



## Gimme gimme gimme

At the end of last year, the Flemish Tax Authorities reported that they had collected more than twice the gift tax they had anticipated. That was all the more extraordinary since the rate of the gift tax had just dropped. Why are all Flemish rushing to donate their assets?

In 2004 Flanders has simplified and reduced the rates for donations of so-called moveable assets. That is everything that is not attached to the soil: a car, cash, stock and bonds, art, etc. The rate is 3 percent between (grand)parents and children and between spouses. Partners living together under a cohabitation agreement are put on the same foot as spouses. And so are people who have set up household together for over a year. For anyone else, the gift tax is 7 percent.

That is a very big cut if we look at the old gift tax rates. And in fact they still apply when you give away a house or an apartment. The rate starts at 3 percent (on the first € 12,500) and goes up to 30 percent for every euro over € 500,000. And that is just for donations to a child or a spouse. Between brothers and sisters, the rate varies between 20 and 65 percent. For uncles and nieces, they are five percent higher. The shocker is for donations to friends: you cannot give anything without paying 30 percent. And for every euro € 175,000, 80 cents goes to the state in gift tax.

It is not surprising that donations at 80 percent have always been rare. And even parents were reluctant to make a donation with a 30 percent tax bill. But there have always been alternatives. The famous '*don manuel*' or hand-to-hand gift is an all-time favourite.

In fact the gift tax is must be paid when the notary registers the deed recording the donation with the Ministry of Finance. Indeed, strictly legally speaking, a donation must be passed before a notary. But because that is not very practical for birthday presents, it has always been accepted that a hand-to-hand gift is valid. One does not have to go to the notary to hand over moveable assets. And such hand-to-hand gift does not attract gift tax.

But such gift has its shortcomings. It can only be used for goods that can be handed over, literally. You cannot do that with a flat. More important is that the donor must live for three years after the donation. If he doesn't, inheritance tax will be due on the donation.

The 3 percent gift tax allows donors living in Flanders to overcome these drawbacks. And this has seduced a lot of people. The tax amnesty allowed them to bring back their savings, pay a 9 percent penalty, and pass them on to their children at a cost of 3 percent. Some are worrying that it is becoming too easy to get around the inheritance tax. It's true: an old aunt could well make a generous donation on her deathbed and validly avoid the inheritance tax. She does not have to wait for three years anymore before passing on.

The best estate planning is to leave nothing, and the new rates make that easier. However, nobody likes to give everything away before the finale. Parents can now donate their investments to their children and keep the life interest for themselves. On paper, the children become the owners and they pay 3 percent gift tax. Mum and dad continue to collect the dividends and the interest, and when they pass away, no inheritance tax is due.

If you only asset is your house or apartment, you cannot donate that with the 3 percent rate. There are always people who will propose an alternative. They will propose that you take out a



mortgage to buy bonds and give those at 3 percent. The mortgage will bring the value of your estate to zero for inheritance tax. An alternative is that you sign an IOU to a friend. That is a gift and if it is done before a notary 7 percent gift tax is due. And this gift will be a debt for your heirs.

At this moment in time, the favourable gift tax is only possible if you live in Flanders. But with the unexpected success of the Flemish gift tax, Brussels and Wallonia simply cannot stay behind. Brussels should apply the same rules in the next couple of weeks. And Wallonia is very likely to follow suit later this year or in the beginning of next year.

Notaries all over the country are going to be busy.

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21 February 2005