

Private client law in Turkey: overview

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A Q&A guide to private client law in Turkey.

The Q&A gives a high level overview of tax; tax residence; inheritance tax; buying property; wills and estate management; succession regimes; intestacy; trusts; charities; co-ownership; familial relationships; minority and capacity, and proposals for reform.

To compare answers across multiple jurisdictions, visit the private client *Country Q&A tool*.

The Q&A is part of the global guide to private client law. For a full list of jurisdictional Q&As visit global.practicallaw.com/privateclient-guide.

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Taxation

Tax year and payment dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The official tax year for income tax runs from 1 January to 31 December. Tax declarations must be filed by the end of March the following calendar year and paid in two equal instalments in March and July. Despite their similarities, individual income tax and corporate income tax are subject to separate pieces of legislation.

If individual income taxpayers (both full and limited) generate commercial or self-employed income, they must file and pay advance income tax on a quarterly basis. The declared amounts are deducted from the individual's annual income tax. The advance tax amount is 15% of the net income, and advance income tax declarations and payments must be made by the 17th day of the second month following the end of the quarterly tax period.

Domicile and residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

The concepts that determine tax liability in Turkey for individual taxpayers are (depending on the tax in question):

- Residency.
- Nationality.

The criteria for income tax purposes is mainly determined based on residency. Within a limited scope, nationality regardless of residency is used for the basis of inheritance and gift tax (*see Question 7*).

Domicile

Domicile is an indicator of residency (*see below, Residence*). For the purposes of income taxation, "domicile" is defined as the place an individual intends to inhabit permanently.

Residence

There are two possibilities for an individual to be a "resident" in Turkey:

- Where the individual is domiciled in Turkey.
- Where the individual continuously resides in Turkey for a period of more than six months in one calendar year (temporary departures do not interrupt the residency term).

If the individual qualifies in relation to either of the points above, he/she will be resident as a full taxpayer for the purposes of income tax.

For the purposes of income tax, "domicile" is defined as the place an individual intends to inhabit permanently.

An exception to the rule above applies to expatriates (such as business persons, scientists, experts, government employees, or journalists) who come to Turkey to perform temporary and predefined work and those who arrive in Turkey for the purposes of education, medical treatment, rest, or travel. Such persons are considered non-residents even if they stay in Turkey for a period that is longer than six months.

In addition, Turkish citizens who reside abroad to perform duties with an official authority, entity, institution or enterprise, or who work abroad under the direction of a Turkey-based head office of an official authority, entity, institution, or enterprise, will qualify as full taxpayers.

The taxation of individuals is subject to their liabilities as full taxpayers or foreign-based (limited) taxpayers and the type of income earned.

Full taxpayers are taxed on their worldwide income while non-resident individuals are taxed only on income and revenue generated, or considered to be generated, in Turkey.

Although Turkish citizens are subject to Turkish income tax on their worldwide income, citizens who reside abroad to fulfil duties with an official authority or institution with a head office in Turkey do not need to pay income tax on income that has already been taxed in their country of residence.

Taxation on exit

3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

There is no exit or departure tax imposed on residents if they move to another jurisdiction. However, individuals must file an income tax declaration 15 days before their exit.

Temporary residents

4. Does your jurisdiction have any particular tax rules affecting temporary residents?

Turkey does not have any tax rules affecting temporary residents.

An individual is deemed a full taxpayer (that is, worldwide income taxable in Turkey) if he/she uninterruptedly resides in Turkey for a period of more than six months.

An individual who resides abroad for a period of more than six months will be considered a limited taxpayer and therefore will only be liable for income derived in Turkey (subject to any applicable double taxation treaty provisions).

Taxes on the gains and income of foreign nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

For tax purposes, capital gains are derived from the "disposal" (sale, exchange, alienation and so on) of certain movable and immovable rights and assets.

The taxation of capital gains for limited and full taxpayers is similar.

For movable assets, a disposal of securities or other capital market instruments, shareholding rights or shares of a corporation, certain immovable assets, enterprises whose activities are halted will entail a capital gain and therefore be subject to capital gains tax. Revenue derived from the partial or whole disposal of shareholder rights or share certificates is also taxed as capital gains.

Taxation on limited taxpayers' capital gains requires the relevant transactions (such as a sale of real estate or movable property) to be executed or utilised in Turkey.

In relation to shares, capital gains can be derived from both:

- The disposal of a closed company's shares: this is subject to tax at general progressive income rates of between 15% and 35% and must be reported in the person's annual income tax return. However, if the shares

are attached to share certificates, issued by a full taxpayer company, and held for more than two years, the gain is not subject to income tax.

- The disposal of a publicly-held company's shares (whose shares are traded on Bourse Istanbul (that is, the sole stock exchange in Turkey) and sold through the intermediation of a bank or an intermediary institution): this is subject to withholding tax at a rate of 0% within one year of the acquisition and is the final taxation.

Capital gains from the disposal of real estate and intangible rights are taxed at general rates through the annual tax return. Such gains are subject to an inflation adjustment (that is, the acquisition cost may be adjusted according to an increase in the production price index). If the annual total of such gains does not exceed TRY14,800 for 2019, no income tax is due and any excess will be subject to income tax at general rates between 15% and 35%.

However, capital gains on immovable property (land, buildings (including flats), property rights, and ships) held for more than five years are exempt from income tax. Double taxation treaties should be taken into consideration.

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

Turkey residents (both foreign nationals and citizens) are subject to unlimited tax liability in Turkey, while non-residents are subject to limited tax liability (*see Question 2, Residence*).

