

# TAXATION: WHAT IF IT WASN'T SO COMPLICATED?

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# PLAN

- I. Income tax: tax residence and reporting obligations**
  
- II. Inheritance and gift tax**



## **II. INHERITANCE AND GIFT TAX**

## INTRODUCTION

When a person dies, his or her succession begins:

### 1. Civil aspects: federal matters

- Marital status ?
- Devolution of the estate - will ?
- Property Mass;
- Is there a reserve that must be applied for the benefit of one of the heirs?

### 2 Fiscal aspects: matter that falls under the three regions: **BXL, Wallonia, Flanders**

- The inheritance tax due on an inheritance is governed by the Regions: how much will an heir pay in inheritance tax?
- Progressive tax rates: the larger the estate, the higher the rates
- Family relationship: Distant - close?

# I. INHERITANCE TAX

- I LIVE IN BELGIUM BUT MY CHILDREN LIVE IN DIFFERENT COUNTRIES. HOW WILL MY ESTATE BE DETERMINED WHEN I DIE?

**Belgium: « Nexus » / criterion of the residence of the deceased**



→ "Inhabitant of the Kingdom ? Inheritance tax

→ **World heritage** of the deceased.

→ The declaration of succession must include **everything** the deceased owned, minus the debts of the estate

→ **Non-resident ? Transfer duties by death**

→ Transfer duties **but** only for the real estate belonging to the estate and located in Belgium.

→ « Declaration of transfer by death »

- I LIVE IN BELGIUM BUT MY CHILDREN LIVE IN DIFFERENT COUNTRIES. HOW WILL MY ESTATE BE DETERMINED WHEN I DIE?

Reminder (residence exception) → *Protocol on Privileges and Immunities of the EU (PPI)*

→ European officials shall retain their residence in the Member State in which they were established **before taking** up their duties

It is not a choice! (CJCE, 17/06/1993)

Condition: (i) installation from another MS in Belgium (ii) only because of the exercise of his functions in the service of the Union

✓ *if installed at the same time as or after the appointment by the European Communities*

→ Fiction **only for the application** :

- Income taxes (professional, real estate, movable property, miscellaneous)
- Inheritance tax
- DTC's

Other taxes apply according to their own regime

- I LIVE IN BELGIUM BUT MY CHILDREN LIVE IN DIFFERENT COUNTRIES. HOW WILL MY ESTATE BE DETERMINED WHEN I DIE?

Reminder (continued): *Protocol on Privileges and Immunities of the European Union (PPI)*

→ Fiction applicable to **spouse** if:

- Marriage before entering into service in Belgium
- Spouse has no professional activity of his or her own

If not met: tax residence of spouse analyzed separately

→ Fiction applicable to **children** if:

- Born before the start of the job
- Dependent and in the custody of the European official

**End of the exception** → Upon retirement = the civil servant becomes a resident of the state where he/she actually resides (domicile or seat of wealth)



- I LIVE IN BELGIUM BUT MY CHILDREN LIVE IN DIFFERENT COUNTRIES. HOW WILL MY ESTATE BE DETERMINED WHEN I DIE?

## Belgium: criterion of the residence of the deceased

### European civil servant?

#### → Article 13 PPI ? → Non-Resident

- Active employee
- Spouse who does not work
- Dependent child

#### → No inheritance tax but only transfer tax if real estate located in Belgium

- But a Bank account in Belgium won't be subject to inheritance tax

#### → ~~Article 13 PPI~~: Belgian tax resident

- Retired civil servant who stays in Belgium
- Working spouse
- Non-dependent child

#### → Inheritance tax in Belgium on world heritage



- I LIVE IN BELGIUM BUT MY CHILDREN LIVE IN DIFFERENT COUNTRIES. HOW WILL MY ESTATE BE DETERMINED WHEN I DIE?

→ Therefore, Belgium does **not** use ~~the criterion of the nationality of the deceased or of the heirs~~ or the criterion of the ~~residence of the heirs~~ to request the payment of inheritance tax



→ If my estate is taxed in Belgium, check whether an estate declaration must also be filed abroad

→ E.g.: Second residence in the South of France

→ Check if my heirs (e.g. children) live in another country, if that country applies a different tax criterion / « nexus »

→ E.g.: France and Germany tax what the heirs receive, even if the estate is taxed in Belgium

→ Possible **double** taxation in international successions

- I LIVE IN BELGIUM BUT MY CHILDREN LIVE IN DIFFERENT COUNTRIES. HOW WILL MY ESTATE BE DETERMINED WHEN I DIE?

→ If a Belgian resident dies and leaves a property in Belgium to his children who are Belgian nationals but Spanish residents, what happens?

