as made in New Zealand for GST purposes if they are made by New Zealand residents (as defined for GST purposes). Supplies made by nonresidents are generally regarded as made outside New Zealand unless they relate to goods that are in New Zealand at the relevant time or services that are physically performed by someone in New Zealand. Notwithstanding the general rule, nonresident suppliers and GST-registered recipients may generally agree to treat supplies as made in New Zealand, which may enable the supplier to register for GST and claim input tax credits for GST levied on importation of goods and other costs under the general rules. (From 1 April 2014 nonresident suppliers can also register for GST and claim input tax credits if they meet certain other criteria.) Certain supplies of digital and other remote services by nonresidents to New Zealand residents are also treated as made in New Zealand for GST purposes.

2.1 Residency

Income tax

Individuals are considered resident in New Zealand for income tax purposes if they meet either of the following conditions:

- They have a permanent place of abode in New Zealand, regardless of whether they also have a permanent place of abode in another country.
- They are physically present in New Zealand for more than 183 days in any 12-month period.

Transitional residents

Individuals who first arrive and become resident in New Zealand after 1 April 2006, or who have been nonresident for at least 10 years before returning to New Zealand after that date, may choose to be treated as transitional residents, in which case they may be exempt from New Zealand income tax on certain foreign-sourced and attributed income for the first four years (possibly up to four and a half years in some circumstances) of their New Zealand residence. The transitional resident exemption does not apply to foreign-sourced employment or services income derived during the transitional residence period and is available only once.

Trusts (including estates of deceased individuals)

Trust income is subject to New Zealand income tax if it is sourced in New Zealand or if it is derived by beneficiaries who are New Zealand resident or by trustees where there is a settlor (generally any person who provides some benefit to the trust) who is New Zealand resident. Please see further below.

GST

The concept of residence may also be relevant for GST purposes, particularly in relation to whether supplies are regarded as made in New Zealand. The GST concept of residence is based on the income tax concept but is extended to also cover others to the extent they carry on any activities through related fixed or permanent places in New Zealand. Unincorporated bodies are treated as New Zealand resident for GST purposes if their center of administrative management is in New Zealand.

3. Rates

Income tax

The current rates of income tax applicable for resident, nonresident and transitional resident individuals are as follows:

Income bracket	Year ending 31 March 2012 (2011–12 income year) and subsequent income years
NZ$0–NZ$14,000	10.5%
NZ$14,001–NZ$48,000	17.5%
NZ$48,001–NZ$70,000	30%
Over NZ$70,000	33%

Income derived through trusts (including the estates of deceased individuals) is taxable at adult beneficiaries' individual rates if treated as beneficiary income, generally at 33% if treated as beneficiary income of minor beneficiaries or at 33% if treated as trustee income. The income tax treatment of other distributions depends on the residence of the beneficiaries and how trusts are categorized for New Zealand income tax purposes at the times distributions are made. Trusts can be categorized as:

- Complying trusts in which there are no taxes on such distributions.
- Foreign trusts in which distributions are generally taxable at beneficiaries' individual rates. Distributions of realized capital gains and amounts settled on the trust as corpus may be distributed tax free, but are generally subject to ordering rules.
- Non-complying trusts in which distributions are taxable at 45% except for distributions of amounts settled on the trust as corpus, which may be distributed tax free, but which are generally subject to ordering rules.

As outlined below, the New Zealand income tax treatment of trusts is complex.

GST

The standard rate of GST is 15%. Zero-rating applies to a number of types of supplies, particularly in relation to exports, international transportation, business-to-business supplies of financial services in certain circumstances and supplies that include land between GST-registered persons (for supplies from 1 April 2011).

4. Exemptions and reliefs

Income tax

As outlined above, transitional residents may be exempt from income tax on foreign-sourced and attributed income for a period of four years (slightly longer in some circumstances) after they first become resident in New Zealand, although this exemption does not apply to foreign-sourced employment or services income derived during that period.

Charitable purpose trusts and organizations may be wholly exempt from income tax if they are registered under the Charities Act 2005 (or, in limited circumstances, if the Commissioner of Inland Revenue approves a nonresident body for these purposes). If they derive income directly or indirectly from business activities, rather than solely from passive investments or carrying out their charitable purposes, the exemption will not apply or may be limited if they carry on their charitable purposes outside New Zealand or if those with some control over the business can procure or influence certain personal benefits or advantages.

5. Filing procedures

Income tax

The standard New Zealand income tax year runs from 1 April to 31 March of the following calendar year, although taxpayers may seek the Commissioner of Inland Revenue's approval of nonstandard balance dates in certain circumstances (such as the date of death for continuing deceased estate returns).

Taxpayers with 31 March balance dates must generally file returns of income by the following 7 July unless they obtain a specific extension or are on a tax agency list, in which case filing extensions to the following 31 March may be available.

Taxpayers may need to make advance payments of provisional tax, generally in the 5th, 9th and 13th months following the beginning of their income years if their preceding year's residual income tax liability (after source deductions, withholding taxes, imputation and foreign tax credits) exceeded NZ$2,500. Interest may be imposed if provisional tax paid at each installment date is less than the appropriate fraction of the final residual income tax liability for the year. Any terminal tax balance is generally payable by 7 February of the year following the date unless taxpayers are on a tax agency list, in which case the time for paying terminal tax is extended by two months.

GST

GST return periods may cover six-month periods (annual GST-taxable turnover below NZ$500,000), two-month periods (generally applicable for annual GST-taxable turnover between NZ$500,000 and NZ$24 million) or a one-month period (required if annual GST-taxable turnover exceeds NZ$24 million or if taxpayers elect). A quarterly return period applies to nonresident suppliers of digital and other remote services. Returns and payment of any net GST output tax liability (after deducting any relevant input tax credits on supplies acquired) must generally be filed by the 28th of the following month except for the periods ending 30 November (due by 15 January) and 31 March (due by 7 May).

6. Assessments and valuations

Income tax and GST

New Zealand has a formal self-assessment regime for income tax and GST purposes, with taxpayers effectively making their own assessments when taking tax positions by filing (or not filing) relevant returns. Such self-assessments may be reviewed and amended by the Commissioner of Inland Revenue at any time, although amendments that increase income tax or GST liabilities must generally be made within a four-year period (from the end of the tax year in which an income tax return is filed; from the end of the GST return period in which a GST return is filed). No such time limit applies for income tax purposes if returns are fraudulent or willfully misleading or do not mention income of a particular nature or from a particular source. No such time limit applies for GST purposes if the Commissioner of Inland Revenue considers taxpayers have knowingly or fraudulently failed to disclose all material facts.

Shortfall penalties may be imposed and interest charged by the Commissioner of Inland Revenue in relation to errors that result in shortfalls of income tax or GST compared with the positions taken by taxpayers in their returns.

7. Trusts, foundations and private purpose funds

Trusts

Trusts are well-established and recognized under New Zealand law, and trusts are commonly used for asset protection and succession planning purposes. The terms of discretionary trusts can provide considerable flexibility as to income and capital entitlements and distributions while retaining significant influence or control by those who initiate or settle the trust. Assets held on trust for others are generally not regarded as part of the estate of a deceased that may be subject to claims under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949. The maximum length of time a trust (other than certain public or charitable trusts) may continue is generally limited by the Perpetuities Act 1964, which allows periods up to 80 years to be specified.

The settlement of property on a trust could previously be subject to gift duty (on the same basis as dispositions of property to any other person or entity could constitute dutiable gifts up to 30 September 2011) and is likely to have New Zealand income tax implications. Distributions to beneficiaries in terms of a trust were not regarded as constituting dutiable gifts, and resettlements may or may not have involved dutiable gifts (up to 30 September 2011), depending on the beneficiaries and terms of each of the trusts involved.

There may be income tax and GST implications if trust assets are distributed in-kind or are made available for use by beneficiaries or associated persons for less than market value.

In some circumstances, settlements of property to be held on trust or other property transfers or payments may be challenged and reversed if transferors subsequently become bankrupt or if the transfers are intended to defeat the rights of spouses/partners under the Property (Relationships) Act 1976.

The New Zealand Government is currently moving to update and improve the general law governing trusts in New Zealand. Feedback is being sought on a new draft Trusts Bill, and it is expected that the bill could be introduced to Parliament in 2017.

Income tax treatment of trusts

The New Zealand income tax treatment of trusts can be complex, particularly if there are any cross-border elements, whether in terms of assets, settlors, trustees or beneficiaries. Unit trusts are generally treated as companies for income tax purposes, but trusts in a family context are not normally unit trusts.

In very general terms, New Zealand seeks to tax income derived through trusts (other than unit trusts) if it is sourced in New Zealand, if settlements on the trust have been made directly or indirectly by New Zealand tax residents or if beneficiaries receiving or being credited with distributions are tax resident in New Zealand. The New Zealand income tax treatment of trusts is therefore not necessarily determined by the place where the trust was established or by the residence of the trustees.

Current year taxable income may be taxed in the trustees' hands (at 33%) or as beneficiary income (at adult beneficiaries' personal tax rates or, generally, at 33% in relation to minor beneficiaries under 16) if the income vests in or is paid to, credited or applied for beneficiaries within prescribed time frames.

For income tax purposes, the concepts of settlor and settlement are defined broadly and may generally include any person who has transferred value or provided services or financial assistance to the trust without receiving equivalent market value consideration in return. In some circumstances, for instance, beneficiaries with trust current account credit balances may arguably be regarded as settlors for New Zealand income tax purposes.

Categorization of trusts under the income tax rules as complying, foreign or non-complying affects the income tax treatment of distributions (other than of current year taxable income) to beneficiaries, with the most advantageous treatment (no further income tax liability) applying to distributions (other than of current year income) from complying trusts. Distributions from foreign trusts may be tax free if they are of realized capital gains or of corpus while the only tax-free distributions from non-complying trusts are those of corpus. The concept of corpus is defined narrowly for New Zealand income tax purposes. Distributions from foreign and non-complying trusts are generally subject to ordering rules and may result in double taxation without effective relief under double tax treaties.

Where foreign trusts have New Zealand resident trustees but no New Zealand settlors, assets, income or beneficiaries, and would therefore not normally need to file New Zealand income tax returns, specific information about the trusts must be maintained in New Zealand and disclosed to the Commissioner of Inland Revenue.

Foundations

Trusts are commonly used to establish foundations for charitable or other nonprofit purposes. If such trusts are registered under the Charities Act 2005 or otherwise approved as donee organizations for income tax purposes, settlements or donations to them may provide income tax credits for resident individual donors or tax deductions for company donors (subject to their having sufficient taxable income).

The income of trusts or other bodies that are registered under the Charities Act 2005 is generally exempt from income tax unless it is derived directly or indirectly from business activities and is used for purposes outside New Zealand or persons who can control the business can also influence or determine benefits or advantages for themselves. The net income of other nonprofit organizations is generally taxable, although they may be entitled to a statutory deduction up to NZ$1,000 in addition to deductions for their normal operating costs.

GST may apply to charitable and other nonprofit bodies although there is generally no GST on unconditional gifts or on supplies of donated goods and services.

8. Grants

With regard to estate taxes, there are no specific rules regarding grants in New Zealand.

9. Life insurance

Life insurance proceeds are generally regarded as capital receipts that are not subject to income tax. However, rights (including contingent or discretionary rights) to benefit from foreign life insurance policies may constitute foreign investment fund (FIF) interests in relation to which New Zealand resident holders (other than transitional residents) may be taxable on attributed FIF income.

10. Civil law on succession

10.1 Estate planning

Pre-immigration trusts and transitional residence

If individuals have established trusts or are beneficiaries under trusts established overseas before they move to New Zealand, care is required to ensure such trusts do not become categorized as non-complying trusts by reason of any person who may be regarded as a settlor under the wide New Zealand income tax definition of that term becoming New Zealand tax resident. Settlements made by nominees are generally regarded as made by their principals. One consequence of a settlor becoming tax resident is that all foreign source income of the trust may become taxable in New Zealand (unless treated as current year income of nonresident beneficiaries). A consequence of non-complying trust categorization, for instance, is that distributions to New Zealand residents (other than of current year income) may be taxable at a flat 45% rate, rather than at their lower personal income tax rates.

There are currently transitional residence concessions for income tax purposes for individuals who move to New Zealand and who have never previously been New Zealand tax resident or who have been nonresident for at least 10 years. In general terms, the concessions mean that transitional residents are not taxable in New Zealand on their foreign investment or rental income and are not subject to New Zealand's income tax rules relating to financial arrangements for an initial four-year period. They may also defer making elections to bring any pre-residence foreign trusts into full New Zealand income tax liability on foreign-sourced income during that four-year period (otherwise a one-year election period would generally apply).

Specific advice should be obtained in advance in all cases.

10.2 Succession

Choice of law to govern succession

New Zealand laws should be regarded as potentially applying in any situation where individuals are domiciled or resident in New Zealand at death or where they have assets situated in New Zealand.

New Zealand law provides rules for the succession to individuals' net assets if they die without effective wills that meet Wills Act 2007 requirements. Otherwise, adult individuals are generally free to leave their assets by will, as they choose, although their estates may be subject to claims by certain affected relatives and others under specific statutory provisions, such as those contained in the:

- Property (Relationships) Act 1976 (claims by spouses, civil union or *de facto* partners)
- Family Protection Act 1955 (claims for maintenance or support by a limited class of relatives who consider the deceased may not have made adequate provision for them)
- Law Reform (Testamentary Promises) Act 1949 (claims by those who have performed services for the deceased on the basis of promises to reward them by some testamentary provision)

Wills are generally revoked automatically by entry into marriage or civil union unless they are made specifically in contemplation of that event. Dissolutions of marriage or civil unions or formal separation orders generally revoke dispositions in a will to the former spouse or civil union partner.

Application of the New Zealand rules may be affected by the domicile of the deceased person at the date of making any will or at the date of death and on the location and movable or immovable nature of their assets.

10.3 Forced heirship

As outlined above, New Zealand does not impose any forced heirship provisions, although statutory provisions allow relatives and others to make claims against estates in certain circumstances.

10.4 Matrimonial regimes and civil partnerships

Marriage or civil union does not, by itself, alter either spouse's or partner's ability to own or deal with property in his or her own right, but the existence of a marriage, civil union or *de facto* partnership (between members of the same or different sex) may affect property rights in various ways. Examples include:

- Property becoming subject to claims by the other spouse, civil union or *de facto* partner, primarily under the Property (Relationships) Act 1976, to determine their share or provide for them or any children. There is a general presumption of entitlement to an equal share in the family home, family chattels and other relationship property (based on a presumption of equal contributions of all types) unless the relationship has been short (generally involving less than three years' cohabitation) or there are extraordinary circumstances that would mean equal sharing was repugnant to justice. In some circumstances, the courts may order compensation where relationship property has previously been transferred to trusts or controlled companies. Claims may be brought under the Property (Relationships) Act 1976 after the death of one of the spouses, civil union or *de facto* partners, whether or not the deceased left a valid will. The parties to such relationships may generally contract out of the Act's provisions (but cannot do so with the intention of defeating creditors) and agree as to how property will be dealt with, but each party must have appropriate and separate independent legal advice and such agreements must meet certain formal criteria to be valid. Income tax "rollover" concessions may apply where property interests are transferred under Property (Relationships) Act 1976 orders or agreements but may also effectively transfer latent income tax liabilities to transferees.
- Property (possibly including trust settlements) becoming subject to review and orders by the courts under the Family Proceedings Act 1980 (in the event of orders being made affecting the status of a marriage or civil union or affecting its dissolution).
- The ability of spouses or civil union partners to settle their home on both parties under the Joint Family Homes Act 1964, which may provide protection of a limited amount in the event of subsequent bankruptcy.

10.5 Intestacy

The Administration Act 1969 provides rules stipulating who inherits a deceased person's assets if the person dies intestate, or to the extent there is no valid will dealing with particular assets. The Administration Act 1969's intestacy rules provide primarily for set proportions and types of assets to pass to spouses, civil union or *de facto* partners, issue (children or other descendants) and surviving parents, but if there are no individuals in any of those categories, assets may pass to siblings, in default to grandparents, aunts and uncles. If there are no individuals in any of these categories, the assets pass to the Crown, which has discretion to apply them to other dependents or persons for whom the deceased might reasonably have been expected to make provision.

10.6 Probate

Executors of an individual's will generally must apply to the High Court Registry at Wellington for probate to establish their authority to act, deal with the deceased's estate and distribute assets to the beneficiaries in accordance with the will. Probate may not be required for small estates that do not include any interests in land and certain other investments, and bank accounts that do not individually exceed NZ$15,000 in value.

Applications for probate are generally made *ex parte* unless someone is contesting the will or there are possible issues as to the validity of the will, and should generally be made through New Zealand lawyers to minimize the risk of any possible problems or procedural difficulties.

If there is no will, application should be made to the High Court to appoint an administrator, generally a close relative, to deal with the deceased's estate.

As the New Zealand courts have general jurisdiction over all property in New Zealand, it may be necessary to apply for probate or letters of administration if foreigners die owning New Zealand property. Probate or administration granted in certain foreign jurisdictions (such as those of Commonwealth countries) may be recognized and resealed in New Zealand for these purposes.

11. Estate tax treaties

New Zealand has not concluded any estate tax treaties with foreign states. The provisions of its double tax treaties that deal with income tax may be relevant in relation to New Zealand property interests and income streams owned by deceased individuals and their estates.

Norway

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1. Types of tax

The Norwegian unified inheritance and gift tax was terminated on 1 January 2014. The reason for this termination was to relieve the strain on liquidity in cases of generational changes of companies and transfer of family property.

1.1 Inheritance tax

The inheritance and gift tax was replaced with rules of continuity for tax purposes, meaning the heir or beneficiary is to assume the testator or benefactor's tax values and tax positions. The purpose of these rules is to secure latent profits occurring during the testator or benefactor's period of ownership. As the recipient is entitled and obligated to continue the tax values of the assets, such latent profits will become taxable when the recipient sells them.

The rules are neutral regarding transfer of privately operated businesses, registered shares and non-registered shares and assets. Furthermore, the rules are given a general application for assets owned within and outside of business, allowing all tax positions to be transferred with continuity.

Exceptions regarding property

There is an important exception from the continuity rules with regard to transfers of residential property, holiday property and general farms and forestry, under the prerequisite that the testator or benefactor was in a position to sell such property tax-free. This makes the rule neutral for tax and inheritance tax purposes, as the seller is given the opportunity to sell the property without taxation, and transfer the proceeds without inheritance tax.

As such, when the exception applies, the recipient will be able to set the tax base of the property to the market value at the time of transfer. Future profits on the property will be taxable unless the recipient himself fulfills the requirements for tax-free profits when selling.

Withdrawals of company assets for gift purposes

Withdrawals of company assets for gift purposes are subject to tax. In such cases, the recipient's tax base value shall be equal to the exit value applied when taxing the donor (market value).

However, there is an exception from such taxation when the recipient is entitled to succession by law and continues all or part of the business.

Transfer against partial compensation

Transfers against partial compensation (gift sale) may trigger a profit tax for the donor.

When business assets are transferred by a gift sale and the recipient is entitled to succession by law, the donor may choose whether the profits are to be taxed, or whether the recipient shall continue the donor's tax positions. If the donor chooses profit taxation, the tax base of the assets for the recipient will be equal to the compensation. When assets transferred by a gift sale are not part of a business, profit taxation is mandatory.

1.2 Gift tax

As of 1 January 2014, Norway has terminated its gift tax.

1.3 Real estate transfer tax

This is not applicable in Norway.

1.4 Endowment tax

This is not applicable in Norway.

1.5 Transfer duty

Registration of transfer of title to property triggers a transfer duty of 2.5% of the fair market value (FMV) of the land and/or property being transferred. According to the general rules in the Norwegian Inheritance Act (*Arveloven*), heirs would normally be exempted from transfer duty of land and/or property. The exception for transfer duty covers only the FMV of the land and/or property of the ideal part the heirs are entitled to, according to the Norwegian Inheritance Act. Inheritance in advance and inheritance in testaments beyond the inheritance in law are not covered by the exception from transfer duty.

1.6 Net wealth tax

Inheritance and gifts will be added to the net wealth of the recipient. The basis for the net wealth tax is the FMV of the owner's assets, minus debt, as of 1 January in the year of tax assessment.

Net wealth is only taxed for the part that exceeds NOK1.48 million (2017), whereby 0.7% is payable to the municipality and 0.15% to the state.

2. Who is liable?

Inheritance and gift taxes were abolished effective as of 1 January 2014.

3. Rates

This is no longer applicable in Norway.

4. Exemptions and reliefs

This is no longer applicable in Norway.

5. Filing procedures

This is no longer applicable in Norway.

6. Assessments and valuations

This is no longer applicable in Norway.

7. Trusts, foundations and private purpose funds

A trust may not be set up under the Norwegian civil law. As Norwegian law does not recognize the concept of a trust, Norway has not ratified the Hague Convention on the Recognition of Trusts dated 20 October 1984. Hence, settlors, trustees and beneficiaries of a foreign trust are not recognized as such.

Trusts formed under the law of a foreign jurisdiction will be assimilated to the legal entity under Norwegian civil law that most closely resembles the provision of trust (e.g., family foundations, aggregation of property, nominee agreement). Generally, the trust would be recognized for tax purposes, and beneficiaries resident in Norway could be liable to be taxed on the income and the value of the trust under the controlled foreign company (CFC) rule.

7.1 Gifts to a foreign trust

This is no longer applicable in Norway.

7.2 Inheritance to a foreign trust

This is no longer applicable in Norway.

7.3 Inheritance taxation at the time of the settlor's death

This is no longer applicable in Norway.

8. Grants

This is no longer applicable in Norway.

9. Life insurance

This is no longer applicable in Norway.

10. Civil law on succession

10.1 Estate planning

Generational changes of companies should take place when the parents are still alive, due to the fact that the rules on forced heirship are not applicable in such a situation. This allows for more flexibility.

If the grantor of shares in a non-listed company wishes to retain control of the company that he or she transfers to his or her children, he or she may divide the shares into A and B shares. Class B shares with less voting rights or dividend rights can be transferred to his or her children.

10.2 Succession

When a person dies, the estate will be distributed to the heirs according to specific rules in the Norwegian Inheritance Act (*Arveloven*). The distribution of the inheritance depends on the deceased's family relations. According to the Inheritance Act, the estate will be distributed as described in the table "Testamentary documents and intestacy" (see Section 10.4.3). If the deceased has prepared a will, then the distribution of the estate is carried out according to the will, provided the testator has legal capacity.

10.3 Forced heirship

The Inheritance Act provides a certain minimum inheritance for spouses and children. These regulations do not, however, apply to gifts.

For all the children jointly, the minimum inheritance is two-thirds of the parent's total estate, but this may be reduced in a testamentary document to NOK1 million per child.

For spouses, the law provides a minimum inheritance of one-quarter of the deceased's entire estate. This may be decreased by will, but only if the surviving spouse has been notified of this prior to the decedent's death.

Each year the Norwegian Parliament determines a National Insurance Amount (G); it is currently NOK93,634. Under no circumstances may the spouse's inheritance be reduced below four times the National Insurance Amount (NOK374,536) if there are lineal descendants.

If there are no lineal descendants, the minimum inheritance will be equivalent to six times the National Insurance Amount (NOK561,804).

10.3.1 Cohabitants

For cohabitants who have joint lineal descendants, the law provides a minimum inheritance of four times the National Insurance Amount (NOK374,536). The right to inherit up to four times the National Insurance Amount supersedes the right of inheritance to both the deceased cohabitant's children and joint lineal descendants.

10.4 Matrimonial regimes and civil partnerships

10.4.1 The asset arrangement

Co-ownership (of marital property) and separate property settlement are factors that will have an effect when a married person dies. Co-ownership is the description of the asset arrangement that arises automatically by virtue of marriage. If the spouses have not entered into a separate property settlement, they automatically have a co-ownership. Persons other than spouses can also create a separate property settlement by the donor, making his or her gift expressively subject to a separate property settlement in favor of the beneficiary.

A surviving spouse has the right to assume ownership of the co-owned assets. If the spouses had a partial separate property settlement, the co-owned assets can be taken outright, while the separate property settlement assets are divided among the heirs of the deceased. This applies as long as no modification has been made either by the provisions of a marriage settlement or with consent of the heirs.

10.4.2 Undivided estate

The right to outright ownership of the undivided estate applies to spouses who are still married at the time of death of the first deceased. The surviving spouse has the right to inherit such assets free from claims of other heirs according to law.

For cohabitants who have joint lineal descendants, the law provides a right to retain undivided possession of some assets of the estate. The right by law is limited to the following assets: property and furniture in joint ownership, recreational property and cars.

Undivided estate implies that the division of the inheritance is postponed and that the longest living spouse/cohabitant virtually has full disposal over the assets of the deceased. If the longest living spouse or cohabitant uses the right to retain undivided possession of the estate, the rights of the heirs will be reduced accordingly. They will not receive any inheritance until the undivided estate is distributed.

The right for the longest living spouse/cohabitant to retain undivided possession of the estate can be limited by a will. However, a will reducing the extent of the right to the undivided estate is only valid if the longest living spouse/cohabitant was aware of it before the earlier death of the spouse/cohabitant.

There are also other limitations on the right for the longest living spouse or cohabitant to inherit. The limitations are connected to:

- The asset arrangement of the spouses
- The surviving heirs of the deceased
- Certain circumstances applicable to the survivor

10.4.3 Testamentary documents and intestacy

A will is a legal document that regulates an individual's estate after a person's death. Norway will normally accept the formal validity of a will drawn up in the deceased's domicile, nationality or place of residence at the time of making the will or at death. Whether he or she has the personal legal capacity to make the dispositions in the will is generally governed by the law of the deceased's domicile.

The distribution of a deceased person's estate depends on whether he or she has made a will. If there is no will, the estate will be distributed to the relatives and the spouse/cohabitant according to the Norwegian Inheritance Act. The parties are, however, free to agree on a distribution that deviates from the Act, but the Act will apply if such an agreement cannot be reached. Where there are cross-border issues, the conflicts-of-law provisions will be relevant. The following table sets out the current rules when there is no will.

Spouses and children* survive the deceased	Spouse survives the deceased but no children or grandchildren*	No spouse or child survives the deceased
If the deceased leaves both a spouse and collective children, the estate must be divided between them. The spouse inherits one-quarter of the estate after the deceased, while the rest of the estate is divided equally between the children. The surviving spouse can usually choose to retain undivided possession of the estate. In this case, the children will inherit when the surviving spouse dies or if he or she marries again.	The spouse inherits half of the estate if the nearest living relatives of the deceased are their parents or their offspring. If the deceased does not have such relatives, the spouse inherits the whole estate.	The inheritance goes to the parents of the deceased. If both parents are dead, the inheritance goes to the siblings of the deceased or their offspring. If the deceased has no siblings, then the inheritance goes to their grandparents. If both grandparents are dead, the inheritance goes to the aunts and uncles of the deceased or to their cousins.

**Children of a predeceased child of the intestate parent take their parent's share.*

10.5 Probate

The administration of the deceased's estate may be private (the heirs themselves agree on who is to inherit what) or public. Private administration of the estate is the most common. However, the heirs may request that the public authorities carry out the administration.

11. Estate tax treaties

These are longer applicable in Norway.

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1. Types of tax

1.1 Estate tax and tax on gifts during lifetime

There used to be both inheritance tax (tax on the right of heirs to inherit) and estate tax (tax on the net estate of the decedent) in the Philippines.

Now, the Philippines only imposes estate tax which applies on the fair market value (FMV) of a decedent's estate at the time of the person's death. In determining the value of the gross estate, the FMV of all properties, real or personal, tangible or intangible, is included regardless of their location. With respect to nonresident aliens, only properties located in the Philippines are subject to estate tax.

The following should be included as part of the gross estate:

- **Decedent's interest.** This refers to value of the decedent's right or expectation (short of naked title) on a property.
- **Transfers in contemplation of death.** The value of any disposition, whether by trust or otherwise, that is intended to take place only after the decedent's death (*donation mortis causa*).
- **Revocable transfers.** The value of any transferred property where the decedent retained his or her power to amend, alter or revoke the transfer during his or her lifetime. This is regardless of whether he or she actually exercised that power or not.
- **Transfers with retention of rights of ownership.** This refers to the value of any transfer where the decedent retained the power to enjoy the fruits or income of the asset during his or her lifetime. Since this means that the transfer performed by the decedent is not absolute and transfer of all rights of ownership will only take place upon his or her death, the value of the asset transferred should still be considered part of his or her gross estate.

- **Property passing under the general power of appointment.** This refers to the value of any property for which the decedent was given the power to appoint any person, including himself or herself, to be the recipient or beneficiary. Since the decedent enjoys the right to dispose the property any way he or she wants to as if he or she is the owner, the value of such property should be included in his or her gross estate.
- **Proceeds of life insurance.** The value of insurance proceeds from insurance policies taken out by the decedent upon his or her own life should be included in the gross estate of the decedent when the designation of the beneficiary is revocable, or when the decedent has made himself or herself, or his or her estate, the executor or administrator as the beneficiary regardless of whether the designation is irrevocable or not.
- **Transfers for insufficient consideration.** This refers to the excess of the FMV at the time of death over the value of the consideration received by the decedent for any disposition by sale that he or she made during his or her that is less than a bona fide sale for an adequate and full consideration in money or money's worth.
- **Property owned in common with surviving spouse.** The value of any property owned in common with the surviving spouse should be included in the decedent's gross estate. However, the value of the equal share of the surviving spouse should be deducted from the estate after all conjugal expenses have been deducted from the gross estate.

The gross estate is entitled to claim the following deductible expenses to determine the net estate:

- **Funeral expense.*** Actual funeral expenses include cost of clothes for bereavement or 5% of the gross estate, whichever is lower, but in no case to exceed PHP200,000.
- **Judicial expense.*** Fees of executors, administrators and lawyers as well as expenses for the preservation of the estate.
- **Claims against the estate.*** Third-party creditor claims such as loans obtained by the decedent, which must be evidenced by a notarized agreement.
- **Claims against insolvent persons.*** Basically, bad and /receivables of the decedent.
- **Mortgage indebtedness, taxes and loss.*** Unpaid mortgages, unpaid taxes before the death of decedent and any losses from fire, theft or embezzlement incurred by the estate that is not covered by insurance.
- **Vanishing deduction.** A certain percentage of the value of an asset may be deducted from the gross estate if it was acquired by inheritance or by gratuitous title by the decedent at a time proximate to the decedent's death. For example, the value of property acquired by the decedent by inheritance at least four years but not more than five years before his or her death may be deducted from his or her gross estate to the extent of 20% thereof. If such property was inherited by the decedent within one year before his or her death, then 100% of the value of such asset is deductible from his or her gross estate.
- **Transfer for public use.** Any bequeath, legacies or devisees to the Philippine government or any of its political subdivisions for public use.
- **Family home.*** The actual FMV of the decedent's family home or PHP1 million, whichever is lower.
- **Standard deduction.** The amount of PHP1 million is deductible without question.
- **Medical expenses.** Actual medical expenses incurred within one year prior to the death of the decedent or PHP500,000, whichever is lower.

There is a proposal under House Bill (HB) No. 5636 to reduce the estate tax to 6% of the net taxable estate. HB 5636 was approved by the Lower House on 31 May 2017 and might become law in 2017.

* The family home deduction is being proposed by HB No. 5636 to be increased to PHP3 million.

HB No. 5636 also proposes removing ordinary expenses, losses, indebtedness and taxes as one of the allowable deductions from the gross estate of a nonresident alien; it also proposes removing the requirement that a nonresident alien declare all of his or her non-Philippine assets in his or her Philippine estate tax return before he or she can be allowed to claim the other allowable deductions.

1.2 Gift tax

Donations made during the lifetime of the donor (*donation inter vivos*) are subject to donor's tax. Donor's tax is imposed on total net gifts made in any calendar year. Generally, any donation to a "stranger" is subject to donor's tax at the rate of 30% of the FMV of the property or cash donated. Otherwise, the donation is subject to the graduated scale under Section 3 below. A "stranger" is a person who is not a:

- Brother, sister (whether by whole or half-blood), spouse, ancestor or lineal descendant

  Or

- Relative by consanguinity in the collateral line within the fourth degree of relationship

Donor's tax is also imposed on any transfer of any property (other than real property classified as a capital asset) for less than adequate and full consideration in money or money's worth.

1.3 Real estate transfer tax

There is a real estate transfer tax in the Philippines that is imposed on all transfers of real estate property, including transfer by way of inheritance. This is referred to as local transfer tax (LTT) and is imposed by the local government unit having jurisdiction over the location of the property and not by the National Government. In the case of cities, the maximum rate of LTT is 75% of 1% of the FMV, zonal value or consideration received, whichever is higher of the three. On the other hand, municipalities cannot impose LTT that is higher than 50% of 1% of the FMV, zonal value or consideration received, whichever is higher.

In case of transfer by way of inheritance, the LTT should be paid within 60 days from the time of death of the decedent.

1.4 Endowment tax

There is no endowment tax in the Philippines.

1.5 Transfer duty

There is no transfer duty in case of transfer by way of inheritance. Documentary stamp tax (DST) is applicable, however, on any transfer or disposition of real property or shares of stock in a domestic company during the lifetime of the person. The DST rate on transfer of shares is PHP0.75 for every PHP200, or fraction thereof, of the total par value of the shares. The DST on transfers of real property is PHP15 for every PHP1,000, or fraction thereof, of the zonal value, FMV or consideration received, whichever is higher.

1.6 Net wealth tax

There is no net wealth tax in the Philippines.

2. Who is liable?

The estate tax should be paid by the executor or administrator of the estate or any person in actual or constructive possession of the property. The estate tax is a lien on the property of the decedent and must be paid before any distribution can be made to the heirs. Heirs are secondarily liable for estate tax to the extent of his or her distributive share in the estate.

2.1 Residency

The estate of any decedent, citizen or not, who, at the time of their death, is a resident of the Philippines, shall be subject to estate tax in the Philippines, regardless of the location of the property, tangible or intangible, real or personal property.

Nonresident aliens are subject to estate tax only on properties situated in the Philippines, whether they are real or personal, tangible or intangible. However, intangible personal properties of such nonresident alien will be excluded in the gross estate if the foreign country (of which the decedent is a resident at the time of his death) did not impose a transfer tax of any character, in respect of intangible personal property of citizens of the Philippines not residing in that foreign country (reciprocity rule).

Residence is generally determined by presence of intent to return (*animus revertendi*). It usually refers to a permanent home where one intends to return whenever away for business or pleasure.

2.2 Domicile

Domicile is similar to residence as far as Philippine estate tax is concerned.

3. Rates

Estate tax

The net estate of every decedent, whether resident or nonresident, shall be subject to estate tax based on the value of such net estate in accordance with the following schedule (in PHP):

Table 1

Over	But not over	The tax shall be	Plus	Of the excess over
	200,000	Exempt		
200,000	500,000	0	5%	200,000
500,000	2,000,000	15,000	8%	500,000
2,000,000	5,000,000	135,000	11%	2,000,000
5,000,000	10,000,000	465,000	15%	5,000,000
10,000,000	And over	1,215,000	20%	10,000,000

As noted in Section 1.1, there is a proposal under HB No. 5636 to reduce the estate tax to 6% of the net taxable estate.

Donor's tax or gift tax

Donor's tax is imposed based on total net gifts made during the calendar year in accordance with the following schedule (in PHP):

Table 2

Over	But not over	The tax shall be	Plus	Of the excess over
	100,000	Exempt		
100,000	200,000	0	2%	100,000
200,000	500,000	2,000	4%	200,000
500,000	1,000,000	14,000	6%	500,000
1,000,000	3,000,000	44,000	8%	1,000,000
3,000,000	5,000,000	204,000	10%	3,000,000
5,000,000	10,000,000	404,000	12%	5,000,000
10,000,000		1,004,000	15%	10,000,000

HB No. 5636 proposes reducing the donor's tax to 6%, which would be computed on the basis of the total gifts exceeding the PHP100,000 exemption for gifts made during the calendar year. The 6% donor's tax would apply regardless of whether the donation is to an immediate family member or to a stranger.

4. Exemptions and reliefs

Estate tax

As can be seen from Table 1 above, it is only when the net estate is below PHP200,000 that the estate will be exempt from estate tax.

However, the following transmissions are also not subject to estate tax:

- The merger of usufruct in the owner of the naked title
- The transmission or delivery of the inheritance or legacy by the fiduciary heir or legatee to the fideicommissary
- The transmission from the first heir, legatee or donee in favor of another beneficiary, in accordance with the desire of the predecessor
- All bequests, devises, legacies or transfers to social welfare, cultural and charitable institutions, no part of the net income of which inures to the benefit of any individual; provided, however, that no more than 30% of the said bequests, devises, legacies or transfers shall be used by such institutions for administration purposes

Donor's tax

From Table 2 above, it can be seen that it is only when the net gift is less than PHP100,000 during the calendar year that the donation is exempt from donor's tax.