Individual income and gains calculated on a cumulative basis are subject to income tax at progressive rates ranging from 15% to 35%, calculated on a cumulative basis. The 2019 brackets and rates are as follows:

- For income up to TRY18,000: the rate is 15%.
- For income between TRY18,000 and TRY40,000: the rate is 20% (plus TRY2,700 payable).
- For income of between TRY40,000 and TRY98,000: the rate is 27% (plus TRY7,100 payable).
- For income of more than TRY98,000: the rate is 35% (plus TRY22,760 payable).

Withholding tax is applicable to certain types of income, including:

- Dividends derived from non-residents are subject to a 15% withholding tax and the non-resident does not have to declare the dividends in an annual return.
- Interest over Turkish government bonds and debentures issued on or after 1 January 2006 and interest over bonds and debentures issued by capital companies derived by non-residents are subject to a 10% withholding tax.
- Income from repo transactions (residents and non-residents) is subject to a 15% withholding tax.

- Non-residents' rental income derived from immovable property is subject to a 20% withholding tax if rented to companies.
- The proceeds derived by non-residents from the sale of patents and copyrights are subject to a final 20% withholding tax.

Interest income derived from non-residents from debentures issued by resident companies abroad is subject to different income withholding tax rates depending on the debentures' maturity:

- For a maturity of up to one year: the rate is 10%.
- For a maturity of between one year and three years: the rate is 7%.
- For a maturity of between three years and five years: the rate is 3%.
- For a maturity is for five years and for longer: the rate is 0%.

Interest income derived from bank deposits is subject to different withholding tax rates depending on the maturity and the currency:

- For a maturity of up to six months: the withholding tax rate is 18% for foreign exchange deposits and 15% for TRY deposits.
- For a maturity of between six months and one year: the withholding tax rate is 15% for foreign exchange deposits and 12% for TRY deposits.
- For a maturity of more than one year: the withholding tax rate is 13% for foreign exchange deposits and 10% for TRY deposits.

Inheritance tax and lifetime gift

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Inheritance and gift tax is based on nationality.

Turkish citizens are subject to inheritance and gift tax on worldwide assets received through inheritance or gratuitous succession.

Resident foreign nationals are subject to inheritance and gift tax on worldwide assets received from Turkish citizens and assets located in Turkey received from resident foreign nationals or non-residents by means of inheritance or gratuitous succession.

Non-resident foreign nationals (individuals and legal entities) are subject to inheritance and gift tax on assets located in Turkey received by means of inheritance or gratuitous succession.

Tax is imposed on the assessed value of the inherited or gifted assets. The assessed values for different types of assets are set out in the Tax Procedure Law. The valuation date is the date of death or attainment of the gift.

The term "asset" is defined as a movable asset or real estate that constitutes the subject matter of an estate and all other rights and receivables that constitute the estate under the applicable laws.

8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

Tax rates

The rates for inheritance and gift tax are composed of two separate taxes which are not added to each other. The inheritance and gift tax rates for 2019 are:

- Where the tax base is up to TRY290,000: the inheritance tax rate is 1% and the gift tax rate is 10%.
- Where the tax base ranges from TRY290,001 and TRY990,000: the inheritance tax rate is 3% and the gift tax rate is 15%.
- Where the tax base ranges from TRY990,001 to TRY2,490,000: the inheritance tax rate is 5% and the gift tax rate is 20%.
- Where the tax base ranges from TRY2,490,001 to TRY5,190,000, the inheritance tax rate is 7% and the gift tax rate is 25%.
- Where the tax base is over TRY5,190,001, the inheritance tax rate is 10% and the gift tax rate is 30%.

Tax free allowance

For inheritance, the first TRY250,125 for each beneficiary is exempt from inheritance tax. If the deceased has no descendants (no children or grandchildren), the surviving spouse has an exemption of TRY500,557.

For gifts, the first TRY5,760 is tax free.

Exemptions

The following transfers are exempt from inheritance and gift tax:

- Household goods transferred through inheritance, the decedent's personal belongings, and heirlooms (such as paintings, swords, medals and so on) kept as family memorabilia.

- Gifts, devices, dowry, and other items given as per custom (excluding real estate).
- Donations.
- For 2019, up to TRY5,760 of voluntary gratuitous successions.
- For 2019, up to TRY5,760 of prizes won in games of chance as defined under the applicable laws.
- Salaries given to widows and orphans by public administrations and institutions under the applicable legislation or associations with public utility or retirement funds (or similar organisations).
- Retirement bonuses for widows and orphans (apart from salaries).
- Marriage bonuses for widows and orphans.
- Collective payments made instead of salaries to widows and orphans of the deceased that had not completed their term of services.
- For 2019, up to TRY250,125 of all of goods transferred to the children, spouses, or parents of officers, petty officers, and soldiers (including Gendarmerie) who died in war or in a conflict with bandits, during movements and practices, or from being wounded in these activities, and similarly for police who died on duty.
- Donations made with recourse conditions, and if the donee dies before the donator, the donated goods are recoured to the donator.
- Goods transferred in bare ownership, provided it remains bare ownership (except for transfers made voluntarily between living persons).
- Goods allocated to foundations granted tax exemptions by the President for incorporation or after incorporation.
- Transactions related to transfers and acquisitions through the transfer and inheritance of registered immovable cultural assets.
- Entitled parts of the state's contribution to individual retirement accounts.

Techniques to reduce liability

Turkish inheritance and gift tax rules leave little leeway for lower taxation and accordingly for effective tax planning. Nevertheless, transferring assets retaining a life interest (in particular, usufruct) may reduce liability.

In this limited respect, transfers of assets located abroad to a company incorporated in a low-tax jurisdiction may be an alternative strategy, since inheritance and succession tax does not apply to such transfers. However, this strategy requires consideration of certain tax obligations (such as the taxation of controlled foreign corporations).

