



Cheap donations

On 1 January 2004, the Flemish Parliament dropped the tax rate for donations to 3 percent. We have come a long way.

Until eight years ago, the gift tax and the inheritance tax had the same rates. The tax started at 3 percent for the first € 12,500 and 30 percent for anything above € 500.000. That was for donations between parents and children or grandchildren and between spouses. Between individuals who were not related, the tax would start at 30 percent and go up to 80 percent over € 175,000.

In 1996, Flanders changed its inheritance tax rates drastically. Brussels and Wallonia followed, but they all maintained their gift tax rates. And that is changing now.

Admittedly, donations at 80 percent were always exceptional, but even within the same family the gift tax could be quite prohibitive. And there have always been alternatives. The 'don manuel' has been a favourite for ages.

The principle is simple. The gift tax is only due if the donation is passed before a notary. Strictly legally speaking, a donation is not valid if it is not laid down in a notarial deed. However, there is a big exception: the hand-to-hand gift. When you hand something over to someone, that donation is completely legal and it is exempt of gift tax.

For as long as memory goes back the hand-to-hand donation has been the miracle solution to avoid the gift tax. But there are three drawbacks.

First of all, you must be able to hand over something. That is not possible for shares registered in a share register and certainly not for real property. But you can hand over cash, a car, bearer shares or bearer bonds, etc.

Secondly, the donor must live for another three years. If he dies before, the taxman can add the donation to the estate for calculating the inheritance tax on his estate. And paying less inheritance tax is usually the *raison d'être* of the donation. A solution is to take out insurance to pay the inheritance tax should the donor die early. For older donors this can become quite expensive. What is important though is to prove the date of the donation. The most popular way to do this is for the donor to invite the beneficiary by registered mail to the branch of his own bank. He takes money or shares out of his account, hands them over and the beneficiary puts them on his own account. The registered letter and the two bank statements can then confirm the date of the donation.

Finally, a hand-to-hand donation excludes a written document, per definition. When a donation is inspired by tax reasons, the donor does not always want to let go. That is often a problem for first generation entrepreneurs. They want to save on inheritance tax by giving the bearer shares of their company to their children. But they seldom feel old enough to hand over the reins as well. A solution is to donate the shares before a Dutch notary, without Dutch or Belgian gift tax. The notarial deed could include conditions, e.g. they could keep the right to vote in the company's shareholders' meetings.

The gift tax has now been seriously reduced on donations passed before a notary in Flanders. The tax is now a flat rate of 3 percent between spouses and between parents and



(grand)children, and 7 percent between all other parties. The 3 percent also applies between people who have been living together for over a year or who have signed a cohabitation agreement.

The law has been drafted very broadly. All movables can be given at 3 percent : shares, bonds, furniture, art, cars, cash, You could even imagine recognising a debt to someone for your heirs to honour. This can be tax effective because debts reduce the inheritance tax. Only real property is excluded.

The other restriction is that only donors living in Flanders can give with the reduced tax rate. If you live in Brussels or Wallonia, you cannot, unless you have been living in Flanders for the larger part of the last five years. It is not unlikely that Brussels and Wallonia will follow in the near future.

Flemish notaries hope that many people will be seduced by these attractive rates. Combined with the tax amnesty, it allows taxpayers to bring back their savings and pass them on to their children at a very low cost.

It sounds like the taxman is having his sales.

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19 March 2004