However, the following donations of a Philippine resident during his or her lifetime are also exempt from donor's tax:

- Dowries or gifts made on account of marriage and before its celebration or within one year thereafter by parents to each of their legitimate, recognized natural or adopted children to the extent of the first PHP10,000

- Gifts made to or for the use of the national government or any entity created by any of its agencies that is not conducted for profit, or to any political subdivision of the said government
- Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, accredited nongovernment organization, trust or philanthropic organization or research institution or organization provided, however, that no more than 30% of said gifts shall be used by such donee for administration purposes

In the case of a nonresident alien, only the first and second bullets above are exempt.

5. Filing procedures

Estate tax

Before an estate tax return can be filed, the executor, administrator or heirs must apply for a new tax identification number (TIN) for the estate using Bureau of Internal Revenue (BIR) Form 1901. The TIN of the decedent will be cancelled.

A notice of death must be filed by the executor, administrator or any of the legal heirs within two months after the decedent's death with the Revenue District Office (RDO) that has jurisdiction over the place of the decedent's residence at the time of his death or, if there is no legal residence in the Philippines, with the Office of the Commissioner. The notice of death is required to be filed where the gross value of the estate exceeds PHP20,000.

An estate tax return (BIR Form 1801) is required to be filed when the gross value of the estate is over PHP200,000 or, regardless of the gross value of the estate, when the estate is composed of real properties, shares of stock or motor vehicles, or any property where a BIR tax clearance is required as a condition precedent for the transfer of ownership.

Estate tax returns showing a gross value exceeding PHP2,000,000 shall be supported with a statement duly certified by a certified public accountant containing the following:

- Itemized assets of the decedent with their corresponding gross values at the time of his death, or, in the case of a nonresident and not a citizen of the Philippines, of that part of his gross estate situated in the Philippines
- Itemized deductions from gross estate allowed under the law
- The amount of tax due whether paid or still due and outstanding

Estate tax returns are required to be filed within six months from the decedent's death. The Commissioner shall have authority to grant, in meritorious cases, a reasonable extension not exceeding 30 days for filing the return.

If there is estate tax payable, the estate tax must be filed and paid with the authorized agent bank of the Revenue District Office that has jurisdiction over the place of the decedent's residence at the time of his or her death or, if there is no legal residence in the Philippines, with the Office of the Commissioner.

The estate tax must be paid at the time the return is filed by the executor, administrator or the heirs. However, if the Commissioner finds that the payment on the due date of the estate tax or of any part thereof would impose undue hardship upon the estate or any of the heirs, he may extend the time for payment of such tax or any part thereof not to exceed five years, in case the estate is settled through the courts, or two years in case the estate is settled extra-judicially. In such case, the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment as provided in Section 203 of the National Internal Revenue Code shall be suspended for the period of any such extension.

A certified copy of the schedule of partition and the order of the court approving the same shall be furnished to the Commissioner within 30 days after the promulgation of such order.

If an extension is granted, the Commissioner may require the executor, administrator or beneficiary, as the case may be, to furnish a bond in such amount, not exceeding double the amount of the tax and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the said tax in accordance with the terms of the extension.

6. Assessments and valuations

The estate shall be appraised at its FMV as of the time of death. However, the appraised value of real property as of the time of death shall be whichever is the higher of:

- The FMV as determined by the Commissioner

  Or

- The FMV as shown in the schedule of values fixed by the provincial and city assessors

With respect to usufruct, the value of the right of usufruct, use or habitation, as well as that of annuity, there shall be taken into account the probable life of the beneficiary in accordance with the latest Basic Standard Mortality Table approved by the Secretary of Finance, upon recommendation of the Insurance Commissioner.

The book value based on the latest audited financial statements of the company is presumed to be the FMV of the shares of stock of a domestic company for estate tax purposes.

For shares that are listed and traded in the stock exchange, the market price nearest to the date of death is considered the FMV of the listed shares.

7. Trusts, foundations and private purpose funds

As an estate planning tool, only irrevocable trusts, in whatever name, shape or form, can be used to reduce the estate and, thus, minimize estate tax. However, as transfers to an irrevocable trust are considered full transfer of all rights and ownership over the assets that are placed in the trust, they are considered as a donation *inter vivos* (donation during the lifetime of the giver) and hence are subject to donor's tax. If the irrevocable trust is in favor of a brother, sister (whether by whole or half-blood), spouse, ancestor or lineal descendant or first cousin, the donor's tax will be in accordance with the graduated scale in Table 2 above. If it is in favor of a stranger, the donor's tax is 30% of the FMV of the property at the time of the transfer to the irrevocable trust.

For the trust to be considered irrevocable, the trustor must not retain any right to amend, alter or revoke the trust. The trustor must not also retain the power to possess or enjoy the property or any of its fruits or income.

Also, assets that are considered part of the legitime (that portion of a parent's estate in which he or she cannot disinherit his or her children without a legal cause) of compulsory or forced heirs cannot be the subject of any condition. Hence, they cannot be transferred to an irrevocable trust that is subject to certain conditions. In other words, only assets other than those pertaining to the legitime of forced heirs may be transferred to an irrevocable trust, subject to certain conditions, such as a scheduled and periodic release of the funds, or upon the beneficiary reaching a certain age.

Life insurance trust

Since the proceeds of life insurance (taken upon the life of the decedent when the irrevocable beneficiary is other than the decedent or his estate) are not considered part of the gross estate, such proceeds may be placed in a trust and be the subject of certain conditions, such as a gradual and periodic release of funds, in order to ensure that an improvident child-beneficiary, for example, will not be able to squander the entire amount.

Generation-skipping trust

Because the merger of usufruct in the owner of the naked title is not subject to estate tax (as noted in Section 4), a trust may be formed whereby the naked title to the asset of the trust can be placed in the name of a grandchild but the usufruct or right to use the same can be given to the immediate child of the decedent. Hence, when the child of the decedent dies, the usufruct and the title on the asset will merge in the grandchild, which is exempt from estate tax. Thus, one generation of estate tax is saved.

However, again, this can only be done on properties that are not part of the legitime of forced heirs, as legitime cannot be the subject of any condition, burden or substitution.

Foundations

Formation of foundations is useful in terms of reducing the taxable estate and retaining valuable assets (e.g., expensive paintings) within the family line.

Donations to foundations created for charitable purposes are exempt from donor's tax, and such donations even become tax-deductible expenses of the donor if the foundation is an accredited donee institution.

8. Grants

From an estate tax perspective, grants forming part of the estate of the decedent at the time of his estate are considered subject to estate tax. Grants given by the decedent during his lifetime are subject to donor's tax unless they will qualify as one of the donations exempt from donor's tax as enumerated above.

9. Life insurance

Premiums paid, as well as proceeds of the life insurance, do not form part of the gross estate for estate tax purposes provided:

- It is taken out of the life of the decedent.
- The beneficiary is other than decedent, his estate, executor or administrator.
- The designation of the beneficiary is irrevocable.

If any of these conditions are not met, then the proceeds of the life insurance should be included in the gross estate and will become subject to estate tax.

10. Civil law on succession

10.1 Estate planning

As briefly mentioned above, there are several estate planning tools that can be used to cushion the impact of estate tax, such as:

- Donations or gifts
- Life insurance
- Trusts
- Foundations
- Straight sale
- Tax-free exchange

The first four bullets have already been discussed above. Hence, we will focus on straight sale and tax-free exchange as planning tools.

Sale of asset

This mode of transfer during the lifetime of the decedent is the simplest way to reduce an estate, and the tax implications of a sale transaction are, in fact, lower than donor's tax.

A sale of unlisted shares in a Philippine company by a parent to his or her children, for example, will only entail capital gains tax (CGT) of 5% on the first PHP100,000 of the net gain, and anything in excess of the PHP100,000 is subject to tax of only 10%. There will also be stamp duty of PHP0.75 for every PHP200, or fraction thereof, of the par value of the domestic shares sold.

On the other hand, a sale of shares listed in the Philippine Stock Exchange is subject only to stock transaction tax of ½ of 1% of the gross selling price or gross value in money of the shares of stock sold.

A sale of real estate properties that are considered capital assets is subject only to 6% CGT based on presumed gain, that is, based on the selling price, FMV or zonal value of the BIR, whichever is higher. There will also be stamp duty of 1.5% based on selling price, FMV or zonal value of the BIR, whichever is higher.

Hence, taxes applicable to sale as a mode of transfer are still generally lower compared to donor's tax and estate tax.

However, it goes without saying that a transfer by way of sale requires that there be a bona fide sale which requires the capacity of the transferee (buyer) to buy.

It should also be noted that transfer by way of sale of real estate properties that are classified as ordinary assets is not recommended since this will entail higher taxes, namely, 32% income tax for individual sellers, plus 12% value-added tax and 1.5% stamp duty. A real property is considered an ordinary asset for Philippine tax purposes when it is being used in business, or when it is being held out for sale or for lease.

Tax-free exchange

This is more popularly known as a "property-for-shares swap" and is a very tax-efficient tool for transferring real properties that normally appreciate in value over time.

Philippine tax laws require that the transferor (parent) gain control, that is, 51% of the transferee corporation (NewCo) so that the property-for-shares swap will qualify as a tax-free exchange. The CGT on the exchange is deferred until the shares are sold by the parent. The transfer of the real property is also exempt from stamp duty. Stamp duty will only apply to the new issuance of shares at the rate of PHP1 for every PHP200, or fraction thereof, of the par value of the shares subscribed.

The next step would be for the parent to sell his or her NewCo shares to his or her child. The sale of shares to the child is subject to 10% CGT on net gain (book value or selling price of the shares, whichever is higher, less historical cost of the land). The sale of shares is also subject to stamp duty of PHP0.75 for every PHP200, or fraction thereof, of the par value of the shares sold.

Please note that any incremental increase in value of the real property is not considered in the computation of the book value of the NewCo shares; thus, the increase in value of the real property will not affect the book value of the shares when the latter are subsequently sold. Therefore, an indirect transfer of real property where the incremental increase in value of the real property is not subject to tax is effectively achieved. What is more, the CGT on the transfer of shares is only 10%, whereas the maximum statutory rate for estate tax is 20%. Also, note that the CGT on sale of shares is based on net gain, while estate tax is based on the FMV of the property at the time of death.

However, the BIR recently issued a revenue regulation that requires the incremental increase in value of the underlying real property to be included in the computation of the book value of the shares. The revenue regulation purportedly is meant to capture the gain from the increase in value of the real property.

The transferor in a tax-free exchange has, of course, the option of retaining ownership of the shares until he or she dies, in which case the incremental increase in value of the underlying real property will not be included in the computation of the estate tax.

10.2 Succession

The Philippines has, by law, institutionalized the concept of compulsory heirs and their legitime. Thus, regardless of the wishes and desires of a testator as provided in his or her will, the legitime of compulsory heirs must be respected. Legitime cannot be the subject of any burden, restriction, condition or substitution.

10.3 Forced heirship

Legitime, or automatic inheritance of compulsory heirs, must be respected at all times. Compulsory heirs can rescind or collate inofficious dispositions of the decedent/testator if they impair their legitime. Hence, legitime is the minimum amount of inheritance that compulsory heirs are entitled to. Once the legitime of each compulsory heir is satisfied, everything else is considered part of the "free portion," which the testator can freely dispose of or bequeath to any person, natural or juridical, and which may be subject to conditions imposed by the testator.

If a citizen dies without a last will and testament, intestate succession rules will govern the distribution of the decedent's entire estate and there will be no "free portion" to speak of.

Compulsory heirs are legitimate and illegitimate children, a spouse and, in some instances, parents or ascendants.

10.4 Matrimonial regimes and civil partnerships

If the marriage was solemnized after August 1988, the default property regime is the Absolute Community of Property (ACP) where everything brought into the marriage and acquired during the marriage is presumed co-owned by the parties. Thus, if a husband and wife do not execute any prenuptial agreement, their property regime will be the ACP.

Marriages solemnized before August 1988 are governed by the Conjugal Partnership of Gains (CPG) regime, unless the parties agreed by way of a prenuptial agreement that they will be governed by another property regime, such as complete separation of property. Under the CPG regime, everything brought in as the exclusive properties of the husband or the wife remains as his or her own, respectively. However, everything acquired during the marriage is presumed co-owned by the parties.

Common law relationships (living together without the benefit of marriage), when there is no legal impediment to marry each other, is deemed governed by the rules on co-ownership.

10.5 Intestacy

Intestate succession rules will govern when a citizen dies without a will.

When a citizen dies with a will, the will has to be probated in court where the extrinsic (formal) and intrinsic (substantive; for example, were the legitimes respected?) validity of the will and testament will be determined.

For aliens, resident or not, the formal validity of wills is determined by the rules of the jurisdiction in which the will was executed. Generally, the rules of succession of the foreign country of his or her nationality will determine the hereditary rights of his or her heirs. The rules of his country of domicile or residence may also come into play. In some cases, Philippine rules on succession will apply if his country of nationality or residence, as the case may be, adheres to the *renvoi* doctrine (referring back to the decedent's country of residence at the time of death).

10.6 Probate

As long as a will exists, a probate proceeding has to take place during which the validity or invalidity of the will is determined. If the entire will is invalidated for violating formal or substantive rules in making a will, the intestate succession will be determined in the same proceeding.

11. Estate tax treaties

11.1 Unilateral rules

A foreign tax credit for estate taxes paid in a foreign jurisdiction may be claimed in the Philippines with respect to assets situated or subject to estate tax in the Philippines. The foreign tax credit may be claimed in accordance with the following formula:

One other foreign country is involved:

$$\text{Tax credit} = \frac{\text{Net estate in foreign country}}{\text{Entire net estate}} \times \text{Philippine estate tax}$$

Or

The actual estate paid in foreign country, whichever is lower

Two or more foreign countries are involved:

Limit 1: Per foreign country

$$\frac{\text{Net estate per foreign country}}{\text{Entire net estate}} \times \text{Philippine estate tax}$$

Limit 2: By aggregate

$$\frac{\text{Net estate all foreign countries}}{\text{Entire net estate}} \times \text{Philippine estate tax}$$

Or

The actual amount of foreign estate tax paid, whichever is lower

11.2 Double-taxation treaties

The Philippines does not have any estate tax treaties with any other country to date.

Poland

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1. Types of tax

1.1 Inheritance tax

Inheritance and gift tax is levied on the acquisition of goods located in Poland and property rights executed in Poland via donation or inheritance. Tax is also levied when goods are located outside Poland and property rights are executed outside Poland when the decedent dies, or the gift agreement concludes that the beneficiary has Polish nationality or has a place of residence in Poland.

Inheritance and gift tax also applies to the acquisition of property through adverse possession (usucaption) and on the acquisition of a right to savings deposits and the acquisition of units in an investment fund according to the depositor's/investor's instructions in the event of his or her death. These two tax events are not further described.

Individuals who receive inheritances or gifts are liable to pay tax on the value of the goods or property rights received. If a notary is involved in the transaction, he or she is obliged to withhold the tax due.

Individuals who receive inheritances or gifts from spouses, dependent (also adopted children, stepchildren and grandchildren), ascendants (i.e., parents, stepparents and grandparents), brothers and sisters are exempt from tax, if declared with the respective tax office within six months. In the case of monetary donations, receipt of money has to be additionally documented via bank transfer confirmation or postal order. Donations of money do not have to be declared if made via notarial act.

Taxpayers are classified into the following three categories, according to the proximity of the relationship between the deceased/donor and the beneficiary/donee:

- Category 1: Spouses, dependent (also adopted children, stepchildren and grandchildren), sons- and daughters-in-law, ascendants (i.e., parents, stepparents, parents-in-law and grandparents), brothers and sisters
- Category 2: Nieces and nephews, uncles and aunts, spouses of brothers and sisters, siblings of the spouse and spouses of other dependent
- Category 3: Others

Taxable base

Inheritance and gift tax is levied on the net market value of the property received, after deduction of debts and other burdens. The valuation is made on the date when the tax liability arises, e.g., the conclusion of a gift agreement or the acceptance of inheritance. If the declared value of the property does not correspond to its market value, the tax authorities may assess the value.

The value of taxable property received from the same person over a five-year period is aggregated and treated as a single acquisition. In the case of periodic payments such as annuities and pensions, the value of the payments is established during the course of the payment if the value cannot be established at the moment when the tax liability arises. Payments made during a definite period of time or in installments are attained by multiplying the annual value of the payment by the number of years or installments.

Other payments, including payments made during an indefinite period of time, are valued by multiplying the annual value of the payment by 10.

If a usufruct is inherited or donated, the annual value of the usufruct is deemed to be 4% of the value of goods subject to usufruct.

The catalog of items exempt from inheritance and gift taxes includes:

- Inherited furniture, clothing, etc., under some conditions
- Inherited collections of ancient art, monuments, etc., under some conditions
- Property inherited or received from spouses, dependent (also adopted children, stepchildren and grandchildren), ascendants (i.e., parents, stepparents and grandparents), brothers and sisters if reported to the tax authorities and in case of cash payments if documented by the bank transfer

Gifts and inheritances of property located in Poland are exempt if neither party is a Polish national nor a person domiciled in Poland.

Double taxation relief

Poland has concluded treaties for the avoidance of double taxation on inheritance tax with a number of countries. The table below shows a few examples.

Country	Date of signature	Date of entry into force
Austria	24 November 1926	22 May 1928
Czech Republic	23 April 1925	14 December 1925
Hungary	12 May 1928	21 August 1931
Slovak Republic	23 April 1925	14 December 1925

1.2 Gift tax

See Section 4 on donations tax.

1.3 Real estate transfer tax

In general, a supply of immovable property, including land made within the scope of economic activity, is subject to value-added tax (VAT). However, if neither party is subject to VAT on that transaction, the supply falls within the scope of Tax on Civil Law Transactions (TCLT). Additionally, TCLT liability also arises on sales and exchanges of immovable property that are exempt from VAT.

TCLT applies to immovable property located in Poland. Transactions involving immovable property located abroad are subject to tax only if the following conditions are jointly met: the transaction is performed in Poland and the acquirer has a place of abode in Poland or its seat is in Poland. The sale of agricultural farms is exempt from TCLT.

The taxable base is the market value of the property. TCLT on the transfer of immovable property is levied at the rate of 2%.

1.4 Endowment tax

There is no endowment tax in Poland.

1.5 Transfer duty

The transfer duty in Poland is governed by TCLT.

TCLT is levied, *inter alia*, on the following transactions: the sale of immovable property; the sale of certain movable property; and the sale of property rights, loan agreements and mortgage agreements. If at least one party to the transaction is liable to pay VAT or is exempt from VAT on that particular transaction (with the exception of, *inter alia*, immovable property transfers where a special regulation applies), such transaction is excluded from the scope of TCLT.

The taxable base and tax rate depend on the type of the transaction (see below).

TCLT is imposed on the establishment of a company or a partnership. The establishment of capital of partnerships is subject to taxation if a partnership has a registered office in Poland. In the case of companies, such operation is taxable if a company has a registered office or an effective place of management in Poland. The concept of the effective place of management is prevailing, i.e., if the registered office is located in Poland, TCLT is levied only if the company's effective place of management is outside the European Union (EU).

The scope of TCLT also covers the transfer of an effective place of management or the registered office of companies that had their former effective place of management or the registered office in a non-EU country. The rate of TCLT on the establishment of a company is 0.5%. The taxable base is the share capital value. The taxable base is reduced by the sum of the loans granted to a company by its shareholder (stockholder) and any additional payments to a company which were subject to TCLT and which were subsequently converted to increase the company's share capital.

Exempt from the scope of TCLT are:

- A merger of companies
- A change of legal form of a company
- A contribution of a branch or majority of shares in a company (or additional shares when the company receiving the shares is already a majority shareholder) to another company in exchange for its shares
- Increase of the capital of a company, which was previously decreased due to losses incurred by the company, provided that the increase of the capital takes place within four years since its decrease

A share premium is not subject to the TCLT. However, if the share premium is subsequently converted into the share capital, the TCLT is due. If, for example, 10 of 100 is paid for a share capital of a company and 90 is treated as a share premium, the TCLT is levied on 10 only. If the remaining 90 is later incorporated in the share capital, the 90 will be subject to TCLT.

A partnership agreement/articles of association and any amendments thereto are also subject to TCLT if they are exempt from VAT.

1.6 Net wealth tax

There is no net wealth tax in Poland.

2. Who is liable?

2.1 Residency

Under domestic law measures, individuals who have their center of personal or economic interests (a center of vital interests) in Poland or stay in Poland for a period exceeding 183 days in a given tax year are generally considered Polish tax residents. Individuals who do not have their center of personal or economic interests in Poland and stay in Poland for a period shorter than 183 days in a given tax year are taxed in Poland only on Polish source income. These rules relate to personal income tax. There are separate rules for donations and inheritance tax — citizenship and place of permanent abode criteria determine the tax obligation in that area.

2.2 Domicile

Except for the residency rules listed above, no specific domestic rules under Polish tax law are applicable for tax purposes.

3. Rates

The rates of the inheritance and gift tax are progressive and depend on which category the taxpayer falls under and the value of the property received, as follows:

Category 1

Taxable income (PLN)	Tax on lower amount (PLN)	Rate on excess (%)
Up to 9,637	0	0
9,638–10,278	0	3
10,279–20,556	308.3	5
20,557 and over	822.2	7

Category 2

Taxable income (PLN)	Tax on lower amount (PLN)	Rate on excess (%)
Up to 7,276	0	0
7,277–10,278	0	7
10,279–20,556	719.5	9
20,557 and over	1,644.5	12

Category 3

Taxable income (PLN)	Tax on lower amount (PLN)	Rate on excess (%)
Up to 4,902	0	0
4,903-10,278	0	12
10,279–20,556	1,233.4	16
20,557 and over	2,877.9	20

However, when the tax obligation arises after the taxpayer claimed the gift during a tax audit, tax proceedings, fiscal control or control activities and the tax due on that acquisition has not been paid previously, the acquisition is taxed at a rate of 20%.

4. Exemptions and reliefs

Personal reliefs

Acquiring wealth within the closest family may be exempt upon meeting certain formal conditions, such as informing the tax office within a six-month period and through a wire transfer form in case of cash.

In addition, the following reliefs apply to inheritances and gifts received by persons in a given category (family ties proximity):

- PLN9,637 for Category 1
- PLN7,276 for Category 2
- PLN4,902 for Category 3

In addition to the above reliefs, when a donee receives cash in Category 1 and it is used to purchase a dwelling up to a limit of PLN9,637 from one donor or PLN19,274 from multiple donors, it is exempt from inheritance and gift tax.

Inheritances and gifts from those in Category 1 and inheritances from those in Categories 2 and 3 of a dwelling up to a value that corresponds to surface space of 110 square meters of the dwelling, subject to certain conditions, are also exempt from inheritance and gift tax. The list of exempt income is extensive and includes, *inter alia*, several types of social distributions (e.g., funeral allowances, social benefits), indemnities received in respect of property and personal insurance, scholarships, and game and lottery winnings (in some cases up to a certain limit).

Donations

Donations for purposes relating to religion and donations to organizations carrying on activities in the field of public tasks are deductible up to 6% of the taxpayer's annual income. However, the deduction is not allowed if the donation is made to an individual, legal entity or an entity without legal personality that engages in certain activities (e.g., production of electronic equipment, fuel, tobacco or alcohol). Donations made to certain churches carrying on charity and public aid activities may be deductible without any limits.

Additionally, one-off gifts of up to PLN200 per donee are also exempt from inheritance and gift tax.

5. Filing procedures

In the case of most inheritance and gift taxes, taxpayers are obliged to file a tax return within a month from the day the tax obligation arises.

Based on the filed returns, the tax office is obliged to assess the tax due and the taxpayer is obliged to pay the tax within 14 days.

In the case of some gifts, income tax rules may be applicable. The tax year in Poland is the calendar year. By 30 April following the close of the tax year, taxpayers must file tax returns and pay any difference between total tax payable and advance payments. Married persons who are Polish tax residents may be taxed jointly, if certain conditions are met. Under additional conditions, joint filing may be available to Polish tax nonresidents who are tax resident elsewhere in the EU, the European Economic Area or Switzerland.

Income tax may generally be withheld directly by employers on behalf of employees and remitted to the tax office within 20 days after the end of the month in which the income is paid or made available to the employee. Self-employed individuals and expatriates on temporary assignments to Poland who are paid from abroad must generally make advance tax payments each month, and must file annual tax reconciliations stating their income received and the advance tax paid by 30 April of the following year.

The annual tax return must be filed with the regional tax office with jurisdiction over the taxpayer's place of residence. The tax return must state all sources of income and must show income tax due. If a taxpayer keeps accounting records, financial statements must be attached to the annual tax return. If a taxpayer does not submit the annual tax return, the tax office establishes the amount of tax due by the assessment.

Failure to file a return and late payment of tax may result in penalty interest and fines.

Tax returns may be filed electronically, either by the taxpayer or his or her proxy. In the latter case, the taxpayer has to provide the tax office with the power of attorney for a proxy to file electronically on behalf of the taxpayer.

6. Assessments and valuations

Assessment

As a rule, self-assessment is the default system in Poland. The tax authorities may question the taxpayer's assessment during the formal proceeding.

Appeals against assessment

Appeals against assessment are generally not applicable in the case of individual income tax. The deadline for appealing against the decision of the tax authorities issued during the formal proceedings against the taxpayer's assessment is usually 14 days from the receipt of the decision.

7. Trusts, foundations and private purpose funds

Income from investment funds is calculated as the difference between income obtained and cost incurred to acquire the investment fund units. The income from investment funds is not aggregated with income from other sources and thus is not subject to tax at the progressive rates.

8. Grants

There are no specific rules in Poland with regard to grants.

9. Life insurance

Pension income comprises old-age pensions and disability pensions, including their increases and supplementary payments, except for family and nursing supplementary payments and certain supplementary payments for orphans.

Pensions are treated as income from dependent services and are taxable at the moment of payment or when they are put at the taxpayer's disposal. The general progressive rates apply.

Pensions derived from certain voluntary private pension plans, however, are exempt (contributions to these plans are not deductible for income tax purposes).

10. Civil law on succession

10.1 Estate planning

In general, real estate income may be taxed at a flat rate of 19%. Real estate income is the difference between the sales price and respective expenses, which includes the purchase price.

If the sale of real estate occurs more than five years after the end of the calendar year in which the real estate was acquired or built (six months for other property, counted from the end of the month in which the property was acquired), the proceeds of the sale are not subject to tax.

In general, rental income from immovable property is taxable at the progressive rates. If immovable property is made available free of charge, taxable income is deemed to be the amount of rent that would have been due had the property been rented for consideration.

Generally, individuals deriving rental income may opt for flat-rate taxation instead of regular individual income taxation. The taxable base is the gross income. The flat-rate tax is levied at the rate of 8.5%.

Real estate rental income may be taxable as self-employment income or may be treated as a separate source of income.

10.2 Succession

Succession may be handled via the rules for donations and inheritance tax or, in cases involving the sale of a business, capital gains tax may be levied. In the latter case, as a rule, 19% of income tax would be due although certain tax savings are available.

10.3 Forced heirship

Under Polish inheritance law, specified legal heirs, including dependent, surviving spouse and parents, are entitled to a legal portion of an estate if certain conditions are met.

10.4 Matrimonial regulations and civil partnerships

A community property regulation applies in Poland to married couples. Under the regulation, property acquired before the marriage or during the marriage for proceeds received as an equivalent for the property acquired before the marriage remains separate. Couples may amend or opt out of the regulation via a notarized agreement.

10.5 Intestacy

General inheritance tax law is applicable.

10.6 Probate

General inheritance tax law is applicable.

11. Estate tax treaties

11.1 Unilateral rules

Unilaterally, Poland grants ordinary foreign tax credits. The domestic tax law provides that if income derived from sources located outside Poland is subject to income tax abroad, such income is aggregated with the income derived from sources located in Poland. In such a case, the amount corresponding to the income tax paid in the foreign country is deducted from the tax assessed on the total income. The tax credit is granted on a per-country limitation basis, i.e., the deduction may not exceed that part of the tax as assessed prior to the deduction, which is proportional to the income derived in the foreign country.

Under Poland's signed tax treaties, double taxation may be avoided through tax credit or exemption with progression. For a list of tax treaties in force, see below.

11.2 Double-taxation treaties

Poland has entered into general double-taxation treaties for avoidance of double taxation (mainly income tax) with a number of countries and territories. Some of them are listed below. Most of the treaties follow the Organisation for Economic Co-operation and Development Model Convention.

Albania
Algeria
Armenia
Australia
Austria
Azerbaijan
Bangladesh
Belarus
Belgium
Bulgaria
Canada
Chile
China
Croatia
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
India
Indonesia
Iran
Ireland
Isle of Man
Israel
Italy
Japan
Jordan
Kazakhstan
Kuwait
Kyrgyzstan
Latvia
Lebanon
Lithuania
Luxembourg
Macedonia
Malaysia
Malta
Mexico
Moldova
Mongolia
Morocco
Netherlands
New Zealand
Nigeria
Norway
Pakistan
Philippines
Portugal
Qatar
Romania
Russian Federation
Saudi Arabia
Singapore
Slovak Republic
Slovenia
South Africa
South Korea
Spain
Sri Lanka
Sweden
Switzerland
Syria
Tajikistan
Thailand
Tunisia
Turkey
Ukraine
Former USSR
United Arab Emirates
United Kingdom
United States
Uruguay
Uzbekistan
Vietnam
Former Yugoslavia
Zambia
Zimbabwe

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1. Types of tax

1.1 Inheritance tax

Historically, inheritance and gifts were subject to Inheritance and Gift Tax (*Imposto sobre Sucessões e Doações*). However, as a result of a tax reform, effective from 1 January 2004, inheritance and gift tax was revoked and inheritance and gifts became subject to stamp tax (ST) (*Imposto do Selo*), hereinafter ST. The ST Code was adjusted to accommodate the rules previously applicable under the Inheritance and Gift Tax but also to introduce several changes to the taxation of gratuitous transfers (including inheritance and gifts).

With regards to incidence, the ST Code expressly indicates which goods and rights are not subject to tax, eliminating taxation on personal or domestic goods, as well as the assumption of their existence.

Gratuitous transfers in favor of taxpayers subject to corporate income tax (CIT) (*Imposto sobre o Rendimento das Pessoas Colectivas*) also became excluded from ST. Only individuals became subject to ST.

With regards to territoriality, ST continues to apply to transfers of goods and assets located in Portuguese territory.

The rules to determine the taxable amount of a gratuitous transfer are simplified and aligned with other taxes, e.g., personal income tax (PIT) (*Imposto sobre o Rendimento das Pessoas Singulares*) and property tax (*Imposto Municipal sobre Imóveis*).

The Portuguese Tax Administration assesses the tax due on a gratuitous transfer.

The most important innovation in this regard is that the tax basis on transmissions by death ceased to be the hereditary share of each heir, becoming the global hereditary mass for the person who was the head of the household. Thus, the tax assessment does not require the prior sharing process of the inheritance — although ideal — that constituted an important factor of simplification and efficiency.

The tax rate applicable on gratuitous transfers suffered a significant reduction to 10%.

1.2 CIT

Gratuitous transfers in favor of taxpayers subject to CIT are excluded from ST; instead, they are subject to CIT.

A gratuitous transfer would represent a positive net worth variation, taxable at the applicable standard tax rate (currently 21%) plus any additional municipal and estate surcharges that are applicable.

For the purposes of determining the taxable income for CIT purposes, the acquisition cost of a gratuitous transfer is the fair market value (FMV), which shall not be lower than the value that would result from the rules foreseen in the ST Code.

1.3 Real estate transfer tax (RETT)

RETT is levied on the transfer for consideration (i.e., onerous transfers) of ownership rights or parts thereof on real estate (immovable property) situated in the Portuguese territory, regardless of how such transfer is carried out.

1.4 Registration fee

Transfers of ownership of real estate or real estate rights are subject to a registration fee of relatively low amounts.

1.5 Net wealth tax

Portugal does not impose net wealth tax.

1.6 Municipal tax and additional municipal tax

Municipal tax is levied by each municipality on the cadastral value of real estate located in Portuguese territory.

As of 1 January 2017, an additional municipal tax is imposed and applies to the sum of all cadastral values of real estate located in Portuguese territory (some deductions are allowed, and some exceptions are available).

2. Who is liable?

2.1 Liability and territoriality rules applicable to inheritance and gifts

Gratuitous transfers can refer to:

- Ownership rights or partial rights on immovable property, including acquisition by adverse possession/by prescription
- Movable property subject to registration, license or number plate
- Corporate rights, securities and debt claims associated thereto, even if autonomously transferred; government bonds as well as monetary amounts, even when deposited in bank accounts
- Commercial, industrial and agricultural establishments
- Industrial property rights, copyrights and other rights connected thereto

- Debt claims of shareholders on noncommercial pecuniary payments connected with their participation, regardless of the name, nature or form of the incorporation or modification deed, namely shareholder loans, loans, supplementary capital contributions, ancillary capital contributions, as well as any other advance payments granted to the company
- Acquisition resulting from voidness or nullity, dissolution, waiver or desistance, dissolution or revocation of a gift *inter vivos*, with or without a usufruct reservation, except in those cases provided for under Articles 970 and 1765 of the Civil Code, in relation to goods and assets and rights referred to under the preceding paragraphs
- Amounts distributed as a result of the settlement, revocation or termination of fiduciary structures to taxable persons who have not constituted them

The following will not qualify as gratuitous transfers for ST purposes:

- Family allowance in debt upon death of the beneficiary, credits arising from life insurance, and pensions and subsidies paid by social security systems, even if paid as a death allowance
- Amounts invested in retirement-savings funds, education-savings funds, retirement-education-savings funds, stock-savings funds, pension funds, or movable and immovable investment funds
- Gifts granted under the provisions of the Patronage Law (*Lei do Mecenato*)
- Gifts of goods or values not listed above, according to the common use, up to €500
- Transfers on behalf of taxable persons subject to CIT, even when exempted from it
- Goods of a personal or domestic use

In gratuitous transfers, ST taxpayers are those individuals to whom the goods are transferred, subject to the following rules:

- In successions *mortis causa,* tax is due on the estate, this being represented by the head of the household and the legatees
- In any other gratuitous transfer, including the acquisition by adverse possession, tax is due by the beneficial owners

In gratuitous transfers, tax is due whenever goods are located in national territory. The following are deemed to be considered goods/properties located in Portugal:

- The rights over movable and immovable property situated therein
- Movable property registered or subject to registration or number plate in national territory
- Credit or patrimonial rights over individuals or collective persons when the debtor has residency, registered office, effective management or permanent establishment in the national territory, and provided the beneficiary is domiciled therein
- Shareholdings when the company in question has its headquarters, effective management or permanent establishment in the national territory, provided that the beneficiary is domiciled in this territory
- Monetary values deposited in institutions with headquarters, effective management or permanent establishment in the national territory, or, if no monetary values deposited, the author of transmission has domicile, headquarters, effective management or permanent establishment in this territory
- Industrial property rights, copyrights and other rights connected thereto registered or subject to registration in national territory

The ST Code defines domicile using the rules applicable for PIT purposes for assessing tax residency. Accordingly, the following individuals are resident in Portuguese territory:

1. Those who have remained therein for more than 183 days, consecutively or not, in any period of 12 months starting or ending in the concerned year

2. Those who have stayed for less time, but who have available therein, in any day of the period referred above, a home in conditions that indicate an intention to keep and occupy it as a habitual residence

3. Those who, on 31 December, are crew members of vessels or aircraft, provided that they are in the service of entities with residence, head office or (place of) effective management in that territory

4. Those who discharge abroad an office or commission of a public nature, in the service of the Portuguese State
5. The status of tax resident in Portugal continues if the individual relocates his or her residency to a country, territory or region subject to a clearly more favorable tax regime, as in the list approved by order of the Minister for Finance, in the year of relocation and in the subsequent four years (this presumption is refutable); this status will cease to apply if he or she becomes tax resident in another country, territory or region not subject to a clearly more favorable tax regime, as in the list approved by order of the Minister for Finance.

Individuals who become tax residents in Portugal under any of the criteria set forth in (1) to (4) and who have not been considered as such in Portugal in the last five years may benefit from a PIT special tax regime, known as the non-habitual residents' law.

The loss of tax resident status occurs from the last day of staying in Portuguese territory unless the person in Portugal remains more than 183 days on the departure year and derives, after the departure, any Portuguese source income that would otherwise be subject to tax, in which case, he or she will continue to be considered tax resident in Portugal for the whole year (except if some conditions are met). By contrast, if a tax resident leaves Portugal and returns in the following year after becoming nonresident in Portugal (one year of nonresidency in Portugal), that person will be deemed Portuguese tax resident for the prior year (year in which he had been nonresident).

As of 1 January 2015, the marital status and tax residency of the spouse is no longer a condition to determine tax residency of an individual in Portugal, as the PIT Reform introduced the principle of separate taxation.

3. Rates

3.1 ST

ST on inheritance and gifts is levied at a fixed rate of 10%. An additional 0.8% applies to gifts of real estate (immovable property).

3.2 CIT

A gratuitous transfer would represent a positive net worth variation, taxable at the standard tax rate applicable (currently 21%) plus additional surcharges applicable (municipal and estate).

