Death and Taxes

Marc Quaghebeur examines the consequences of dying in Belgium, starting with the red tape, the inheritance rules and, of course, the inheritance tax.

The Red Tape

1. What happens when I die in Belgium?

When you die in Belgium, your death must be reported at the registry office (état civil / burgerlijke stand) in the townhall of the place where you died, and not of the commune where you are living at the time of your death. The death must be reported by a relative with a doctor's certificate; usually the funeral undertaker takes care of this.

The registry office will record the death and issue a death certificate. Nowadays only one copy is given, usually as in pdf format with a QR code the check the validity. That certificate must allow your relatives to inform the employer, the social security authorities, the mutuelle, the pension office, the pension fund, the banks, the insurance etc. Relatives also need that certificate to get some time off work for personal reasons.

When the death is recorded, the tax authorities are automatically notified, and the receiver of your local registration tax office will write to your relatives to remind them that they must file an inheritance tax return.

2. The bank freezes your bank accounts

When the banks are informed that you have died, they block all your bank accounts, even the joint accounts you have with your spouse or partner and most likely your spouse's personal accounts.

There is no legal reason why the banks freeze your bank accounts; it is just to make sure that they pay out to the people who are entitled to it : your rightful heirs or the beneficiaries of your Will.

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It is only if one of your heirs lives outside the European Economic Area (the 27 EU Member States plus Iceland, Liechtenstein and Norway) that the bank is required by law to freeze the account until the inheritance tax has been paid. This is an obligation for Belgian banks only.

If all your heirs live in the EEA, the only obligation banks and financial institutions have is to inform the tax authorities how much money you have on your accounts before they release any money from these accounts.

They must report how much money is on the current and savings accounts and give a list of the securities held on securities accounts.

3. How do we pay the bills?

When the bank accounts are frozen, your spouse does not have access to your accounts or even their own accounts.

The bank may and will your pay your hospital and medical bills for the last year as well as your funeral bills, but they will not pay the rent, the utilities, … even if your last salary or pension is paid into the account. Standing orders and direct debits of invoices (domiciliation) are cancelled.

Your spouse can draw down up half of the balance of your personal and joint accounts, with a maximum of €5,000. If they withdraw more than that, the excess is deducted from what they inherit. Your civil partner can also draw down but only from joint accounts.

What is more important is that if they draw money from the account, they are deemed to have accepted your estate and they cannot refuse it anymore, even if you leave them more debts than assets.

4. How are the accounts released?

The banks will require a certificate of succession (*akte van erfopvolging / certificat d'hérédité*) identifying you, the deceased, and the heirs in accordance with Belgian law rules and the terms of your Will.

That certificate can be drafted by a notary or by the receiver of the local registration tax office. That can take some time because they must investigate if there is a Will with the Central Register of Wills and they have to check that you and your heirs do not have any outstanding tax or social security debts.

The bank will also ask your heirs to sign a document confirming who can receive the money.

How long the accounts are blocked depends on the situation.

Normally, this should not take more than four to six weeks, but if the heirs disagree, the account can remain blocked longer. Moreover, if the deceased or the heirs have any outstanding tax or social security debts, the bank will have to pay these first.

If one of your heirs lives outside the European Economic Area, the banks cannot release the bank accounts until the tax authorities deliver a certificate that the inheritance tax has been paid or that sufficient guarantees have been given for the payment of the inheritance tax.

5. The bank and the taxman

If you have a safe deposit box with a bank (even in joint names) the bank will seal the safe. The safe cannot be opened until the bank or a notary has drawn up an inventory of the contents of the safe. The tax authorities must be invited to the opening of the safe. They will receive a copy of the inventory.

Belgian banks will also inform the tax authorities of any bank accounts you have and Belgian insurance companies will report on any sums they have been asked to pay out at your death on an insurance policy you or your spouse have taken out.