- We are faced with a case where inheritance taxes will be due in Belgium (criterion of the *residence* of the deceased) and in Spain (criterion of the *residence* of the heirs).
- In order to avoid possible double taxation, it is advisable to check whether the two States have signed a **convention for the prevention of double taxation?**

→ Belgium and Spain have not, to date, signed such a convention on inheritance tax.

- But it is possible to impute in Belgium the duties paid in Spain (unilateral remedy)

→ Belgium has only signed such a convention with **France** (and Sweden – but Sweden abolished its inheritance tax since then).

- I LIVE IN BELGIUM BUT MY CHILDREN LIVE IN DIFFERENT COUNTRIES. HOW WILL MY ESTATE BE DETERMINED WHEN I DIE?

Michel, a retired EU civil servant, is a Belgian resident.

He held US bonds.

He dies during his vacations of a heart attack in Spain.

His estate was inherited by his son who lives in Germany.

- criterion of the deceased's residence: inheritance tax in Belgium
- criterion of the heir's residence: inheritance tax in Germany
- criterion of the location of the property: inheritance tax in the USA

## I HAVE JUST INHERITED A PARENT OUTSIDE BELGIUM. WILL THE ESTATE BE TAXED IN BELGIUM?

→ **No**:

- Belgium does not tax estates opened abroad, i.e. those of non-residents
- No existing tax criterion based on heirs' place of residence
- If a deceased person of Belgian or foreign nationality is resident abroad but has heirs residing in Belgium or of Belgian nationality, these heirs will not be required to pay Belgian inheritance tax.
- But there will be taxation in Belgium if there's real estate located in Belgium (but it's a limited tax liability)

## CAN A PERSON CURRENTLY RESIDING IN BELGIUM CHOOSE ANOTHER INHERITANCE LAW?

→ Yes, following the European Regulation on the law applicable to succession, applicable to all successions opened since August 17, 2015

→ What inheritance law can be chosen?

- Only the law of the nationality on the day of the election or on the day of death;
- Failing that, the legal inheritance law of the country of the deceased's habitual residence will apply to all of the assets comprising the estate.
  - European official - "habitual residence"?
  - Prepare a will !

→ Of course, it is not possible to choose the applicable inheritance tax law on one's estate.

## WHAT ARE THE INHERITANCE TAXES TO BE PAID BY MY HEIRS?

→ **Progressive** tax rates.

→ They vary according to the Region where the deceased was domiciled on the day of his death (but beware of the 5-year rule!).

→ They vary depending on whether you are dealing with an heir:

- In direct line and between partners ;
- Between collateral brothers and sisters ;
- Among all other people.

## Direct line comparison between spouses and legal cohabitants

Flemish Region		Brussels Region		Walloon Region	
Tax bracket	Tar.	Tax bracket	Tar.	Tax bracket	Tar.
0 to 50.000	3%	0 to 50.000	3%	0 to 12.500	3%
50.000 to 250.000	9%	50.000 to 100.000	8%	12.500 to 25.000	4%
Above 250.000	27%	100.000 to 175.000	9%	25.000 to 50.000	5%
		175.000 to 250.000	18%	50.000 to 100.000	7%
		250.000 to 500.000	24%	100.000 to 150.000	10%
		Over 500.000€.	30%	150.000 to 200.000	14%
				200.000 to 250.000	18%
				250.000 to 500.000	24%
				Over 500.000€.	30%



## Inheritance tax between brothers and sisters

Flemish Region		Brussels Region		Walloon Region	
Tax bracket	Tar.	Tax bracket	Tar.	Tax bracket	Tar.
0 to 35.000	25%	0 to 12.500	20%	0 to 12.500	20%
35.000 to 75.000	30%	12.500 to 25.000	25%	12.500 to 25.000	25%
Over 75.000€.	55%	25.000 to 50.000	30%	25.000 to 75.000	35%
		50.000 to 100.000	40%	75.000 to 175.000	50%
		100.000 to 175.000	55%	Over 175.000€.	65%
		175.000 to 250.000	60%		
		Over 250.000€.	65%		

## Inheritance tax between aunts and uncles / nieces and nephews

Flemish Region		Brussels Region		Walloon Region	
Tax bracket	Rate	Tax bracket	Rate	Tax bracket	Rate
0 to 35.000 €	25%	0 to 50.000 €	35%	0 to 12.500 €	25%
35.000 to 75.000 €	30%	50.000 to 100.000 €	50%	12.500 to 25.000 €	30%
Above 75.000 €.	55%	100.000 to 175.000 €	60%	25.000 to 75.000 €	40%
		Above 175.000 €.	70%	75.000 to 175.000 €	55%
				Above 175.000 €.	70%