4. Exemptions and reliefs

4.1 ST

The following exemptions are available:

- Exemption of ST on inheritance for spouses, civil partners, descendants and ascendants
- Exemption of ST on gifts for spouses, civil partners, descendants and ascendants, except for gifts of real estate (immovable property) where a 0.8% rate applies
- Tax exemptions on transfers carried out free of charge as laid down in agreements between the Portuguese State and any person of public or private law

5. Filing procedures

5.1 ST

Taxable amount

The taxable amount for ST purposes is defined in the General Stamp Tax Table. Under specific situations foreseen in the law, the taxable amount may be assessed by indirect methods.

ST on gratuitous transfers applies on the value. Value depends on the type of goods and assets or rights being transferred, for example:

- Real estate: taxable value (also cadastral value) for property tax purposes (*Imposto Municipal sobre Imóveis*)
- Motor vehicles, motorcycles, tourism aircrafts and recreational boats: higher between the market value and the amount determined according to the rules foreseen in the PIT
- Quotas: value as per the last balance sheet or the amount assigned in the sharing process or liquidation of the company, except if, the company would not continue with the heir, legatee or donee of the deceased partner, the value of the quotas has been defined in the articles of incorporation
- Shares: official quotation or nominal value up to €500 or amount resulting from a specific formula

Responsibility for tax assessment

The following are the applicable rules:

1. The assessment of the tax payable as a result of a gratuitous transfer is a responsibility of the tax authorities' central services, being promoted by the competent local tax office where the author of the transfer or adverse possessor resides in national territory.

2. In the absence of residency in the national territory, the tax assessment is promoted by the tax office of the residence of the head-of-household or beneficiary.

3. If there are several beneficiaries for the same transfer, as provided for by the end of the preceding paragraph, the tax assessment is promoted by the tax office in which the older beneficiary resides or, in the case the transfer refers to goods located in national territory, where the goods of a higher value are located.

4. In the case of several donors, all or some domiciled in national territory, the tax assessment is promoted by the tax office where the donor resident in this territory that donated the goods of higher value is domiciled and, if the goods are of equal value, the tax office where the older donor is domiciled.

5. In case all donors are domiciled outside national territory, rules (2) and (3) shall apply.

Filing obligations

The head of the household and the beneficiary of any gratuitous transfer subject to tax are required to notify the competent tax office when the following events occur: the receipt of a gift; the death, or declaration of presumptive death, of the *de cujus*, and the acquisition of property by way of adverse possession, under the terms laid down by the Immovable Property Register Code (*Código do Registo Predial*) or any other deed or contract involving a transfer of property.

Regardless of whether tax is due or not, there shall always be a requirement to present a statement and a list describing any goods and assets and rights, which, in case of tax exemption, shall only include those goods and rights referred to in Article 10 of the PIT Code, as well as any other goods subject to registration, license or number plate.

Payment

The total tax amount assessed on gratuitous transfers shall be paid until the end of the second month following the notification or during the month in which each installment is due. If tax is paid in a lump sum until the end of the second month following the notification, a deduction of 0.5% per month is available and shall be computed on the amount of each installment according to the circumstances described below, excluding the first mentioned one.

If the tax payable is higher than €1,000, it shall be divided into equal installments up to a maximum of 10 and a minimum of €200 per installment, the first being increased by the fractions resulting from the rounding sum of all the others, together with any compensatory interest and the real estate transfer tax that may be due. The first installment shall be paid in the second month following the notification and each one of the remaining installments six months after the maturity date of the previous one.

6. Assessments and valuations

This does not apply to Portugal.

7. Trusts, foundations and private purpose funds

Until 2015, trusts were not recognized figures in the Portuguese legal system or in the Portuguese tax system, with the exception of the specific regime for the Madeira Free Zone. Portugal had not ratified the Hague Convention on the Recognition of Trusts dated as of 20 October 1984.

The lack of recognition of this figure implied that the tax treatment of trusts was still a gray area in Portugal. Though the Portuguese tax authorities issued a ruling indicating that trusts do not benefit from the application of double-taxation treaties when they obtain income in Portugal, except if so expressly stated in the treaties (as in the case of the treaties signed with the US and Canada), by requiring proof that the trust is the beneficial owner of such income (beyond other requirements foreseen in each of these two treaties).

As from January 2015, a PIT Reform entered in force and introduced rules applicable to fiduciary structures (trusts). As such, if the beneficiary of the trust is the settlor, then:

- If the trust is domiciled in a country, territory or region subject to a more favorable regime, income is subject to PIT at a rate of 35%.
- If the trust is not domiciled in a country, territory or region subject to a more favorable regime, income is subject to PIT at a rate of 28%.

In both cases this is applicable only if the result of the liquidation, revocation or extinction of the trust, distributed or reimbursed, is higher than the value of the assets transferred by the settlor to the trust upon its constitution.

Taxation applies only if the good or asset acquired is located in Portuguese territory at the acquisition date and no ST exemption applies. In both cases, this is applicable only if the result of the liquidation, revocation or extinction of the trust, distributed or reimbursed, is higher than the value of the assets transferred by the settlor to the trust upon its constitution. If the beneficiary of the trust is a third person, income is subject to ST at a rate of 10%.

On the other hand, foundations have a specific legal framework in Portugal. There is no specific tax regime for foundations. Even though, as a general rule, they are subject to several taxes, e.g., CIT and ST, some exemptions may be available, depending on the type of foundation.

There are several types of private funds in Portugal, such as immovable property funds and movable property funds, pension funds and venture capital funds. Normally, each type has its own legal and tax regime (even though there might not be a specific tax regime, there may be specific rules applicable).

8. Grants

This does not apply to Portugal.

9. Life insurance

Premiums and commissions related to life insurance benefit from an exemption from ST.

10. Civil law on succession

10.1 Estate planning

As mentioned above, Portuguese tax law provides for a very favorable tax regime for inheritance and gifts:

- Exemption of inheritance tax for spouses, descendants and ascendants
- Exemption of gift tax for spouses, descendants and ascendants except for gifts or real estate where a 0.8% rate applies

10.2 Succession

The Portuguese Succession Law follows universal succession principles according to the law of the deceased's nationality.

Heirs have universal succession, and unless they refuse to accept the inheritance, they are personally liable for the deceased's debt plus the total taxes due. These obligations are placed upon all the heirs jointly. The heir succeeds to the decedent in all aspects. However, the heirs' liability is limited to the value of the inheritance received in case the heir accepts the inheritance with the benefit of inventory, in which case only the goods and assets included in the inventory respond toward the respective liability (as set forth in Article 2071 of the Portuguese Civil Code). On the contrary, if the inheritance is accepted pure and simple (not accepted under the benefit of inventory), it is up to the heir to make proof that there is not enough value found in the inheritance to meet the respective liabilities.

A legatee under a will has only a personal claim against a compulsory heir (subject to forced heirship laws) and is not liable for a deceased's debt although it is liable for the relevant taxes on any legacy.

The main connecting factor for succession purposes is the nationality of the deceased.

10.3 Forced heirship

In Portugal, a spouse, relatives[1] and the Portuguese State have automatic inheritance rights *(Heres necessarius)* irrespective of the provisions in a will. This compulsory share or forced heirship is called "*legitima*." Forced heirship applies to all of the deceased's goods and assets and to all of the inheritance rights.

[1] For the purposes of this law, "relatives" are defined to include children, parents, siblings, grandparents, grandchildren or corresponding in-law or "step" relation.

If the deceased makes a disposition prejudicing the rights of any of these heirs, such disposition can be challenged before a Portuguese court and the heirs can make a claim for the associated damages suffered. In the same way, lifetime gifts (donations) can be challenged before a Portuguese court, even if performed in favor of other legitimate heirs.

In practice, forced heirship rules restrict the ability to decide how goods and assets should be distributed after death.

The following relatives are entitled to receive the minimum statutory quotas:

Relatives	Minimum statutory quotas
One child and no spouse	One-half of the inheritance goods and assets
Two or more children and no spouse	A total of two-thirds of the inheritance goods and assets
One or more ancestors (parents, no spouse and no children)	One-half of the inheritance goods and assets
Surviving spouse	One-half of the inheritance goods and assets
Surviving spouse and a child	One-third of the inheritance goods and assets to each
Surviving spouse and two or more children	Two-thirds of the inheritance goods and assets
Surviving spouse with no children and ancestors	Two-thirds of the inheritance goods and assets

10.4 Matrimonial regimes and civil partnerships

Portuguese family law distinguishes between three marital property regimes:

1. Statutory marital property regime (i.e., community of accrued gains — *Comunhão de bens adquiridos*): According to this regime, spouses and partners of registered same-sex partnerships hold their goods and assets as separate property during their marriage or partnership, although there are partial restraints on management and disposal. Upon divorce or death, the gains accrued on the property of the spouses or the partners of a registered same-sex partnership during the marriage or the partnership will be shared. Goods and assets inherited are considered own goods and assets, i.e., separate property. Upon formal agreement to be implemented by notarial deed by means of a pre-marriage contract (*Convenção ante nupcial*), spouses may elect one of two contractual matrimonial property regimes, which may be further modified (within certain limits) by contract as well.

2. Separation of property (*Separação de bens*): Under this regime, each spouse holds his or her property independently in separate ownership. Management and disposal are not subject to any limitations deriving from the marital status.

3. Community of property (*Comunhão geral de bens*): Under this regime, all goods and assets become joint property of the spouses (common property). Immediate joint ownership is also presumed for any asset acquired by any spouse during the marriage or the partnership while this property regime is in force. Goods and assets that cannot be transferred by legal transaction will not become common property. Within the pre-marriage contract, spouses can agree to exclude certain goods and assets from common property. Goods and assets acquired on inheritance at death or by gift are also excluded if so stipulated by the decedent or the donor.

10.5 Intestacy

Under the Portuguese Law of Succession, a person may only dispose of his legally available quota of property or estate (*Quota disponível*) for the time after death by will (testament).

When a person dies leaving a valid will concerning the disposable quota of his goods and assets or estate (in accordance with the quotas described in Section 10.3 above), the law will ascertain the validity of the will, provide a set of formalities to be complied with and, in some cases, the taxes to be paid.

The Portuguese Law of Succession will also ensure that the immediate members of the deceased's family are not deprived of their minimum statutory quota of the estate (see Section 10.3).

Under the Portuguese rules of succession, there are two forms of making a valid will:

- Public will (*Testamento público*): This is a document drafted by a Portuguese notary upon the instructions of the testator (*Testador*) and read by the notary to ensure that it complies with the wishes of the testator and is signed by the testator in front of two witnesses.
- Secret will (*Testamento cerrado*): This is a will drafted by the testator and approved by the notary under the notarial laws. The testator may keep the secret will in his or her power, have it kept under the custody of a third party or deposit it in any notary office.

When there are cross-border issues, the conflicts-of-law provisions will be relevant, which is beyond the scope of this book.

10.6 Probate

Portuguese law does not require executors to be appointed; however, when a person dies owning property, it may be necessary to collect documentation, organize certified translations of documents, appoint a local notary and follow specific procedures.

After completing the probate procedure, it will be possible to register the immovable assets in the name of the heirs.

11. Estate tax treaties

Portugal has not concluded any double-tax treaties with other jurisdictions in connection with inheritance and gifts or real estate transfers.

Portugal has signed double-tax treaties for income tax purposes with the following jurisdictions: Algeria, Andorra,* Austria, Barbados,* Bahrain,* Belgium, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, East Timor,* Estonia, Ethiopia,* Finland, France, Georgia, Germany, Greece, Guinea, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Ivory Coast,* Japan, Kuwait, Latvia, Lithuania, Luxembourg, Macau, Malta, Mexico, Moldova, Morocco, Mozambique, Netherlands, Norway, Pakistan, Panama, Peru, Poland, Qatar, Romania, Russia, São Tomé and Príncipe,* San Marino,* Senegal, Singapore, Slovak Republic, Slovenia, South Africa, South Korea, Saudi Arabia, Spain, Sultanate of Oman,* Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela and Vietnam.*

** This tax treaty is not yet in force.*

Russia

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1. Types of tax

Currently, the Russian legislation does not provide for any special taxes with regard to inheritance or donation. The tax on assets transferred through inheritance or donation that previously existed was abolished effective January 2006.

However, personal income tax applies in certain instances where individuals receive gifts.

Additionally, individuals receiving income through inheritance may also be subject to personal income tax in certain circumstances.

1.1 Inheritance tax

There is no inheritance tax in Russia.

1.2 Gift tax

There is no gift tax in Russia, although in certain cases personal income tax may be levied.

1.3 Real estate transfer tax

There is no real estate transfer tax in Russia, although in certain cases personal income tax may be levied.

1.4 Endowment tax

There is no endowment tax in Russia.

1.5 Transfer duty

There is no transfer duty in Russia.

1.6 Net wealth tax

There is no net wealth tax in Russia.

However, changes have been made with respect to taxation of wealth. The changes did not affect the wealth tax as it exists in most European Union (EU) countries, but rather they introduced a new concept for the taxation of prestige consumption.

Under amendments to the Russian Tax Code that took effect 1 January 2015, the tax on immovable property is calculated based on the cadastral value of such property. Property of a higher value is taxed at a higher rate.

The tax on expensive vehicles is calculated by multiplying coefficients which are based on the vehicle's cost.

2. Who is liable?

2.1 Residency

Personal taxation in Russia is defined on the basis of the tax residency status of individuals.

Russian tax residency is determined by the number of days actually spent in Russia. Russian tax residents are individuals who spend at least 183 days in Russia within a 12-month consecutive period, while Russian tax nonresidents are those who spend fewer than 183 days in Russia.

Although a rolling 12-month period was established in the Russian Tax Code, the position of the Ministry of Finance as expressed in a number of letters is that presence in consecutive 12-month periods should be used only by tax withholding agents, and individual taxpayers should determine their residency status on the basis of physical presence in a calendar year (which is a tax period for personal income tax purposes). Russian tax authorities have adopted and used this approach in practice.

The Russian Tax Code does not provide a definition of "Russian days" for the purposes of the 183-day test. The current position of the Ministry of Finance and the Russian tax authorities is similar in terms of treating both days of arrival and departure as days of presence in Russia. The Ministry of Finance has issued many clarifying letters to confirm this, while the tax authorities have adopted and used this in practice.

3. Rates

Russian tax residents are taxable in Russia on their worldwide income, generally at a 13% tax rate (including, but not limited to, gifts in various forms and inheritance in special cases). For some types of income, such as material benefit, different tax rates are applied.

Russian tax nonresidents are taxable only on their Russian source of income, with a 30% tax rate on most types of taxable income (including, but not limited to, income earned in Russia) and a 15% tax rate on dividends.

Sourcing of income

The Russian Tax Code is not explicit in terms of determining the circumstances under which a gift constitutes a Russian or non-Russian source income. In the absence of clear guidelines, the Russian tax authorities may apply various criteria in order to determine sourcing, including the location (or tax residency) of the donor, the location of the property, place of conclusion/execution of the gift contract as well as other similar criteria. Potentially, this may result in additional tax burden (especially for recipients that are tax nonresidents) or double taxation in cross-border cases.

Furthermore, as far as double-taxation matters are concerned, income taxes and inheritance taxes are usually addressed in separate treaties, with estate tax treaties often covering estate and gift taxes. While Russia has effective double-taxation treaties with most countries, it has not entered into any estate tax treaty. Since income received through inheritance or donation is considered to be regular taxable income of an heir/recipient in Russia (if not exempt), double-taxation treaties between Russia and countries imposing inheritance or gift taxes may not sufficiently provide for the avoidance of double taxation with respect to this income. Therefore, potential double taxation may arise if the foreign jurisdiction imposes gift or inheritance taxes on such transfer of assets (by donation or inheritance).

4. Exemptions and reliefs

The Russian Tax Code establishes the following exemptions with regard to taxation of income received through inheritance or donation.

Inheritance

Income received from individuals by way of an inheritance is generally exempt from taxation in Russia, with the exception of royalties paid to the heirs (successors) of authors of works of science, literature and art and of discoveries, inventions and industrial samples.

Donation

Income irrespective of the form, i.e., both in cash and in-kind, received from individuals through a gift is generally exempt from taxation in Russia, except for immovable property, motor vehicles, shares, stakes and participatory interests, unless the donor and the recipient are members of a family and/or close relatives in accordance with the Russian Family Code, i.e., spouses, parents and children, including adoptive parents and adopted children, grandfather, grandmother and grandchildren, full siblings and half siblings (having a common father or mother).

Income irrespective of the form, i.e., in cash and in-kind, received from organizations and/or individual entrepreneurs is generally subject to personal taxation in Russia in excess of RUB4,000. The tax due may be subject to withholding at source if the organization (or individual entrepreneur) is qualified as a tax agent under Russian tax law.

5. Filing procedures

Russian personal income tax is paid either via withholding at source or via the filing of a Russian personal income tax return to the tax authorities.

The personal income tax return is submitted to the tax authorities on an annual basis no later than 30 April of the year following the year-end, with an exception for departing expatriates, who must file the tax return no later than one month prior to their final departure.

The corresponding tax due must be paid no later than 15 July of the year following the year-end. Departing expatriates must pay the tax within 15 days of the departure tax return filing.

6. Assessments and valuations

Since the income received through inheritance or donation is considered to be regular taxable income (if not exempt from taxation as described above), the general valuation rules established for personal income tax purposes are applied.

In general, for income in kind that an individual receives through inheritance or donation, the taxable base for personal income tax purposes is defined on the basis of the fair market value of received property.

7. Trusts, foundations and private purpose funds

From 1 January 2015, the existing trusts, foundations and private purpose funds became subject to reporting in accordance with the new controlled foreign companies (CFC) legislation in Russia. There are notification requirements for the settlor who is a Russian tax resident on the participation in entities established outside Russia and potentially for settlors, controlling parties (e.g., protector) and beneficiaries on the existence of a CFC should they be considered as controlling parties to the entities.

Should the latter be the case, the profit of the trusts, foundations and private purpose funds may be subject to tax at the level of controlling persons — Russian tax residents at the portion of their entitlement for the profit share.

Moreover, in certain cases profit (loss) of a CFC shall be understood to mean the amount of that CFC's profit (loss) that has been calculated according to the Russian Tax Code.

In general, the concept of trusts does not exist in Russian civil and tax legislation. In practice, for personal income tax purposes, income received from trusts (trust distributions) is most likely treated as ordinary income received from a foreign source and taxable at respective rates in Russia.

8. Grants

With regard to estate taxes, there are no specific rules in Russia.

9. Life insurance

With regard to estate taxes, there are no specific rules in Russia.

10. Civil law on succession

The main Russian legislative provisions related to inheritance are the Civil Code of the Russian Federation and the Fundamental Legislation of the Russian Federation on Notarial System.

Russian inheritance laws cover everyone who is domiciled (i.e., has his or her usual place of living, but not necessarily his or her nationality) in the Russian Federation and also cover everyone including foreigners who own property in the Russian Federation.

Inheritance

There are two types of inheritance: testamentary inheritance (when there is a will of a deceased) and intestate inheritance (in the absence of a will of a deceased and in other statutory cases).

The deceased's estate incorporates the items and other property the deceased owned as of the date of opening of the inheritance, including property rights and liabilities.

Rights and liabilities inseparable from the personality of the deceased (e.g., rights to alimony), personal incorporeal rights and other intangible assets are not included in the estate.

10.1 Forced heirship

Minor and disabled children of any deceased person domiciled in Russia, disabled spouse and parents, and any disabled dependents of the deceased must inherit at least one-half of the share each of them is entitled to inherit by law, irrespective of any testamentary provisions.

10.2 Matrimonial regimes and civil partnerships

The right of inheritance that the surviving spouse of the testator has by will or by law should not diminish the spouse's right to the portion of property gained over a marriage and deemed to be matrimonial property. The share of the deceased spouse in this property that is determined to be in compliance with the Russian Civil Code is viewed as a part of the estate and passes to the heirs in accordance with the Civil Code-established rules.

10.3 Intestacy

If no provisions are made in prospect of death, a complex statutory order of intestate inheritance is applied to all persons covered by Russian inheritance law. The heirs in law (individuals only) include children of the deceased, his or her spouse and parents, brothers and sisters, other relatives and disabled dependent of the deceased. All of them are divided into eight priorities.

The heirs of each next category inherit if there are no heirs of the preceding categories or if all of them have refused inheritance.

The heirs in the higher priorities inherit statutory intestate shares preferentially to the heirs in the lower priorities. The sizes of these shares depend on the number of heirs involved in the inheritance. In the absence of heirs in law, then the estate is declared heirless and passes to the Russian Federation.

The main categories of heirs are as follows:

- First category heirs — children, spouse and parents of the testator
- Second category heirs — full and half brothers and sisters of the testator, grandfather and grandmother either on the side of the father or on the side of the mother
- Third category heirs — full and half brothers and sisters of the parents of the testator (uncles and aunts of the testator)
- Next category heirs (fourth to eighth priorities) — the testator’s relatives of the third, fourth and fifth degree of kinship who do not qualify as heirs of the preceding categories, stepchildren, stepparents and disabled dependent of the testator

11. Estate tax treaties

There are currently no estate tax treaties between Russia and other countries.

Singapore

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1. Types of tax

Singapore generally does not impose inheritance tax, transfer duty or wealth taxes. However, there are tax implications for certain residential property sales, transfers not made in accordance to the will or law, gifts, estates that continue to generate income after death and trusts.

Estate tax on the deemed value of an estate at death has been removed for deaths on and after 15 February 2008. For deaths prior to this date, estate tax was payable on the principal value of all property that passed or was deemed to pass to the beneficiaries, subject to exemptions of S$9 million for residential properties and S$600,000 for nonresidential assets.

1.1 Inheritance tax — stamp duty

As of 19 February 2011, fixed duty for most instruments upon the distribution of property to a beneficiary of a deceased's estate has been abolished. However, if the document was executed before 19 February 2011, a nominal fixed duty remains payable. The fixed duty is payable if the properties are distributed in accordance with the individual's will or the Intestate Succession Act or the Muslim Law of Inheritance; in these cases, only a fixed stamp duty of S$10 applies.

If the distributions are not in accordance with the above, then the documents are regarded as a transfer by way of gift (see Section 1.2). In such cases, full duty will be charged on the excess entitlement acquired by the beneficiary.

For example, under the Intestate Succession Act, if a widower died without leaving a will and was survived by four children, these children would be entitled to equal shares of the estate. If the distribution was made in line with this, then there would either be no fixed duty payable (post-19 February 2011) or S$10 (pre-19 February 2011). However, if the whole property is transferred to only one child, then the excess transfer (75%) will be subject to full duty.

Documents are required to be stamped within:

- 14 days after the document has been first executed in Singapore
- 30 days after it has been first received in Singapore if the document was first executed overseas

A penalty of up to four times may be imposed if the documents are stamped late or stamped insufficiently.

1.2 Gift tax — stamp duty

For any conveyance or transfer operating as gifts, the documents shall be chargeable with stamp duty as if it were a conveyance or transfer on sale. In such instances, for transfers involving immovable properties and shares, the stamp duty will be computed based on the amount or value of the consideration.

With effect from 22 February 2014, the stamp duty rates are as follows:

- 1% on first S$180,000
- 2% for the next S$180,000
- 3% for the remainder

For transfers involving shares, the stamp duty rate is 0.2% on the amount or value of the consideration.

A document can be presented for stamping at any time before the signing of the document. However, once a chargeable document is signed, duty must be paid within:

- 14 days from the date of signing of the document (which is the date of the document)
- 30 days from the date of receipt in Singapore if the document is signed overseas

A penalty of up to four times may be imposed if the documents are stamped late or insufficiently.

If full duty is payable (i.e., transfer by way of gift), then the submission for stamping should be as follows:

- Documents executed (signed) before 1 January 2009:
  - The document must be submitted to the Commissioner of Stamp Duties for adjudication. Adjudication and valuation fees will be charged accordingly. Neither taxpayers nor agents are permitted to e-stamp such documents.
- Documents executed (signed) on or after 1 January 2009:
  - If a document is signed relating to a transfer of property by way of a gift on or after 1 January 2009, then it is not required to submit such documents for adjudication. Instead the individual may e-stamp the document based on the market value of the property at the date of execution or signing of the document. An individual can stamp the document via the e-stamping system using the transfer of immovable property, land, stocks and shares by way of a gift module.

1.3 Real estate transfer tax

For residential properties acquired on or after 20 February 2010, there may be the Seller's Stamp Duty (SSD) payable upon the sale of a property that was transferred to a beneficiary at death. SSD is also due for any other form of sale or transfer of residential property outside of that transferred via inheritance.

For residential property transferred because of inheritance or right of survivorship in joint tenancy, the SSD will be payable if the property is disposed of within four years of the property being acquired by the deceased if acquired on or after 14 January 2011, or within three years if acquired on or after 10 March 2017. The rate of the SSD in this scenario is applied to the consideration or value, whichever is applicable, of the residential property, as follows:

Residential property acquired between 20 February 2010 and 29 August 2010 (inclusive):

- Disposal within one year:
  - 1% on the first S$180,000
  - 2% on the next S$180,000
  - 3% on the remainder
- Disposal after one year:
  - No SSD payable

Residential property acquired between 30 August 2010 and 13 January 2011 (inclusive):

- Disposal within one year:
  - 1% on the first S$180,000
  - 2% on the next S$180,000
  - 3% on the remainder
- Disposal after one year of ownership but not exceeding two years:
  - 0.67% on the first S$180,000
  - 1.33% on the next S$180,000
  - 2% on the remainder
- Disposal after two years of ownership but not exceeding three years:
  - 0.33% on the first S$180,000
  - 0.67% on the next S$180,000
  - 1% on the remainder
- Disposal after three years:
  - No SSD payable

Residential property acquired between 14 January 2011 and 10 March 2017 (inclusive):

- Disposal within one year:
  - 16%
- Disposal after one year of ownership but not exceeding two years:
  - 12%
- Disposal after two years of ownership but not exceeding three years:
  - 8%
- Disposal after three years of ownership but not exceeding four years:
  - 4%
- Disposal after four years:
  - No SSD payable

Residential property acquired on or after 11 March 2017:

- Disposal within one year:
  - 12%
- Disposal after one year of ownership but not exceeding two years:
  - 8%
- Disposal after two years of ownership but not exceeding three years:
  - 4%
- Disposal after three years:
  - No SSD payable

On 11 January 2013, the Government announced that SSD will be imposed on industrial properties that are bought or acquired on and after 12 January 2013 and sold or disposed of within three years. The SSD rates in these cases are as follows:

- Within one year:
  - 15% of the amount of consideration or value (whichever is applicable)
- Within two years:
  - 10% of the amount of consideration or value (whichever is applicable)
- Within three years:
  - 5% of the amount of consideration or value (whichever is applicable)

For industrial properties acquired prior to 12 January 2013 no SSD will be levied.

There are various exemptions/reliefs that may be available in certain scenarios.

The SSD is generally payable within 14 days of signing the sales agreement, or when it is executed overseas, SSD must be paid within 30 days of the receipt of the contract or agreement in Singapore.

Penalties of up to 400% may be imposed if underreporting is discovered.

1.4 Endowment tax

There is no endowment tax in Singapore.

1.5 Transfer duty

There is no transfer duty in Singapore.

1.6 Net wealth tax

There is no net wealth tax in Singapore.

1.7 Estate income

The assets left behind by the deceased may continue to produce income after his or her death. Income derived during the period from one day after death until the end of the administration period (for deaths on or after 15 February 2008, the period of administration is taken as one day after the date of death to 31 December of the year in which the Grant of Representation is issued by the courts) is termed estate income.

When an estate is no longer under administration and there are more investments and assets left in the estate, these will be held in trust for the beneficiaries. Income derived from assets belonging to the trust is covered in Section 7.

Examples of estate and trust income are:

- Rental income
- Interest income
- Share of profit from partnership (tax at trustee level is final)
- Profit from sole-proprietorship business (tax at trustee level is final)
- Dividends from shares declared after death (excluding exempt or one-tier dividends)
- Director's fee and non-contractual bonuses declared after death
- Income distributions from unit trusts (UTs) and real estate investment trusts (REITs)
- Gains from share options exercised after death
- Royalties
- Other gains or profits of an income nature

For joint bank accounts, upon the death of a joint account holder, the balance in the account will go to the surviving joint account holder(s), as the account lapses to the survivor(s). In this case, any interest income earned after the date of death is not the income of the estate and hence shall not be taxable under this provision.

In the case of properties held under joint tenancy, the surviving owner is required to declare the full share of income for the period after the death of the first owner from such properties in their personal income tax returns. For properties held under tenancy-in-common, the deceased's share of income should be declared in the estate's return.

Beneficiaries who are residents of Singapore and entitled to trust income are accorded concessions, exemptions and foreign tax credits as if the beneficiaries had received the trust income directly. In other words, it is deemed to have retained the nature of the underlying trust income. No tax will be imposed at the trustee level, except in the case of income from a trade or business, in which case it is subject to a final tax at the trustee level and distributions are then considered non-taxable capital.

<table>
<tr><th rowspan="3">Trustee derives trade or business income</th><th colspan="3">Trustee derives income other than trade or business income</th></tr>
<tr><th colspan="2">Beneficiaries are entitled to trust income</th><th rowspan="2">Beneficiaries are not entitled to trust income</th></tr>
<tr><th>Resident beneficiaries</th><th>Nonresident beneficiaries</th></tr>
<tr><td>No tax transparency.

Tax at the trustee level is final.

Trustee is to be treated as a body of persons for purposes of tax and claims for relief, concessions and exemptions.

Distributions received by beneficiaries are capital.</td><td>Tax transparency will be accorded. Hence, tax will not be applied at trustee level.

Beneficiaries are entitled to trust income. Hence, distributions are deemed to have retained the nature of the underlying trust income for the purpose of claiming concessions, exemptions and foreign tax credits.</td><td colspan="2">Tax transparency will not be accorded.

Tax at trustee level is final.

Trustee is to be treated as a body of persons for purposes of tax and claims for relief, concessions and exemptions.

Distributions received by beneficiaries are capital.</td></tr>
</table>

To the extent that tax is due at the trust/estate level, the statutory income of a legal personal representative (LPR) (administrator or executor) is subject to income tax at the rate of 17%.

Example: Resident beneficiary who is entitled to trust/estate income, which is derived from income other than trade or business.

Estate income in 2015	S$5,000
Distributions in 2016	S$4,000
Chargeable to LPR at 17% flat rate	S$1,000

The beneficiary will be assessed on the income distributed to them (S$4,000) at their personal tax rate in year of assessment (YA) 2017.

Income tax return (Form T) is meant for the administrator, executor or trustee to declare the income that accrues:

- One day after the date of death from assets left behind by a deceased person

  Or
- From assets held under a private trust or settlement

All income accruing should be reported in Form T regardless of whether it has been distributed to beneficiaries. The following persons (including nonresidents) should submit Form T:

- Legal personal representatives (administrator or executor) of an estate of a deceased or trustee of an estate held in trust
- Trustee of a private trust or settlement

Form T is required to be completed each year until the income derived by the executor or trustee has ceased.

Beneficiaries also need to declare their share of the income in their annual tax returns (Form B1) under other income.

2. Who is liable?

2.1 Residency

Residency does not impact stamp duty or SSD. As outlined above, in the case of estate/trust income the following applies:

- Nonresident beneficiaries:
  - Tax on nonresident beneficiaries' income distribution will be paid by the personal representative of the estate at the trustee's flat tax rates.
- Resident beneficiaries:
  - In certain circumstances, income received by the beneficiary may be subject to their personal tax rates. Income distributions are taxable on the beneficiary in the year he or she receives it and not the year the income is accrued to the personal representative.

2.2 Domicile

This is not applicable in Singapore.

3. Rates

Rates vary depending on whether the tax is levied at the individual level or trustee or estate level. The specific rates are detailed under each relevant section accordingly.

In cases where tax is levied on the individual beneficiary, the current personal income tax rates for YA 2017 are as follows:

Resident

Singapore income tax rates for individual tax residents Year of assessment 2017 (i.e., 2016 calendar year)			
	Chargeable income	**Tax rate (%)**	**Tax payable**
On the first On the next	S$20,000 S$10,000	0 2	S$0 S$200
On the first On the next	S$30,000 S$10,000	 3.5	S$200 S$350
On the first On the next	S$40,000 S$40,000	 7	S$550 S$2,800
On the first On the next On the next	S$80,000 S$40,000 S$40,000	 11.5 15	S$3,350 S$4,600 S$6,000
On the first On the next On the next	S$160,000 S$40,000 S$40,000	 18 19	S$13,950 S$7,200 S$7,600
On the first On the next On the next	S$240,000 S$40,000 S$40,000	 19.5 20	S$28,750 S$7,800 S$8,000
On the first Above	S$320,000 S$320,000	 22	S$44,550

In addition, resident individuals may be eligible to claim certain personal reliefs (e.g., spouse relief, qualifying child relief).

Nonresident

- There is a flat rate of 17%.
- No personal tax reliefs are available.

4. Exemptions and reliefs

This is not applicable in Singapore.

5. Filing procedures

This is outlined in each of the respective sections.

6. Assessments and valuations

This is outlined in each of the respective sections.

7. Trusts, foundations and private purpose funds

Trust income is taxed in the same way as estate income as outlined above. If final tax is payable at the trustee level, the rate is 17%.

However, as outlined above, when a beneficiary is a resident of Singapore and entitled to certain trust income, he or she may be taxed on this income at his or her personal tax rates instead. The income will also be treated as if he or she had received it directly (i.e., rather than being regarded as trust income, it will now be considered to have arisen from the same income source as the underlying trust income).

It is important to note that this treatment does not apply to trade or business income carried on by the trustees, and this income is subject to final tax at the trustee level. Distributions then made from this income are considered capital in nature and will not be subject to any further tax in the hands of the beneficiaries. The same treatment also applies to beneficiaries who are not entitled to the trust income and to which nonresident beneficiaries are entitled.

The income tax return (Form T) is meant for the administrator, executor or trustee to declare the income that accrues:

- One day after the date of death from assets left behind by a deceased person

  Or
- From assets held under a private trust or settlement

All income accruing should be reported in Form T regardless of whether it has been distributed to beneficiaries.

The following persons (including nonresidents) should submit the Form T:

- Legal personal representatives (administrator or executor) of an estate of a deceased or trustee of an estate held in trust
- Trustee of a private trust or settlement

Form T is required to be completed each year until the income derived by the executor or trustee has ceased.

Beneficiaries also need to declare their share of the income in their annual tax returns (Form B1) under other income.

8. Grants

This is not applicable in Singapore.

9. Life insurance

Personal life insurance payouts are not taxable as estate tax has been abolished.

10. Civil law on succession

10.1 Estate planning

This is not applicable in Singapore.

10.2 Succession

See Section 10.5.

10.3 Forced heirship

As Singapore recognizes Syariah law, forced heirships are recognized in these cases.

10.4 Matrimonial regimes and civil partnerships

Same-sex and civil partnerships are not recognized in Singapore.

Syariah law is recognized in Singapore, and therefore certain polygamous marriages are taken into account in the relevant intestacy acts.

10.5 Intestacy

If a person dies intestate with possessed property in Singapore, the property or the proceeds thereof (after payment of expenses due on administration) shall be distributed among persons entitled to succeed them beneficially, as follows:

- If an intestate dies leaving a surviving spouse, no issue and no parent, the spouse shall be entitled to the whole of the estate.
- If an intestate dies leaving a surviving spouse and issue, the spouse shall be entitled to one-half of the estate.

- Subject to the rights of the surviving spouse, if any, the estate (both as to the undistributed portion and the reversionary interest) of an intestate who leaves children shall be distributed by equal portions per stirpes to and among the children of the person dying intestate and such persons who legally represent those children, in case any of those children are dead.

  Proviso No. 1 — The persons who legally represent the children of an intestate are their descendants and not their next of kin.

  Proviso No. 2 — Descendants of the intestate to the remotest degree who stand in the place of their parent or other ancestor and take, according to their stocks, the share that he or she would have taken.

  A child is defined as a legitimate child and includes children who have been adopted by virtue of a court order in Singapore, Malaysia or Brunei.
- If an intestate dies leaving a surviving spouse and no children but a parent or parents, the spouse shall be entitled to one-half of the estate and the parent or parents to the other half of the estate.
- If there are no descendants, the parent or parents of the intestate shall take the estate, in equal portions if there are two parents, subject to the rights of the surviving spouse (if any) as provided in the rule above.
- If there are no surviving spouse, descendants or parents, the brothers and sisters and children of deceased brothers or sisters of the intestate shall share the estate in equal portions between the brothers and sisters, and the children of any deceased brother or sister shall take, according to their stocks, the share that the deceased's brother or sister would have taken.
- If there are no surviving spouse, descendants, parents, brothers and sisters, or children of such brothers and sisters but grandparents of the intestate, the grandparents shall take the whole of the estate in equal portions.
- If there are no surviving spouse, descendants, parents, brothers and sisters, or their children or grandparents but uncles and aunts of the intestate, the uncles and aunts shall take the whole of the estate in equal portions.
- In default of distribution under the foregoing rules, the government shall be entitled to the whole of the estate.