Moreover, insurance companies in Belgium have a legal obligation to notify the tax authorities of the existence of any insurance contracts you or your spouse have subscribed for any tangible movable assets; those can be the furniture, jewels, art, the car, etc. This gives the tax authorities an idea of the value of your estate.

The tax authorities do not generally review the history of a Belgian bank account unless they suspect that funds have disappeared shortly before death. They can go three years back, and in certain cases even further.

6. How does probate work in Belgium?

Belgium does not have a legal process comparable to probate for administering and distributing the property of a deceased person.

Under Belgian law, your estate passes automatically to your heirs upon your death. Your heirs are then responsible for the administration of the estate. We do not have executors who act as the personal representatives of your estate. You cannot appoint an executor in your Will to be your representative who must make sure that your last wishes are respected; an executor does not administer or take possession of your estate.

If there is a Will, the heirs are required to comply with it. A Will signed before a notary automatically has full effect (see 15). A handwritten Will and an international Will do not have the same effect. Upon death the handwritten Will or the international Will must be lodged with a notary, who will open it and record the receipt and the state of the Will. The notary will lodge a copy of the handwritten or international Will with the court of first instance.

To release bank accounts, the heirs must provide a certificate of succession (see 4).

For real estate, the transfer is recorded in the land registry (the cadastre / kadaster) by the tax authorities when they process the inheritance tax return.

If you make a bequest to a friend, he must contact your heirs to receive it. If there is a dispute between or with the heirs that cannot be solved amicably, matters are taken to court.

7. Refusing the inheritance

When your estate passes to your heirs, they take the good with the bad. They take over all your debts and responsibilities.

They can refuse the inheritance, but in general they just unwittingly take on the inheritance without realising they take on the debts. As soon as they take anything out of your estate, even a photo album or a souvenir, they are deemed to have accepted the inheritance. This is also the case for the spouse or civil partner who has taken money from the blocked accounts (see 3).

They can refuse the inheritance before a notary but then they get absolutely nothing. Refusing the inheritance is final and irrevocable, but your heirs cannot be held liable for any debts. The inheritance then passes to the next in line to inherit, e.g. their children. Refusing an inheritance may also be a tax efficient way to skip a generation and save on inheritance tax.

If they want to play it safe, and they do not know if the inheritance will be sufficient to pay the debts, they can accept the inheritance with the benefit of an inventory being drawn up. That guarantees they can only be held liable for any debts that do not exceed the value of the estate.

8. What about the children?

In Belgium, the age of majority is 18.

When one parent dies, there is no need to appoint a guardian for minors; the surviving parent will be the guardian. It is only when both parents of a minor have died that a guardian must be appointed. The guardian is officially appointed by the justice of the peace (*vrederechter* / *juge de paix*).

You can appoint a guardian in your Will, or you can make a statement to that effect before the justice of the peace or a notary. The justice of the peace is not obliged to appoint the guardian you proposed. If he considers that your guardian is unsuitable or that appointing him would not to be in the best interests of the children, he can appoint someone else. In international situations, when the guardian lives outside Belgium, the justice of the peace will normally take interim measures for the protection of the children and their assets.

If you have not appointed a guardian, the justice of the peace will appoint one, preferably a close family member. The justice of the peace will interview children

over 12 and he will meet their brothers and sisters who are over 18, the grandparents, the uncles and aunts and anyone else who may wish to be heard.

The justice of the peace will also appoint a supervising guardian, preferably from the family of the other parent, who will report to him. The justice of the peace can also appoint two guardians, one who will look after the children and one who will be responsible for financial matters. Nobody can be obliged to act as a guardian or a supervisory guardian, and they can always ask to be released.

If the child has a dispute with the guardian, he can file a complaint with the public prosecutor's office if he is 12 (15 for money matters). A guardian who does not look after the best interests of the children can be revoked.

The guardian must make an inventory of the estate of the child. He manages the property of the minor and he reports every year about the education of the child and his finances. However, he needs the authorization of the justice of the peace for major financial decisions such as the sale of property.

The inheritance rules: who inherits?