## Inheritance tax between all other persons

Flemish Region		Brussels Region		Walloon Region	
Tax bracket	Tar.	Tax bracket	Tar.	tax bracket	Tar.
0 to 35.000 €	25%	0 to 50.000 €	40%	0 to 12.500 €	30%
35.000 to 75.000 €	30%	50.000 to 75.000 €	55%	12.500 to 25.000 €	35%
Above 75.000 €.	55%	75.000 to 175.000 €	65%	25.000 to 75.000 €	60%
		Above 175.000 €.	80%	over 75.000 €.	80%

## Summary table of inheritance tax

	RBXL	RW	RFL
<b>Direct line and similar</b>	Progressive 30% > 500,000 euros	Progressive 30% > 500,000 euros	Progressive 27% > 250.000 euros
<b>Brothers and sisters</b>	Progressive 65% > 250.000 euros	Progressive 65% > 175,000 euros	Progressive 55% > 75,000 euros
<b>Uncle/Aunt - Nephew/Niece</b>	Progressive 70% > 175,000 euros	Progressive 70% > 175,000 euros	Progressive 55% > 75,000 euros
<b>All other persons</b>	Progressive 80% > 175,000 euros	Progressive 80% > 75,000 euros	Progressive 55% > 75,000 euros

## **II. GIFT TAX**

I AM A EUROPEAN CIVIL SERVANT AND I WANT TO GIVE MY SON MY APARTMENT IN BRUSSELS. WILL I HAVE TO PAY GIFT TAX?

→ **Yes:**

→ Reminder: fiction of article 13 **only for the application of**: (i) *income taxes* (professional, real estate, movable, miscellaneous); (ii) *inheritance taxes*; and (iii) *DTC's*.

→ ***Not applicable to gift tax***

→ Notarial deed required:

- Payment of the gift tax on the property according to the residence of the donor at the time of the donation;
- If a ~~Belgian resident~~: gift tax of the Region where the property is located.

**Gift tax: real estate rates (RW, RFL, RBXL) :**

Belgium only taxes donations of real estate located in Belgium

→ *Non-Belgian assets aren't taxed in Belgium in case of donation*

Portion of the real estate donation (house, land, apartment)		Direct line, between spouses and legal cohabitants		Among other people	
From	to be included	a	b	a	b
EUR	EUR	%	EUR	p.c.	EUR
0,01	150.000	<b>3</b>	-	<b>10</b>	-
150.000,01	250.000	<b>9</b>	4.500	<b>20</b>	15.000
250.000,01	450.000	<b>18</b>	13.500	<b>30</b>	35.000
Above 450.000,01		<b>27</b>	49.500	<b>40</b>	95.000

**Gift tax: movable property rates (RW, RFL, RBXL) :**

→ Cash, work of art, securities portfolio, etc., if notarized or registered

→ Belgian resident donor

→ BXL, RFL:

- 3% (in direct line/spouses/legal cohabitants); and
- 7% (among other people)

→ RW:

- 3.3% (direct line/spouses/legal cohabitants); and
- 5.5% (among other people)

→ 0% ? Manual or indirect donation (bank transfer, etc...).



→ Impact on inheritance tax (Article 7 of the Belgian Inheritance Tax Code)



**III. IS THERE ANYTHING I CAN DO TO  
MAKE LIFE EASIER FOR MY LOVED ONES?**

- IS THERE ANYTHING I CAN DO TO MAKE LIFE EASIER FOR MY LOVED ONES?
  - **Anticipate** these issues and **plan** your succession
  - Make an assessment of the inheritance tax in case of immediate death or in the years to come
  - International context ? Check the impact in the different countries concerned
  - Search for a solution adapted to the difficulties raised + practical application
  - **Donation ?**
    - Possibility to keep the income of the donated property
    - To occupy the property
    - Care Clause
    - Charges
  - **Will ?**

- IS THERE ANYTHING I CAN DO TO MAKE LIFE EASIER FOR MY LOVED ONES?

- Applicable civil law of succession ?

- Children ?

- of the relationship / marriage?
- from a previous relationship?
- age?
- civil status?
- grandchildren?
- residence?

- Marital status ?

- IS THERE ANYTHING I CAN DO TO MAKE LIFE EASIER FOR MY LOVED ONES?
  - Take into account the evolution of the different important points
  - New circumstances? Departure abroad, death of the donee?
  - Has the law changed? Changes in case law, administrative position?
  - Ensure that documents are kept in a safe place for years and even generations to come: bank statements, deeds of gift, wills, etc.

**THANK YOU FOR YOUR  
ATTENTION!**  
ANY QUESTIONS?

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