Life insurance proceeds are also significant for inheritance tax planning. The taxation of ordinary life insurance contracts is strictly regulated. Ordinary life insurance, which refers to life insurance pay-outs by the insurer on the death of the insured by natural causes, is subject to inheritance tax.

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

Resident foreign nationals are subject to inheritance and gift tax on worldwide assets received from Turkish citizens and assets located in Turkey received from resident foreigners or non-residents (*see also Question 7*).

Non-resident foreign nationals are only subject to inheritance and gift tax on assets located in Turkey.

10. Are there any other taxes on death or on lifetime gifts?

In principle, no other taxes are due on death or lifetime gifts. However, the following charges in relation to real estate apply:

- Charge at 2.277% rate over the relevant real estate to register the heirs.
- Charge at 6.831% rate for registering the beneficiary of the gift.

Taxes on buying real estate and other assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Aside from the legal requirements and conditions for foreign individuals, legal entities established abroad, or foreign capital companies in Turkey, the following taxes and charges apply to the acquisition or transfer of inherited real estate as set out below.

Purchase and gift taxes

Real estate charges apply to real estate sales and purchases before the land registry irrespective of the nationality and residency of the individual or legal entity. The rate of charge is 2% (decreased to 1.5% until 31 December 2019 by a Presidential Decision). Both the buyer and seller are separately liable to pay the charge over the sale amount.

VAT

There is VAT exemption for non-resident foreigners on the purchase of newly-constructed residential flats and commercial offices. The purchaser is liable to pay VAT. The VAT rate applicable for flats generated from urban regeneration is 1% whereby the VAT rate applied to the sale of flats can vary between 1%, 8%, to 18% depending on the tax value of the relevant flat or office. However, the 18% rate has been suspended until 31 December 2019 and the 8% rate is applied instead until the proposed deadline.

Wealth taxes

Real estate tax, as a wealth tax, is applicable to buildings and land in Turkey. The taxpayer is the owner of the building/land, the owner of any usufruct over the building/land, or, if neither exists, any person that uses the building/land as its owner.

The tax value is the estimated over market value of the real estate determined by the relevant municipality. The rate of the real estate tax applicable to buildings (including flats and offices) is, in principle, 0.2%, but this rate is reduced to 0.1% for residential flats. The rate of the real estate tax applicable to land located outside municipal areas is, in principle, 0.1% whereby such rate is 0.3% for parceled lands. These rates are increased by 100% within the boundaries of the metropolitan municipality and contiguous regions as defined by law.

Other

A 0.948% stamp tax applies to real estate purchase agreements executed before land registries. This rate is reduced to 0% for prepaid residence sale agreements.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

Various tax advantages apply to real estate investments, depending on the type of investment:

- **Individual investments.** A sale of real estate made five years after the acquisition is exempt from personal income tax for individuals.
- **Investment through a company.** A 50% corporate tax exemption is applied to corporations for capital gains from the sale of real estate after two years of acquisition, provided other conditions set out in Turkey's corporate tax laws are satisfied. If the real estate is acquired through a full-taxpayer company and company shares are sold after two years of acquisition, the capital gain on this share sale will also be income tax free for individuals.

- **Investment through real estate investment corporations (REICs) and real estate investment funds (REIFs).** Income from REICs and REIFs are exempt from corporate income tax. Stamp tax is also exempt for contracts related to real estate on the portfolio of REICs and REIFs. Dividends or capital gains from these investments are subject to withholding tax. Withholding tax on dividends from REICs is 15% while the rate is 10% for dividends from REIFs for non-residents. The capital gain from REIC shares is taxed as an ordinary share sale (see [Question 5](#)), while a 10% withholding tax applies to capital gains from REIFs.

Taxes on overseas real estate and other assets

13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

Since Turkish residents are taxed on their worldwide income (including but not limited to real estate inherited or acquired as a gift in any jurisdiction), income tax paid abroad can be deducted from Turkish income tax provided the conditions set out in Turkey's income tax laws are met. Double taxation tax treaties should also be considered.

International tax treaties

14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

Turkey has a large tax treaty network with 85 income double taxation treaties in force. These are with the US, the UK, Germany, China, Russian Federation and so on. These treaties are based on OECD Model Double Taxation Convention on Income and on Capital 1977 (OECD Model Tax Convention 1977).

However, Turkey has not signed any tax treaties concerning the avoidance of double taxation regarding inheritance.

Wills and estate administration

Governing law and formalities

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

As detailed under [Question 24](#), on the grantor's death, universal succession (*külli intikal*) is immediately and automatically applicable, with all of the relevant rights and obligations. Thus, it is not essential for the deceased to make a will. However, if an individual is not willing to be bound by the intestacy rules or wants to appoint an executor, a will is necessary.

A will does not need to be governed by Turkish law. Turkey also recognises foreign wills that comply with formal requirements (see [Question 18](#)).

In Turkish law, the deceased's estate (*miras bırakan*) is subject to the deceased's national law (apart from in relation to any real estate located in Turkey). Under the principle of *lex rei sitae*, real estate is regulated by the laws of the place the property is situated.

Under Turkish inheritance law, courts located at the deceased's last place of residence have jurisdiction over inheritance matters. If the last place of residence was not in Turkey, the Turkish courts of where the real estate is located have jurisdiction.

16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

Wills

The formalities for making a will are standard regardless of the testator's nationality, residence, or domicile. Wills can be carried out in conformity with the form envisaged by the substantive laws of the jurisdiction the transaction is carried out, or the law applicable to the substance of that will.