The Belgian inheritance rules determine how your assets are distributed upon your death, who inherits what when you die intestate (i.e. when you have not made a Will), what rights your spouse or civil partner has, whether your Will is valid, and whether your heirs have any particular protection.

These rules apply do not only apply to Belgian nationals (see 23).

9. Who gets what if I have no Will?

Under the Belgian inheritance rules, the default rule is that all your assets go to your children, in equal shares.

If you are married, and you do not make a Will, your spouse will have usufruit (see 10) on your entire estate.

If you are in a registered or civil partnership, your partner gets usufruit on the family home and on the furniture in the family home. Partners who do not register their partnership do not inherit.

If you do not leave any (joint or own) children but you have blood relatives (parents, siblings, …), your spouse inherits your share of the community property (*) but only the usufruit of your personal property (**). Your family inherits the bare ownership of your personal property and they will have access to it when your spouse dies (if you want your spouse to inherit, you must make a Will).

(*) If you are married under a matrimonial property regime of *community property* (which is the default regime in Belgium), community property will include the jointly purchased family home but also everything that you saved during the marriage. Personal property includes anything you owned before your marriage or any gifts or inheritances received during your marriage.

(**) If you have a marriage contract of *separate personal properties*, e.g. a British couple or a couple who had their first marital residence in a country that does not have a matrimonial property regime of community property, the spouse inherits nothing but the usufruit of your estate, e.g. the right to the rental income of a flat that you owned personally.

10. What is this usufruit?

Usufruit is the right to hold the assets in the inheritance and to collect and use the dividends, interest, rent ... It does not give a right to sell the assets of the estate.

When you have bought a house with your spouse, half of the house is yours and, upon your death, your half falls in your estate. Your spouse inherits usufruit of your share and the children inherit the bare ownership.

Ownership of his/her half the house and usufruit of your half allows your spouse to live in the house, or to let it out and move into smaller accommodation.

Usufruit on a house gives you the enjoyment and the use of the property, but you also have to pay for all the

expenses related to the property (the annual real estate tax, maintenance and repairs, refurbishment, etc ...).

However, you do not have sole responsibility to pay for major repairs to the main structure of the building (walls, roof, ...).

For shares and bonds, usufruit is the right to collect and use the dividends of shares or the interest of bonds. The shares or bonds are usually put in one bank account in the name of the bare owners (the children) and the dividends and interest are paid into an account in the name of the surviving spouse.

The inconvenience of usufruit is that you do not own the house or the investments and that you do not have the right to sell the house or the investments … without the agreement of the bare owner(s). And for a savings account, you can collect the interest paid, but you cannot touch the capital.

In common law, a life interest trust would be the closest thing to usufruit.

11. Can I not sell the house?

Indeed, when you inherit the usufruit, you cannot sell the property without the agreement of the bare owners, the children.

And when they are under 18, you will need the authorization of the justice of the peace. In general, the judge will be reluctant to authorize a sale that could result in the children losing their inheritance, unless there is a real need, e.g. because you are moving abroad and need to purchase property there.

Generally, when the children are cooperative, usufruit does not pose a problem. They tend to keep in mind that the other parent still holds half of the total estate of both parents and that they can spend that, leaving nothing to the children except what is left of their bare ownership.

If you fear that your children or stepchildren will raise problems or that your children from a first marriage will or, you can take preventive action. You or your partner can use the part of your estate that you are free to dispose of (see 18) and give more to your spouse or partner (in a Will, by changing a marriage contract, etc…).

12. Am I stuck with this usufruit for ever?

If you inherit usufruit, that is for the rest of your life. It extinguishes with your deatj, and the bare owners become full owners.

However, if you have usufruit, you can agree with the bare owners to terminate it for a price. You can buy them out or you can abandon your rights (that is called "*conversion*" of the usufruit), or you can sell the property together and split the price. If the bare owners are reluctant, the surviving spouse can oblige the bare owners to sell the property or to buy the usufruit. They can also oblige you to do the same.