10.6 Probate

Where there is a will, the estate vests in the executor and he has the authority to conduct the deceased's affairs the moment the deceased dies. He is empowered to pass proper title to the assets of the deceased that are sold and any action he may undertake on behalf of the deceased would be held valid. The executor would, however, normally apply to court for a grant of probate, as any third parties dealing with him or her will usually require such a grant before they enter into any transactions with the latter. In intestacies, the administrator's authority stems from the grant of letters of administration, and until the grant is obtained, the administrator has no authority to act on behalf of the estate.

11. Estate tax treaties

Estate tax has been abolished in Singapore.

South Korea

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1. Types of tax

Inheritance tax is imposed on inherited property that is transferred upon the death of an individual. Such property includes a testamentary gift, a donation becoming effective at the death of an individual, and a divisional donation, which is inherited to a special party under certain circumstances stipulated in the Civil Act.

Gift tax is imposed on a transfer (including a transfer at a price significantly lower than the fair market value) of property by one person to another with no compensation. With the comprehensive taxation principle adopted in 2004, gift tax is imposed based on the economic substance of the transaction regardless of its title, form or objective.

1.1 Inheritance tax

Taxpayer

A beneficiary or a person who receives a testamentary gift (hereafter referred to as a beneficiary or testamentary donee) is obligated to pay inheritance taxes, in proportion to the properties received or to be received by each beneficiary or testamentary donee out of the total properties inherited from the decedent. When the beneficiary or testamentary donee is a for-profit corporation, the for-profit corporation is exempted from inheritance taxes. However, when the beneficiary or testamentary donee is a for-profit corporation and shareholders of the for-profit corporation include beneficiaries, testamentary donee or lineal descendants of the deceased, the shareholders (who are also the beneficiaries, testamentary donee or lineal descendants of the deceased) shall be liable for inheritance tax corresponding to his or her stake in the for-profit corporation whose inheritance tax was exempted.

Beneficiaries or testamentary donees are jointly and severally obligated to pay the inheritance tax within limits of the property received or to be received by each beneficiary or testamentary donee.

Scope of inherited property

The inheritance tax is assessed on all properties bequeathed by a resident and all properties within the territory of South Korea bequeathed by a nonresident.

The inherited property includes all properties that may be realized as money or having economic value and all *de facto* or *de jure* rights having asset value.

From the date of the commencement of the succession, the following assets are deemed taxable:

- Inherited property (including donated property transferred upon the death of an individual)
- Property donated within 10 years prior to the commencement date of the succession by the deceased to the beneficiary
- Property donated within five years prior to the commencement date of the succession by the deceased to a person other than the beneficiary

In case of the death of a nonresident, only those donated properties that are located within the territory of South Korea are deemed taxable.

1.2 Gift tax

Taxpayer

A person who receives donated property (hereafter referred to as a donee) is obligated to pay gift taxes. Generally, if the donee is a for-profit corporation, the donee is exempt from gift tax liability.

A donee who is a nonresident on the day of the donation is obligated to pay gift taxes only in respect of that donated property located within the territory of South Korea.

In case a resident donor makes a gift of any property or asset located outside of South Korea to a nonresident donee (excluding gift effected by the death of a donor), a resident donor is obligated to pay gift tax. However, in case other gift taxes are imposed on the same property pursuant to the law of the relevant foreign country, then the donor is exempt from South Korean gift tax.

The donor is jointly and severally liable to pay the gift tax in cases where it is difficult to secure the gift tax claim, due to reasons such as when the domicile or temporary domicile of the donee is unknown or when the donee is deemed not to have the ability to pay the gift tax even after taking measures against the donee to recover taxes in arrears. Even when the conditions for a donor's joint and several liability for the gift tax are not met, the donor is jointly and severally liable to pay the gift tax when the donee is a nonresident.

Scope of tax

The gift tax covers all property donated to a resident and all property within the territory of South Korea donated to a nonresident.

The gift property refers to all property donated to a donee that may be realized as money or having economic value and all *de facto* or *de jure* rights having asset value.

Non-taxed donated property

Generally, the amounts of gifts or donated properties in any of the following cases are non-taxable:

1. The value of property received as a donation from the state or local government
2. The difference between the acquisition value and market value of shares when the employee (who is also a minority shareholder) of a domestic corporation has acquired relevant shares through the employee's stockholder association
3. The value of donated property received by a political party
4. The value of donated property received by the intracompany labor welfare fund or another similar association
5. Socially accepted and recognized funds (e.g., disaster relief funds and goods, medical fees, dependents' living expenses and education expenses)
6. The value of donated property received by the Credit Guarantee Fund or other similar associations
7. The value of donated property received by the state, local government or a public organization
8. The value of transferred property by a non-profit organization to another non-profit organization in order to meet requirements mandated by the law
9. Insurance proceeds capped at the maximum of KRW40 million per year where an insured beneficiary is disabled

1.3 Real estate transfer tax

Generally, gains arising from the transfer of real estate are subject to capital gains tax rather than gift tax, under the Individual Income Tax Law (IITL). However, gift tax would apply for a transfer of real estate when the transfer is deemed as a gift, despite its possible form as a sale, in accordance with the Inheritance and Gift Tax Law (IGTL). Examples of such cases are as follows:

- Properties transferred or taken over at a remarkably lower or higher price than the market value without any justifiable reasons in the common practices of transactions would be deemed as a gift.
- Properties transferred to the spouse or lineal ascendants/descendants (hereafter referred to as spouse, etc.) shall be deemed as a gift, and the value of the transferred properties would be viewed as the value of gift properties.

1.4 Endowment tax

This is not applicable in South Korea.

1.5 Transfer duty

This is not applicable in South Korea.

1.6 Net wealth tax

This is not applicable in South Korea.

1.7 Exit (departure) tax

A new exit (or departure) tax regime has been introduced as part of the IITL. Under this regime, which will apply to departures occurring on or after 1 January 2018, an exit tax will be imposed on the unrealized capital gains of Korean shares held by Korean tax residents who emigrate to a foreign country.

The exit tax will be assessed as if the shares are sold on the day the emigration takes place. The regime applies to domestic shares and to majority shareholders (1% or more ownership in the case of listed corporations) who have had a domicile or place of residence in Korea for five years or more during the past 10 years. The tax rate is 20% (22% including local income tax), which is the capital gains tax rate applicable to majority shareholders in Korea.

To prevent double taxation, those subject to the exit tax will be able to claim a foreign tax credit for tax paid in a foreign country in case of an actual share transfer. An additional tax credit may be claimed if the share price on the actual transfer date is lower than at the time the exit tax was levied. In addition, if certain requirements are met, such as pledging collateral security for tax payment and appointing a tax agent, the tax payment can be postponed for five years. The exit tax paid will be refunded if the taxpayer re-enters Korea and becomes a resident of Korea.

2. Who is liable?

2.1 Residency

Residency of a decedent is determined pursuant to the Individual Income Tax Law. Generally, an individual who holds domicile or has held temporary domicile in South Korea for 183 days or longer is considered a tax resident of South Korea, while an individual who is not a tax resident shall be treated as a nonresident of South Korea.

Inheritance tax

Residency determines the scope of reportable inherited properties and allowable deductions. Inheritance tax is assessed on all properties bequeathed by a resident and all properties within the territory of South Korea bequeathed by a nonresident. More expenses and deductions are permitted to residents than to nonresidents.

Gift tax

Gift tax applies to all property donated to a resident and all property within the territory of South Korea donated to a nonresident.

2.2 Domicile

Inheritance tax

Inheritance tax shall be levied by the tax office having jurisdiction over the place of the domicile of the decedent. In cases where the place of the commencement of succession is overseas, inheritance tax shall be levied by the tax office having jurisdiction over the location of the property that is within the territory of South Korea. In cases where the inherited property is within two or more jurisdictions, inheritance tax shall be levied by the tax office having jurisdiction over the location of the main property.

Gift tax

Gift tax shall be levied by the tax office having jurisdiction over the place of the domicile of the donee. In cases where the donee is a nonresident or the domicile or temporary domicile of the donee is unknown, gift tax shall be levied by the tax office having jurisdiction over the place of the domicile of the donor.

3. Rates

3.1 Inheritance tax

Inheritance tax is calculated by applying the marginal tax rates, ranging between 10% and 50%, to the tax base, as in the following table:

Tax base	Tax rates
KRW100 million or less	10%
Above KRW100 million to KRW500 million	KRW10 million + (20% x the excess above KRW100 million)
Above KRW500 million to KRW1 billion	KRW90 million + (30% x the excess above KRW500 million)
Above KRW1 billion to KRW3 billion	KRW240 million + (40% x the excess above KRW1 billion)
More than KRW3 billion	KRW1.04 billion + (50% x the excess above KRW3 billion)

Generation-skipping inheritance tax

When the beneficiary or testamentary donee is a lineal descendant other than a son or daughter of the deceased, a surtax of 30% is levied in addition to inheritance tax. In cases where the beneficiary or testamentary donee is a minor and lineal descendant other than son or daughter of the deceased, a surtax of 40% is levied when the total value of properties received or to be received exceeds KRW2 billion.

Tax credits

The following inheritance tax credits are available mainly for the purpose of avoiding double taxation:

1. *Gift tax credit*: In case the inherited property includes donated property for the purpose of calculating the inheritance tax base, gift tax computed from the donated property is available as tax credit.

2. *Foreign tax credit*: If inheritance tax was paid on the inherited property in a foreign country, the inheritance tax paid in the foreign country is available as a tax credit.

3. *Tax credit for short-time re-succession*: In cases where inheritance recommences due to the death of a beneficiary within 10 years of the commencement of the earlier inheritance, the phase-out credit is available for the second generation beneficiary, as in the following table:

Re-succession period	Credit percentage
Within 1 year	100%
Within 2 years	90%
Within 3 years	80%
Within 4 years	70%
Within 5 years	60%
Within 6 years	50%
Within 7 years	40%
Within 8 years	30%
Within 9 years	20%
Within 10 years	10%

4. *Tax credit for filing on time*: A 7% tax credit is available for those taxpayers filing tax returns on time.

3.2 Gift tax

Gift tax is calculated by applying the marginal tax rates, ranging between 10% and 50%, to the tax base, as in the following table:

Tax base	Tax rates
KRW100 million or less	10%
Above KRW100 million to KRW500 million	KRW10 million + (20% x the excess above KRW100 million)
Above KRW500 million to KRW1 billion	KRW90 million + (30% x the excess above KRW500 million)
Above KRW1 billion to KRW3 billion	KRW240 million + (40% x the excess above KRW1 billion)
Above KRW3 billion	KRW1.04 billion + (50% x the excess above KRW3 billion)

Generation-skipping gift tax

When the donee is a lineal descendant other than a son or daughter of the donor, a surtax of 30% is levied in addition to gift tax. In cases where the donee is a minor and is the lineal descendant other than son or daughter of the donor, a surtax of 40% is levied when the total value of properties received or to be received exceeds KRW2 billion.

Tax credits

The following gift tax credits are available mainly for the purpose of avoiding double taxation:

1. *Credit for previously paid gift taxes*: The amount of gift tax paid previously or to be paid with respect to the value of property received from the same donor during the past 10 years (aggregated amount of the values of donated properties if there are more than two donations) can be claimed as a tax credit, if the value of property received previously is added to the taxable amount of gift tax.

2. *Foreign tax credit*: A foreign tax credit is granted for the amount paid on the donated property in a foreign country as a gift tax.

3. *Tax credit for filing on time*: A 7% tax credit is available for those taxpayers filing tax returns on time.

4. Exemptions and reliefs

4.1 Inheritance tax

Inheritance deductions

Among the various deductions stated below, only a basic deduction is applied if the deceased is a nonresident, while all of the deductions are applied if the deceased is a resident.

Itemized deductions

1. KRW200 million of basic deduction.

2. In addition to the basic deduction, the following can be deducted from the taxable amount if the inheritance falls under any of the following categories:
   - Inherited family business (a small-to-medium business that has been run by the deceased for 10 years or longer) — the amount of deduction is 100% of property value of an inherited family business capped at the maximum KRW20 billion (capped at the maximum of KRW30 billion for a business run for 15 years or longer and at the maximum of KRW50 billion for a business run for 20 years or longer)
   - Inherited farming business (including livestock-raising, fishing and forest management) — the value of the inherited farming business, capped at the maximum of KRW1.5 billion

3. The actual amount inherited by the spouse is deductible. The amount of spousal deduction is allowed between the minimum of KRW500 million and the maximum of KRW3 billion.

4. If the beneficiary falls under any of the following categories, the sum of amounts allowed for each category is added together and deducted from the taxable amount:
   - With respect to a child of the deceased, KRW50 million
   - With respect to a minor (excluding the spouse), who is either a beneficiary or a family member of the beneficiary, an annual deduction of KRW10 million is granted until the minor reaches 19 years of age
   - With respect to a beneficiary or a family member of the beneficiary (excluding the spouse), who is 65 years old or older, KRW50 million

- With respect to a disabled person (including a spouse), who is either a beneficiary or a family member of the beneficiary, an annual deduction of KRW10 million is granted until he or she reaches their expected remaining years as announced by Statistics Korea
- With respect to the beneficiary satisfying all of the following conditions, 80% of the net value of the inherited house (including the value of the land attached to the house) less relevant debt, but the deduction amount would be capped at the maximum of KRW500 million:
  (i) Beneficiary is a lineal descendant of the deceased and had resided in the same house with the deceased for 10 years or longer (excluding periods when the beneficiary was minor) immediately before the commencement of the inheritance
  (ii) Beneficiary and the deceased formed a single household, as prescribed by the Individual Income Tax Law, for 10 years or longer immediately before the commencement of the inheritance
  (iii) Beneficiary does not own a house as of the date of the commencement of the inheritance

Lump-sum deduction option

The taxpayer has an option to deduct either the sum of (1) and (4) (stated in Section 4.1) or a lump-sum amount of KRW500 million, whichever is greater. If the deduction option is not reported, the deductible amount is fixed at KRW500 million. In case the spouse alone receives the inheritance, a lump-sum option is not available.

Administrative expense deductions

In cases where the deceased is a resident, the following expenses relating to the deceased or the inherited property as of the commencement date of the inheritance are subtracted from the value of the inherited property:

- Public imposts, including taxes and public utility expenses transferred to the beneficiary that were due to the deceased as of the date of the commencement of the inheritance
- Funeral expenses based on actual costs incurred from the date of death through the date of the funeral:
  - KRW5 million, if the actual cost incurred is KRW5 million or below
  - Actual amount, if the actual cost incurred is above KRW5 million to KRW10 million
  - KRW10 million, if the actual cost incurred exceeds KRW10 million
  - Actual burial chamber usage fee incurred up to KRW5 million, if any
- Debts left by the deceased for which the beneficiary is able to prove that he or she is responsible to settle upon the commencement of the inheritance

In cases where the deceased is a nonresident, the following expenses are deducted from the value of the inherited property:

- Public imposts, including taxes and public utility expenses relating to the inherited property
- Debts secured with liens, pledges, right to lease on a deposit basis, right of lease, right to property transferred for security or mortgages for the purposes of the inherited property
- Debts and public imposts, confirmed in accordance with books and records, of the business place(s) within the territory of South Korea

Deductions for financial property

If the inherited property includes a value of net financial property, which is a value obtained by deducting a financial debt from the value of financial property, the following amount capped at the maximum of KRW20 million would be deducted from the taxable amount of inheritance taxes:

1. When the value of net financial property exceeds KRW20 million: 20% of the value of net financial property or KRW20 million, whichever is larger
2. When the value of net financial property does not exceed KRW20 million: the value of the relevant net financial property

Financial property includes deposits, installment savings, trusts, stocks, bonds, equity shares, investment in capital and other marketable securities that are generally handled by financial institutions.

4.2 Gift tax

Itemized deductions

In cases where a resident donee receives donated property from any of the following persons, each of the following amounts is deductible from the taxable amount of a gift. However, the sum of deductions already taken within 10 years prior to the relevant donation and the current-year deduction determined from the taxable amount of gift taxes shall not exceed the threshold amount stated in the following:

- Spouse: KRW600 million
- Lineal ascendant: KRW50 million (KRW20 million if the donee is a minor)
- Lineal descendant: KRW50 million
- Relative other than a spouse or a lineal family member: KRW10 million

5. Filing procedures

5.1 Inheritance tax

Tax returns and payment

A beneficiary or a testamentary donee having an inheritance tax payment obligation must file a tax return within six months of the last day of the month in which the inheritance commenced, together with detailed supporting documentation that can prove the type, quantity, appraised value, distribution of property and all types of deductions of the inherited property necessary for the calculation of the inheritance tax base.

When the inheritance tax to be paid exceeds KRW10 million, a part of the total taxes due may be paid in installments within two months after the payment due date, unless payment by annual installments is permitted. When the inheritance tax to be paid exceeds KRW20 million, the head of the district tax office may permit payment by annual installments upon filing of an application. In such cases, the taxpayer shall provide security.

The head of the district tax office may permit in-kind payment of inheritance tax (limited to real estate and securities) upon filing of an application by the taxpayer, if all of the following conditions are met:

- The value of real estate and securities inherited accounts for more than 50% of the inherited property received.
- The amount of the inheritance tax is in excess of KRW20 million.
- The amount of the inheritance tax is in excess of the value of the inherited financial assets.

Determination by tax office

The district tax office determines and notifies the tax base amount, including any adjustments, and the amount of inheritance tax liability within six months from the filing due date of the tax return.

5.2 Gift tax

Tax returns and payment

A donee having a gift tax liability must file a tax return within three months of the last day of the month in which the donated property was received, together with detailed supporting documentation.

When the gift tax to be paid exceeds KRW10 million, a part of the total due may be paid in installments within two months after the payment due date, unless payment by annual installments is permitted. When the gift tax to be paid is in excess of KRW20 million, the head of the district tax office may permit payment by annual installments upon filing of an application. In such cases, the taxpayer shall provide security.

Determination by tax office

The head of the tax office determines the tax base amount, including any adjustments, and the amount of gift tax liability within three months of the filing due date of the tax return.

6. Assessments and valuations

6.1 Inheritance tax

In principle, the value of inherited property is assessed based on its current market value (e.g., acquisition price, appraised value) on the commencement date of inheritance. The following methods of valuation are applied when the market value is not available:

- Land: publicly notified individual land price in accordance with the Public Notice of Values and Appraisal of Real Estate Act
- Buildings: the value determined and published by the Commissioner of the National Tax Service (NTS) every year
- Listed stocks: four-month average closing market price (two months prior to and two months after the valuation date)
- Non-listed stocks: the value of unlisted shares shall be calculated based on the weighted average of the adjusted net income value per share and the adjusted net asset value per share in the proportion of 3 to 2. Please see below for the definition of net asset value and net income value for IGTL valuation purposes. If the value of non-listed stock computed based on the method prescribed under the IGTL is less than 80% of the adjusted net asset value, 80% of the adjusted net asset value would be deemed as the value of the non-listed stock.
  - Net asset value = total net assets on the valuation date after adjustments (including goodwill computed under the IGTL)
  - Net income value = weighted average adjusted after-tax net income during the preceding three years/discount rate (currently, 10%)

Different weighted ratios may apply for companies that own certain percentages of real estate among the total asset.

6.2 Gift tax

The same rules described in Section 6.1 apply to assessments and valuations for gift tax purposes.

7. Trusts, foundations and private purpose funds

7.1 Inheritance tax

Pension benefits received from a private pension due to the death of the policyholder shall be regarded as an inherited property. Assets held in a trust shall be regarded as an inherited property upon death of the grantor.

7.2 Gift tax

If the beneficiary of a private pension and the payer of contributions are different, the private pension benefits received shall be deemed as a property donated to the beneficiary.

8. Grants

Inherited and donated property contributed to a person operating a business for religious, charitable, academic or other purposes of public good (hereinafter referred to as a public service corporation) shall not be subject to inheritance or gift tax. In cases where all or part of the benefits arising from inherited or donated property, which have been excluded from the taxable amount of inheritance or gift tax, are not used for purposes of the public good in an appropriate manner, inheritance and gift tax shall be immediately levied on the excluded amount.

8.1 Inheritance tax

Property contributed by the deceased or the beneficiary to a person operating a public service corporation shall not be included in the taxable amount of inheritance tax if the contribution is made within six months from the commencement of inheritance. When shares with voting rights or equity shares of a domestic corporation are contributed and the aggregate of the shares to be contributed exceeds 5% (10% in cases of contributions to conscientious public service corporations as prescribed by the Presidential Decree of the IGTL) of the total number of the shares, the excess shall be added to the taxable amount of inheritance tax.

In cases where property is not included in the taxable amount of inheritance tax and all or part of the benefits arising from such property belong to the beneficiary or a person(s) having a special relationship with the beneficiary, inheritance tax shall be immediately levied on the amount.

Inherited property contributed by the deceased or the beneficiary to a public service corporation as a public trust pursuant to the Trust Act, through a trust for religious, charitable, academic or other purposes of public good, shall not be included in the taxable amount of inheritance taxes.

8.2 Gift tax

Donated property contributed to a public service corporation shall not be included in the taxable amount of gift tax. When shares with voting rights or equity shares of a domestic corporation are contributed and the aggregate of the shares to be contributed exceeds 5% of the total number of stocks (10% in cases of a conscientious public service corporation), the excess shall be added to the taxable amount of gift tax.

In cases where property is not included in the taxable amount of gift tax and all or part of the benefits arising from such property are not being operated pursuant to the Presidential Decree of the IGTL (e.g., the property is being used for purposes other than for the public good), gift tax shall be immediately levied on the amount.

Donated property contributed by the donor to a public service corporation as a public trust pursuant to the Trust Act, through a trust for religious, charitable or academic purposes, or for purposes other than for the public good, shall not be included in the taxable amount of gift taxes.

9. Life insurance

9.1 Inheritance tax

When the beneficiary receives insurance proceeds from life or accident insurance due to the death of the policyholder, insurance proceeds shall be regarded as an inherited property if i) the policyholder is the deceased, or ii) the deceased has paid the insurance premium even when the deceased is not the policyholder.

9.2 Gift tax

If the beneficiary of insurance proceeds and the payer of premiums are different in a life insurance or non-life insurance policy, the insurance money shall be deemed to be donated to the beneficiary as of the date when the incident triggering the payment of insurance proceeds happens (including the expiration of the insurance policy).

10. Civil law on succession

This is not applicable for individuals in South Korea.

11. Estate tax treaties

South Korea has not entered into any estate tax treaties.

Spain

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1. Types of tax

1.1 Inheritance and gift tax

According to the Spanish Inheritance and Gift Tax (IGT) Law, this tax is levied on the acquisition by individuals of assets (whether tangible or intangible) by virtue of inheritance (*mortis causa*), donation (*inter vivos*) or life insurance policies where the payer of the premium and the beneficiary are different persons (subject to certain exceptions).

IGT is a national tax; however, the power to legislate some aspects that have a direct impact on the quota to be paid has been transferred to the regional governments. Indeed, many regions have approved lower tax rates, reductions and other benefits that significantly reduce the tax burden. As a consequence of this, effective inheritance taxation is much higher under national law than under regional regimes.

Additionally, the regions of Navarre and Basque Country have a wide right to self-regulate IGT. Taxation in these regions is significantly different from the mainstream Spanish tax laws.

Historically, regional law was not applicable when nonresidents were involved (when the deceased, heir or donee was a nonresident or when the real estate was located outside of Spain). If so, national law applied in any case, with nonresident individuals being generally subject to a much higher tax burden only because of their nonresident status. However, the Court of Justice of the European Union (CJEU) ruled against Spanish IGT in a 3 September 2014 judgment, concluding that the Spanish IGT rules breached the EU Treaty principle of free movement of persons since only Spanish residents were permitted to apply regional tax benefits. As a result of this judgment, Spain has amended its IGT Law and now EU residents are entitled to apply regional rules.

Moreover, it should be noted that there is an opportunity to recover taxes unduly paid under the former and discriminatory IGT Law.

1.2 Real estate transfer tax

The transfer of real estate by inheritance or gift is exempt from Spanish real estate transfer tax.

1.3 Endowment tax

No endowment taxes are levied in Spain. Nevertheless, as a general rule, donations made to charitable foundations (meeting certain requirements and pursuing special charitable purposes) would allow the donors to claim a tax credit for income tax purposes, as follows:

- If the donor is a corporation, then a corporate income tax relief ranging from 35% to 40% on the amount donated could be applied if certain requirements are met. Nevertheless, the tax base of the deduction cannot exceed 10% of the period's total taxable base. Non-deducted amounts due to an insufficient tax quota can be applied during the next 10 years.
- If the donor is an individual, then a personal income tax relief ranging from 30% to 75% on the amount donated is available, with the tax base of the deduction also subject to the limit of 10% of the period's total taxable base.

1.4 Transfer duty

Spain levies a stamp duty tax upon signature of a public deed, notarial documents and documents to be registered officially, with rates ranging from 0.1% to 1.8%.

However, successions and gifts are exempt from Spanish transfer duty.

1.5 Net wealth tax

Net wealth tax (NWT) is an annual tax levied on the net worth of individuals as at 31 December of each year. Wealth subject to this tax is defined as all the assets and rights that can be economically valued, less all the burdens, encumbrances or debts that the individual may have and that effectively reduce the wealth.

If the individual is resident in Spain, NWT is levied on a worldwide basis, whereas nonresident individuals are only subject to NWT on their Spanish-located assets.

Spanish NWT was abolished in Spain, but the Spanish Government decided to reinstate the tax initially for years 2011 and 2012, and then extended it to 2013, 2014, 2015, 2016 and 2017. It is likely that NWT will also be extended in future years.

Spanish autonomous regions are authorized to set their own tax rates and allowances within certain limits, leading to different wealth tax liabilities. For instance, NWT is not due in Madrid since the region offers a 100% relief.

2. Who is liable?

2.1 Inheritance and gift tax

IGT legislation in force in Spain imposes gift and inheritance tax on donees, heirs or insurance beneficiaries regardless of the tax residence of the donor, deceased or payer of the policy premiums.

Taxpayers are the heir, the donee or the beneficiary. Tax liability will depend on whether the IGT taxpayer is Spanish resident or not, as follows:

Worldwide taxation

Spanish resident taxpayers are liable to IGT on their share in the estate of the deceased or the assets donated, or the life insurance benefit, regardless of where the assets or rights received were located/exercisable (worldwide principle).

IGT on Spanish-located assets

Nonresident taxpayers are only liable for IGT on the Spanish-located assets acquired by virtue of inheritance or donation, or where the insurance policy is entered into with a Spanish insurance company or concluded in Spain with a non-Spanish insurance company.

Shares in foreign companies are deemed foreign *situs* assets for Spanish IGT purposes. However, the Spanish tax authorities have ruled at least twice that shares in foreign companies whose main assets are Spanish *situs* real properties may be deemed Spanish *situs* assets for IGT purposes.

2.2 Net wealth tax

Spanish tax residents are liable for NWT on their worldwide assets and rights (worldwide principle) as at 31 December of each year.

Non-Spanish tax residents are subject to NWT on their assets located or exercisable in Spain. Historically, national law (instead of regional law) was applicable in those cases. However, as a result of the 2015 Tax Reform, EU residents are now able to apply the rules of the region where most of their wealth is located or exercisable in Spain (the most common case is nonresidents holding properties in Spain).

2.3 Residency

An individual is generally deemed to be Spanish resident if either of the below conditions are met:

(a) The individual is physically present in Spanish territory for more than 183 days per year. Sporadic absences are considered as days spent in Spain for computing this period, unless the individual evidences the tax residence in another country for more than 183 days during a calendar year. This evidence must be in the form of a certificate from the foreign tax authorities confirming such circumstance.

(b) The main center of the individual's activities or economic interests is located in Spain, either directly or indirectly. Unless evidenced otherwise, an individual will be deemed tax resident in Spain if their legal wife or husband and minor dependent children are tax resident in Spain.

2.4 Spanish territoriality rules applicable to IGT

As a result of the 3 September 2014 judgment of the CJEU, Spanish IGT rules were amended and new connection points were introduced to enable EU nonresident taxpayers to apply regional rules, as follows:

Inheritance tax

In the case of inheritance, bequest or other type of successions, if the deceased had been a resident in a Member State of the EU or European Economic Area (EEA) other than Spain, Spanish tax residents will be allowed to apply the rules approved by the region where the highest value of the assets (and rights) forming part of the estate were located.

In those cases where the deceased was resident in a Spanish region, non-Spanish tax residents who reside in another Member State of the EU or EEA will be allowed to apply the rules of the region in which the deceased was resident.

Regarding the amounts received by the beneficiaries derived from life insurance contracts, when such amounts should not be added to the taxable base for inheritance tax purposes, non-Spanish tax residents who reside in a Member State of the EU or EEA will be allowed to apply the rules approved by (i) the region where the registered office of the Spanish life insurance company was situated, or (ii) the region in which the foreign life insurance company had concluded the relevant contract.

Gift tax

In the case of acquisition of movable property situated in Spain by gift or any other *inter vivos* gratuitous transfer, non-Spanish tax residents who reside in another Member State of the EU or EEA will be allowed to apply the rules approved by the region where the referred movable assets had been situated for a greater number of days during the five-year period prior to the taxable event.

In the case of acquisition of real estate property located in Spain, non-Spanish tax residents who reside in another Member State of the EU or EEA will be allowed to apply the rules approved by the region where the real estate property was situated.

In cases where real estate is located outside Spain but in a Member State of the EU or EEA, Spanish tax residents will be allowed to apply the rules approved by the region in which they reside. For this purpose, a Spanish tax resident will be considered a resident of any region provided that such individual had been a resident in that particular region for a greater number of days during the five-year period prior to the taxable event.

3. Rates

3.1 Inheritance and gift tax

The taxable base is taxed (both for gift and inheritance tax purposes) by application of the following progressive scale:

Up to	EUR	Remaining	%
€0.00	€0.00	€7,993.46	7.65
€7,993.46	€611.50	€7,987.45	8.50
€15,980.91	€1,290.43	€7,987.45	9.35
€23,968.36	€2,037.26	€7,987.45	10.20
€31,955.81	€2,851.98	€7,987.45	11.05
€39,943.26	€3,734.59	€7,987.46	11.90

Up to	EUR	Remaining	%
€47,930.72	€4,685.10	€7,987.45	12.75
€55,918.17	€5,703.50	€7,987.45	13.60
€63,905.62	€6,789.79	€7,987.45	14.45
€71,893.07	€7,943.98	€7,987.45	15.30
€79,880.52	€9,166.06	€39,877.15	16.15
€119,757.67	€15,606.22	€39,877.16	18.70
€159,634.83	€23,063.25	€79,754.30	21.25
€239,389.13	€40,011.04	€159,388.41	25.50
€398,777.54	€80,655.08	€398,777.54	29.75
€797,555.08	€199,291.40	Excess	34.00

The resulting gross tax should be further increased by application of certain additional coefficients, which take into account the acquirer's net wealth prior to the acquisition,[1] as well as his or her relationship with the donor/deceased (as per the groups described in Section 4.1).

Donee's pre-existing wealth (EUR)	Group (family relationship)		
	I and II	III	IV
From 0 up to 402,678.11	1.0000	1.5882	2.0000
Over 402,678.11 up to 2,007,380.43	1.0500	1.6676	2.1000
Over 2,007,380.43 up to 4,020,770.98	1.1000	1.7471	2.2000
Over 4,020,770.98	1.2000	1.9059	2.4000

Therefore, the effective maximum rate may reach 81.60% (i.e., maximum general rate: 34% x maximum personal rate: 2.4 = 81.60%).

These rates have been slightly modified in certain autonomous regions.

Other key aspects

- Gifts to the same donee within a three-year period are treated as single gifts; gifts to heirs within a four-year period are added to the taxable basis for inheritance tax purposes.
- There are special rules governing life and temporary usufructs created by reason of inheritance or donation.
- Significant reductions may apply to family business transfers and/or art collections within families.

[1] The net wealth prior to the acquisition is calculated according to Spanish net wealth tax provisions.

- Foreign tax relief is available in order to avoid double taxation.
- With certain exceptions, gifts trigger capital gains in the hands of the donor for personal income tax purposes, computed as the difference between the acquisition cost and the market value of the assets donated.
- No income or capital gains are deemed to arise in the hands of the deceased for personal income tax purposes on the difference between the acquisition cost and the market value of the assets comprised in the estate.
- Some of the main characteristics of regional IGT rules are as follows:

1. Balearic Islands, Galicia and Murcia have almost eliminated taxation in cases of inheritance by Group I acquirers (descendants under 21 years of age).
2. La Rioja, Castilla La Mancha and Madrid have almost eliminated taxation in cases of inheritance by Group I and II acquirers (ascendants, descendants and spouse).
3. Catalonia only maintains the 99% tax relief in the case of inheritance by the spouse. For all other heirs, the relief is reduced progressively as the taxable base increases.
4. Castilla La Mancha and Madrid have almost eliminated taxation in cases of donation to Group I and II acquirers (subject to formal requirements).
5. In 2017, Valencia has reduced the applicable discount from 75% to 50% in cases of inheritance regarding Group II acquirers. Additionally, Valencia has removed the tax relief in cases of donation.
6. Aragon offers a reduction up to €3 million in cases of heirs under legal age (18 years).

As explained above, these regional rules apply only when certain conditions related to the residence of the deceased, heir or donee are met.

With regard to Basque Country and Navarre, transfers between families are generally advantageous due to reduced rates.

3.2 Net wealth tax

Net wealth tax rates under national law are as follows (note that some regions have higher rates up to 3.75%):

Up to	EUR	Remaining	%
€0.00	€0.00	€167,129.45	0.2
€167,129.45	€334.26	€167,123.43	0.3
€334,252.88	€835.63	€334,246.87	0.5
€668,499.75	€2,506.86	€668,499.76	0.9
€1,336,999.51	€8,523.36	€1,336,999.50	1.3
€2,673,999.01	€25,904.35	€2,673,999.02	1.7
€5,347,998.03	€71,362.33	€5,347,998.03	2.1
€10,695,996.06	€183,670.29	Excess	2.5

4. Exemptions and reliefs

4.1 Inheritance and gift tax

The taxable value of the acquisition by the taxpayer is determined by taking into account the fair market value (FMV) of the assets forming part of the estate or donation, or the benefit from the life insurance policy.

Encumbrances and liens attached to the assets of the estate or donation, along with the liabilities transferred by the deceased or donor and certain debts and expenses related to the deceased, may be deducted.

The resulting amount is further reduced, regardless of the residence status of the acquirer, by application of certain allowances in cases of inheritance or life insurance benefits, as follows:

- Reductions on inheritance, depending on the family relationship between the heir and the deceased, as follows:
  - Group I: descendants under 21: €15,956, plus €3,990 for each year the descendant is under 21 years. Total reduction may not exceed €47,858.
  - Group II: descendants older than 21, spouse and ascendants: €15,956.
  - Group III: ascendants and descendants by affinity (second- and third-degree collaterals (brothers and sisters, uncles and aunts, nieces and nephews)): €7,993.
  - Group IV: others: there is no reduction.
- Disabled acquirers: €47,858 or €150,253. Disability is determined according to Spanish social security regulations.
- Acquisition of the principal private residence by close relatives: 95% of the real estate value, up to an amount of €122,606.
- Benefits deriving from life insurance policies may be reduced by 100% up to a maximum amount of €9,195 where the beneficiary is the spouse, ascendant or descendant of the payer of the premiums.[2]
- Acquisition of qualified shareholdings in family-owned operating companies by certain relatives (including the spouse of the deceased or donor): This reduction is applicable, up to 95% of the shares' value, provided that a number of requirements are met, including that the conditions required for wealth tax exemption are met as of the date of death. This reduction also applies to donations, subject to the fulfilment of additional requirements.

In case of gifts, the exemptions are generally reduced to the acquisition of qualified shareholdings in family-owned operating companies by certain relatives and to the acquisition of Historical Heritage assets, giving more legislative power to the autonomous regions.

4.2 Net wealth tax

There is a general threshold of €700,000 (lower in some regions) available for each taxpayer, either resident or not resident in Spain. As a result, taxpayers with taxable assets below €700,000 will not be subject to NWT. Nevertheless, NWT rules provide that individuals whose assets and rights' values are above €2 million are obliged to file the NWT return even though the resulting tax liability is zero.

[2] There are a number of transitional measures applicable to life insurance policies contracted before 19 January 1987.

In addition, the law exempts from NWT certain assets and rights, amongst others:

- Habitual dwelling: Each taxpayer has an exemption on the first €300,000 of the value of property (lower in some regions).
- Family business relief: There is a total exemption for family businesses under certain requirements, and as a result, owners of qualifying family businesses might not be taxed under wealth tax on their shares.
- Business assets and property needed for the exercise of a profession or an activity are exempt under certain requirements.
- Works of art are exempt provided that certain requirements are met and the National Heritage regulations are complied with.
- Household items (with some exceptions, such as jewelry or certain type of leather) are exempt.
- The amounts saved through a retirement or pension plan are exempt.

5. Filing procedures

5.1 Inheritance and gift tax

Generally, IGT returns must be filed by the legal deadlines as follows:

- In cases of inheritance or life insurance policies: six months from the date of death
- Donations: 30 days from the date of the gift

However, some of the regions have established a self-assessment procedure. Where this procedure is applicable, tax must be paid upon filing.