There are three types of wills under Turkish law, which are:

- **Official wills.** These are prepared before a notary public, a Court of Peace Judge (*Sulh Mahkemesi Hakimi*), or other authorised official (such as Turkish consulates in foreign countries) at the direction of the testator. The will must be executed in the presence of two witnesses. Official wills are the most common form in practice, often prepared by notary publics. Once an official will is notarised by a notary public, the testator reads the text and accepts its content by signing the document in the presence of two witnesses. An official will is preserved at the office of the notary public or by a Court of Peace Judge and a copy can be given to the testator upon his/her request.
- **Holographic will.** This is written and signed by the testator herself/himself, including the place of preparation and date. Holographic wills do not require witnesses. Even a letter meeting these requirements

and clearly stating the testator's intentions can be enough to constitute a holographic will. A holographic will can be preserved by a notary, a Court of Peace Judge, or any authorised official upon the testator's request.

- **Oral will.** An oral will is only permitted under extraordinary circumstances (such as during a war, accident, or serious illness) that makes it impossible for the testator to execute an official or holographic will. The testator must have two witnesses, must write down and sign the will as soon as possible, and then submit it to a Court of Peace or a Court of First Instance (*Asliye Mahkemesi*) confirming that the testator was capable of making a will and the will was made under extraordinary circumstances. Instead of writing the will, witnesses can also apply to a court, explain the testator's requested will to the judge, and sign the will made in the form of a court record. A hospital director, plane pilot during an international flight, or a commander in a war also has the authority to accept an oral will.

If an opportunity to execute an official or holographic will arises within one month of the oral will, the oral will becomes invalid.

Inheritance agreements

Turkish law also permits inheritance agreements as an alternative to a unilateral will. Since these are bilateral:

- They can be revoked by the parties' mutual written agreement.
- The testator can terminate the agreement at any time if the successor acts in a way that results in disinheritance.

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

An agreement made with third parties is valid even without a notary public. However, agreements made during the deceased's lifetime in relation to the transfer of an inheritance share between heirs or with a third party are void without the testator's participation or consent to such agreement. The general principles of Turkish contract law also apply to these agreements.

The heirs can make post-death variations between themselves or with third parties through written agreement.

If an heir wishes to refuse his/her inheritance, he/she must refuse it within three months (*see Question 22*).

Validity of foreign wills and foreign grants of probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of foreign wills

Wills made in another jurisdiction are recognised in Turkey. Turkey is a party to HCCH Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention), which ratified the Convention through a Council of Ministers' decision dated 26 November 1982 so that the formal requirements set out under the Convention are required when dealing with foreign wills. However, the Turkish courts have exclusive jurisdiction over the real estate of the deceased under the *lex sitea* principle.

Validity of foreign grants of probate

The validity regime of foreign grants of probate is subject to the validity regime of foreign wills (*see above, [Validity of foreign wills](#)*).

Death of foreign nationals

19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

Inheritance is governed by the deceased's national law. However, irrespective of the deceased's nationality, Turkish law applies to and Turkish courts have exclusive jurisdiction over real estate situated in Turkey. The rules regarding opening succession for the property's acquisition and separation are governed by the law of the estate's country.

Disputes arising from inheritance are heard by the court of the deceased's last domicile in Turkey or at the court where the estate's property is situated if his/her last domicile was not in Turkey (*see [Question 39](#)*).

Administering the estate

20. Who is responsible for administering the estate and in whom does it initially vest?

Responsibility for administering

The testator can appoint one or more executors (*vasiyeti yerine getirme görevlisi*) to administer his/her will. If the deceased did not appoint an executor, from opening until partition of the estate, the decedent's heirs form an estate partnership (*miras ortaklığı*) where all the heirs are responsible for administration of the estate equally. If no executor is appointed by the decedent, the heirs may request the Court of Peace in the area the estate is opened to appoint a representative to administer the estate. It is also possible for the heirs to appoint a representative without a judge if they agree on the representative.

To carry out the will, the executor must:

- Administer the estate.
- Pay the estate's debts.
- Distribute the remaining part of the estate as specified in the will or as required by law.

Unless the inheritor has undertaken such, the transfer of goods included in the estate by the executor of the will or the establishment of limited in-kind rights on such goods are subject to the Court of Peace's authorisation.

Vesting

The decedent's estate vests in the heir(s) the moment of the decedent's death by force of law unless a testamentary disposition is made (*see Question 24*).

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
- Paying taxes?
- Distributing?

Establishing title and gathering in assets

On the death of the grantor the heirs acquire the entire estate through universal succession (*külli intikal*) immediately and automatically with all related rights and obligations (see [Question 24](#)). If no testamentary dispositions were issued by the deceased, the heirs can apply to the Court of Peace for issuance of the grant of probate.

Under the applicable laws, the official who prepared or who keeps the will, the person who keeps the will upon the request of the deceased, or any other person must immediately submit the will to the Court of Peace of the jurisdiction in which the testator was located following his/her death.

The will is opened by the judge of the Court of Peace within one month following its submission, without considering its validity, and is read aloud to the persons concerned.

If the will provides for an executor, the Court of Peace will notify the executor of his/her duties and the executor is deemed to have accepted his/her duties if he/she does not notify the judge otherwise within 15 days of the notification date.

Procedure for paying taxes

Inheritance tax is assessed on a declaration submitted by the heirs. The tax declaration is submitted by heirs within four months of the decedent's death. However, this amount of time will vary if the death occurs outside of Turkey or if the heirs are located outside of Turkey at the time of death, as described in below:

- If the death occurs in Turkey and the heir is outside of Turkey: the declaration period is six months.
- If the death occurs outside of Turkey and the heir is in Turkey: the declaration period is six months starting from the decedent's death.
- If the death occurs in a foreign country and the heir is in the same foreign country: the declaration period is four months.
- If death occurs in a foreign country and the heir is in another foreign country: the declaration period is eight months.