The value of the usufruit is calculated in function of the duration of the usufruit, and that depends on your life expectancy. The value of the usufruit is a percentage of the value of the property. Every year, the Minister of Justice publishes the conversion tables for usufruit inherited by the surviving spouse. These are much less than the conversion tables to calculate the inheritance tax (see 30 below). The value of the bare property is the value of the full ownership minus the value of the usufruit.

If you anticipate problems, you can make a Will in which you deny your heirs the right to ask for the conversion of usufruit. However, there are two limitations.

¬ You can deny your spouse the right to ask for conversion, but you cannot do that for the family home. The surviving spouse har a particular protection in respect of the family home. If the heirs request that the surviving spouse ends the usufruit on the family home he/she can always refuse.

Children are protected against their stepparents. You cannot stop your children from a previous relationship from requesting the termination of the usufruit that your current spouse will inherit. To protect stepchildren even more, the civil code states that when valuing the usufruit received by the stepparent, it must be assumed that the stepparent is

twenty years older than the oldest stepchild. That means that the usufruit will be worth much less in the negotiations between your children and their stepparent.

13. Do I need a Belgian Will?

No, you do not need a Belgian Will if you are happy with the Belgian default solution.

If you want your children to inherit the bare property and your spouse to have usufruit on your estate, you do not need a Will. Most Belgians do not have a Will.

Your foreign will may also be suitable (see 16).

14. So why would I need a Belgian Will?

If you are not happy with the Belgian default rules, you need a Will to decide who gets what. You just have to make sure that your children and your spouse are entitled to receive a spewcified share of your estate (see 18 and 20).

¬ ***Protect your spouse.*** You can give whatever is not reserved to the children and leave that to each other in full ownership so that he/she has more control over your estate.

¬ ***Protect your children*** If you anticipate problems with the children (marrying the wrong person, substance abuse, difficulties managing money, ...), you can give whatever is not reserved to the children and leave that to each other in full ownership. You can also decide that one of the children receives more, e.g. if they have more difficulties building up a successful professional career and may need financial assistance, e.g. to buy a first house.

¬ ***To opt for the inheritance law*** of the State that gave you your citizenship under the European Succession Regulation (see 24)

¬ ***Decide who gets what***. By drawing up a Will, you can leave specific assets to specific beneficiaries. E.g. you can decide that your son gets your collection of watches and that your daughter gets her mother's jewellery.

¬ ***Make specific bequests*** and leave small sums of money to some friends or relatives or give to charity (within the limits set out in 18 and 20).

¬ ***Deny conversion***. In your Will you can tell your heirs that they do not have the right to ask for the conversion of the usufruit (see above, 12).

¬ ***Appoint a guardian*** for underage children (see 8).

¬ ***Funeral arrangements***. You can also decide in your Will what funeral arrangements you want (cremation, burial, where, ...);

¬ ***Appoint an executor***. Although you do not have to, you can appoint an executor, to make sure that your heirs respect your last wishes; that may also be useful if you need the Belgian Will to have effect in the U.K. or Ireland.

¬ ***Tax planning***. A Will is also useful for tax planning, in fact, it is the first instrument for tax and estate planning.

Since there is no inheritance tax between husband and wife and between registered partners on the family home (see 32), it can be advantageous to leave the family home in full ownership to the surviving spouse or partner.

Another useful planning technique is to skip a generation by making bequests directly to grandchildren, spread the estate over as many people as possible and reduce the inheritance tax.

15. How do I make a Will?

The Belgian civil code has three forms of Wills. Please note that you do not need to have Belgian nationality to draft a Will in one of these forms in Belgium.

¬ A notarized Will is a Will you "dictate" to a notary who types it up as you dictate it, even in English. In practice, you tell the notary what you want to see in it and you go back to sign it.

¬ The international testament is a Will that you type out or write out in longhand and present to the notary.

The notary will not read the Will; he will just keep the Will with other notarial deeds.