Filing forms for this tax are as follows: Form 650 for inheritance and Form 651 for donations. Additionally, Form 652 is used for certain simplified inheritances. These forms are used for both resident and nonresident taxpayers.

Autonomous regions have their own tax forms for gift and inheritance tax purposes. These must be used whenever the region is entitled to collect the tax.

5.2 Net wealth tax

NWT taxpayers must file an annual tax return (Form 714) no later than 30 June of each year in connection with the period of the previous calendar year, along with the payment of the amount of tax due.

6. Assessments and valuations

6.1 Inheritance and gift tax

The tax assessment basis for the Spanish inheritance and gift tax is the FMV of the inherited or donated assets.

6.2 Net wealth tax

The valuation of assets and rights must be performed according to specific rules. For instance, a property is valued at the highest of: (i) the acquisition value, (ii) the cadastral value and (iii) the value declared for other taxes.

7. Trusts, foundations and private purpose funds

Trusts are institutions alien to Spanish civil and tax laws. Additionally, Spain is not a signatory to the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition. As a consequence of this, inheritances or gifts involving trusts must be carefully analyzed, as it is extremely complex to determine their Spanish tax and legal status.

8. Grants

This is not applicable in Spain.

9. Life insurance

Life insurance policies where the payer of the premium and the beneficiary are different persons will be liable for inheritance tax (subject to certain exceptions).

Benefits deriving from life insurance policies may be reduced by 100% up to a maximum amount of €9,195 when the beneficiary is the spouse, ascendant or descendant of the payer of the premiums.

10. Civil law on succession

10.1 Estate planning

Relevant international private law issues

Several regions in Spain have their own civil law system, which is applicable to individuals whose residence, according to Civil Code rules, is in the region. However, we shall refer below to mainstream Spanish legislation only.

International private rules are applicable in the whole of Spain, regardless of the region where the individuals have their residence.

Inheritance

As a general rule, the national law of the deceased governs his or her succession, regardless of whether there is a will or not and regardless of the place of domicile or residence of the deceased. Only in the case of married individuals are forced heirship rights of the surviving spouse ruled by the law governing the marriage (see below), but always observing the forced heirship rights of the descendants.

Dual citizenship status is not recognized by Spanish legislation, with the sole exception of South American countries, Andorra, Portugal, the Philippines and Equatorial Guinea. Consequently, an individual who holds dual Spanish and another citizenship (other than the above) will be deemed Spanish for the purposes of determining the law governing his or her succession.

The fact that several jurisdictions (e.g., England and Wales) remit to Spanish succession laws with regard to Spanish property of its citizens has given rise to complex lawsuits in Spain, where the plaintiff has claimed the application of Spanish forced heirship rules to the inheritance of Spanish-located real estate held by a foreign deceased person.

Although this is still a debatable issue, the mainstream position of the Spanish courts may be summarized as follows:

- The Spanish Civil Code only accepts remissions made by foreign law where the foreign conflict rule remits back to the Spanish law. Spanish courts will never accept remissions to third countries' laws.
- The Spanish Supreme Court has issued several case law decisions regarding remissions to Spanish law in cases of inheritance of Spanish-located properties where the deceased was a non-Spanish citizen. In general, remission to Spanish succession law is acceptable provided that the whole succession is governed by the law of only one country (Spain). Consequently, and generally, the Spanish courts would not accept that the succession by reason of death is governed both by the Spanish law with regard to certain items of the estate (Spanish properties, for instance) and foreign laws with regard to the remaining assets.

10.2 Succession

The rights to the estate of a person are transmitted from the time of his or her death. The inheritance includes all assets, rights and obligations of a person, not extinguished by his or her death. Succession defers to the will of an individual expressed in a will and, failing that, by law. The first is called probate, and the second legitimate. It may also be conferred in part by the will of an individual, and another by law.

10.3 Forced heirship

According to the Spanish Civil Code, forced heirship rules are as follows:

- Children and other descendants are entitled to two-thirds of the estate. One-third must be split equally among all children and the other one-third may be freely given to any of the descendants (children or grandchildren). When a child has died, leaving his or her own descendants, the portion of the estate attributable to the deceased children passes on to his or her descendants.
- If there are no descendants, ascendants are entitled to one-half of the estate, provided that there is no surviving spouse. If there is a surviving spouse, the ascendants' compulsory share is one-third of the estate.
- The surviving spouse's rights over the estate are as follows:
  - If there are descendants, the surviving spouse has a right of usufruct over one-third of the estate.
  - If there are no descendants, but there are ascendants, the surviving spouse has a right of usufruct over one-half of the estate.
  - If there are neither descendants nor ascendants, the surviving spouse has a right of usufruct over two-thirds of the estate.
- Special rules apply in the case of separated couples.

The balance may be freely disposed of by will.

10.4 Matrimonial regimes and civil partnerships

Marriage

According to the Spanish Civil Code, a marriage is ruled by the following principles:

- The common national law of the spouses
- If there is no common citizenship, by the law of the citizenship or residence of either of the spouses, stated in a public deed before the marriage
- Failing this, by the law of the first common domicile after the marriage
- Finally, failing this, by the law of the place of celebration of the marriage

Additionally, before 1991, other conflict laws were in force (generally the husband's national law ruled the marriage), which has caused complex case law.

According to the Spanish Civil Code, the spouses can freely choose the economic regime of the marriage before the marriage or change it during the marriage.

If they do not make an express selection, a joint ownership (*sociedad de gananciales*) will apply.[3] Under this regime, income or gains obtained by any of the spouses during the marriage are made common to both of them.

Both spouses manage common goods jointly. Any asset acquired by any of the spouses under the community regime is deemed to be common to both, unless it is duly proved that it has been acquired using money or goods that only belong to one of the spouses. Each of the spouses will, however, keep sole property, *inter alia*, over the following assets (*bienes privativos*):

- Assets held before the marriage is celebrated or the community regime is established
- Assets received by inheritance or donation
- Assets received in exchange of other *bienes privativos*

Nevertheless, the gain derived from the sale of an individual right is common to both spouses. Additionally, special rules apply to the main family home.

A separate property regime (*separación de bienes*) is selected by a growing number of couples, especially by high-net-worth individuals (HNWIs). In addition, this regime is applicable by default in Catalonia and the Balearic Islands. If this regime is applicable, each spouse has his or her own separate possessions, which are managed individually.

10.5 Intestacy

Testamentary documents and intestacy

A will is a legal document that regulates an individual's estate after death. Spain is a member of the Hague Treaty of 5 October 1961 regarding will formalities, and consequently, will accept the formal validity of a will drawn under:

- The laws of the deceased's domicile, nationality, place of residence at the time of execution of the will or at death
- The laws of the place where the will has been executed
- The laws where real estate is located, but only regarding real estate

If there is no valid will at death, then the deceased's estate passes under predetermined rules known as intestate succession, in the following order:

- Children and other descendants (observing forced heirship rules applicable to the surviving spouse)
- Ascendants (observing forced heirship rules applicable to the surviving spouse)
- The surviving spouse (special rules apply in the case of separated couples)
- Other relatives, up to the fourth degree (uncles, aunts, nephews, nieces and cousins)
- The Spanish state

[3] I.e., spouses who marry without a marriage contract have a joint estate by law.

10.6 Probate

The act by which a person disposes of assets or part thereof after their death is called a will. The testator may dispose of his or her property by inheritance or legacy. A will is a personal act: its formation cannot be left, in whole or part, at the discretion of a third party or made by commissioner or agent.

An individual that has no forced heirs may dispose by will of all his or her property or part thereof for any person having capacity to acquire them.

An individual having forced heirs may only dispose of property in the manner and within the limitations set out in the forced heirship rules stated before.

11. Estate tax treaties

11.1 Unilateral rules

This is not applicable in Spain.

11.2 Double-taxation treaties

For the purpose of inheritance and gift tax, Spain has concluded estate tax treaties with France, Greece and Sweden.

On the other hand, regarding net wealth tax, Spain has a large network of international treaties to avoid double taxation on income. Most of these treaties include net wealth tax provisions.

Sweden

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1. Types of tax

1.1 Inheritance tax

The Swedish unified inheritance and gift tax legislation was abolished in 2004. Hence, gifts transferred after 31 December 2004 and acquisitions of property in relation to deaths occurring after 17 December 2004 are not subject to inheritance/gift tax.

1.2 Capital gains tax

Capital gains on the sale of property such as real estate, securities, artwork and other personal property are taxable in Sweden. The capital gain is calculated as the difference between the proceeds received and the acquisition value of the property. When acquiring property through gift or inheritance, it is necessary to establish the acquisition value for the donor/donee.

In order for a gift to be completed, it is necessary to have it registered in some circumstances, and although gift tax was abolished from 1 January 2005, this can have certain other tax consequences. The transfer of immovable property situated in Sweden must, for instance, be registered with the Swedish Urban Land Administration (*Lantmäteriet*) through applying for registration of a transfer deed. This must be done within three months from the date of the transfer. Similarly, a gift of shares needs to be registered in the shareholders' register, which is either kept by the company itself or by Euroclear Sweden (if listed shares).

Furthermore, on the registration of the transfer of immovable property with the Swedish Urban Land Administration, stamp duty is normally levied. An individual purchasing property is normally liable to pay stamp duty corresponding to 1.5% of the acquisition value. However, transfers on inheritance or gift are not subject to stamp duty, only a registration fee (for 2017, this fee amounts to SEK825).

1.3 Property tax

There is no property tax levied in Sweden on private housing. The tax has been replaced by an annual municipal property fee. However, commercial and industrial buildings are still subject to property tax at a certain percentage of the assessed value.

The municipal property fee is based on the assessed value of the property with a maximum of SEK7,687 or 0.75% (for 2017) of the assessed value for single-family houses. The rules also apply to (i) a plot of land upon which the dwelling is owned by another person (e.g., leasehold), and (ii) dwellings whose assessment value does not exceed SEK50,000. Special rules apply to retired individuals (the fee may not exceed 4% of the early income). There is no property fee for individuals owning their apartment by a tenant owner's association. New buildings containing dwellings are exempt from the fee for the first five years, and the fee is half for the following five years (for 2017, 0.375% of the assessed value or maximum SEK3,843). However, as of 1 January 2013 dwellings with assessment year 2012 and thereafter are exempted from the municipal property fee for the first 15 years. The system with half fee is abandoned.

On properties situated outside of Sweden, there is no property tax or municipal property fee.

1.4 Net wealth tax

There is no wealth tax in Sweden.

Former wealth tax rules were abolished in 2007.

2. Who is liable?

Individuals who are tax resident in Sweden are liable to pay tax on worldwide income and assets.

Furthermore, nonresidents are tax liable on certain Swedish-sourced income. Capital gain on the sale of immovable property situated in Sweden is taxable in Sweden. Nonresidents are also taxed on capital gains on Swedish shares or foreign shares that were acquired when living in Sweden, if they have been tax resident in Sweden at any time during the 10 calendar years immediately preceding the year in which the transaction occurred. Tax treaties often shorten the 10-year period.

2.1 Residency/domicile

There are no differences in Sweden between the determination of residency or domicile.

Individuals living in Sweden permanently are regarded as tax resident in Sweden. Furthermore, individuals present in Sweden for a period of 183 days or more in any given 12-month period are regarded as tax resident in Sweden. In addition, those who have previously been tax resident in Sweden may be regarded as tax resident, if they have essential ties to Sweden.

Individuals who neither live in Sweden nor reside there for a period of 183 days or more, nor have essential ties with Sweden after moving abroad, are regarded as nonresident.

3. Rates

3.1 Capital gains — acquisition value

The acquisition value is normally the purchase price when acquiring the property, including costs relating to the purchase, such as costs for real estate agents and stamp duty.

The acquisition cost for equities should be calculated with the "average method." This means that the acquisition cost for all equities of the same type and series are added together and determined collectively, with respect to changes to the holding. For listed shares and funds, etc., the acquisition cost may, as an alternative, be determined as 20% of the net sale revenue under the "standard rule."

When acquiring an asset by gift or inheritance, the beneficiary takes over the acquisition value of the donor or the deceased. Hence, it is important for the beneficiary to receive information on the price paid by the donor or the deceased for the asset. Special rules apply for gifts given against remuneration.

3.2 Rates

All capital gains are treated as investment income and are taxed at a flat rate of 30%.

The taxable base for sales of private property is 22/30 of the profit, an effective tax rate of 22% (22/30 x 30%), and a loss can be set off against other capital gains with 50% of the loss. The taxable base for sales of industrial property is 90% of the profit, an effective tax rate of 27% (90/100 x 30%), and a loss can be set off against other capital gains with 63% of the loss.

Dividends and capital gains deriving from shares are subject to income tax at the date of payment (the cash principle). Dividends and capital gains on listed shares are fully taxable, whereas dividends and capital gains on unlisted shares are taxable at five-sixths. In other words, the effective tax rate applicable to dividends and gains on unlisted shares is 25% (5/6 x 30%).

Capital losses on listed and unlisted shares may be set off against capital income and other income as follows:

- A capital loss on listed shares can be set off against taxable gains on other shares (listed or unlisted) and other similar financial instruments. As mentioned above, dividends and capital gains on unlisted shares are taxable at five-sixths. Consequently, a loss on unlisted shares is also deductible at five-sixths and can be set off against taxable gains on shares (listed or unlisted) and other similarly listed financial instruments.
- Furthermore, 70% of capital losses not set off against such aforementioned gains are deductible from the taxpayer's other capital incomes such as dividends, interest, gain on bonds, etc.

Special rules apply to qualified shares in closely held companies. There are two ways to determine whether a corporation is counted as a closely held company. One is based on the number of owners of the firm (main rule), while the other is regardless of the number of partners (special rule). A share is considered qualified if the shareholder or a relative is active to a significant degree so that his activity has a significant influence on the income generated by the company during the income year or any of the previous five income years. Qualified shares are taxable at 30% at two-thirds of the dividend and gain (or, in other words, by 20% of the dividend and gain) to the extent the dividend and gain fits within the calculated threshold amount. Any dividend that exceeds the threshold amount is taxed as income from employment, which can vary from 30% to 60%, up to a limit of approximately SEK5.3 million for dividends and approximately SEK5.9 million for capital gains. Capital gains and dividends exceeding the limit are subject to a fixed tax rate of 30%. If the company has a silent partner owning at least 30% of the shares, all dividends or gains are taxed at 25%, assuming the silent partner is not related to the active shareholder.

Special rules apply to holdings in mutual investment funds. The tax is a yield tax and the tax rate amounts to 30%. The taxable base is 0.4% of the fair market value (FMV) as of 1 January. The effective tax rate will therefore be 0.12%.

Sweden has a special type of investment account (*Investeringssparkonto*, or ISK), which is available to private investors investing in listed stock or mutual funds. The investment account is taxed on a standardized basis, calculated as the value of the assets quarterly and transfers during the year of cash or investments. The taxable base is multiplied by 0.75% + the government borrowing rate as per 30 November the prior year (0.27% for 2016), however, never less than 1.25%. Capital gains are not taxed and capital losses are not deductible for investments on this account. For nonresidents, tax treaties must be considered.

4. Exemptions and reliefs

Any capital losses not set off against other capital income will be subject to a tax reduction. The reduction can be used against national and municipal tax of employment income and against federal property tax/municipal property fees of the same income year. The tax reduction is 30% on capital losses up to SEK100,000 and 21% on capital losses exceeding SEK100,000. The same rules apply for all taxpayers regardless of age.

If the loss exceeds the taxes from which a reduction is made, it is not possible for individuals to carry forward those "losses."

5. Filing procedures

The estate of individuals regarded as tax resident in Sweden at the time of their death is set out in an inventory of estate. This inventory must be filed with the Swedish Tax Agency within three months of the date of death. The inventory lists all assets of the deceased, as well as his or her liabilities at the time of his or her death.

6. Assessments and valuations

Due to the abolishment of net wealth tax and inheritance/gift tax, there are no assessments or valuations in Sweden.

7. Trusts, foundations and private purpose funds

In Sweden, trusts are not recognized as a special type of legal entity. Nor is there any special tax regime regarding payments from family trusts. Such payments could be regarded either as taxable capital income, as an inheritance or as taxable income of employment, depending on how the trust is designed.

8. Grants

Income from grants, such as child allowance, housing grants from the social security office, scholarships, etc., is tax-exempt in Sweden.

9. Life insurance

A Swedish life insurance company is obliged to pay a premium tax on life insurance. Individuals who hold foreign life insurance have to pay Swedish yield tax. As of 1 January 2012, the base for yield tax is:

- The value of the insurance on 1 January of the income year
- The value of premiums paid during the first six months of the income year
- Half of the value of premiums paid during the last six months of the income year

As per 2017, the base will be multiplied with the government borrowing rate as of 30 November the year before + 0.75%, with a minimum of 1.25%. The yield tax is 30% of the calculated base for yield tax.

10. Civil law on succession

10.1 Estate planning

There are special rules in Sweden regarding spouses' and cohabitants' common home and household goods. When a marriage or a cohabitant relationship ends, a split of the property has to be made. Estates are normally valued after the taxable value, but it can also be agreed upon between the spouses/cohabitants. If the spouses/cohabitants cannot agree who should receive the home, the spouse who needs the home the most will have the right to it. The need of the home is determined with factors such as who will have the custody of the children or if there is any sentimental value to the property (e.g., a family home throughout generations). For the division of cohabitants' household goods, only the household goods that were bought for the purpose of common use are to be included.

10.2 Succession

The succession hierarchy in Sweden is divided into the following three categories:

- Children and grandchildren
- Parents, siblings and their children
- Grandparents, aunts and uncles

In the first category are the direct heirs, i.e., children and their children. As long as there are heirs in the first category, the third and second will not inherit anything. The property will be split equally with the children. There are no differences made between children born within a marriage or not. If a child of the deceased is dead, the grandchildren will take the place of the deceased child.

If there are no direct heirs in the first category, the parents of the deceased will inherit. If the parents are dead, the siblings will inherit. If the siblings are also dead, the children of the siblings will inherit.

If there are no relatives in the first or second category, the grandparents of the deceased inherit one quarter each. If the grandparents are deceased, their children, i.e., aunts or uncles, inherit. However, cousins may not inherit.

If the deceased was married at the time of death, the main rule is that the spouse inherits everything and common children will have to wait until the death of the other parent before receiving their inheritance. The spouse inherits the property with a right of disposal and has no right to make testamentary arrangements for the received property. When the spouse later dies, the heirs of the first spouse will inherit what is left from the property that was left with a right of disposal. If there are children of the deceased that are not the children of the spouse (stepchildren), the stepchildren have the legal right to receive their part immediately (see Section 10.3).

If there are no heirs in either one of the three categories of succession, the estate will be accrued to the Swedish inheritance fund. The foundation has a nonprofit character that works to promote activities supporting children, youths and people with disabilities.

10.3 Forced heirship

Part of an inheritance can be restricted through a will or the statutory share of inheritance for the first category, i.e., children of the deceased (see Section 10.2). The statutory share of inheritance is half of the inheritance property. The children of the deceased have the legal right to inherit half of the deceased's property. The other half of the deceased's estate can be bequeathed away.

10.4 Matrimonial regimes and civil partnerships

Sweden recognizes a community property regime for all property, whether the property was acquired before entering the marriage or during the marriage. However, the property may be kept separate if declared through a prenuptial contract, or if it was acquired as a gift from a third party or by inheritance on the condition that it should be the separate property of the recipient. A prenuptial contract may be entered into before or after the wedding day.

As to debts, each spouse is responsible for his or her own debts, but spouses are jointly and severally liable to mutual debts.

10.5 Intestacy

To a significant extent, there is freedom of testamentary disposition in Sweden.

However, if the deceased has not left a will, there are legal rules to decide how the estate is divided between the surviving spouse and descendants. As a general rule, the surviving spouse inherits the deceased's estate.

Furthermore, children always have a right to half of the inheritance calculated under certain rules (statutory share of inheritance) of their parents, but generally they do not have access to the property until the surviving spouse is deceased (regarding stepchildren, see Section 10.2). If an individual has bequeathed his or her estate in such a way that less than the statutory share of the inheritance is left in equal shares to his or her children, the children can contest the will. If they do not contest the will, the estate will be divided according to the deceased's will. A will has to be contested within six months from the date when the heir was served the will.

Sweden is party to the new EU regulation regarding succession. As party to the new EU regulation, Sweden accepts wills from other Member States. Following the new regulation, it is now possible to make a choice of law in the will regarding the civil treatment of the will. However, a choice of law does not apply to inheritance tax.

10.6 Probate

A will should be in written form and have two witnesses. The testator should sign the will in the presence of two witnesses, and then the witnesses have to sign the will. The witnesses have to be above the age of 15 and cannot be the spouse, siblings, parents or children of the testator. Neither brothers-in-law nor close relatives can be the witness of a will. Anyone mentioned in the will is also disqualified as a witness. The will does not have to be registered at any special department in Sweden.

11. Estate tax treaties

11.1 Unilateral rules

This is not applicable in Sweden.

11.2 Double-taxation treaties

Sweden has entered into estate tax treaties with several countries. However, as Sweden has abolished estate tax, gift tax and net wealth tax, from a Swedish perspective these are currently not applicable.

Switzerland

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1. Types of tax

Switzerland is a confederation of 26 cantons. In all instances, the cantons maintain autonomy and sovereignty, unless specifically noted by the confederation in the federal constitution. This is especially the case in tax matters. The cantons have their own constitution and may, in turn, confer certain autonomy on the municipalities. In total there are 27 tax jurisdictions, comprising the confederation and 26 cantons.

1.1 Inheritance and gift tax

Nature of the inheritance and gift tax

The cantons have an exclusive right (to the exclusion of the confederation) to levy gift and inheritance taxes. In some cantons, this taxing power is shared with the municipalities, such as the cantons of Vaud and Graubünden.

The cantons of Schwyz and Obwalden do not levy inheritance or gift tax. The canton of Lucerne does not levy gift tax except when the transfer has taken place within five years before the death of the donor. In this case, the gift is subject to inheritance tax.

In the majority of the cantons, inheritance and gift tax is donee-based and is levied on the net share of the inheritance or legacy passing to the beneficiary (the heir, legatee or the donee). In case of an inheritance, the cantons of Graubünden and of Solothurn have maintained an estate tax that is imposed on the net value of the decedent's estate.

Although estate tax is levied at a fixed rate on the net value of the decedent's estate, the rate applicable to inheritance and gift tax charged on the beneficiary depends on the net amount received and the relationship between the beneficiary and decedent; the closer the relationship, the lower the applicable tax rate.

Determination of the tax basis

The tax legislation of the 26 cantons contains specific provisions on the valuation of any assets transferred and on allowable deductions (expenses incurred in connection with the death). Reference needs to be made to the local cantonal rules in any particular case.

1.2 Real estate profit tax

Transfer of real estate may generally be subject to real estate profit tax.

Furthermore, real estate transfer tax and/or real estate register costs may apply. Real estate profit tax is levied by the cantons or the municipalities, and therefore the tax legislation may differ in each canton.

A taxable transfer results because of the sale of real estate or a similar transaction (e.g., the sale of shares in a real estate company). The tax is calculated on the capital gain, and usually a progressive tax rate is applied. For short holding periods, an additional surcharge is levied.

If the transfer of real property takes place in the course of an inheritance or gift, then the real estate tax is not levied but deferred until the new owner sells the property. However, such a transfer may be subject to inheritance or gift tax.

1.3 Endowment tax

The incorporation of a foundation or a similar transaction upon death may be subject to inheritance or gift tax (see Section 2). However, Switzerland does not have a separate endowment tax.

1.4 Transfer duty

Generally, there are no transfer taxes in cases of inheritance or gift transactions. However, certain cantons may levy a transfer tax (*Handänderungsabgaben*) if the transferred asset is real estate.

1.5 Net wealth tax

On the cantonal/communal level, net wealth tax is levied. The tax base includes the worldwide assets, with the exception of real estate or permanent establishments located abroad.

The tax rates are reasonably low and vary widely, depending on the canton and municipality where the taxpayer is resident.

2. Who is liable?

The beneficiary of the assets (heir or legatee) is liable to pay the inheritance tax. When there are several heirs, they are jointly and severally liable to pay the taxes. Estate tax is levied once at a fixed rate on the net value of the estate.

In the case of a lifetime gift, the donee will be liable to pay gift tax. In certain cantons, the donor is jointly liable with the donee to pay gift tax.

Taxable transfers

Inheritance tax is levied on the share of the inheritance passing from the decedent to the statutory heir or to the heir or legatee specified under the terms of a testamentary document. Inheritance tax is also levied on gifts made in contemplation of death.

The contribution of assets to an existing foundation or to a foundation to be created by a last will is subject to inheritance tax. As the foundation is a legal entity not related to the decedent/testator, the highest tax rate will apply. Partial or total exemption may be granted, subject to obtaining a written tax ruling, when the foundation qualifies as a charitable foundation.

The transfer of insurance proceeds that mature at death is subject to inheritance tax, unless they have been subject to income tax. This applies whether or not the proceeds are payable directly to the beneficiary.

Gift tax is levied on *inter vivos* gratuitous transfers of assets and on any transfer of assets made without adequate consideration. In this latter case, gift tax will be imposed on the difference between the fair market value (FMV) of the property transferred and the consideration paid.

The following are also subject to gift tax:

- The *inter vivos* transfer of assets to a foundation
- The transfer of insurance policies that mature during the donor's lifetime
- The forgiveness of a private debt (provided the debtor is solvent)

The disclaimer of an inheritance, the waiver of a right before it has vested or the transfer of assets in fulfillment of a moral duty are, however, not considered as taxable gifts.

Residency/domicile

The inheritance and gift tax is generally levied by the canton in which the decedent had or the donor has his or her legal domicile. In the canton of Solothurn, the inheritance tax is also levied if the procedure of the estate distribution takes place in Solothurn.

The Swiss Civil Law defines legal domicile in cases of inheritance and gift tax as the place in which an individual resided or is residing with the intent of a continuous stay. There is no alternating domicile (as under other Swiss tax laws).

If immovable property is transferred, the canton in which the immovable property is located levies an inheritance and gift tax.

3. Rates

Rates may vary due to the fact that the cantons and municipalities have the right to levy inheritance and gift taxes.

Generally, there are two factors that influence the tax rate: the value of the transferred assets and the degree of relationship of the beneficiary to the decedent or donator.

The tax rates in the different cantons vary from 0% up to 50%. A detailed analysis based on the specific facts and circumstances is highly recommended.

4. Exemptions and reliefs

The majority of the cantons currently exempt the spouse/surviving spouse and the children from inheritance and gift tax.

In the cantons of Appenzell Innerrhoden, Neuchâtel and Vaud, children are still subject to inheritance and gift tax. In all other cantons, they are exempt from inheritance and gift tax.

In certain cantons, such as Zug and Geneva, the parents are also exempted from inheritance and gift taxes.

Government bodies, as well as charitable institutions, are exempt from inheritance and gift taxes. As far as charitable institutions are concerned, exemption (total/partial) is only granted on the basis of a specific tax ruling. No general exemption exists.

5. Filing procedures

Inheritance

The authorities are generally obliged to prepare an estate inventory upon an individual's death.

Depending on the canton, such inventory is usually prepared shortly after the death. The inheritance tax is generally assessed on the basis of such inventory.

Gift

In most of the cantons, gift transfers have to be declared with the authorities by filing a gift tax declaration by the donee (in a few cantons, the declaration has to be filed by the donor). The filing deadline for such declaration may vary in each canton (e.g., for the canton of Zurich it is three months).

The assessment of both inheritance and gift tax is notified to the taxpayer in written form. If the taxpayer does not agree with the assessment, an objection within a defined period (usually 30 days) can be filed.

6. Assessments and valuations

In the majority of the cantons, an estate inventory will provide the basis for the tax assessment. The assessment authority, with the cooperation of the beneficiaries or the beneficiaries themselves, prepare the estate inventory. The beneficiaries are required to file a tax return providing an inventory of the estate.

A tax assessment decision is notified to the beneficiary. The tax assessment decision can be challenged to reconsider and/or appeal to the cantonal judicial or administrative authorities. An ultimate appeal against the final cantonal decision can be brought before the federal Supreme Court.

Inheritance taxes are due within 30 days following the notification of the tax assessment.

Gift taxes are levied on the basis of a donee's self-assessment.

In most cantons, a tax audit can commence at any time within the 10 years following the end of the year of the decedent's death.

7. Trusts, foundations and private purpose funds

Trusts

The concept of trusts does not exist in Swiss civil and tax legislation. Nevertheless, Switzerland has ratified the Hague Convention of 1 July 1985, and the Swiss tax authorities have published guidelines regarding the taxation of trusts in Switzerland.

Taxation of the settlor

A Swiss resident settlor's settlement of assets into a trust may trigger gift/inheritance taxes.

The following criteria will be applied by the tax authorities in examining the trust documents:

Revocable trust:

- The ownership of the assets will not be considered to have been transferred. Income and assets of the trust remain taxable in the hands of the settlor, and distributions to the beneficiaries are considered as gifts from the settlor.

Irrevocable trust:

- The ownership of the assets will be considered to have been transferred to the trustee.
- When the trust is of a discretionary nature, the highest gift/inheritance tax rate will apply because the trustee has no relationship to the settlor.
- When the trust provides for an interest in possession for specific beneficiaries, the competent tax authority may consider that the transfer is made to the beneficiary directly, and the applicable tax rate in such case would depend on the value of the assets transferred and the degree of relationship between the settlor and each beneficiary.

Taxation of the beneficiaries

Beneficiaries of a trust who are residents in Switzerland will face income tax and net wealth tax consequences based upon the distributions received.

Subject to any specific tax ruling that can be negotiated with the competent tax authority, the following general taxing rules will apply:

Distributions/grants out of an irrevocable fixed interest trust

- Income: taxable as income when received
- Capital gain: not taxable as income — free of tax
- Distribution of the contributed assets — not subject to income tax
- Capital: not taxable as income — free of tax

The beneficiary is taxed as if he or she was a usufructuary, and the share of trust corpus allocable to the income distributed will be subject to net wealth tax.

Distributions/grants out of an irrevocable discretionary trust

- Income: taxable as income when distributed
- Capital gain: subject to income tax
- Distribution of the contributed assets — not subject to income tax
- Capital: not taxable as income — free of tax

The beneficiary of a discretionary settlement has only a virtual interest, and no share of the trust corpus is allocable to the income received on a discretionary basis and, consequently, no net wealth tax is levied.

Taxation of the trust/trustee

The trust itself is not subject to tax under Swiss tax legislation. This is also the case for a fully discretionary trust in which all the trustees are residents in Switzerland.

The trustee is considered to hold the trust assets only in a fiduciary capacity and thus is not subject to tax under present Swiss direct tax legislation (income and wealth taxes).

8. Grants

See Section 7.

9. Life insurance

Under certain circumstances, the transfer of an insurance (e.g., life insurance) may be fully or partially considered in the inventory of the deceased and, therefore, be subject to inheritance tax. Additionally, income tax consequences could result if the transfer is not fully subject to inheritance tax.

Nominating a beneficiary of insurance can result in gift tax consequences.

Due to the numerous insurance products, it is essential to analyze any tax consequences on the specific facts.

10. Civil law on succession

10.1 Estate planning

Pre-immigration trust and lump-sum taxation

In setting up a pre-immigration discretionary trust, a foreign (non-Swiss) settlor, resident in Switzerland under a lump-sum tax regulation, can achieve a double-tax optimization: distributions out of the foreign trust remain outside of the scope of lump-sum taxation, and the assets irrevocably transferred into the trust no longer form part of his or her estate at death.

Choice of law to govern succession

A foreign (non-Swiss) citizen who is a resident in Switzerland may choose to have his or her national law apply to his or her estate, thereby circumventing the Swiss civil code forced heirship rules, which might otherwise be an obstacle to flexible succession planning.

10.2 Forced heirship

Upon an individual's death, the heirs are divided into classes. The first class of heirs are the children and their successors. If there are no heirs from that class, the inheritance is divided among the parents and their successors. The third class includes the grandparents and their successors.

The surviving spouse receives:

- One-half of the inheritance if shared with children
- Three-quarters of the inheritance if shared with parents
- The whole in any other case

Under Swiss civil law, the following forced heirships are foreseen:

- For children and their successors: three-quarters of the inheritance as described above
- For parents: one-half of the inheritance as described above
- For the surviving spouse: one-half of the inheritance as described above

The heirs have the possibility of agreeing to another division of the inheritance by setting up a testamentary contract (certain legal requirements have to be considered in this situation).

10.3 Matrimonial regimes and civil partnerships

Swiss civil and international private law

The Swiss civil code, in common with other continental European legislation, attributes to specific categories of heirs (e.g., parent, surviving spouse and children of the deceased person) a fixed share in the estate, otherwise known as forced heirship.

The forced heirship provisions, however, are not a matter of public policy and, in an international context, can be circumvented by a non-Swiss testator who is resident in Switzerland and chooses his or her national law to govern the disposition of his or her estate.

The testator can also agree with the compulsory heirs to enter into a so-called successoral pact whereby the latter renounce their compulsory portion. In an international context, however, the validity of such a successoral pact may not only depend on the law applicable to the succession, but also on the law applicable to the capacity of the parties concerned to enter into such a pact.

Swiss international private law regards the jurisdiction of residence as the competent jurisdiction to determine the law applicable to the succession and the principle of unity of succession.

Issues connected with the matrimonial regime have been intentionally not dealt with, although they form an integral part of a succession planning in the circumstances of a married couple.

10.4 Intestacy

If the decedent has not created a last will, the inheritance is attributed according to Swiss civil law (see Section 10.2).

10.5 Probate

Swiss civil law does not normally require a formal procedure in respect of the presentation of a last will to the heirs. On the contrary, the validity of a will does not depend on specific procedures of filing, approval or opening as long as the formal requirements of drafting are respected.

11. Estate tax treaties

11.1 Unilateral rules

Under unilateral rules, the worldwide assets are generally taxed in the canton in which the decedent or the donor has his or her legal domicile. In the canton of Solothurn, the worldwide assets are also taxed if the procedure of the estate distribution takes place in Solothurn.

As an exception of this general rule, immovable property is taxed at the place in which it is located (unilateral exemption).

11.2 Double-taxation treaties

The unilateral tax rules are also applicable in international circumstances, unless a double-taxation treaty limits the taxation right of the canton. This may be the case if a fixed place of business (permanent establishment) is included in the inheritance.

Estate tax treaties

The confederation has concluded estate tax treaties with eight foreign countries: Austria, Denmark (including Faroe Islands), Finland, Germany, Netherlands, Sweden, the United Kingdom and the United States.

Certain cantons, such as Zurich and Basel-Stadt, have also concluded international tax treaties with foreign countries in connection with inheritance tax.

There are no double-tax treaties with regard to gift tax.

12. Specific rules

Certain rules apply when the testator has proscribed that persons take an interest in his or her estate in succession to each other, i.e., there are current and reversionary heirs. In most cantons, inheritance tax will be levied twice: once upon the transfer of the property to the initial heir, and a second time upon the transfer of the property to the reversionary heir. The applicable tax rate will depend upon the relationship between the decedent and the first heir, and the decedent and the reversionary heir. Some cantons such as Fribourg, Vaud and Jura levy tax once, at the higher rate, depending upon the relationship between the decedent and the first or reversionary heir.

Other rules apply in cases involving the creation of a usufruct. In the majority of the cantons, the beneficiary of the usufruct will be liable to inheritance tax on the capitalized value of the usufruct. The bare owner will pay taxes on the open market value of the capital assets less the capitalized value of the usufruct.

In both cases, tax advice should be sought on the basis of the individual circumstances.

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1. Types of tax

The transfer of goods that belong to Turkish citizens and the transfer of goods in Turkey from one person to another person by inheritance or gratuitously in another way are subject to inheritance and gift tax.

The inheritance and gift tax is also applicable for the goods that Turkish citizens acquire abroad in the same ways.

However, a foreign person who does not have a place of residence in Turkey and who acquires a Turkish citizen's goods that are outside the borders of Turkey by inheritance or gratuitously in another manner, cannot be held liable for the inheritance and gift tax.

The inheritance and gift tax base is the value of the transferred goods determined according to the Tax Procedural Code. See Section 6 for details of valuation. (If deduction of the debt and cost specified in the Inheritance and Gift Tax Law is required, the inheritance and gift tax base is the remaining amount of value of the transferred goods determined according to the Tax Procedural Code after deduction of these debts and costs.)

1.1 Inheritance tax

The transfer of goods obtained from heritage, testament and inheritance contracts is subject to inheritance tax.

1.2 Gift tax

The gratuitous transfer of goods by donation or another manner is subject to gift tax.

1.3 Real estate transfer tax

There is no tax in Turkey called "real estate transfer tax." However, real estate transfer is subject to the taxes mentioned below.

The transfer of real estate that belongs to Turkish citizens, and the transfer of real estate in Turkey from one person to another person by inheritance or gratuitously in another manner, are subject to inheritance and gift tax.

Income derived from the sale of real estate for money by an individual person within five years from the date of acquisition of that real estate is subject to income tax. However, income derived from the sale of real estate transferred by inheritance or gratuitously is not subject to income tax.