Inheritance and gift tax is paid over three years in two equal instalments in May and November each year.

Distributing the estate

If the deceased did not issue a will or provide for the partition of his/her assets, or even if he/she did, according to the mandatory reserved portion of the rules, the assets will be distributed among his/her heirs in accordance with the ratios regulated under the applicable laws unless the heirs conclude a mutual agreement (see [Question 28](#)).

22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

There are no time limits/restrictions/valuation issues relevant to an estate with an element in another jurisdiction. However, an heir may:

- Refuse the inheritance within three months. For legal heirs, this period starts from the death of the deceased unless they can prove they are heirs appointed by will. For heirs appointed by will, this period starts from the date that disposal of the deceased was notified to them.
- Cancel the testamentary disposition by bringing it to court within one year of becoming aware of:
 - the disposition;
 - the reasoning behind the cancellation; and
 - his/her right to bring the cancellation claim or, in any event, no later than ten years for bona fide defendants and not later than 20 years for non-bona fide defendants, starting from the opening of the will, or in inheritance agreements, starting from the death of the deceased.

The estate of a foreign individual may include real estate in Turkey. There are certain restrictive rules regarding the acquisition of real estate by foreign individuals which may be deemed part of the estate of the deceased foreign individual. This is because Turkish law will apply to real estate in Turkey regardless of the nationality of the deceased.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

Dispositions can be completely or partially challenged by heirs/beneficiaries with an interest in the disposition when they submit a claim before the court.

The heirs/beneficiaries can bring a claim if the:

- Disposition was made at a time when the deceased did not have the capacity to make the disposal.
- Disposition was made as a result of deception, threat, or coercion.
- Content of the disposition or its conditions are against Turkish laws or morals.
- Disposition was in breach of the formal requirements regulated under the applicable laws.

For details of the limitation periods in which a lawsuit must be filed in the case of cancellation of a disposition, see [Question 22](#).

Executors are subject to the supervision of the Court of Peace and may be dismissed. Judges can take action upon the receipt of a complaint or on their own initiative. Heirs can challenge the executor's acts and request damages based on the provisions related to proxy relationships.

Succession regimes

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

Under Turkish law, there are two types of succession:

- Intestate succession.
- Testamentary succession.

In principle, the deceased's estate vests in his/her heir(s) on the moment of death. The heirs acquire the entire estate through universal succession (*külli halefiyet*) immediately and automatically with all related rights and obligations on death. Heirs can include blood relatives (descendants and ascendants of the deceased) as well as the surviving spouse and the state.

In Turkey, there is a forced heirship regime whereby some blood relatives have a reserved portion of the decedent's assets and the testamentary disposition of the deceased cannot waive this right.

If there is no will or identified partition of the assets, or even if there is, according to the mandatory reserved portion rules, the assets will be distributed among the heirs in accordance with the ratios regulated by civil law.

Forced heirship claims are recognised against trust assets.

Forced heirship regimes

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

Avoiding the regime

In the law of succession, one important issue is the difference between intestate succession (applied upon death without a will or agreement of inheritance) and testate succession (applied upon death with a will or agreement of inheritance).

A person can freely dispose of assets in his/her will. However, to protect his/her heirs after death, the rules on forced heirship must be taken into consideration, otherwise the person whose forced heirship rights are infringed upon has the right to challenge the testamentary disposition.

The estate is composed of all of the decedent's assets, including movable assets and real estate.

The rules on forced heirship dictate the manner in which an individual's estate must devolve on death. These rules are applicable to Turkish nationals, regardless of their residency, and must be considered by Turkish families when planning the succession of their wealth. Turkish inheritance (estate) and succession laws will apply to real estate of foreign nationals located in Turkey and the value of such real estate will be subject to gift and inheritance tax.

Assets received by beneficiaries in other jurisdictions

Provided that Turkish law applies, the forced heirship regime applies to all assets of the deceased, irrespective of the assets' location and the location of the beneficiary (see [Question 26](#) and [Question 27](#)).

Mandatory or variable

The deceased can debar legal heirs who would otherwise be entitled to a reserved portion of the estate if they either:

- Commit a serious crime against the deceased or against persons closely related to the deceased.
- Significantly omit to fulfil their obligations arising from family law.

However, the debarred person's successor can claim the reserved portion.

The legal heir can also agree to renounce their right to the deceased's estate with or without anything in exchange, also binding on the heir's estate. Therefore, to avoid forced heirship, before the deceased's death, an agreement can be stipulated stating legal heir's renouncement of rights from descendant's assets.

Attempts to reduce the reserved portion can be challenged if it is evident that the transaction is based on evading the reserved portion. Similarly, legal heirs can challenge donations one year before the death of the deceased.

Real estate or other assets owned by foreign nationals



26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

The basic principle under private international law with respect to applying Turkish law to international inheritance issues is that succession is subject to the deceased's national law. Exceptions to this principle may apply, however. For example, Turkish law applies to foreign nationals if either:

- They have real estate in Turkey.
- Movable property in the deceased's estate is located in Turkey. However, the applicability of Turkish law is limited to executing, acquisitioning, and partitioning the estate.

27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

The doctrine of *renvoi* is only recognised in conflicts regarding the law of persons and family law.

The law of the decedent will apply to the estate. However, Turkish law is applied to real estate located in Turkey.

Intestacy

28. What different succession rules, if any, apply to the intestate?

The distribution of the assets must comply with the ratios regulated by the mandatory reserved portion rules. These ratios will apply where the deceased did not leave a will or otherwise provide for the portion of his/her assets on death, or in cases even where he/she did.

