



Inheritance matters

Before the last elections, one political party promised it would do away with the inheritance tax between husband and wife. Some English and Scandinavian friends asked me if they had heard correctly. Surely, when a wife inherits from her husband, there can be no inheritance tax? I had to disillusion them. There is, and in Belgium it has become quite unusual to leave everything to your spouse, because of the cost in inheritance tax.

What is more, you cannot just leave everything to your spouse in your will. Napoleon has a lot to answer for. 200 years ago, he introduced the civil code, the first codification of all laws that govern relationships between individuals. Inheriting is part of that. And Napoleon rewrote the book.

It used to be that the oldest son inherited everything from his father. The estate could not be split up. Younger children had to marry well, or make a career in the army or in the church. The Code napoléon divides the inheritance equally between all children. But it also reserves a share of the father's estate to his children. If he has one child, she is entitled to half of his estate, two children can claim two thirds. And if a father has more children, he cannot give away more than one quarter in his will, or even during his lifetime. And even to his wife he can only give a maximum of one quarter.

In 1804 the wife did not have any rights. She could not inherit or own property. It took a while to correct this. But it was not until 1981 that the surviving spouse became a heir in his own right. What Jean inherits from Camille's estate depends on the family situation. Usually, their children inherit the bare ownership while Jean receives a life interest ('*usufruit*') in the estate.

What has changed as well is that Jean cannot be disinherited anymore. By law Jean has an entitlement to the life interest in half of Camille's assets and in particular in the family home.

If Jean and Camille have two children, Camille can give Jean a maximum of one third in full ownership. This comes on top of the life interest Jean is entitled to inherit in the first place. Jean inherits the right to use Camille's estate, but each child must inherit the ownership of one third

Having said that, there is one way to leave everything to Jean. Camille and Jean can sign a marriage contract with a provision that whoever lives longest gets everything. That is perfectly legal as long as it is laid down in a marriage contract before a notary. There is one exception when there are children from a previous marriage. It is not even necessary to sign the marriage contract before the marriage. Every married couple can change their marriage contract or sign a new marriage contract, even if they are not Belgian.

But that solution is not tax efficient. If the marriage contract gives everything to Jean, inheritance tax will be due twice. First when Jean inherits from Camille. And when Jean dies, the children will pay inheritance tax a second time.

If Camille and Jean live in the Brussels region and they jointly own assets worth € 1 million, Jean would have to pay some € 85,000 in inheritance tax. And when Jean dies, the children will have to pay a further € 170,000. More than 25 percent of the value of the estate goes up in tax.

That is a lot, especially considering the alternative. If Jean inherits the life interest in Camille's assets, Jean and the children will pay € 37,500 in inheritance tax (we assume Jean is under 60).



And when Jean dies, the children will pay inheritance tax on Jean's part of the estate. That will come to € 50,000. The total inheritance tax will be less than 10 percent.

The higher inheritance tax may be the price Camille and Jean are willing to pay to give Jean some more security. Or even more freedom if they expect problems with the children. Giving Jean ownership of the estate gives Jean the right to sell a property and reinvest it. If the children were the owners on paper, they would need to sign with Jean.

The Flemish Government is going part of the way to help. Spouses will soon be exempt from inheritance tax, but only on the family home. And that is usually what it is all about.

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