1.4 Endowment tax

There is no tax in Turkey called "endowment tax." However, the gratuitous transfer of goods by donation or another manner is subject to inheritance and gift tax.

1.5 Transfer duty

There is no tax in Turkey called "transfer duty." However, the transfer of goods that belong to Turkish citizens and the transfer of goods in Turkey from one person to another person by inheritance or gratuitously in another manner are subject to inheritance and gift tax.

1.6 Net wealth tax

In Turkey, wealth and transfer of wealth are subject to tax. Property tax and motor vehicles tax are taxes on wealth. Also, transfer of wealth to another person by inheritance or gratuitously in another manner is subject to inheritance and gift tax.

2. Who is liable?

2.1 Residency

Recipients of property through inheritance or donation are subject to inheritance and gift tax.

Turkish citizens are subject to inheritance and gift tax on worldwide assets received.

Resident foreigners are subject to inheritance and gift tax on worldwide assets received from Turkish citizens and on assets located in Turkey received from resident foreigners or nonresidents.

Nonresident foreigners are subject to inheritance and gift tax on assets located in Turkey only.

2.2 Domicile

Tax residency and tax domicile have the same meaning from a Turkish tax point of view.

3. Rates

Items acquired as gifts or through inheritance are subject to a progressive tax rate ranging from 10% to 30% and 1% to 10%, respectively, of the item's appraised value.

For the 2017 tax year

Taxable value of the acquisition (*)	Tax rate for inheritance (%)	Tax rate for gift (%)
First TRY210,000	1	10
Following TRY500,000	3	15
Following TRY1.11 million	5	20
Following TRY2 million	7	25
Taxable value more than TRY3.82 million	10	30

* *Please note that for the 2017 tax year, TRY176,600 of inheritance gains and TRY4,068 of gift gains are exempt from tax.*

For the gratuitous transfer of goods from mother, father, spouse and children (other than gratuitous transfers from adoptive child to adoptive parents), gift tax is calculated by using half of the rates in the tariff related to gifts.

4. Exemptions and reliefs

The following transfers are exempt from inheritance and gift tax:

- Household goods transferred through inheritance and personal belongings of the descendant and belongings kept as heirlooms such as paintings, swords or medals
- For the 2017 tax year, TRY176,600 of the inheritance shares corresponding to each child and spouse, including adopted children, from movable or immovable properties, the value of which is determined according to Article 10 (if there are no children, TRY353,417 of the inheritance share corresponding to the spouse)
- Gifts, devices, dowry and other things that are given as per customs (except for immovable properties)
- All charities
- For the 2017 tax year, TRY4,068 of transfers made voluntarily
- For the 2017 tax year, TRY4,068 of prizes won in games of chance defined under Law No. 5602 (dated 14 March 2007) on Regulation of Taxes, Funds and Shares Received from the Revenue of Games of Chance
- The financial support provided duly and in accordance with their purposes as per their status by the persons included within the scope of paragraphs (a) and (b) of Article 3 of the Inheritance and Gift Law, which contains provisions about the persons exempt from inheritance and gift tax
- Salaries given to widows and orphans by public administrations and institutions or institutions subject to Law No. 3659 or associations with public utility or retirement funds (or from organizations with this nature); retirement bonus given apart from these salaries; marriage bonuses given to widows and orphans; collective payments made instead of salaries to the widows and orphans of decedents that had not completed the term of services; and amounts paid to disabled soldiers and orphans of martyrs from seller's share of monopoly administrations
- One fold of the amount accepted under paragraph (b) from the value of all the goods transferred to the children and spouse or mother and father of officers, petty officers and soldiers (including Gendarmerie) who died in a war or in a conflict with bandits, or during movements and practices, or as a result of being wounded in these; and similarly of police department members who died on duty
- In donations made with recourse condition according to Article 242 of the Code of Obligations, in case the donee dies before the donator; donated goods are recoursed to the donator
- Goods transferred in the nature of bare ownership (provided that it stays as bare ownership) except for the transfers made voluntarily between living persons
- Goods allocated to foundations, which are granted with tax exemption by the Council of Ministers, for their incorporation or after their incorporation
- Amounts distributed to owners of commercial-plate vehicles from the money derived from the sales of commercial plates by the traffic commissions authorized with the Council of Ministers Resolution in provinces where plate restriction is applied

- Procedures related to transfer and acquisition through transfer and inheritance of registered immovable cultural assets within the scope of Law No. 2863 on Protection of Cultural and Natural Assets
- Economic transfers and aids to be made to government business enterprises from the budgets of general and annexed budget administrations
- Entitled parts of the state's contribution to the individual retirement account within the scope of Individual Retirement, Savings and Investment System Law No. 4632 and dated 28 March 2001

According to the second, fifth and sixth bullets, exemption limits to be applied in each calendar year are determined by increasing the previous year's exemption limits at the revaluation rate specified as per the provisions of Tax Procedures Code for the current year.

5. Filing procedures

Date for declaration and payment of tax

Declaration of the tax

Inheritance and gift tax is assessed on the declaration submitted by the respondent.

In the case of inheritance:

- The declaration will be submitted within four months starting from the date of death as a rule of law.
- If the death occurs in Turkey and the taxpayer is outside of Turkey, the declaration period is extended to six months.
- If the death occurs outside of Turkey and the taxpayer is in Turkey, the declaration will be six months starting from the date of death.
- In the case of occurrence of death in a foreign country and the taxpayer is in the same foreign country, the declaration period will be four months.
- However, when the death occurs in a foreign country and the taxpayer is in another foreign country, the declaration period is extended to eight months.
- In case of absence, the declaration will be submitted within one month starting from the date of declaration of presumed death.

In the case of gratuitous transmissions, the declaration will be submitted within one month following the date of acquisition of the properties.

For the competitions and lottery drawings organized by real persons or entities and chance games that are defined in Law No. 5602, the declaration will be submitted until the 20th of the following month of the day on which competition, lottery drawings and contests are done.

Payment of the tax

Inheritance and gift tax is paid over three years in two equal installments, in May and November each year. However, for prizes paid to the winners in competitions and lottery drawings organized by real persons or entities and prizes distributed in chance games that are defined in Law No. 5602, gift tax is paid within the submission period of the declaration.

Declaration and payment of tax for the transfer of real estate

Registration of real estate that is gained through succession is done without waiting for the accrual of the inheritance and gift tax, provided that the result is declared to a related tax office within 15 days at the latest starting from the registration date. However, transfer and alienation of the real estate that is gained through succession cannot be done, and no real right can be established over the real estate unless inheritance and gift tax related to acquired real estate is fully paid. Recording officers cannot execute transfer and alienation transactions without a severance document provided by the tax office, otherwise recording officers are held responsible successively for the payment of the tax along with the taxpayer. However, if the taxpayers provide collateral (in terms of collateral defined in Law No. 6183) against the accrued tax, all or part of the real estate gained through succession is allowed to be transferred and alienated.

6. Assessments and valuations

Valuation

Valuation of goods that are transferred through inheritance or other ways is done in two stages.

First, taxpayers value and declare the transferred goods according to the methodologies defined in the Inheritance and Gift Tax Law. According to the Tax Procedural Code, if there is no defined methodology stated in the tax law, wealth declared by taxpayers is subject to second valuation by the tax authority. In this stage, valuation methodologies, which are defined in the Tax Procedural Code, are applied.

Valuation methodologies defined in the Inheritance and Gift Tax Law and the Tax Procedural Code are provided below:

Type of good	Method of valuation (under Inheritance and Gift Tax Law — first valuation by the taxpayer)	Method of valuation (under Tax Procedural Code — valuation by the tax office)
Commercial capital	Shareholders' equity shown in the balance sheet of year preceding the death year. It is also possible to make valuation by using the shareholders' equity in the balance sheet of the death date.	Commodities, ships and vehicles, installments and machines, inventory stock and other movable assets in a commercial capital included in taxable possessions are valuated at arm's-length prices.
Real estate	Taxable value	Taxable value
Movable goods and ships	Market value	Comparable value
Equity	1. If it is listed in a stock market, it is valued with the most recent market price in the three years from death. 2. If it is not listed in a stock market or it is not traded for three years from death, it is valued with nominal value.	Market prices of stocks, whether included in the commercial capital or not, and stocks that are not registered in the stock exchange are valuated at arm's-length prices. If it is detected that there is simulation in the determination of the market price, arm's-length price is taken as a basis rather than this price.
Bond	Nominal value	Market prices of bonds, whether included in the commercial capital or not, and bonds that are not registered in the stock exchange are valuated at arm's-length prices. If it is detected that there is simulation in the determination of the market price, arm's-length price is taken as a basis rather than this price.
Foreign currency	Market value (if the market value does not exist, Central Bank's buying rate is used in calculation)	Market value (Central Bank's buying rate)
Rights	Land registration value for the rights that are subject to registration. Rights that are not subject to registration are not taken into account in the first valuation.	Rights that are subject to registration are valued by land registration value; others are valued by comparable value.

7. Trusts, foundations and private purpose funds

Foundations are institutions of social assistance and social solidarity that meet the needs of different areas of society and help prevent social injustice that occurs as a result of competition of people and institutions.

Established foundations aiming to use at least two-thirds of their overall revenues to fulfill the service or services that took part in the budget of public or private administration can be exempted from tax by the decision of the Council of Ministers.

According to Article 4 of the Inheritance and Gift Tax Code, goods allocated to foundations that are granted a tax exemption by the Council of Ministers for their incorporation or after their incorporation are exempt from inheritance and gift tax.

8. Grants

The transfer of goods by inheritance or gratuitously is subject to inheritance and gift tax. However, transfers and grants mentioned in Section 4 are exempt from inheritance and gift tax.

9. Life insurance

Payment from the insurance company to the heirs as a result of natural death of the life insurance policy owner is subject to inheritance and gift tax, with the tax rate of inheritance. However, payment from the insurance company to a person who is not an heir as a result of the natural death of the life insurance policy owner is the gratuitous transfer of money and is subject to inheritance and gift tax, with the tax rate of gift.

10. Civil law on succession

10.1 Estate planning

This is not applicable in Turkey.

10.2 Succession

Under the "universal succession" principle, heirs automatically gain inheritance in accordance with the law as a whole upon the decedent's death. Heirs directly gain all of the decedent's property rights, receivables, rights of other properties and rights on movable goods and real estate, and they are personally liable for the decedent's debts.

Inheritance may be rejected within three months by the heirs.

10.3 Forced heirship

In Turkey, descendants are the first-degree heirs of the deceased person. Children's heirship has equal share. When children are still alive, the grandchildren do not inherit, but if a child has died before the deceased person, his or her children (grandchildren) inherit their share of the estate.

If there are no children, the parents have automatic inheritance right. Parents have equal heirship shares. If only one parent is living, the descendants of the deceased parent inherit the share attributed to this parent. If both parents are deceased, their children or grandchildren (sisters, brothers, nieces and nephews of the deceased person) receive the inheritance of their parents.

If there are no children or parents, the grandparents have automatic inheritance right. Grandparents have equal heirship shares. If the grandparents are deceased, their descendants inherit their portion.

The spouse will be the heir by these proportions:

- Receive a quarter of the share if there are descendants of the deceased person.
- Receive half of the share if there are parents.
- Receive three-quarters of the share if there are grandparents.
- Receive the entire share if there is no legal inheritance.

If there are no heirs at all, the state of Turkey is entitled to inherit the estate of the deceased.

10.4 Matrimonial regimes and civil partnerships

Participation in goods acquired and matrimonial agreements

In Turkish Civil Law, spouses have the half share of the acquired goods remaining after the deduction of liabilities related to these goods. Some properties of the acquired goods belonging to a spouse are listed in the law as follows:

- Acquisitions resulting from work
- Payments made by social security and welfare entities or personnel relief funds
- Claims paid due to loss of working ability
- Incomes of personal belongings
- Values that are substitutes of acquired goods

According to Turkish Civil Law, matrimonial agreements, which define the proportion of the right on the goods acquired, could also be made. If there is a matrimonial agreement between spouses, shares of each spouse are determined according to this agreement.

10.5 Intestacy

Three types of will are stated in Turkish Civil Law:

1. Legal will
2. Oral will
3. Handwritten will

A legal will is a legal document that regulates an individual's estate after death. Two witnesses are needed, and it is edited by a legal civil officer.

If the will is handwritten, witnesses are not necessary. A handwritten will is required to be fully written and must be signed. It should also include the exact date, which consists of day, month and year, that the will was created. A handwritten will may be left to a notary, justice of the peace or authorized officer in order to be kept in an open or closed manner.

For oral wills, which are possible only in very special cases, including risk of sudden death, being inaccessible, illness, war, etc., two witnesses are required to listen to the last wishes of the devisor and write a will complying to the declaration of the devisor.

If there is no valid will, the rules of intestate succession will apply (see above).

10.6 Probate

A will must be delivered to a justice of the peace after the death of the individual, regardless of whether it is valid or not.

The officer who regulates or maintains the testament, or the person who stores it on request of the deceased person or finds the will, is responsible for delivering the will to the justice of the peace. Otherwise, he or she is responsible for the damage caused by not delivering the will. The justice of the peace examines the will immediately and takes the necessary means of protection and decides to deliver the heritage to the heirs temporarily or manage the heritage legally after listening to the responsible people if it is possible.

Within one month from the delivery of the will, it must be opened and read by the justice of the peace from the settlement area of the deceased person.

Known heirs and other interested parties are called if they wish during the opening of the will.

The same procedures will be performed for subsequent wills.

A certified copy of portions of the will of the rightful heirs will be notified by the judge to the entitled heirs.

11. Estate tax treaties

11.1 Unilateral rules

A foreign person who does not have a place of residence in Turkey and who acquires a Turkish citizen's goods that are outside the borders of Turkey by inheritance or gratuitously in another manner cannot be held liable for the inheritance and gift tax.

The transfer of goods in Turkey from one person to another person by inheritance or gratuitously in another manner is subject to inheritance and gift tax.

11.2 Double-taxation treaties

There are currently no estate tax treaties established between Turkey and other countries.

Ukraine

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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.

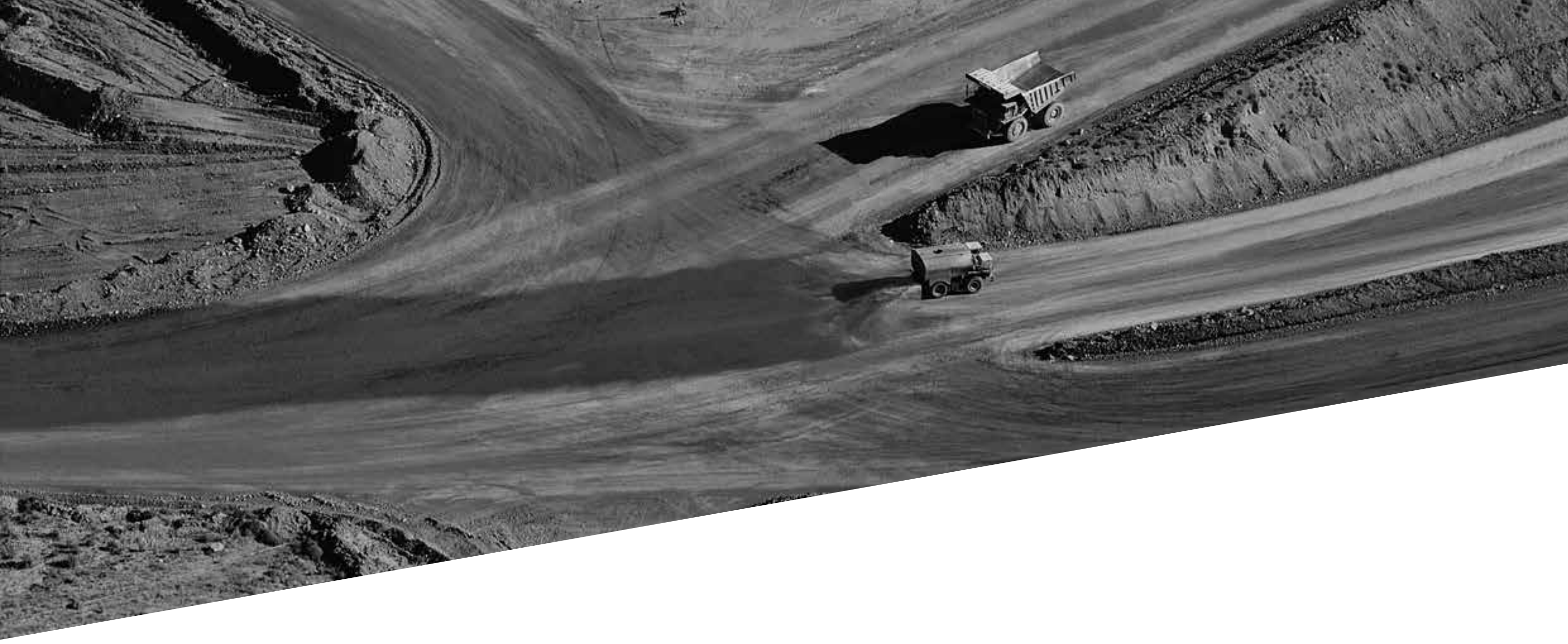
According to the clarifications from the Ukrainian tax authorities, the taxable event for the heir occurs at the moment he or she obtains a certificate on the right to inheritance. Such a certificate can be obtained as late as six months after the inheritance commencement date, which is the actual date 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 non-taxable minimum (i.e., UAH0.85 or €0.03 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 €1.20 at the current exchange rate) per each certificate.

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

*Due to constant local currency rate fluctuations in Ukraine, it is recommended that readers contact an EY advisor for correct rates.



The law stipulates that if a subject matter of a gift agreement is an immovable property or any currency valuables amounting over UAH850 (€30 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 or €0.60) 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 or €0.60) 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 minimum wages established for 1 January of the reporting year (currently, UAH1.2 million or €41,372.87). The tax is UAH25,000, or €875, 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 of Economic Development and Trade of Ukraine 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 of 1.5% of the minimum wage established for 1 January of the reporting tax year (currently, UAH48 or €1.68) 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 pay an additional tax of UAH25,000, or €875, 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 orphan 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 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. 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, motorcycles and motor bicycles, 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.

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 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.

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.

By 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.

By 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 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.

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 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 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 inheritance on general grounds. However, the 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 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 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 inherit 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 apostiled 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 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 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 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-taxation treaties address all types of double taxation, such as residence source, dual residence and dual source and, in most cases, apply to the personal income tax from the Ukrainian side.

Double-taxation 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, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Macedonia, Malaysia, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, Norway, Pakistan, 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 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-taxation 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.

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1. Types of tax

1.1 Inheritance tax and tax on gifts during lifetime

The United Kingdom (UK) has a unified estate and gift tax called inheritance tax (IHT). IHT applies to the value of an individual's estate when he or she dies (in which case he or she is deemed to make a transfer of the whole estate immediately before such time) and to certain transfers or gifts made during the individual's lifetime. The tax applies on the basis of the loss to the donor's estate that arises by reason of the transfer of value.

Adjustments are made to property that increases or decreases in value by reason of an individual's death (e.g., life insurance policies that mature on death and form part of the deceased's estate).

Certain other events give rise to deemed transfers of value, including deliberate depreciatory transactions, sales at an under value, when a person's interest in certain trusts comes to an end, and when a close company (broadly one in the control of five or fewer persons) makes a disposition. In addition, certain trusts are subject to 10 yearly inheritance tax charges and charges when an asset is distributed out of trust.

Types of transfer

Essentially there are three types of transfers for IHT purposes. These are:

Exempt transfers

As noted in Section 4, certain transfers, in a lifetime or on death, attract special exemptions such as gifts to charities and spouses. These attract no tax.

Potentially exempt transfers (PETs)

These are certain lifetime transfers that only become chargeable if the transferor dies within seven years of making the gift. Types of gift that fall within this category include outright gifts from one individual to another.

It should be noted that the potential tax exposure, which would arise on death, can normally be insured at quite competitive rates.

Chargeable transfers

These are immediately chargeable and will use the nil-rate band (see Section 4 below) and any available annual allowances, with any excess being liable at 20% (and potentially higher taxes if death occurs in the following seven years). Common lifetime chargeable transfers include transfers to most trusts or to a company that is not 100% owned by the transferor.

Transfers on death are fully chargeable at 40% to the extent they exceed the available nil-rate band, unless specific reliefs are available (e.g., business property relief) or the transfer is exempt (e.g., a bequest to a spouse (to the extent that the spouse exemption is unlimited — see Section 4) or to an exempt person such as an EU charity).

Transfers by non-UK domiciliaries

With respect to the three types of transfers set out above, it is important to note when an individual is non-UK domiciled and not UK deemed domiciled (as set out in Section 2.2) as special rules apply.

Significant changes have been proposed to the taxation of non-UK domiciled individuals. These were expected to be effective from 6 April 2017; however, the proposals were dropped from the 2017 Finance Bill following the announcement of a general election to be held on 8 June 2017. The expectation is that the dropped provisions will return in a later Finance Bill after the election, regardless of who wins the election, but there is some uncertainty as to the date from which the rules will take effect. Where relevant, these proposals are referred to as the "proposed new non-dom rules" below.

UK residential property held via offshore structures

When the proposed new non-dom rules come into force, a qualifying interest in a non-UK close company or partnership will generally be subject to UK IHT to the extent that the value of the interest is directly or indirectly attributable to a UK residential property. Interests in loans provided in relation to the acquisition, maintenance or enhancement of a UK residential property or to acquire a qualifying interest in a close company or partnership that owns UK residential property will be within the scope of IHT for the creditor. Such debts are generally deductible for the debtor, and restrictions on the deductibility of connected party debts have been removed. Under the proposals, when a UK residential property has been sold following the introduction of the changes, the proceeds will continue to be within the scope of IHT for two years after the sale. When the UK residential property is held within a non-UK trust (with, say, a non-UK company between the trust and property), the trust will be treated as holding "relevant property," meaning the trust falls within the scope of the 10 yearly charges and exit charges. When a company is in place, that company may also be paying the annual tax on enveloped dwellings charges.

Gifts with reservation

A gift where the donor has reserved or retained some direct or indirect benefit or enjoyment over the property given away is treated as being part of the donor's estate for tax purposes until the reservation is removed. It should be noted that this does not affect the normal inheritance tax consequences on making the gift; although, if ultimately this causes potential double taxation, regulations provide appropriate offset to avoid this. For example, a gift to a trust of which the settlor is a beneficiary may trigger a lifetime tax charge at 20% while the asset gifted would still remain within the settlor's estate for IHT purposes. The release of the reservation is regarded as the making of a potentially exempt transfer. These provisions can also be triggered by any informal, non-binding arrangement made with the recipient of the gift to provide a benefit in some indirect way to the donor.

Pre-owned assets charge

This is an income tax charge that depends on whether or not property is included in a person's estate for IHT purposes. The provisions were introduced to counter planning measures that gave the donor continued benefit from the assets given away, but which did not fall within the gifts with reservation legislation outlined above. From 6 April 2005, when a donor has previously owned an asset (either tangible or intangible) and no longer does so, but arrangements have been made to give him or her continued enjoyment of such property without the asset forming part of his or her estate for IHT purposes, an income tax charge is imposed on him or her, broadly based on the value of the benefit he or she receives. The charge applies when there was previous ownership by the donor at any time since 17 March 1986, and complex rules cover situations where substitutions and replacements have been made by the donee since then. Gifts of cash can also cause the provisions to apply if made within the prior seven years. The pre-owned assets charge on intangible property affects assets that are neither land nor chattels placed in a settlement where a settlor still has an interest and where certain other conditions are also met.

1.2. Gift tax

There is no specific gift tax in the UK, although the above sets out circumstances when lifetime gifts can trigger an IHT charge. Additionally, lifetime gifts (other than to a spouse) are treated as disposals for capital gains tax purposes.

1.3. Real estate transfer tax

Stamp Duty Land Tax (SDLT)

SDLT is charged on transfers of land and buildings located in England, Wales and Northern Ireland and certain partnership transactions, at rates ranging from 0% to 15% (the highest rate payable on certain purchases of residential property).

SDLT on residential property

For transfers of residential property, the tax is progressive, with consideration being charged at the percentage applicable to each of the bandings. SDLT is a liability of the purchaser of the land or property.

Since 1 April 2016, the UK Government introduced higher SDLT rates on purchases of additional residential property (and any purchases of residential property by corporate buyers) that complete on or after 1 April 2016 (subject to transitional provisions). The new rates are 3 percentage points above the standard SDLT rates, thereby increasing the maximum SDLT rate to 15%. Transactions under £40,000 are not subject to the higher rates and residential properties, including a tenancy or lease of a residential property, worth less than £40,000 are not taken into account when determining if the higher rates apply. As well as this, subject to certain exclusions, a flat SDLT rate of 15% is payable on certain acquisitions of residential properties above £500,000 by "non-natural persons," such as companies (which are defined as bodies corporate), collective investment schemes and partnerships where at least one of the partners is a company (irrespective of whether these are UK or non-UK entities). This will be relevant for many individuals who use Special Purpose Vehicles (either directly or via offshore trusts) to hold UK residential property and will not be limited to those who have engaged in SDLT planning.

In cases where the property is acquired by way of a grant of a new lease, SDLT also applies at a rate of 1% on the net present value of the rent in excess of £125,000.

SDLT on nonresidential or mixed use property

As regards the acquisition of nonresidential or mixed use property, SDLT is charged on the VAT inclusive consideration. With effect from 17 March 2016 (and subject to transitional arrangements), SDLT is charged at new progressive rates up to 5%. In addition, for new leases of nonresidential (including mixed use) property granted on or after that date, a new 2% rate will be charged on the amount of the net present value (NPV) that exceeds £5 million (below this threshold, the rate applying on the net present value of the rent in excess of £150,000 is 1%). Gifts of land and buildings for no chargeable consideration do not, however, generally incur a charge, although a charge by reference to the market value of the property may arise in certain circumstances (e.g., on the transfer of land and buildings to a connected company, exchanges of land and in relation to certain partnership transactions). There are special rules with regard to leases.

Land and Buildings Transaction Tax (LBTT)

From 1 April 2015, transfers of land and buildings situated in Scotland and certain partnership transactions involving Scottish property are subject to Land and Buildings Transaction Tax (LBTT). This, too, is a progressive charge levied on the value of the consideration received with rates for residential property ranging from 0% to 12%. As with SDLT, a supplemental rate of 3% may be added to each of the rates in certain cases — see below. However, the bandings differ to SDLT. The acquisition of non-residential property is also taxed on a progressive basis and the rates range from 0% to 4.5%. LBTT is also charged on the VAT inclusive consideration. Similar to SDLT, there are special rules for leases.

In line with the higher SDLT rates on additional residential properties purchased in England, Wales and Northern Ireland that apply from 1 April 2016 (see above), the Scottish Government introduced similar higher rates for the purposes of LBTT. The higher LBTT rates apply to purchases of additional residential property (and certain first purchases of residential property by corporate buyers) in Scotland that complete on or after 1 April 2016, subject to transitional measures. The LBTT higher rates apply only to transactions of £40,000 or more.

Land Transaction Tax (LTT)

It is expected that from 1 April 2018, transfers of land and buildings situated in Wales and certain partnership transactions involving Welsh property will be subject to Land Transaction Tax (LTT). It is still too early to give any concrete details about this tax and, therefore, the progress of the legislation should be monitored in respect of relevant transactions.

Annual Tax on Enveloped Dwellings (ATED)

An ATED starting at £3,500, but increasing depending of the property value (but capped at a maximum of £220,350 per annum (p.a.) in 2017/18), applies to those interests held by non-natural persons (as defined above) in a UK dwelling (broadly, an individual residential unit) over £500,000. This charge is separate to SDLT or LBTT and applies to residential properties situated anywhere in the UK. The tax is subject to certain reliefs (e.g., property developers, property rental businesses). When this tax applies, the disposal of the relevant dwelling is also within the charge to ATED-related CGT.

1.4. Endowment tax

There is no endowment tax in the UK.

1.5. Transfer duty

In addition to the potential charge to SDLT/LBTT in relation to the acquisition of UK real estate mentioned above, UK stamp duty is chargeable on documents transferring stock or "marketable securities" (broadly, shares and certain debt instruments) and transfers of certain partnership interests; duty is generally charged at the rate of 0.5% on the consideration given. If no consideration is given, there is no charge to stamp duty.

UK stamp duty reserve tax (SDRT) arises on an agreement to transfer "chargeable securities" (broadly, shares, stock and loan capital) and is also charged at the rate of 0.5% on the consideration paid. It is essentially an alternative tax to stamp duty and, subject to meeting certain conditions, when the relevant document of transfer is duly stamped, this will cancel the charge to SDRT that would otherwise arise on the agreement to transfer the relevant chargeable securities. SDRT is therefore generally payable when the chargeable securities are transferred electronically.

With appropriate implementation, these taxes broadly do not apply in practice to transfers of shares in non-UK incorporated companies.

There is not otherwise any specific transfer duty in UK law, although the above sets out circumstances when lifetime gifts can trigger an IHT charge.

1.6. Net wealth tax

There is no net wealth tax in the UK. However, the annual ATED charge (mentioned in Section 1.3) applies from April 2013 for certain residential properties held by "non-natural persons."

2. Who is liable?

The taxation of individuals in the UK is determined by their residence and domicile status (see below), although residence is less important for IHT. IHT is levied on the worldwide estate of a decedent who was domiciled in the UK and on the UK sited assets of a person who was not domiciled in the UK. Non-domiciled here means also not deemed domiciled (see below). Lifetime gifts may also be subject to IHT on the same basis for UK domiciliaries and non-UK domiciliaries. The decedent's personal representative (i.e., the person charged with administering his or her estate under the terms of his or her will or under the intestacy laws) or the donor of a lifetime gift is normally liable for payment of IHT (rather than the donee), but various provisions exist for recovery of unpaid tax from other persons (e.g., the recipients of gifts or the trustees of settlements). However, in the case of a potentially exempt transfer (see below), where tax only arises if the donor dies within the following seven years, the donee is the person primarily liable to pay the tax. When the tax arises on trust assets, it is normally the trustees who are liable to make payment.

2.1 Residency

From 6 April 2013, a statutory residence test (SRT) has been implemented in the UK. The SRT is a three-part test:

1. Automatic overseas test
2. Automatic residence test
3. Sufficient ties test

The sufficient ties test will determine when a person is considered to be UK resident by virtue of analyzing the number of days spent in the UK and the number of connecting factors he or she has with the UK. Examples of connecting factors are the availability of accommodation, where his or her family live and UK employment. Broadly, the greater number of connecting factors an individual has to the UK, the fewer days he or she is able to spend in the UK before being treated as a UK resident.

2.2 Domicile

- Under English Law, an individual's domicile is the country considered to be their permanent home, even though they may be resident in another country. Every person is born with a domicile of origin, which is normally that of their father at the date of their birth. The fact that a person does not live in the country he or she regards as his or her permanent home for many years does not preclude him or her from being domiciled there under English law, provided he or she has not formed an intention to make any other country his or her permanent home.

- A person may, however, acquire a domicile of choice that displaces his or her domicile of origin by moving from one country of residence to another and living there with the intention to remain in the new location permanently. The onus of proving a change of domicile is on the person asserting the change, and the burden of proof when the assertion is the loss of a domicile of origin is onerous.
- For IHT purposes, the concept of domicile is extended to include certain persons who have been resident in the UK in any part of 17 or more of the previous 20 UK tax years (6 April to the following 5 April). This is known as deemed domicile. In reality, this may be less than 17 calendar years as the calculation is by reference to the number of tax years (or part) in which an individual has been UK resident for income tax purposes. In addition, a person who is domiciled or has become deemed domiciled in the UK, but leaves to reside permanently elsewhere, or otherwise acquires a non-UK domicile, will continue to be deemed to be domiciled in the UK for three calendar years thereafter.
- Under the proposed new non-dom rules, an individual with a non-UK domicile will be treated as deemed domiciled in the UK once he or she has been resident in the UK for 15 out of the previous 20 tax years. Split years will count as years of residence for this purpose. Individuals born in the UK with a UK domicile of origin ("Returning Doms") will be deemed domiciled in the UK when they are resident in the UK. Returning Doms will be "deemed UK domiciled" for any tax year in which they are UK resident provided they were also UK resident for at least one of the two preceding tax years.
- When one spouse is UK domiciled and the other is non-UK domiciled, there is a lifetime limit of the prevailing nil-rate band (currently £325,000) on the property which can be passed to the non-UK-domiciled spouse under the spouse exemption.

From 6 April 2013, the non-UK-domiciled spouse can elect to be treated as UK domiciled for the purpose of IHT. This would allow an unlimited exemption for transfers of property between spouses, but would bring the whole estate of the non-UK-domiciled spouse into the UK inheritance tax net. An election of this type should relate only to inheritance tax and should not have an impact on their domicile for other purposes (so it would not, for example, prevent them from claiming the remittance basis). The election may be made either during lifetime or on death (by the personal representatives of the decedent's estate). While the election is defined as being irrevocable, there are circumstances under which the election, while not revoked, will nevertheless cease to be effective. This occurs once the person making the election ceases to be UK tax resident for four consecutive tax years.

3. Rates

Lifetime transfers

Lifetime chargeable transfers are taxed at a rate of 20%. If death occurs within seven years of making a gift, then tax on a PET arises at up to 40% and further tax on a previous chargeable gift may arise, at up to 20%, subject to the following reductions:

Number of years after gift made	Percentage of death tax due
0–3	100%
3–4	80%
4–5	60%
5–6	40%
6–7	20%
7 or more	0%

In the case of a lifetime chargeable gift where higher tax becomes payable at death, the tax previously paid is offset against the death taxes due.

Transfers on death

Transfers on death are charged at 40%.

Under the proposed new non-dom rules, when a will contains a charitable legacy leaving at least 10% of an individual's estate to charity, this will reduce the inheritance tax rate applied to that estate by 10% — meaning that the effective tax rate will be reduced to 36%.

The new lower rate will apply automatically to any component of an estate that meets the 10% condition. However, the legislation contains a provision to allow the "appropriate persons" in relation to that component to opt out of the provisions. They may choose to do this when it is expected that the benefit of the low rate will be minimal and they do not wish to incur the cost of valuing assets donated to charity.

Trusts

Trusts are also liable to IHT (see Section 7 below) on each 10-year anniversary of the trust's creation, and on distributions to beneficiaries between these anniversaries. The maximum rate charged at these events is 6% of the fund value.

Date for payment of tax

Lifetime transfers

On chargeable transfers made between dates:

6 April and 30 September	Payment is due on 30 April of the following year.
1 October and 5 April	Payment is due six months after the end of the month in which the chargeable transfer was made.

From 6 April 2014, the tax payment and filing dates for certain trust charges changed so that they must be reported within six months of the transfer, and any tax must be settled within the same timeframe.

Transfers on death

On transfers at death, and extra tax becoming payable on chargeable lifetime transfers and potentially exempt transfers made within seven years of death, payment is due six months after the end of the month in which death occurred.

4. Exemptions and reliefs

IHT is charged on a cumulative basis so that the values of all gifts made within the previous seven years, which do not qualify for exemptions or reliefs, are added together. IHT is charged at a zero rate on an amount known as the nil-rate band, which is £325,000 for the tax year 2015–16 and fixed until 2017–18. The UK Government currently proposes that in addition to the abovementioned £325,000 "general" nil-rate band, an additional "main residence" nil-rate band will be introduced for main home transfers on death. It is proposed that such "main residence" nil-rate band will be £100,000 from 2017–18, gradually increasing to £175,000 in 2020–21 (this relief is gradually phased out for main residencies worth more than £2 million). When two individuals are married or in a civil partnership, any percentage of the unused nil-rate band (and "main residence" nil-rate band once introduced) on the first death can be transferred to the surviving spouse's/civil partner's estate on second death. As mentioned in Section 1.1, chargeable lifetime transfers in excess of this cumulative amount are currently charged at 20% (although if death occurs in the following seven years, this figure may be increased). Transfers on death are charged at 40%. Certain lifetime transfers are regarded as exempt (see below) and others as potentially exempt (see Section 1.1).

There are a variety of exemptions and reliefs available to prevent a charge to tax arising on transfers of property. These include the following:

Asset/purpose-related exemptions

During lifetime or at death, the following gifts can be made tax-free without affecting the £325,000 nil-rate band:

- Transfers of any amount to a UK-domiciled spouse or civil partner, or between two non-UK-domiciled spouses or civil partners

- Transfers by a UK-domiciled spouse or civil partner to a non-UK-domiciled spouse or civil partner up to the current nil-rate band and unlimited if election made (see Section 2.2)
- Gifts to certain favored bodies (e.g., UK-registered charities)
- Gifts of certain favored types of property (e.g., heritage property)
- Gifts of agricultural or business property (that can qualify for 50% or 100% relief depending on the nature of the property)

From 5 December 2005, same-sex couples were able to register as civil partners under the Civil Partnership Act 2004 and benefit from the same exemptions and reliefs as married couples, and the Marriage (Same Sex Couples) Act 2013 gives further rights to same-sex couples.