The legal heirs of a deceased are considered to be:

- **Descendants (*alt soy*).** These include the legitimate, illegitimate (subject to certain conditions) and adopted children of the deceased.
- **Parents.** If the parents are deceased, the decedent's descendants (that is, the deceased's sisters, brothers, and nephews) are the legal heirs.

- **Grandparents.** In the absence of descendants or parents (and their descendants), the grandparents of the deceased are the legal heirs. If the grandparents are also deceased, their descendants (that is, the deceased's aunts, uncles, and cousins) are the legal heirs.

The descendants will inherit the deceased's entire estate in equal shares even if the blood relatives in the second or third group described above are alive. If the immediate descendants of the deceased are not alive at the time of the deceased's death, the surviving descendants connected to the deceased through the immediate descendants (that is, the grandchildren) will take their place.

If there are no descendants in the first group, the right to inheritance passes to the second group and the inheritance is divided equally between the mother's and father's sides of the deceased's descendant. If there are no descendants or parents (or their descendants) of the deceased, the inheritance passes to the third group, in which the grandparents (or their descendants) inherit the estate equally on both sides.

The surviving spouse, as a legal heir, does not belong to the group system explained above. The surviving spouse participates in the estate with every relative group in different portions.

The surviving spouse inherits the following proportions of the estate:

- If there are surviving descendants: 25% of the estate.
- If there are surviving parents (or their descendants): 50% of the estate.
- If there are surviving grandparents (or their descendants): 75% of the estate.
- If none of the above apply: the spouse will be entitled to 100% of the estate.

If the deceased has no legal heirs and did not dispose of his/her assets in part or in whole by a will or an agreement of inheritance, the estate will pass to the State on death. The State, unlike other heirs, is never liable for the debt of the estate that is in excess of the estate's amount.

29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

If the beneficiaries' forced heirship rights are violated, the beneficiaries subject to a reserved portion can challenge certain *inter vivos* (between the living) acts of disposition (such as gifts or a sale of real estate) made by the intestate deceased through a "reduction lawsuit."

All beneficiaries can challenge the validity of such transactions through a "cancellation lawsuit" if those acts are construed as part of a simulation to disguise the testator's real intention and dilute the beneficiaries' provisions (see [Question 22](#)). Disinherited heirs may also claim that their debarring from inheritance was based on a material mistake.

Trusts

30. Are trusts (or an alternative structure) recognised in your jurisdiction?

Under the Turkish legal system, there is no basis for recognising the concept of a trust as used in the common law. Turkey is not a signatory to HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention).

Since Turkey does not recognise trusts, the taxation of trusts is not expressly regulated, but from a tax perspective, trusts established abroad are treated as foreign entities. A foreign trust may be subject to the Turkish controlled foreign corporation's (CFC) rules if a person's stake in that trust meets the criteria of a foreign corporation under CFC.

A trust may also be a legal entity, and the beneficiaries' income received from the trust would be treated as dividends subject to income tax.

31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

There is no legal basis for recognising a trust in Turkey (*see Question 30*).

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/ leaving your jurisdiction?

The consequences of the absence of statutory provisions and well-established practice dealing with trusts invokes uncertainty with regards to both:

- The proprietary rights of trusts, especially for properties in Turkey.
- The tax treatment of trusts, creating difficulty with regard to tax planning with trusts.

If the trust was made abroad and is considered a foreign legal entity for Turkish taxation purposes, the income received by a beneficiary will be considered a dividend subject to an income tax declaration if the trustee or beneficiary is resident (and therefore a full tax payer) in Turkey. If the trustee or beneficiary is not a resident, he/she is not taxed in Turkey (*see Question 2, Residence*).

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries' rights to information about the trust?

There is no legal basis for recognising a trust in Turkey (*see Question 30*).

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

The default matrimonial property regime is "participation in accrued gains". This provides that, save for certain exceptions, each spouse retains and manages their own assets and acquisitions throughout the marriage and is free to transfer his/her own assets.

According to the principles of the default regime, each spouse is entitled to one-half of the other spouse's assets acquired during the marriage, subject to contractual modifications the spouses may enter into. Therefore, asset transfers performed throughout the duration of the property regime proven to be abusive efforts aimed at asset reduction are added to the calculation of the total assets to protect the former spouse.

Donations performed without the consent of the other spouse during the one year before terminating the property regime are also added to calculation of the total assets to be shared by the spouse upon dissolution of the marriage.

There is no concept of "civil partnership" in Turkey.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

Although the use of trusts is common in estate and wealth planning in common law countries, in Turkey there is no basis to recognise the concept of a trust as used in the common law. However, based on the "freedom of contract" principle, workable legal structures or other arrangements may (to some extent) be available. Since these arrangements are neither specifically defined nor regulated but are used in practice, the rights and powers of the parties are not framed by law.

Under Turkish Law, "ownership" is accepted as a whole and cannot be segregated to enable the holder in trust to have legal ownership and for the beneficiary to have equitable ownership. Similarly, as far as fiduciary arrangements (*inançlı işlem*) are concerned, these are completely held in trust by the holder in trust and the rights of such do not form a separate fund like a "trust fund" separate from the holder in trust's assets. The holder in trust cannot segregate their assets and the rights transferred will become part of their private estate available to creditors in bankruptcy proceedings.

Notwithstanding our explanations above, if such transfer of assets from a trust for one of its beneficiaries with Turkish tax implications is deemed a gift (gratuitous transfer) rather than a transfer through inheritance, the applicable taxes would be substantially higher.