Lifetime gift exemptions

The following exemptions are available for lifetime gifts only:

- Gifts of up to £250 per donee per tax year
- Annual exemptions of up to £3,000 on chargeable transfers made in a tax year (this can be carried forward for one year only)
- Gifts of between £1,000 and £5,000 in anticipation of marriage or civil partnership (depending on the identity of the donor)
- Payments for family maintenance (e.g., spouse and minor children or children in full-time education)
- Normal expenditure out of income which does not affect the donor's standard of living

Quick succession relief

In addition, if a person inherits assets and dies within five years thereafter, a form of quick succession relief allows a proportion of tax on the earlier death to be set against the tax at the later death.

5. Filing procedures

In England and Wales, a Form IHT400 must be used to deliver an account of a deceased's taxable estate to HM Revenue & Customs' (HMRC) Capital Taxes Office within 12 months of the end of the month of death. Any inheritance tax due must also be paid within six months after the end of the month in which the deceased died. This is normally done simultaneously with the application for a grant of probate to administer the estate as the tax must be paid before this is issued.

In Scotland, the rules are slightly different. An inventory of the estate must be completed and presented to the local Sheriff Clerk or Commissary Office in Edinburgh for the issue of Confirmation (which is the equivalent of grant of probate) along with a C5 Form if the estate qualifies as either an excepted estate or an exempt excepted estate. If the estate does not qualify, a Form IHT400 must be submitted to HMRC. All the accounts should be sent in within 12 months of the end of the month in which death occurred.

Periodic and exit charges for trusts are reported on Form IHT100, and the form must be submitted within six months of the charge. Chargeable lifetime events (except those that are excepted transfers or settlements) must be reported on Form IHT100 within one year of the event.

6. Assessments and valuations

For UK IHT purposes, assets are valued at the price that it would be reasonably expected to fetch if sold in the open market.

There is specific guidance that applies to the valuation of shares and securities, where there are two possible valuation methods:

- The quarter-up method
- The average of the highest and lowest marked bargains

In addition, an adjustment will be required when the share or security is quoted ex-dividend or ex-interest.

In some circumstances, liabilities (e.g., loans secured on the asset) can reduce the value subject to IHT. It should be noted that the deductibility of loans is disallowed when they have been taken out to acquire or enhance excluded property, relievable property and where there is no intention to repay the loan on death (subject to limited grandfathering provisions).

From 2014, this rule has been extended to disallow the deductibility of borrowed funds deposited into a foreign currency account with a UK bank. Such accounts are now included in the definition of "excluded property."

7. Trusts, foundations and private purpose funds

From an estate planning point of view, trusts are often used as a means of making lifetime gifts to enable the donor to place constraints on the donee. Property will normally be gifted at a time when it does not attract an IHT liability, and any growth in value of assets held by the trust is outside of the donor's estate — provided that the donor and donor's spouse cannot benefit from the trust. Care needs to be taken when making gifts, as this can attract a capital gains tax liability on any unrealized appreciation in the asset.

Under the proposed new non-dom rules, the UK Government proposes to change the IHT regime for trusts (please see the summary of the key proposed changes below in this section).

Types of UK trust

Bare trust

A bare trust is the simplest form of trust where property is held effectively as nominee for another person. For legal purposes, the trustees have certain duties and obligations, but for UK tax purposes, the trust and gifts to it are treated as if the beneficiary were the owner of the assets themselves.

Interest in possession trust

An interest in possession trust, or life interest trust, is one that confers on one or more persons a right to receive the income with, in some cases, potential discretionary distributions of capital. From 22 March 2006, gifts to an *inter vivos* interest in possession trust follow that for discretionary trusts (see below), whereas those that are created as an immediate post-death interest will not be part of the relevant property regime (see below).

Discretionary trust

A discretionary trust is one where the trustees have discretion over distributions of capital and income, including accumulation and maintenance trusts.

An accumulation and maintenance trust is a type of discretionary trust, for a class of beneficiaries under 25 years of age, which prior to 22 March 2006 (provided it complied with special rules) had beneficial ongoing inheritance tax treatment. This tax treatment is no longer available and the tax treatment follows that of a discretionary trust, as set out below. In place of accumulation and maintenance trusts, there are two new trust regimes: trusts for bereaved minors and 18–25 trusts, and, provided certain conditions are met, each trust has a more beneficial inheritance tax treatment than a normal discretionary trust. However, as far as new trusts are concerned, both these new categories of trust can only be set up on death.

Creation of trusts and transfers of assets in

The creation of an interest in possession trust or a discretionary trust, or the transfer of property into such a trust, is, generally speaking, a chargeable lifetime transfer.

The gift to a trust may therefore incur a lifetime IHT charge of 20% if the value of assets given over the seven-year cumulative period exceeds the nil-rate band or the transfer does not otherwise qualify for relief. Additionally, trusts that are in the relevant property regime will be subject to periodic and exit charges. This means that a tax charge of up to 6% of the fund value applies at each 10-year anniversary of the trust's creation (the periodic charge) and, proportionately, on distributions from the trust between these anniversaries (the exit charge). Income that has not been accumulated but remains undistributed for more than five years at the date of a periodic charge will now be deemed to be capital for the calculation of the charge. In 2015, legislation was introduced that targets the use of multiple trusts by the settlors on death thus preventing the use of the multiple nil-rate bands. Prior to 22 March 2006, the creation of an interest in possession trust and an accumulation and maintenance trust were potentially exempt transfers. Since 22 March 2006, only the following gifts into trust should qualify as a potentially exempt transfer:

- A gift into a qualifying disabled person's trust
- A gift into a bare trust created for an individual beneficiary

Non-UK settlements

Trusts, whether or not UK resident, which are created by UK-domiciled or deemed domiciled individuals, are subject to the UK IHT legislation, regardless of the residence of the settlor at the time of their creation or the *situs* of the assets held. Whenever trusts are formed by non-UK resident persons, care needs to be taken to ensure they are not still deemed to be UK domiciled and thus subject to the UK IHT provisions.

Excluded property settlements

If a trust is established by a settlor when he or she is non-UK domiciled (and when he or she is also not deemed domiciled in the UK) and the trust assets are sited outside the UK, the trust is an excluded property trust. This means that the assets, provided they are situated outside the UK at the time of any charge to IHT, will remain outside the scope of IHT, even if the settlor subsequently becomes UK domiciled or deemed domiciled. As the law currently stands, the trust can therefore offer total protection against IHT for such assets. Such trusts are normally non-UK-resident trusts since this status can also attract capital gains tax benefits.

Under the proposed new non-dom rules, excluded property settlements established by non-UK-domiciled persons should retain their UK tax privileged status even when the non-UK-domiciled settlors become deemed domiciled for UK tax purposes (under the proposed "15 out of the 20 years" deemed domicile rule, please see section 2.2 above). However, trusts established by those with the UK domicile of origin returning to the UK (Returning Doms) and holding non-UK *situs* assets will no longer be excluded property (and therefore may be exposed to UK IHT on 10-year anniversaries and in distributions of capital from the trust) if the settlor is UK resident and deemed domiciled at the relevant time.

It is also possible to take advantage of the excluded property trust status when the assets are sited in the UK. This can be achieved by means of the trust owning the UK assets through a non-UK incorporated company. The assets of the trust are in these circumstances regarded as being the shares in the company (which are regarded as non-UK *situs* assets) rather than the underlying assets situated in the UK. Certain assets should typically not be held in this way, as there may be other UK tax disadvantages (e.g., UK real estate occupied by a beneficiary).

When the proposed new non-dom rules come into force, all UK residential property owned by non-UK companies and other entities (for example, partnerships or foundations) will be brought within the scope of UK IHT. The value of the interest in the entity holding the property will be within the scope of IHT to the extent it derives its value from UK residential property (less any relevant borrowings), thus negating the planning outlined above. Interests in loans provided in relation to the acquisition, maintenance or enhancement of a UK residential property or to acquire a qualifying interest in a close company or partnership that owns UK residential property will also be within the scope of IHT for the creditor. Such debts are generally deductible for the debtor, and restrictions on the deductibility of connected party debts have been removed. The relevant chargeable events for UK IHT purposes may include the following:

- The death of the individual, wherever resident, who owns the company shares

- A gift of the company shares into trust
- The 10-year anniversary of the trust
- Distribution of capital (such as company shares) out of trust
- The death of the donor within seven years of having given the company that holds the UK property away to an individual
- The death of the donor or settlor when he benefits from the gifted UK property or shares within seven years prior to his death.

8. Grants

With regard to estate taxes, there are no specific rules in the UK.

9. Life insurance

The proceeds from a life insurance policy will fall into an individual's estate on death and trigger an IHT charge on assets passing. It is possible, however, to write the policy into trust so that it falls outside the estate and, consequently, the value is not chargeable on death.

10. Civil law on succession

10.1 Estate planning

UK domiciliaries and UK deemed domiciliaries

Estate planning for UK domiciliaries and deemed domiciliaries has become more limited since 22 March 2006, but the following remain viable mitigation techniques:

- Lifetime gifts that constitute PETs or annual gifts out of income
- Lifetime gifts that are exempt
- Investing in assets that qualify for reliefs such as business property relief or agricultural property relief
- Settling assets into trust to create a nil-rate band trust

Non-UK domiciliaries

The main planning that individuals who are not UK domiciled should consider is the creation of an excluded property trust (discussed above in Section 7) prior to becoming deemed domiciled in the UK.

10.2 Succession

There are no compulsory succession rules in England and Wales, other than the statutory rules of intestacy covered below in Section 10.5.

In Scotland, however, members of the family have automatic inheritance rights irrespective of the provisions in a will (legal rights), and these rights are covered below in Section 10.3.

10.3 Forced heirship

England and Wales

There are no compulsory inheritance rules or forced heirship rules in England and Wales. However, if no provision has been made for his or her spouse or for other persons financially dependent on the deceased, a claim against his or her estate may be made under the Inheritance (Provision for Family and Dependents) Act 1975.

Scotland

In Scotland, a spouse and children (and grandchildren, if his or her parent has predeceased) have automatic inheritance rights irrespective of the provisions in a will (legal rights). These can be claimed as an alternative to accepting any inheritance under the will. It is not possible to accept both. If there are no children, Scots law provides a surviving spouse with half of the net movable estate (assets excluding buildings and land). If there is no spouse, the children take half of the net movable estate. If there are spouse and children, the spouse and the children (jointly if more than one) each takes one-third of the net movable estate. The balance can be freely disposed of by will or by the laws of intestacy if there is no will.

These rights under Scots law can be defeated by lifetime gifts to others or to trusts of the individual's movable estate. It is difficult to completely defeat legal rights, however, as there is almost always some movable property remaining in an individual's estate on the date of death.

10.4 Matrimonial regulations and civil partnerships

There is no concept of matrimonial or community property in the UK.

10.5 Intestacy

Testamentary documents and intestacy

A will is a legal document that regulates an individual's estate after death. Subject to what is said above with regard to Scotland, in England and Wales an individual generally has complete freedom of disposition.

The UK will normally accept the formal validity (i.e., of the document itself) of a will drawn under the laws of the deceased's domicile, nationality or place of residence at the time of making the will or at death. In England and Wales, the requirement is that the testator sign at the end of the will in the presence of two witnesses, who must sign in his or her presence and in the presence of each other. In Scotland, the testator must sign every page in the presence of one independent witness. A will can generally be revoked and replaced, save in limited circumstances where mutual wills have been written.

Whether he or she has the personal legal capacity to make the dispositions in the will is generally governed by the law of the deceased's domicile. In the case of the UK, this means the law of the *situs* of the assets will be relevant when real estate is concerned, and the law of the deceased's domicile will be relevant in the case of other assets.

If there is no valid will at death, then the deceased is intestate and his or her estate passes under the statutory rules of intestate succession. When there are cross-border issues, the conflicts-of-law provisions will be relevant, which are beyond the scope of this chapter.

The intestacy rules are different depending on whether the individual is domiciled in England, Wales or Scotland on his or her death.

The following tables set out the current rules:

Intestacy rules in England and Wales

	Spouse or registered civil partner and children* survive decedent	Spouse or registered civil partner and parents survive decedent but no children, grandchildren or great-grandchildren	No spouse or registered civil partner survives decedent
Personal effects	Spouse or registered civil partner	Spouse or registered civil partner	–
Legacies	£250,000 and personal possessions to spouse or registered civil partner		–
	*		
	One-half of the rest To spouse or registered civil partner outright	To spouse or registered civil partner outright	‣ Whole estate in order of priority to the exclusion of all others:
			‣ Children (at 18 years old or when married if before) or grandchildren if they have predeceased
	One-half of the rest To children in equal shares at 18 years old (or when married if before) and on trust until that time (surviving grandchildren take the share of a deceased child)		‣ Parents
			‣ Brothers and sisters (nephews and nieces, if they have predeceased)
			‣ Half-brothers and half-sisters (their children, if they have predeceased)
			‣ Grandparents
			‣ Uncles and aunts (their children, if they have predeceased)
			‣ Half-brothers and half-sisters of decedent's parents (and their children if they have predeceased)
			‣ The Crown

** Children of a predeceased child of the intestate parent take their parent's share.*

Intestacy rules in Scotland

	Spouse or registered civil partner and children* survive decedent	Spouse or registered civil partner survives decedent but no children*	Children* survive decedent but no spouse or registered civil partner	Neither spouse nor registered civil partner nor children* survive decedent
1. Dwelling house right	To spouse or registered civil partner up to a value of £473,000; balance per #5 below	To spouse or registered civil partner up to a value of £473,000; balance per #5 below	–	–
2. Furniture and plenishings	To spouse or registered civil partner up to a value of £29,000; balance per #4 then #5 below	To spouse or registered civil partner up to a value of £29,000; balance per #4 then #5 below	–	–
3. Financial provision	£50,000 to spouse or registered civil partner	£89,000 to spouse or registered civil partner	–	–
4. Legal rights	One-third of net movable estate to spouse or registered civil partner; one-third to children	One-half of net movable estate to spouse or registered civil partner	One-half of net movable estate to children	–
5. Balance of estate (heritable and movable) s2 of 1964 Act (i.e., Succession (Scotland) Act 1964)	To children	One-half to surviving parents and one-half to surviving siblings. If no surviving parents, all goes to siblings. If no surviving siblings, all passes to parents. If no surviving siblings or parents, all passes to spouse or registered civil partner.	To children	One-half to surviving parents and one-half to surviving siblings. If no surviving siblings, all passes to parents. If no surviving parents, all passes to siblings. If none of the aforementioned, all passes to aunts and uncles. If no aunts and uncles, all passes to grandparents. If no grandparents, all passes to brothers and sisters of grandparents. If none of the aforementioned, all passes to remoter relatives and if none of those, ultimately to the Crown.**

** When a child would have had a claim had he or she not died before the intestate parent, his or her descendants may claim that child's share.*

*** When a relative would have had a claim under these rules had he or she not died before the intestate individual, that relative's descendants may claim that relative's share. In this way, an intestate's nieces and/or nephews could have a claim if the estate (or part of it) was due to pass to the intestate individual's brothers and sisters, but one or more of the brothers or sisters died before the intestate leaving children.*

10.6 Probate

In England and Wales, the granting of probate (when there is a will) or letters of administration (when there is no will) and, in Scotland, the obtaining of Confirmation, allows the personal representatives to administer the deceased's estate and for the assets to be passed to the beneficiaries as named in the will or by the laws of intestacy. Probate will only be granted when the tax due under the estate has been settled or, in limited circumstances, when an installment option has been agreed with the authorities. The payment date for tax due is six months after the end of the month in which death occurred (see Section 5 above), after which interest will be charged on the outstanding sum. In England, the estate can be distributed as soon as a grant has been received. In Scotland, the personal representatives (executors) must wait six months from date of death before distributing in order to deal with any creditor claims (otherwise, they may be legally liable for any unpaid debts).

11. Estate tax treaties

11.1 Unilateral rules

When an asset is subject to tax overseas in a jurisdiction that does not have an estate tax treaty with the UK, unilateral rules will apply. Unilateral credit is given when inheritance tax and overseas tax are chargeable by reference to the same event and attributable to the value of the same property. In addition, the overseas tax must be similar in character to inheritance tax. The amount of tax relief given is capped at the lower of overseas tax paid and UK tax due.

11.2 Double-taxation treaties

The UK has concluded estate tax treaties with France, India, Ireland, Italy, the Netherlands, Pakistan, South Africa, Sweden, Switzerland and the United States.

United States

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1. Types of tax

1.1 Estate tax

The United States (US) imposes an estate tax on the transfer of a decedent's taxable estate at death. US citizens and residents dying after 31 December 2012 are subject to a top estate tax rate of 40% and are entitled to a US$5 million estate tax exemption, which is adjusted annually for inflation (US$5.49 million for 2017). Nonresident aliens are also subject to a top estate tax rate of 40%, but their estate tax exemption amount is only US$60,000 and is not indexed for inflation.

The US imposes an estate tax liability on all US citizens and residents. See Section 2.2 for a discussion of who is a US resident and a nonresident alien for estate tax purposes. The estate tax will ultimately be assessed upon the taxable estate (i.e., the gross estate, less applicable deductions). For a US citizen or resident, the gross estate is the fair market value (FMV) of a decedent's worldwide assets at date of death; the taxpayer may also elect an alternative valuation date six months after date of death. See Section 5.1 for filing procedures.

For an individual who is neither a US citizen nor a US resident (i.e., a nonresident alien), the gross estate includes only US *situs* property owned at death. The Internal Revenue Code (IRC) determines the *situs* of different types of property, the treatment of which may be modified through the application of estate and gift tax treaties that the United States has concluded with various countries (see Section 11). Under the IRC, US *situs* property includes real and tangible personal property located in the United States, stock or options issued by a US corporation, debt of a US person (except portfolio debt), deferred compensation and pensions paid by US persons, and annuity contracts enforceable against US obligors. It does not include US bank deposits, insurance on the life of a nonresident alien, stock issued by non-US corporations or pensions payable by non-US persons.

Retained interests

Due to retained interest rules, the reach of the estate tax is broader than simply the assets a decedent owned at death. Notwithstanding attempts to make lifetime transfers, some transferred property may be deemed to remain within the decedent's gross estate at his or her death. The following retained interests may be included in a decedent's gross estate:

- Certain gifts made within three years of death
- Transfers with a retained life estate
- Transfers taking effect at death
- Certain annuities
- Interests owned jointly
- Transfers that provide for broad powers of appointment
- Revocable transfers

The retained interest rules also apply to the estate of a nonresident alien. The definition of the gross estate of a nonresident alien is "that part of his gross estate … which at the time of his death is situated in the United States." Therefore, the estate will be subject to the same definitions of retained interests or powers as those that apply to the estate of a US citizen or resident alien — limited by the *situs* rules.

Situs rules provide that property subject to the retained interest transfer rules will be deemed situated in the US if such property was so situated either at the time of transfer or the time of death. This presents a number of issues for estate planning with respect to nonresident aliens. A transferor should therefore remain aware that transferring US property into a foreign entity may not convert the property to foreign *situs* property, even if the foreign entity no longer holds US property at the date of death.

Basis

All property subject to the estate tax receives a step-up in basis to its FMV on the day of the decedent's death. Each transferee's basis in property received by a decedent is its FMV for federal income tax purposes, regardless of the transferor's historical cost or basis adjustments.

State estate tax

Many states have a state-level estate tax. Where such taxes apply, the state-level estate tax is normally significant. Also, state tax rules for determining residence do not necessarily parallel the federal rules. Therefore, any nonresident alien should also seek state tax advice to determine potential estate tax and informational filing requirements for property situated in a given state. A decedent's estate may be permitted an estate tax deduction at the federal level for any state estate taxes paid.

1.2 Gift tax

US citizens and resident aliens are subject to gift tax on transfers of all property, tangible and intangible, regardless of the location of the property. See Section 2.2 for a discussion of who is a US resident and a US nonresident alien for gift tax purposes. Gift tax applies to the FMV of the transferred assets as of the date of the gift.

An annual, per-donee exclusion (annual exclusion) exists that is indexed for inflation (US$14,000 in 2017), which offsets tax on gifts of present interests. Transfers on behalf of a donee directly to a service provider for qualifying medical expenditures or to an educational institution for educational expenditures are entirely exempt from the gift tax.

US citizens and resident aliens are subject to a top gift tax rate of 40% and are entitled to a US$5 million gift tax exemption, which is adjusted annually for inflation (US$5.49 million for 2017). The US gift and estate tax are unified — there is only one exemption for both gift and estate tax purposes. Therefore, gifts made during an individual's lifetime will reduce his or her estate tax exemption.

Gifts by US citizens or resident aliens to a US citizen spouse are entitled to an unlimited marital deduction and, therefore, do not incur gift tax. However, for transfers to a non-US citizen spouse, the marital deduction is limited to transfers of up to US$149,000 in 2017 (as indexed for inflation). This is an annual limitation. See Section 5.2 for filing procedures.

Unlike US citizens and residents, nonresident alien individuals do not receive a lifetime gift tax exemption, but are entitled to use of the annual exclusion amount. Thus, every transfer of US *situs* property by a nonresident alien in excess of the gift tax annual exclusion (US$14,000 in 2017) is subject to gift tax. Nonresident aliens must generally pay gift tax on transfers of real property and tangible property located in the US. Intangible property, including stocks and bonds, is generally exempt. Nonresident aliens, citizens and residents share the same gift tax rates. See Section 2.2 for a discussion of who is a US resident and a US nonresident alien for gift tax purposes.

Basis

Generally, the donee takes the gifted property at the same income tax basis as it had in the hands of the donor (i.e., "carryover" basis). However, if the FMV of the property at the time of the gift is lower than the donor's adjusted basis, the donee must use the FMV at the time of gift as the basis for computing loss on a subsequent sale of the property. Additionally, the donee's basis may be increased by all or part of the gift tax actually paid by the donor.

State gift tax

Currently, only Connecticut imposes a state-level gift tax, at rates ranging up to 12%.

1.3 Real estate transfer tax

Individual states, counties and municipalities may impose a transfer or recordation tax on conveyances of real property. Generally, the transferor (individual or entity) remains liable for any tax due upon transfer; however, local customs vary as to how such costs are allocated among the transferor and transferee. Furthermore, indirect transfers of real estate through the sale or exchange of stock or partnership interests may also result in transfer taxes if the entity itself owns real estate. Although no federal transfer or recordation tax exists upon a transfer of real estate, if the underlying transfer constitutes a sale, the transaction may trigger both state and federal income taxes. Exceptions may apply in situations where no change in the beneficial ownership of the property occurs (e.g., when the transfer occurs for purposes of securing financing or if the owner transfers property to a revocable trust controlled by the original property owner).

1.4 Endowment tax

No endowment tax laws exist in the US.

1.5 Transfer tax

The US does not impose an inheritance tax at the federal level. However, a minority of states independently retain inheritance tax regimes. Generally, inheritance tax provisions do not impose taxes on transfers to spouses and descendants. Although, in the limited circumstances where inheritance taxes do apply, the impact can result in significant tax burdens, with rates ranging up to 16%.

1.6 Net wealth tax

US federal law does not impose a net wealth tax, but individual localities may impose such a tax on certain real and personal property interests. If at all, property subject to tax at the state and local level includes real estate, vehicles, boats, aircraft, livestock and intangible personal property. The tax generally only subjects real property or personal property physically situated within the specific taxing locality to this tax. Intangible property, if taxed at all, is generally taxable only to individual taxpayers residing within the locality, whereas personal property used in a trade or business carried on in the state or locality can subject individuals to tax based on their contacts with a taxing jurisdiction instead of on the basis of their residence.

1.7 Expatriation (exit) tax

Before 17 June 2008, the United States did not have an exit tax. However, reporting requirements and potential US income tax liability still burdened former US citizens and former long-term residents under a complex set of rules generally in effect for each expatriate for 10 years following expatriation.

Effective since 17 June 2008, the new US exit tax regime subjects certain individuals known as covered expatriates to immediate taxation on the net unrealized gain in their property exceeding US$600,000 (indexed for inflation; US$699,000 for 2017). The tax treats covered expatriates as if they sold their worldwide property for FMV the day before expatriating or terminating their US residency. In general, covered expatriates include US citizens and long-term residents (green card holders for any part of eight tax years during the preceding 15 years) who have a five-year average income tax liability exceeding US$124,000 (indexed for inflation; US$162,000 for 2017) or a net worth of US$2 million or more. This treatment applies to most types of property interests held by individuals.

The above rules also affect the taxation of certain deferred compensation items (including foreign and US pension plans), interests in and distributions from non-grantor trusts, and certain tax-deferred accounts (e.g., 529 plans, Coverdell education savings accounts and health savings accounts) by accelerating the taxation of these amounts absent certain exceptions.

At the election of the taxpayer and subject to Internal Revenue Service (IRS) approval, the expatriating taxpayer may defer payment of the exit tax upon presentation of adequate security. This tax deferral election remains irrevocable, carries an interest charge and requires the taxpayer to waive any treaty rights with respect to the taxation of the property.

Additionally, US citizens or resident aliens receiving gifts or bequests on or after 17 June 2008 of more than the gift tax annual exclusion (US$14,000 in 2017) from covered expatriates are taxed at the highest gift or estate tax rate currently in effect (40% in 2017) (the "Section 2801 tax"). Note, though, that application of the Section 2801 tax is deferred until the IRS issues final regulations. Under the general US estate and gift tax rules, the IRS assesses the tax on the donor. However, the IRS imposes the Section 2801 tax liability on the donee. Thus, the Section 2801 tax on gifts or bequests from a covered expatriate to a US citizen or resident may be assessed at any time when the receipt of such a gift or bequest occurs after the expatriation of the covered expatriate.

1.8 Generation-skipping transfer tax

In 1986, the US Congress enacted a generation-skipping transfer (GST) tax designed to prevent wealthy individuals from transferring property to heirs more than one generation removed from such individuals and thereby allowing that property to pass without any estate or gift tax liability assessed to the generation(s) in between the transferee and transferor. The GST tax is imposed on all direct transfers to skip persons and on taxable distributions and taxable terminations by trusts that have skip persons as beneficiaries. The GST tax is in addition to any gift or estate tax that may be assessed on a transfer. The IRC defines a skip person as someone who is two or more generations below the transferor or a trust for which all beneficiaries are skip persons. Generation-skipping transfers that are subject to GST tax are taxed at a rate of 40%. There is a GST exemption of US$5 million that is adjusted annually for inflation (US$5.49 million for 2017) available to US citizens, US residents and non-US residents. The GST exemption is in addition to the gift and estate tax exemption.

General

The GST tax potentially applies to all transfers of a US person's worldwide assets. See Section 2.2 for an analysis of who is deemed a US person. As stated above, the GST tax applies to any transfer from one taxpayer to a skip person or any donee assigned to a generation two or more generations below the transferor. For taxable terminations, a trust is liable for the GST tax on the FMV of the assets in the trust at the time of the taxable termination. For taxable distributions, the beneficiary is liable for the GST tax on the FMV of the property received. For direct skips, the transferor is liable for the GST tax on the FMV of the property transferred at the time of the transfer.

A nonresident alien can transfer non-US *situs* property without the transfer triggering GST tax, but transfers of US *situs* property do trigger GST tax — whether covered by applicable exclusions or exemptions or taxable in nature. The definition of US *situs* property depends upon whether the transfer constitutes a gift or bequest. Lifetime gift transfers use the same *situs* rules as the gift tax, and bequests use the same *situs* rules as the estate tax. In addition to the application of the general *situs* rules, estate and gift tax treaties the US has concluded with various countries may also modify the *situs* and treatment of an asset. See Section 11. Additionally, the GST tax also excludes property exempt from taxation by the gift tax annual exclusion or the qualified educational and medical expenses exclusion.

GST tax exemption

A taxpayer may irrevocably allocate GST tax exemption to any property transferred during life or at death. The individual or the individual's executor can make the election on a timely filed gift or estate tax return. GST tax exemption is automatically allocated to direct skip transfers and indirect skip transfers (a transfer to a trust in which skip persons are beneficiaries) up to the total amount of the transferor's remaining GST tax exemption, without further action by the transferor to affirmatively alter this allocation.

2. Who is liable?

2.1 Residency

General

US law imposes income taxes on US persons — defined as US citizens and US residents — with respect to their worldwide income and imposes transfer taxes on their worldwide assets. However, income tax law determines residence differently from the way that the US transfer tax (gift, estate and GST tax) law determines residence.

Income tax residence

US income taxation based on residence applies to US citizens and US residents. US residence is determined under two tests — substantial presence test (SPT) and green card test. The SPT calculates residence based on the number of days an individual spends in the US over a three-year period. An individual who is in the US 183 or more days in the current year or for 183 days or more during a three-year period, calculated using a weighted-average formula, is a US resident for income tax purposes.

Under the SPT, the sum of the total number of days of presence is determined by adding the total number of days of presence in the current year, plus one-third of the number of days in the first preceding year, plus one-sixth of the number of days in the second preceding year. Any day, or portion of a day, counts as a day of presence in the US. Exceptions and special rules are provided for individuals in the US due to a medical condition, students, teachers, commuters from Mexico and Canada, professional athletes, and foreign government officials. There is also an exception to the SPT for foreign individuals who are US residents under the SPT but are present in the US for fewer than 183 days in the current year, have a tax home in a foreign country, and have a closer connection to that home country than to the US. A closer connection is established if the individual maintains more significant contacts with a foreign country than with the US.

The green card test is based on an individual's US immigration status and treats a person as a resident for US income tax purposes if the individual obtains lawful permanent resident status. A person who is not a US citizen and fails the SPT and the green card test is considered a US nonresident alien for income tax purposes. In addition to these regulatory tests under US law, income tax treaties entered into between the US and other jurisdictions can alter the residence inquiries. Each treaty should be analyzed separately for residence impact.

During the first year of US residency, special rules apply to determine the exact start date of US residency. If an individual is considered a US resident during a specific year, but was not a US resident at any time during the preceding calendar year, that individual is only a US resident for a portion of the year in question. The determination of the start date of residency depends upon which test the individual satisfies for US resident status (e.g., SPT or green card). Under the SPT, residency generally begins on the first day of presence in the US for the year, but up to 10 days of actual presence can be ignored if the individual had a closer connection to a foreign country and maintained a tax home in a foreign country. Under the green card test, residency begins on the first day of the calendar year in which the individual was present in the US as a lawful permanent resident. If a person meets both residency tests, residency begins on the earlier of the first day of presence under the SPT or the first day as a lawful permanent resident.

2.2 Domicile

In contrast to income tax residence, the US transfer tax laws determine domicile in a more subjective manner. A person acquires a domicile by living at a location — even for a brief period — while possessing no definite, present intention of later removing therefrom. Domicile depends on the facts and circumstances of each particular case. An individual has exactly one domicile — no more, no less — and once established, the individual must explicitly exhibit the intent to leave the old domicile in favor of a new one. Courts in the US have relied on several distinct factors when attempting to discern an individual's domicile. These include written statements of intention, such as those included in wills, visa applications, trust agreements and deeds, the time spent in the US in comparison to other countries, the location and size of the individual's residences, as well as business, family, social and religious attachments. No single factor is determinative, and each case will depend upon the totality of the circumstances.

Nonresident aliens

A nonresident alien is defined as any individual who is not a US citizen or resident. For transfer tax purposes, residence is defined by domicile, so a person is a nonresident alien when the person is not domiciled in the US. Nonresident aliens are not considered US persons for estate, gift and GST tax purposes. Nonresident aliens for estate and gift tax purposes do not receive the same gift and estate tax exemption as US residents. Nonresident aliens are not subject to taxation on worldwide assets; instead, their US estates include only those assets deemed situated in the US.

3. Rates

A unified tax rate schedule applies to gift and estate taxes. The estate tax directs the application of this unified schedule for computation of tax to lifetime transfers and transfers at death, cumulatively, and then subtracting the amounts previously subject to gift tax on lifetime transfers. In doing so, the unified rate schedule attempts to subject all property transfers to tax liability under the gift tax or estate tax, and in return, each individual receives the benefit of a single unified credit.

The following gift and estate tax rate schedule applies to transfers of property by gift for US citizens and residents and transfers of US *situs* property by gift for nonresident aliens occurring in 2017. For US citizens and US residents, a US$5.49 million gift and estate exemption amount exists in 2017. The US estate tax limits nonresident aliens to a US$60,000 estate tax exemption and a US$0 gift tax exemption, other than the gift tax annual exclusion. The same rate schedule applies.

Column A	Column B	Column C	Column D
Taxable amount over	Taxable amount not over	Tax on amount in column A	Rate of tax on excess over amount in column A
US$0	US$10,000	US$0	18%
US$10,000	US$20,000	US$1,800	20%
US$20,000	US$40,000	US$3,800	22%
US$40,000	US$60,000	US$8,200	24%
US$60,000	US$80,000	US$13,000	26%
US$80,000	US$100,000	US$18,200	28%
US$100,000	US$150,000	US$23,800	30%
US$150,000	US$250,000	US$38,800	32%
US$250,000	US$500,000	US$70,800	34%
US$500,000	US$750,000	US$155,800	37%
US$750,000	US$1,000,000	US$248,300	39%
US$1,000,000	No upper limit	US$345,800	40%

4. Exemptions and reliefs

4.1 Estate tax deductions

Administrative expenses, debts, taxes and losses

Deductions for funeral and administrative expenses, debts and losses may reduce the gross estate of a US person. However, the estate tax law limits these deductions for most nonresident aliens. A nonresident alien determines the deductible portion of these expenses by a fraction — the total US *situs* property as the numerator and the estate determined as if the decedent were a US citizen or resident as the denominator (i.e., the decedent's worldwide gross estate). Calculation of the nonresident alien's total deductible expenses occurs by multiplying the deductible expenses by this fraction. A case where a decedent owns US real property subject to a recourse mortgage illustrates this limitation on deductions. The estate must include the real property at its full date of death value, but the estate may only deduct the percentage of the mortgage represented by the US property's value in relation to the decedent's worldwide assets at death. Additionally, the estate must substantiate this deduction by providing the US taxing authorities with a certified copy of the foreign inheritance tax returns reflecting the worldwide assets. In some special situations, the provisions of US estate and gift tax treaties may allow full deductibility.

Charitable deduction

US citizens and residents receive a charitable deduction for the entire value of any property donated to a qualifying charitable organization located anywhere in the world upon death. Nonresident aliens are also entitled to a similar charitable deduction for gifts to a qualifying charity. To receive this deduction, a nonresident alien decedent must disclose the full value of all worldwide assets. The deduction for nonresident aliens differs from the deduction for US citizens and residents. First, the deduction is only applied to the nonresident alien's US gross assets. Second, nonresident aliens only receive a charitable deduction for property passing to a US-based charity.

Marital deduction for bequests to US spouse

US citizens, US residents and nonresident aliens receive an unlimited marital deduction for all bequests to US citizen spouses. The law limits the applicability of the marital deduction allowance to transfers to a non-US citizen spouse.

The estate tax allows portability of the estate tax exemption of a deceased US citizen or US resident to a US citizen or US resident surviving spouse. The availability of a portability election on behalf of a non-US citizen, non-US resident surviving spouse is limited to certain circumstances, including application of certain treaties. Portability of the estate tax exemption permits a surviving spouse to utilize any remaining unused estate tax exemption of the predeceased spouse. A major focus of US estate tax planning for married couples is to make certain that each spouse fully utilizes his or her estate tax exemption, because full utilization of both exemptions allows a married couple to double the amount that they pass free of estate tax. Portability allows for this full use of the estate tax exemption without the need to utilize tax savings trusts or other tax planning techniques on the first spouse's death. However, because these rules are not applicable to non-citizens and nonresidents, traditional estate tax planning minimization techniques should be considered for such persons. Portability of the estate tax exemption is claimed by filing an estate tax return.

Marital deduction for bequests to non-US spouse

The law prohibits a marital deduction for a transfer to a non-US citizen spouse, even by a US citizen decedent. Instead, a special marital trust called a qualified domestic trust (QDOT) allows for the deferral of the tax at the first death. This trust must have at least one US trustee possessing the obligation to withhold US estate tax from principal distributions from the trust. The deferred tax (at the rate applicable to the first decedent's estate, but applied on the current asset value) becomes payable at the death of the surviving spouse or on earlier distributions of principal from the QDOT. The US has estate and gift tax treaties with some countries that allow an increased marital deduction for transfers to a non-citizen spouse without requiring that the assets be placed in a QDOT.

Exemption

In 2017, estates of US citizens and residents receive a credit against the estate tax that exempts the first US$5.49 million (as adjusted for inflation) in assets from taxation. This estate tax exemption unifies with the gift tax exemption in the sense that lifetime transfers of property in excess of the statutory annual exclusion amounts reduce the estate tax exemption. The estate of a nonresident alien receives an estate tax exemption of US$60,000. Some US estate tax treaties allow a higher amount. Effectively, this means that US estate tax will capture many estates of nonresident aliens who die owning US *situs* assets.

5. Filing procedures

5.1 Estate tax

The decedent's estate — a separate legal entity and taxpayer — comes into existence on the date of the decedent's death and continues to exist until the personal representative (also referred to as an executor or administrator) has distributed all of the decedent's property from the estate and properly taken action to close the estate. Therefore, the estate may have US income tax filing obligations during the years between the date of death and the date all property is distributed by the estate. The naming of the personal representative may occur through nomination in the decedent's will or by appointment in court if the decedent dies intestate (without a will). For estates of nonresident aliens, if no qualified US personal representative is appointed, then every person in possession of the decedent's property is required to file an estate tax return and may be liable for any US estate tax due.

The estate tax return for a US citizen or resident is Form 706. For nonresident aliens, it is Form 706-NA. All Forms 706-NA are filed with the Internal Revenue Service Center in Cincinnati, Ohio. The location for filing Form 706 will vary with the US citizen's or resident's domicile at death. The original due date for estate tax returns for all estates is nine months following the date of death. An estate can request an extension of an additional six months to file the return, but the tax must be paid by the original due date to avoid interest and potential penalties.

New consistent basis reporting requirements were enacted, effective for estate tax returns filed after 31 July 2015 to ensure beneficiaries use the same basis for inherited property as was reported on the decedent's estate tax return. In order to curb perceived abuses, the new rules state that a beneficiary may not utilize a higher basis on a subsequent disposition of inherited property than was finally determined for estate tax purposes (unless, of course, the beneficiary has taken action to increase the basis of the property, such as by making permanent improvements to inherited real property). When an estate must file Form 706, the executor must report on Form 8971 the basis of each asset to the IRS and the beneficiary who received the asset. Form 8971 must be filed within 30 days of the due date for filing Form 706.

5.2 Gift and GST

The reporting of gifts and generation-skipping transfers made during life occurs on Form 709. In general, a taxpayer must file this return for any calendar year that the taxpayer makes a transfer by gift to a person, other than the donor's US citizen spouse, either: (1) of a present interest at a value in excess of the annual exclusion (even if no tax is due after application of the gift tax exemption) that does not meet the requirements of a qualified education or qualified medical expense; or (2) of any future interest. Tax is imposed on the FMV of property at graduated rates determined by the individual's cumulative lifetime transfers on the date of the gift.

In addition to GST tax, taxpayers should also report allocations of GST exemption on a timely filed Form 709. Timely filed returns result in allocations effective as of the day of the transfer; late filed allocations result in allocations effective on the date of the filing. In the year of death, the decedent's executor may make an allocation election on a timely filed estate tax return.

US citizens or residents (as defined for income tax purposes) must report gifts or bequests from foreign sources. Gifts received in 2017 from foreign corporations or foreign partnerships in excess of US$15,797 (adjusted for inflation), in the aggregate, are reported on Form 3520, Part IV. The IRS also requires gifts from foreign individuals or foreign estates to be reported once the aggregate gifts exceed US$100,000 on Form 3520, Part IV. The IRS can impose substantial penalties for failure to report such gifts or bequests.

The primary liability for the gift tax due to the IRS falls on the donor of the gift. This liability transfers to the executor or administrator of the estate of the decedent as a liability of the estate if the tax remains unpaid at the time of death. In the event gift tax remains unpaid, gift tax liability can also be enforced on the donee or through the imposition of a gift tax lien for up to 10 years on the transferred property. The donor of property must pay the gift tax at the time and place for filling the gift tax return — as determined without regard to filing extensions. Furthermore, if a donor dies before filing any required gift tax returns, the executor or administrator of the estate of the decedent must file such returns. The primary liability for GST tax rests with the transferee on payments of taxable distributions, rests with the trustee on taxable termination events, and rests with the transferor on direct skip transfers. Secondary liability is determined in the same manner as secondary liability for gift taxes.

5.3 The Section 2801 tax

Unlike the estate, gift and GST taxes, the Section 2801 tax is paid by the donee of a gift or bequest from a covered expatriate. The donee must file Form 708 to report gifts and bequests from covered expatriates in excess of the gift tax annual exclusion amount (US$14,000 in 2017). The requirements to file Form 708 and pay the Section 2801 tax are suspended until the IRS issues final regulations.

6. Assessments and valuations

The value of a US citizen's or resident's gross estate is the value at the time of his or her death of all property, real or personal, tangible or intangible, wherever situated. The IRC does not prescribe how this value is to be determined. The estate and gift tax regulations, however, prescribe extensive valuation rules. These valuation rules are accompanied by prescribed actuarial and interest rate tables.

The general rule prescribed in the U.S. Treasury Regulations for determining value for estate and gift tax purposes is to determine an asset's FMV. FMV is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts. The FMV of a particular item of property includable in the decedent's gross estate, or for purposes of computing the value of a taxable gift, is not to be determined by a forced sale price.

Also, the FMV of an item of property is not to be determined by the sale price of the item in a market other than that in which the item is most commonly sold to the public, taking into account the location of the item wherever appropriate. The latter rule contemplates that when property of a US taxpayer (perhaps resident in a foreign jurisdiction) is outside the US, the valuation should occur in the relevant foreign market, rather than by reference to values for that or similar property existing in a US market.

7. Trusts, foundations and private purpose funds

7.1 In general

As a practical matter, US succession planners use trusts when a donor wishes to place certain constraints on the access of the proposed donee to the trust property. If succession serves as the objective of the transfer in trust, the donor must retain neither influence nor control over the trustees or the property placed in trust to avoid having the property placed in trust being brought back into the donor's estate and subject to estate tax.

7.2 Types of trusts

Various types of trusts exist in the US, but most fit the classification of either grantor, simple or complex. Grantor trusts are ignored for US income tax purposes as separate taxable entities from the grantor as a consequence of the grantor's retention of certain powers over the property in the trust. In the case of a grantor trust, the grantor is treated as owning the property held by the trust for US income tax purposes (although not necessarily for estate tax purposes). Simple trusts are non-grantor trusts that require trustees to distribute all of the trust's current income to one or more beneficiaries annually. Trusts that are not grantor or simple are complex. Absent specific powers vested in a beneficiary, the law does not require estate inclusion of the underlying trust assets in the beneficiaries' estates. Trusts work extensively in conjunction with probate avoidance and estate planning for non-US citizens; specifically, a common practice is to use a QDOT trust created by will to benefit a non-US citizen spouse (see discussion under "Marital deduction for bequests to non-US spouse" in Section 4.1) or a qualified terminable interest property (QTIP) trust for US citizen spouses.

7.3 Trust location

Non-US persons who obtain US residence and who are settlors or beneficiaries of trusts that have been created for estate or gift tax planning in other jurisdictions may encounter unexpected US tax results if they do not seek advice before establishing US residence. This occurs because the US rules that apply to foreign trusts with US beneficiaries and settlors may apply once they become US residents. We outline these onerous rules briefly below, but non-US persons who subsequently acquire US tax residence while retaining an interest in a non-US trust should seek advice of a US tax professional.

7.4 Outbound transfers by US person or domestic trust

Trusts with US beneficiaries

A US citizen or resident who creates a foreign trust over which he or she has no control or power may nevertheless be subject to tax on the income under the US grantor trust rules. These rules provide that, in a year where the trust has a beneficiary who is a US person, any transfer made by a US resident or citizen to a foreign trust will cause grantor trust treatment, at least as to the portion attributable to that transfer to the US resident beneficiary. The grantor trust rules presume foreign trusts have US beneficiaries, unless the transferor can establish that no part of the income or principal of the trust benefits or could benefit a US person. Grantor trust treatment may also extend to transfers made to foreign trusts by foreign individuals who later become US residents within five years of the transfer (for further discussion, see Section 7.6). The US tax law treats any transfers made within that five-year period as though the foreign settlor made the transfer on the date the settlor's US residence begins.

Foreign beneficiary becomes US resident

The taxation of a foreign beneficiary who becomes a US income tax resident will be impacted by the classification of the trust as a foreign grantor trust or as a foreign non-grantor trust. First, if the settlor of the trust was not a US person, then under very limited circumstances will the trust be classified as a grantor trust, causing the beneficiary to receive a gift, rather than a taxable distribution. Next, if the trust was created by a US person and is classified as a grantor trust, then the income tax ramifications flow to the settlor. The more complex case is where a trust is or has become a foreign non-grantor trust; a US beneficiary is subject to tax on distributions from a foreign non-grantor trust and it is possible that an additional throwback tax on accumulated income and interest charge could apply.

7.5 Reporting

In addition to the required annual information return on Form 3520-A, the creation of, and transfers to or distributions from, foreign trusts are reportable for US citizens and residents on Form 3520. Penalties of up to 35% of the amount transferred may be applied for failure to report or late reporting.

7.6 Inbound transfers for foreign trusts with US beneficiaries

A nonresident alien who becomes a US resident who has created a trust within five years of establishing US residency may be treated as the grantor of the portion of the trust that the individual funded, if the trust has a US beneficiary. This result does not change due to the fact that the beneficiaries of the trust were not US persons upon trust creation. If such a trust benefits the settlor or any of the settlor's family members who have become US residents, he or she will be taxed on the trust income and have US filing requirements on Forms 3520 and 3520-A. The penalty for failure to file Form 3520-A reaches 5% of the value of the trust corpus.

7.7 Transfers of appreciated assets by US persons to foreign trusts

US persons who transfer assets to a foreign trust must recognize gain for income tax purposes on the difference between the cost basis and the FMV of the appreciated assets. However, an exception from gain recognition for transfers to a grantor trust exists. Care is necessary, however, in the case of certain trusts, which are only considered grantor trusts because they have a US beneficiary under the rules described above, since they may become non-grantor trusts when the beneficiary ceases to be a US resident or dies. This can cause the appreciated assets in the trust to be treated as though they were transferred to a foreign trust triggering gain recognition. For trusts that may become non-grantor trusts when the settlor ceases US residency, the settlor should seek US tax advice before ending his or her residency in the US.

8. Grants

With regard to estate taxes, there are no specific rules in the US.

9. Life insurance

Life insurance can serve as an important asset on the life of a decedent in the US. A person with an insurable interest — an articulable interest in the continued life of a person — can choose one or more varieties of policies, including whole life, term life, accidental death, joint life, universal life and variable life. The person or entity that retains incidents of ownership (e.g., power to change a beneficiary, assign the policy, use the policy as collateral for loans, reversionary interest, settlement options or surrender the policy) over the policy garners treatment as the owner for US tax purposes. The concept of incidents of ownership is intentionally broader than the technical definition and concept of ownership in other areas of the law.

Life insurance ownership can provide many benefits to an estate and survivors of a deceased individual. First, life insurance proceeds can provide enough cash without having to liquidate assets within the estate to pay debts that survive a decedent and any tax bills arising as a result of death. Second, the death benefit can create a larger pool of assets for more modest estates to assure adequate security and funds for survivors. Third, amounts paid from a life insurance policy can assist business colleagues of the decedent to accumulate funds sufficient to purchase ownership interests left for their procurement.

While life insurance can provide many benefits to a broad group of individuals surviving a decedent, it does not come without limitations. First, if the owner of a life insurance policy is also the person insured by the policy, the death benefit paid is included in his or her estate without regard to the identity of the recipient. This creates the potential for transfer tax implications (e.g., a GST tax liability may arise if a payment is made to a skip person, or an estate tax liability could arise if the value of the policy included in the gross estate calculation takes the value of the estate over the estate tax exemption amount in the year of death). A possible solution to the transfer tax implications is to have a person (other than the insured) or an irrevocable life insurance trust own a policy on the life of the insured. When properly structured and implemented, an irrevocable life insurance trust can purchase the policy on the life of an individual without the insured having any incidents of ownership with respect to the policy, thus allowing policy proceeds to escape US estate tax in the estate of the insured. Where the insured already owns a policy on his or her own life, in order to keep the proceeds of the policy out of the estate of the insured, the policy can either be purchased by an irrevocable life insurance trust for full and adequate consideration in money or money's worth or transferred to the irrevocable life insurance trust, but such transfer must be made more than three years before death because of the retained interest rule that brings assets transferred within three years of death back into an estate.

The method of permissible beneficiary designation on life insurance policies differs from that of most other assets a decedent owns at death. An individual cannot name a beneficiary of a life insurance policy in a will or other at-death declaration; instead the owner must make explicit recognition of the identity of the beneficiary of a policy prior to the death of the insured to the issuing company in the manner it requires.

Because life insurance is not considered a US *situs* asset to a nonresident, it can be an efficient mechanism for mitigating US estate tax exposure on US *situs* assets such as real property and the equity securities of US issuers.

10. Civil law on succession

The US does not follow a civil law system.

10.1 Intestacy rules

The part of a decedent's estate that is not effectively disposed of by will is governed by the intestacy rules of the decedent's state of residence at death or the rules of the state where immovable property owned by the decedent is situated. Therefore, an attorney in that state should be contacted to determine the specific rules that apply to the property.

10.2 Probate

The Uniform Probate Code provides a model of provisions that states consider when drafting their legislation. By way of example, the intestacy provision of the Uniform Probate Code has been adopted in full by certain states, modified by others and not adopted by others. The provisions of the Uniform Probate Code are briefly described below. US legal advice should be sought regarding the intestacy statutes of any particular state as many states do not follow these rules in their entirety:

- Jurisdictions:
    1. Community property: one-half of the property belonging to the decedent passes to the surviving spouse as the intestate share.
    2. Separate property: share of the decedent's surviving spouse depends on the circumstances as follows:
        a. No children or parent of decedent survives decedent: entire intestate estate
        b. Spouse has same children as decedent: entire intestate estate
        c. No descendants of decedent but a parent survives decedent: first US$200,000 plus three-fourths of balance of intestate estate
        d. Decedent's children are also those of spouse, but spouse has other children: first US$150,000 plus half of balance of intestate estate
        e. One or more of decedent's children are not those of spouse: first US$100,000 plus half of balance of intestate estate
- Order of priority if no surviving spouse:
    1. To the decedent's descendants by representation
    2. If no surviving descendants, to the decedent's parents equally if both survive, or to the surviving parent
    3. If no surviving descendant or parent, to the descendants of the decedent's parents, or either of them, by representation
    4. If no surviving descendant, parent or descendant of a parent, one-half of the estate to the decedent's paternal grandparents equally if both survive, or to their descendants. The other half goes to the decedent's maternal grandparents in the same manner as the paternal grandparents. If there are no surviving grandparents or their descendants on either the maternal or paternal side, then the entire estate will pass to the decedent's relatives on the surviving side, in the same manner as the other half.

11. Estate tax treaties

The following table provides details on the US estate tax, gift tax, and combined estate and gift tax treaties currently in effect.

Country	Separate estate tax treaty	Separate gift tax treaty	Combined estate and gift tax treaty	Other	Signed	Transfers made on or after	Comments	
Australia	No	Yes	No	No	May 1953	14 December 1953		PR-UC***
Australia	Yes	No	No	No	May 1953	7 January 1954	Old*	PR-UC
Austria	No	No	Yes	No	June 1982	1 July 1954	New*	
Canada	No	No	No	1995 Protocol	March 1995	9 November 1995**	Estate tax only	PR-UC
Denmark	No	No	Yes	No	April 1983	7 November 1984	New	
Finland	Yes	No	No	No	March 1952	18 December 1952	Old	PR-UC
France	No	No	Yes	No	November 1978	1 October 1980	New	PR-UC (Protocol)
Germany	No	No	Yes	No	December 1980	1 January 1979	New	PR-UC (Protocol)
Greece	Yes	No	No	No	February 1950	30 December 1953	Old	PR-UC
Ireland	Yes	No	No	No	September 1949	20 December 1951	Old	
Italy	Yes	No	No	No	March 1955	26 October 1956	Old	PR-UC
Japan	No	No	Yes	No	April 1954	1 April 1955	Old	PR-UC
Netherlands	Yes	No	No	No	July 1969	3 February 1971	New	
Norway	Yes	No	No	No	June 1949	11 December 1951	Old	PR-UC
South Africa	Yes	No	No	No	April 1947	15 July 1952	Old	
Sweden	No	No	Yes	No	June 1983	5 September 1984 (through 31 December 2007	New (ended 1 January 2008)	
Switzerland	Yes	No	No	No	July 1951	17 September 1952	Old	PR-UC
UK	No	No	Yes	No	October 1978	11 November 1979	New	

** Old or new refers to whether the treaty has the old* situs *rules or the new provisions that generally restrict the US to taxing nonresident aliens' US real estate and business property.*

*** The 1995 Canada-US Protocol had retroactive effect to the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). Claims for refund based upon the treaty had to be filed by 9 November 1996.*

**** "PR-UC" in the comments section above refers to a pro rata unified credit provision. (The pro rata unified credit provisions in the German and French treaties apply only to estate tax, not to gift tax.)*

Inheritance and gift taxes at a glance

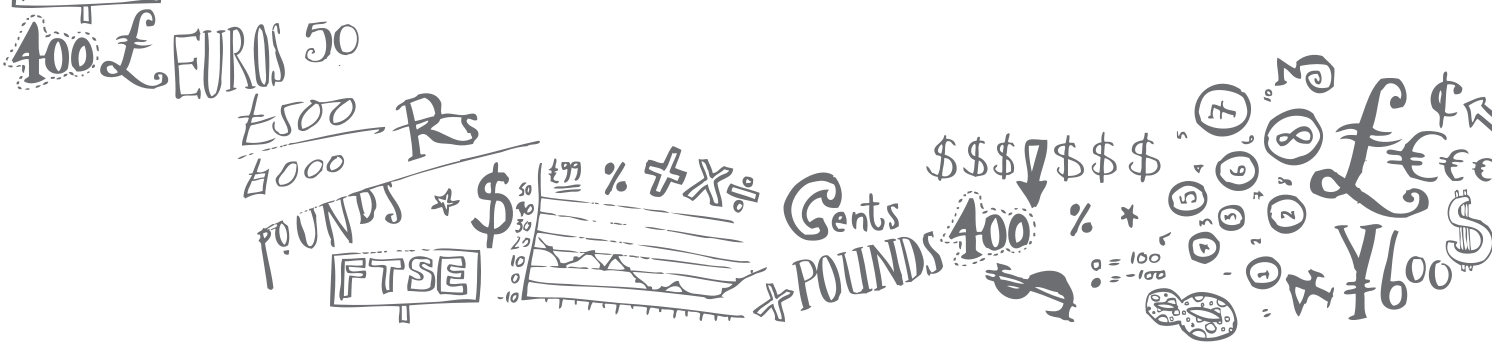
Region	Country/territories	IHT/gift tax	Rate range	Comments
Americas	Brazil	Yes	0%–8%	Taxation on donation and inheritance is regulated at state levels. Rates might vary depending on the location where the donor is domiciled and/or the transaction is concluded.
	Canada	N/A	N/A	While there are no estate taxes in Canada, there is a deemed disposition of all capital property owned by an individual at the time of death. In general, this disposition is deemed to take place at the fair market value (FMV) immediately prior to death. It usually results in the recognition of some amount of gain or loss and is included in computing income in the year of death. In all cases, the estate or the beneficiaries, as the case may be, will acquire the property at a cost equal to the deceased's proceeds from the deemed disposition. Additionally, the FMV of any registered retirement savings plan (RRSP) or registered retirement income fund (RRIF) is fully taxable in the year of death unless it is bequeathed to the individual's spouse or a dependent minor child. Because the deemed disposition of capital property can result in significant tax liabilities, the Canadian Tax Act provides relief in some circumstances. For example, there are exceptions for transfers to spouses and certain transfers of farm and/or fishing property to children. Estates are taxed at the same rates as individuals for a limited period of time then at the top marginal tax rate applicable to individuals. *Inter vivos* trusts are taxed at the top marginal tax rate applicable to individuals (no graduated rates).

Region	Country/territories	IHT/gift tax	Rate range	Comments
	Mexico	N/A	N/A	Mexico's legislation does not recognize inheritance tax. Under Mexican law, succession is the legal means through which a person substitutes another on his or her rights and obligations due to the latter's absence. For Mexican tax purposes, a process must be observed that goes in hand with the civil process, i.e., at the beginning of the testamentary succession to distribute the assets or wealth for which a notice must be filed with the Mexican tax authority. The executor or the legal representative of an estate will pay income tax each year for the accounts of the heirs or legatees. The representative will consider the joint income, until the settlement of the estate is deemed to have concluded. Such payments will be considered definitive, unless the heirs or legatees elect to include, in their gross income, the income corresponding to them, in which case they may credit their pro-rata share of tax paid. Donations are tax-exempt under certain conditions.
	United States	Yes	0%–40%	There was no change in transfer tax (i.e., estate, gift and GST tax) rates in 2017. Significant exemptions apply to US citizens and residents, but are inapplicable or reduced for non-US residents.
Asia-Pacific	**Australia**	N/A	N/A	There is no inheritance or gift tax in Australia. However, in certain circumstances, an immediate income tax liability can arise upon death.
	China	N/A	N/A	The government issued a draft rule on inheritance tax in 2002 to solicit public opinion, but no statute has been passed to provide guidance on inheritance tax. No gift tax is levied in China. From an estate and succession perspective, no real estate transfer tax is levied in China. However, an individual's transfer of real estate or land-use rights in China may be subject to individual income tax, value-added tax, deed tax, stamp duty and land appreciation tax.
	Indonesia	N/A	N/A	Indonesia does not levy inheritance or gift tax. Regarding tax on gifts, Indonesian income tax law stipulates that grants or gifts from the parent directly to the children (or vice versa) or gifts received are not taxable as long as there is no business or employment relationship.

Inheritance and gift taxes at a glance

Region	Country/territories	IHT/gift tax	Rate range	Comments
	Japan	Yes	10%-55%	Inheritance tax is imposed on an individual who acquires property by inheritance or bequest upon the death of the decedent. Gift tax is imposed on an individual who acquires properties by gift (or economic benefit by deemed gift). Gift tax is supplementary to inheritance tax. Both taxes are national taxes and no local tax is assessed on the transfer of property due to inheritance or a gift.
	New Zealand	N/A	N/A	New Zealand abolished estate tax with effect for persons dying on or after 17 December 1992 and currently has no form of estate duty, inheritance tax or capital transfer tax. Gift tax has been abolished for gifts made on or after 1 October 2011. Income tax liabilities may arise in relation to assets that are gifted, that transfer to executors or administrators on an individual's death, that are distributed to beneficiaries under a will or the intestacy rules, or that are distributed by trustees. The general rule deems the assets to have been disposed of and acquired at market value, which may result in income tax liabilities in relation to assets within the tax base, although exclusions and rollover relief may apply in some circumstances when transferees are spouses, civil union or de facto partners or close relatives.
	Philippines	Yes	**Gift tax:** 2%-15%/30% **Estate tax:** 5%-20%	**Gift or donor's tax:** The graduated rates of 2% to 15% apply only to donations to the immediate family members, such as brothers, sisters (whether by whole or half-blood), spouse, ancestor and lineal descendants and first cousins. The flat rate of 30% applies to donations to strangers (any entity or individual other than those relatives mentioned above). Donor's tax or gift tax is based on the fair market value (FMV) of the property at the time of donation. **Estate tax:** Estate tax is applicable on the net taxable estate based on the FMV of assets at the time of death. The first PHP200,000 of the net estate is exempt from tax, and the maximum rate is applicable to the net estate in excess of PHP10 million. The Philippines has a global basis of taxation both for citizens and resident aliens.

Region	Country/territories	IHT/gift tax	Rate range	Comments
	Singapore	N/A	N/A	There is no inheritance tax or estate duty (removed for deaths occurring on or after 15 February 2008), but stamp duty is payable on conveyance or transfers operating as gifts that involve immovable property or shares.



Inheritance and gift taxes at a glance

Region	Country/territories	IHT/gift tax	Rate range	Comments
	South Korea	Yes	10% – 50%	Inheritance tax is levied on worldwide properties if a deceased is a resident. However, if the deceased is a nonresident, then only properties located within the territory of South Korea are subject to Inheritance tax. Gift tax is levied on worldwide properties received by a resident recipient. A donee who is a nonresident on the day of the donation is obligated to pay gift taxes only in respect of that donated property located within the territory of South Korea. Progressive tax rates for both taxes are applied depending on the amount of tax base (i.e., value of assets transferred less qualified deductions). A new exit tax regime has been introduced. For departures occurring on or after 1 January 2018, an exit tax will be imposed on the unrealized capital gains of Korean shares held by Korean tax residents who emigrate to a foreign country. The exit tax will be assessed as if the shares are sold on the day the emigration takes place. The regime applies to domestic shares and to majority shareholders (1% or more ownership in the case of listed corporations) who have had a domicile or place of residence in Korea for five years or more during the past 10 years. The tax rate is 20% (22% including local income tax).
EMEIA	Austria	N/A	N/A	Austrian inheritance and gift taxes were abolished as of 1 August 2008. However, a new endowment tax was introduced, which can apply for donations to trusts and foundations.

Region	Country/territories	IHT/gift tax	Rate range	Comments
	Belgium	Yes	3%–80%	The transfer of property is subject to either inheritance tax or gift tax, depending on whether the transfer takes place before or after the death of the testator. Inheritance tax is levied on the transfer of property after the testator's death; it consists of two types of tax (succession and transfer). Gift tax is levied in the form of registration duties on the donation of movable or immovable property during the lifetime of the donor. The applicable tax rates vary depending on the region, the beneficiary and the taxable amount.
	Bulgaria	Yes	0.4%–6.6%	Transfer of property might be subject to inheritance, gift or transfer tax, depending on whether the transfer takes place before or after the death of the testator, as well as on the availability of consideration or the lack thereof.
	Cyprus	N/A	N/A	There is no inheritance or gift tax in Cyprus. There is a transfer tax payable to the Department of Land and Surveys for transfers of immovable property situated in Cyprus. Also, stamp duty on contracts for transfer of immovable property situated in Cyprus is charged at 0.15% on amounts from €5,001 up to €170,000 of the consideration and at 0.2% on any consideration above that sum up to a maximum of €20,000 per contract.
	Czech Republic	N/A	N/A	As of 1 January 2014, gift tax and inheritance tax have both been incorporated into the income tax. The income from inheritance is fully tax-exempt for both legal and private persons. Gifts received in connection with employment or business activities is taxed within the framework of tax base from employment and business activities. The tax base is also determined by the gift value that is decreased by expenses incurred to obtain this income. The personal income tax flat rate is 15%, while the corporate income tax flat rate is 19%.
	Denmark	Yes	0%–52.7%	Both gift and inheritance taxes are levied on transfer of assets at death or by gift. The tax is either 0%, 15% or 36.25%. However, gifts may be subject to ordinary income taxation of up to 52.7% (2017).

Inheritance and gift taxes at a glance

Region	Country/territories	IHT/gift tax	Rate range	Comments
	Finland	Yes	0%-33%	Inheritance tax is levied on the individual share of each beneficiary and not on the estate of the deceased as a whole. Gift tax is levied on the following types of property received as a gift: 1) Any property if the donor or the beneficiary was a resident in Finland at the time the gift was made, and 2) Real property situated in Finland and shares or other rights in a corporate body where more than 50% of the total gross assets of that corporate body consist of real property situated in Finland.
	France	Yes	5%-45%	Inheritance taxes are due for all transfers at the time of death regardless of whether they result from a legal succession, a will or a gift due to death, such as a gift between spouses. Subject to territoriality rules, tax must be paid in France when the deceased was a French resident, the heirs are French residents or when the assets are located in France. Gift tax is due in France on a gift when the donor or the donee is a French resident or when the gift concerned is an asset located in France. Gift tax is, in principle, due from the donee. However, it may be paid by the donor without such payment being considered a supplemental gift. In principle, gifts follow the same tax rules as estates subject to certain differences.
	Germany	Yes	7%-50 %	Germany has a unified inheritance and gift tax (ErbSt) that is imposed on any transfer of property at death or by gift (or by deemed gift). The basis of assessment is the benefit accruing to the transferee (beneficiary or donee), not the estate itself. The Federal Constitutional Court decided in December 2014 that the German Inheritance and Gift Tax Act, and especially the regulations relating to exemptions and reliefs for business assets, violated German constitutional law. New legislation was enacted in October 2016 and entered into force with retroactive effect from 1 July 2016. The former regulations are applicable for inheritances and donations until 30 June 2016.

Region	Country/territories	IHT/gift tax	Rate range	Comments
	Gibraltar	N/A	N/A	There is no inheritance tax, estate duty, wealth tax or similar taxes in Gibraltar. Stamp duty is payable on the change in ownership of real estate property located in Gibraltar, irrespective of the residency or domicile of the owner of the property. Similarly, stamp duty is payable on relevant capital transactions irrespective of the residency or domicile of the beneficial owner of the shares or loan instrument.
	India	N/A	N/A	There is no IHT/gift tax currently. Income tax is leviable on certain specified transactions. Tax rates apply at the slab the individual falls into, with the highest slab being 30%. When an individual's total income exceeds INR10 million, a 15% surcharge is applicable. Under the Finance Act 2017, a surcharge of 10% is levied on the total income of an individual that is more than INR5 million but less than INR10 million. An additional levy of 3% is applicable on income tax toward education cess. There is an additional levy of 10% on receipt of a dividend exceeding INR1 million declared by a company in the hands of shareholders who are individuals, a Hindu Undivided Family, firms or limited liability partnerships. The Finance Act 2017 widened the applicability of the additional tax on dividends exceeding INR1 million to all resident persons (except domestic companies and specified institutions), including discretionary trusts.
	Ireland	Yes	33%	Inheritances are liable to capital acquisitions tax (CAT). There is no estate tax in Ireland; instead, CAT is levied on each beneficiary who takes an inheritance that falls within the charge to CAT. An inheritance falls within the charge to CAT if either the disponer or the beneficiary is Irish tax resident or ordinarily resident, or the property comprised within the inheritance is situated in Ireland. The beneficiary is accountable for the tax liability and tax return filing obligations. CAT is also chargeable on gifts and is calculated in the same manner as inheritances. The beneficiary is accountable for the tax liability and tax return filing obligations. The first €3,000 of the total taxable value of all taxable gifts taken by a beneficiary from the same disponer in any year is exempt from CAT.

Inheritance and gift taxes at a glance

Region	Country/territories	IHT/gift tax	Rate range	Comments
	Italy	Yes	4%–8%	Both inheritance and gift taxes apply to the worldwide estate when the deceased (donor) is resident in Italy at the time of death (donation). Taxation will apply only to Italian assets if the deceased was not resident in Italy. The tax is levied on the net share of the inheritance or donation passing to the beneficiary, taking into consideration non-taxable threshold amounts that depend on the relationship between the transferor and recipient. The 2017 budget law introduced a special "new resident" regime for income produced abroad by new non-domiciled residents. For individuals who qualify for this regime, only assets located in Italy are subject to inheritance and gift taxes.
	Luxembourg	Yes	0%–48%	Inheritance taxes are levied on the whole estate left by an inhabitant of the Grand-Duchy of Luxembourg at the time of his or her death, except real estate located abroad and movable goods located abroad that are taxed by reference to the citizenship of the deceased. Inheritance taxes are due in Luxembourg wherever the heirs are resident. Tax is levied on gifts made during the individual's lifetime (inter vivos gifts).
	Netherlands	Yes	10%–40%	Inheritance tax is levied on all assets (located worldwide) of a decedent who was a resident or was deemed to be a resident of the Netherlands at the time of his or her death. Gift tax is due on the value of all gifts made by a person who was a resident or was deemed to be resident in the Netherlands at the time of the gift. When determining whether the decedent or donor was a resident of the Netherlands at the time of death or gift, all facts and circumstances are taken into account.
	Norway	N/A	N/A	As of 1 January 2014, the Norwegian inheritance and gift tax was replaced with rules of continuity for tax purposes, meaning the heir or beneficiary assumes the testator or benefactor's tax values and tax positions.

Region	Country/territories	IHT/gift tax	Rate range	Comments
	Poland	Yes	3%–20%	Inheritance and gift tax is levied on the acquisition of goods located in Poland and property rights executed in Poland via donation or inheritance. Tax is also levied when goods are located outside Poland and property rights are executed outside Poland when the decedent dies, or the gift agreement concludes that the beneficiary has Polish nationality or has a place of residence in Poland.
	Portugal	N/A	N/A	Inheritance and gift tax was revoked as of 1 January 2004, and inheritance and gifts became subject to stamp tax (ST). The ST Code was adjusted to accommodate the rules previously applicable under the inheritance and gift tax but also to introduce several changes to the taxation of gratuitous transfers (including inheritance and gifts). Gratuitous transfers in favor of taxpayers subject to corporate income tax also became excluded from ST; only individuals are subject to ST. ST on inheritance and gifts is levied at a fixed rate of 10%. An additional 0.8% applies to gifts of real estate (immovable property).
	Russia	N/A	N/A	Russian legislation currently does not provide for any special taxes with regard to inheritance or donation. The tax on assets transferred through inheritance or donation that previously existed was abolished effective January 2006. However, personal income tax applies in certain instances where individuals receive gifts. Additionally, individuals receiving income through inheritance may also be subject to personal income tax in certain circumstances.
	Spain	Yes	0%–34%	Inheritance and gift tax is levied on the acquisition by individuals of assets (whether tangible or intangible) by virtue of inheritance, donation or life insurance policies where the payer of the premium and the beneficiary are different persons (subject to certain exceptions). New rules have been introduced to avoid discriminatory situations when EU/EEC nonresidents are involved. Refunds are available for taxes unduly paid under former rules.

Inheritance and gift taxes at a glance

Region	Country/territories	IHT/gift tax	Rate range	Comments
	Sweden	N/A	N/A	The Swedish unified inheritance and gift tax legislation was abolished in 2004. Hence, gifts transferred after 31 December 2004 and acquisitions of property in relation to deaths occurring after 17 December 2004 are not subject to inheritance/gift tax. Capital gains on the sale of property such as real estate, securities, artwork and other personal property are taxable in Sweden. The capital gain is calculated as the difference between the proceeds received and the acquisition value of the property. When acquiring property through gift or inheritance, it is necessary to establish the acquisition value for the donor/donee. In order for a gift to be completed, it is necessary to have it registered in some circumstances, and although gift tax was abolished from 1 January 2005, this can have certain other tax consequences.
	Switzerland	Yes	0%–50%	IHT and gift taxes are levied at the cantonal/communal level and are not harmonized. Furthermore, the tax rate generally depends on the relationship between transferor and recipient.
	Turkey	Yes	1%–30%	The transfer of goods that belong to Turkish citizens and the transfer of goods in Turkey from one person to another person by inheritance or gratuitously in another way are subject to inheritance and gift tax. Inheritance and gift tax is also applicable for the goods that Turkish citizens acquire abroad in the same ways. Items acquired as gifts or through inheritance are subject to a progressive tax rate ranging from 10% to 30% and 1% to 10%, respectively, of the item's appraised value.
	Ukraine	N/A	N/A	Ukraine has no specific inheritance or gift taxes. Under Ukrainian law, a transfer of property — either inherited or received as a gift — is subject to personal income tax (PIT). The general PIT rate is 18%, but special rates apply to income received in the form of gift or inheritance. The rates (0%, 5%, 18%) depend on the degree of kindred, as well as tax residency status of the testator and legatee.

Region	Country/territories	IHT/gift tax	Rate range	Comments
	United Kingdom	Yes	0%–40%	The UK has a unified estate and gift tax called inheritance tax (IHT). IHT applies to the value of an individual's estate when he or she dies (in which case he or she is deemed to make a transfer of the whole estate immediately before such time) and to certain transfers or gifts made during the individual's lifetime. The tax applies on the basis of the loss to the donor's estate that arises by reason of the transfer of value. There are three types of transfers for IHT purposes (exempt, potentially exempt and chargeable). It is important to note when an individual is non-UK domiciled and not UK deemed domiciled, as special rules apply. Significant changes have been proposed to the taxation of non-UK domiciled individuals. These were expected to be effective from 6 April 2017; however, the proposals were dropped from the 2017 Finance Bill following the announcement of a general election to be held on 8 June 2017. The expectation is that the dropped provisions will return in a later Finance Bill after the election, regardless of who wins the election, but there is some uncertainty as to the date from which the rules will take effect.

Foreign currencies

The following list sets forth the names and symbols for the currencies of countries discussed in this book.

Country	Currency	Symbol
Australia	Dollar	A$
Austria	Euro	€
Belgium	Euro	€
Brazil	Real	R$
Bulgaria	Leva	BGN
Canada	Dollar	C$
China	Renminbi Yuan	RMB/CNY
Cyprus	Euro	€
Czech Republic	Koruna	CZK
Denmark	Krone	DKK
Finland	Euro	€
France	Euro	€
Germany	Euro	€
Gibraltar	Pound	£
India	Rupee	₹
Indonesia	Rupiah	Rp
Ireland	Euro	€
Italy	Euro	€
Japan	Yen	¥

Country	Currency	Symbol
Luxembourg	Euro	€
Mexico	Peso	MXN
Netherlands	Euro	€
New Zealand	Dollar	NZ$
Norway	Krone	NOK
Philippines	Peso	PHP
Poland	Zloty	PLN
Portugal	Euro	€
Russian Federation	Ruble	RUR
Singapore	Dollar	S$
South Korea	Won	KRW
Spain	Euro	€
Sweden	Krona	SEK
Switzerland	Franc	CHF
Turkey	Lira	TRY
Ukraine	Hryvnia	UAH
United Kingdom	Pound	£
United States	Dollar	US$

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