Under certain circumstances, a donation can be annulled for fraudulent conveyance. Donations, including the transfer of a person's property to a foundation (*vakıf*), performed within the two year period preceding a bankruptcy decision are automatically considered invalid. In addition, the creditors may void any transaction they can prove was performed with the intention of harming the creditors, provided they initiate attachment or bankruptcy proceedings within five years of the performance of such transaction.

Charities

36. Are charities recognised in your jurisdiction?

Charities are recognised in the Turkish legal system. The majority of charities are organised as foundations (*vakıf*). Foundations are subject to state oversight and are generally used for charitable purposes. Family foundations provide similar benefits to family members. However, foundations cannot be used to surpass the rules of inheritance law to establish a family fee tail.

Turkish law applies to the operations of foundations in Turkey, regardless of their country of registration. However, an opinion from the Turkish Ministry of Foreign Affairs and a legal permit from the Turkish Ministry of the Interior are needed for the operation of foreign foundations, given the condition of legal and actual reciprocity.

37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

Foundations regulated under civil law are similar to charitable trusts in common law jurisdictions. Turkish residents and legal entities registered in Turkey can set up a foundation by allocating private property and rights to a specific and continuous objective. Foundations have legal personality. All assets and types of income received from activities, or the economic value derived from any real person or legal entity, may be endowed to a foundation. Foreign residents in Turkey may also establish a foundation according to the principle of *de jure* (by law) and *de facto* reciprocity with respect to their country of nationality.

To incorporate a foundation, the individual donor (founder) must contribute the assets for a specific charitable purpose.

Foundations are established either by:

- Official deed (*resmi senet*), executed by the founder.
- Will of the founder, to be effective upon his/her death.

Foundations become a legal entity upon registration with the registry kept before the tribunal in the place the foundation was established and with the General Directorate of Foundations (General Directorate) for informational purposes.

38. What are the benefits for individuals when setting up charitable organisations?

Foundations that are generally established for public benefit are exempt from certain tax obligations including income tax, gift, and inheritance tax. However, the commercial enterprises established by those foundations are subject to corporate tax

Aid and donations of up to 5% of the donors' declared income tax base (or for districts with development priority: 10%) made to tax-exempt foundations, in return for a receipt, can be deducted from income tax.

There are also VAT exemptions in the Turkey tax legislation for certain foundation services with educational, cultural, and social purposes.

These benefits are only available to foundations established in Turkey for the public benefit (unless the foundation has been declared exempt from tax obligations by the President) (see [Question 36](#)).

Ownership and familial relationships

Co-ownership

39. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

If there is more than one heir, the estate becomes common property between the heirs until the estate is partitioned. The heirs form a community of heirs (*miras ortaklığı*) and are jointly responsible for administration of the estate in accordance with the legislation and an agreement between themselves, if any. This differs from co-ownership because the parties do not possess an alienable share in the assets. The heirs are equally liable for taxes arising from the estate.

If an heir asks to convert the community of heirs regarding all or part of the property into a shared ownership, the Court of Peace will invite the other heirs to object within a specified period. If no objections or lawsuits are filed within this period, the community of heirs will be converted into a shared ownership. These rules also apply to the division of other rights and receivables included in the claim in terms of the ratio of shares. Heirs can also agree to such conversion through agreement.

Heirs are liable for taxes arising from the estate in proportion to their overall share in the estate.

Familial relationships

40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitants/civil partners in real estate or other assets protected by law?

Matrimonial regimes have no direct effect on the inheritance rights of spouses but do impact the calculation of the deceased's estate. A spouse is entitled to a specified share of the deceased's assets before opening of the succession, which is not part of the estate for succession purposes (see [Question 28](#)).

Four matrimonial property regimes exist:

- **Participating acquired assets regime (*Edinilmiş Mallara Katılma Hakkı*)**. This is the default regime in Turkey. There are two sets of acquired assets:

- assets acquired during marriage; and
- personal assets and belongings of each spouse.

Each party retains ownership and management over acquired and personal property and each party has the right to use and dispose of property. On divorce, each party may keep his/her personal assets but they must share acquired assets equally.

- **Separation of property regime (*Mal Ayrılığı*)**. The spouses can own, manage, and dispose of property individually. In the event of divorce, no property is subject to division. If there is common property, on divorce, the common property is shared between the parties in accordance with the provisions set out at the time regime was entered.
- **Participating separation of property regime (*Paylaşmalı Mal Ayrılığı*)**. The spouses can to own, manage, and dispose of property individually. Each party is liable for his/her own debt with his/her assets. Assets acquired after entering the regime and allocating joint use and investments made for the benefit of the family should be shared equally on termination. Moral compensation claims, assets gained by inheritance, or other property/assets gained through dispositions by will or by gratuitous transactions are not within the scope of this provision.
- **Community of property regime (*Mal Ortaklığı*)**. This concerns partnership assets and the individual assets of each spouse. Spouses are vested with joint ownership of assets. Spouses have ownership and management over personal property and each party has the right to freely use and dispose of such property as permitted under the law. On divorce or annulment of marriage or acceptance of a separation of property regime, spouses maintain ownership of personal assets. The remaining assets are equally divided as partnership assets.

The rights of cohabitants/civil partners in real estate or other estates are not regulated under Turkish law and are not protected.

Spouses can choose the law of either one of their habitual residences or their national laws at the time of marriage. If no choice is made, the spouses' common national law at the time of marriage applies. If there is no common national law, the law of common habitual residence applies, and if there is no common habitual residence either, Turkish law applies. In the liquidation of property, the law of the country where the real estate is situated applies.

41. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Same-sex couples are not recognised under Turkish law due to public policy.

42. How are the following terms defined in law:

- Married?
- Divorced?
- Adopted?
- Legitimate?
- Civil partnership?

Married

There is no explicit definition for this term. It is generally defined as a civil wedding of a man and a woman verbally stating their intention to get married before a Turkish civil servant or through a recognised foreign marriage.

Divorced

There is no explicit definition for this term. It is generally defined as the ending of a marriage through a decision rendered by a Turkish court or a recognised foreign judgment.

Adopted

There is no explicit definition for this term. It is generally defined as the creation of a parent-child relationship through contractual agreement or a recognised foreign adoption judgment.

Legitimate

This is not defined under Turkish law.

Civil partnership

This is not defined under Turkish law.

Minority

43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

Minor children (under 18 years) are subject to parental authority. Minors and persons whose property is under custody cannot have parental authority.

During marriage, the parents exercise joint parental authority. If the common life in one home dissolves or the parents are judicially separated, the competent court will determine which parent can exercise parental authority.

If one parent dies, parental authority belongs to the surviving parent. In divorce, parental authority is determined by a court ruling.

If the parents are unmarried, parental authority belongs to the mother of the child. If the mother is a minor placed in the care of an administrator (guardian), has died, or has been deprived of parental authority, the competent court can rule to appoint a guardian or to transfer authority to the father, as the well-being of the child requires.

The rights and authority arising from, and attached to, parental authority can be divided into two groups:

- **Authority and duties over a child's personality.** The mother and father of the child have the right to name, represent, and rear the child. The parents are responsible for the child's care and education and making make decisions with the child's welfare child in mind.

Within the limits of parental authority, the parents have a statutory right to represent their child in transactions with third parties. If the parents are married, any bona fide third party may assume that each parent acts in agreement with the other parent.

- **Authority and duties over a child's property.** Minors can own assets. Parents have the right and must administer the child's property provided they retain parental authority. On dissolution of the marriage, the parent with authority must submit an inventory of the child's property to the court.

The parents can use income obtained from the child's property for the maintenance, education, and training expenses of the child and can also use a portion of this for family expenses.

The parents cannot use any income from the child's property if an explicit charge has been made or if the property will be used as an interest-accruing investment or allocated to the child's personal savings. During the time of such donation, if the donator has not requested otherwise, the parents will have the authority to administer such donation.

The parents may be excluded from the administration of the hereditary portion of the child's property by testamentary disposition. Otherwise, the parents have management rights over the property. The parents are liable for any losses due to inadequate administration of the child's property.

A child under parental authority has the same restricted capacity to act as a person placed under the authority of a guardian. The child is liable for debts arising from his/her own property, without regard to his/her parents' rights over such property.

Capacity and power of attorney

44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

In Turkey, persons who lack capacity are generally considered to be:

- Persons who do not possess the power of discernment.
- Minors.
- Persons who are incapacitated do not have the capacity to act.

For such persons, legal guardians may be appointed.

Turkish law distinguishes between those with:

- Full incapacity (that is, persons who lack the power of discernment).
- Limited capacity (that is, persons who are deemed incapacitated either by a court decision or at their own request).

Persons with full incapacity cannot create legal effect by their actions. However, persons with limited capacity have full tortious liability.

Incapacitated persons must act through a statutory representative, otherwise their transactions are deemed null and void. Persons with limited capacity can act through a representative, but they can enter into gratuitous transactions in which they benefit (for example, they can accept gifts).

Judges appoint a legal guardian for the incapacitated person for a period of four years and that person will continuously supervise them. The guardian represents the incapacitated person in legal transactions and administers his/her estates. However, the guardian cannot make extensive donations, establish foundations, or become a guarantor in a surety contract in his/her ward's account. If there is a conflict of interest between the guardian and the ward, the judge will appoint a curator to represent these persons.

Foreign powers of attorney and other relevant measures are recognised under the HCCH Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants 1961 (Hague Powers of Authorities Convention), which was ratified by the Turkish Parliament in 1977.

Proposals for reform

45. Are there any proposals to reform private client law in your jurisdiction?

There are currently no proposals to reform private client law in Turkey.

However, there is a draft bill to introduce certain changes to income tax laws. One aspect of this draft bill is to revise the income tax rates. The draft envisages an increase in the upper limits of the income tax rates particularly on the upper segment of income:

- For income up to TRY18,000: the rate is 15%.
- For income between TRK18,000 and TRY40,000: the rate is 20% (plus TRY2,700 payable).
- For income of between TRY40,001 and TRY98,000: the rate is 27% (plus TRY7,100 payable).
- For income between TRY98,001 and TRY500,000: the rate is 35% (plus TRY22,760 payable).
- For income over TRY500,001: the rate is 40% (plus TRY163,460 payable).

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Publications

- *Hergüner Bilgen Özeke Newsletter – Warranty and Indemnity Insurances in M&A Transactions.*
- *Freshfields Backhaus Deringer – the Turkish Chapter of the CEE-SEE Securitisation Guide.*
- *LBR – The Inward Investment & International Taxation Review 4th Edition.*
- *Hergüner Bilgen Özeke Newsletter – Bitcoin: An Innovation or Tool for Overriding Regulations?*
- *Hergüner Bilgen Özeke Newsletter - New Business Opportunities Available for Foreign Exchange Companies under New Legislation.*
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Publications

- *Hergüner Bilgen Özeke Newsletter - New Business Opportunities Available for Foreign Exchange Companies under New Legislation.*
- *Thomson Reuters, Practical Law Life Sciences Global Guide 2019: Turkey Q&A, Medicinal product regulation and product liability in Turkey.*
- *Thomson Reuters, Practical Law Life Sciences Global Guide 2019: Turkey Q&A, Pharmaceutical IP and competition law in Turkey.*
- *Hergüner Bilgen Özeke Newsletter, New Foreign Exchange Restrictions in Turkey: Why and How?*

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