These two forms of Will are witnessed by two witnesses (usually provided by the notary – they cannot be family members).

¬ The handwritten Will is the easiest and cheapest way of drafting a Will. To be valid, it must be completely written out in longhand, dated and signed. It does not need to be witnessed.

Any Will can always be modified by a later Will, whatever the form. E.g. a notarized Will can be revoked by a handwritten Will.

The existence of a notarized Will or an international testament is recorded with the Central Register of Testaments, as are any marriage contracts or changes to the marriage contract that have an impact on the inheritance rules.

Upon death, a search in the register will give a list of all recorded Wills and marriage contracts.

16. Is the Will I made in … still valid?

Belgium recognizes Wills drawn up outside Belgium if they are drafted in accordance with your national law, or with the law of the country of your domicile or residence, or even under the rules of the country where you own real estate.

However a foreign Will needs to be translated into one of the official languages (Dutch, French or German) and translated in terms that are consistent with the Belgian rules that protect certain heirs (see 18 and 20).

17. Can I put anything in my Will?

You can deviate from the default inheritance rules described above by making a Will or through the provisions of a Will that you made before you came to Belgium. However, there are a few limitations to your freedom to change the default rules.

You cannot make a Will in favour of someone who cannot accept the gift or who does not exist (e.g. an unborn child or a pet).

Moreover, you cannot provide in your Will that you leave something to someone but imposing an obligation on that person to keep it for, and pass it on, to someone else. This interdiction means that, under Belgian law, you cannot set up a trust by Will. You could, however, do so by opting for the law of your nationality (see 24).

Nevertheless, you can leave something to your children with the obligation to pass it on to their children, or if you do not have children, you can leave something to your brother or sister with the obligation to pass it on to their children.

18. What, I can't disinherit my children?

The most important limitation on making a Will under Belgian law is that you cannot entirely disinherit some people. The "forced heirship rules" protect children and spouses. A part of your estate is reserved for these protected heirs; you must ensure that they get the share of your estate that is set aside for them by law (this is called the "forced share" or the "reserve").

You can only freely dispose – by gift or by Will – of the "disposable part of your estate", that is the part that is not reserved for these protected heirs.

If you have one or more children, they must receive half of your estate; you are free to give the other half to anyone else: your spouse, one of your children, a parent, a sibling, …

This share is calculated on the estate that you have at the end of your life as well as on anything you have given away during your lifetime, even a long time ago.

The European Succession Regulation (see 24) allows you to opt for your national law and that choice may offer you a possibility of circumventing the forced heirship rules. The principle is generally accepted but it will probably have to be confirmed by a decision of the European Court of Justice.

19. Children from a previous marriage?

All of your children are protected by the forced heirship rules. If you have two children from a first marriage and two from your current marriage, you have four

children and they, together, are entitled to half of your estate.

That your ex-spouse has received a very favourable divorce settlement and that her children are likely to inherit from her is irrelevant.

The children of your spouse or partner are not your children. They do not inherit from you unless you adopt them or unless you name them in your Will.

20. Are there any other protected heirs?

Yes, your spouse. If your spouse survives you, you must ensure that he/she has at least the usufruit in one half of your estate and in particular in the family home.

Even if you are not living together anymore, your spouse is protected and has the right to inherit until the day you are legally divorced. If you have been separated for more than six months, you can disinherit your spouse in your Will.

If you are not married, your partner is not protected by law even if you have registered your partnership. And even if, by law, they inherit the usufruit of the family home (see 9), they have no protected right to that usufruit.

21. What freedom do I have then?

It is only when you have no children or grandchildren and no spouse that you are completely free to make a Will and leave your estate to whoever you want.

If you have children, you cannot leave everything to your spouse as British and Irish couples do.

If you have two children, you and your spouse can give each other half of your estate in a combination with usufruit on the other half that your children inherit.

Please note that this is not the most tax efficient approach, the children will pay inheritance tax while the spouse does not.

22. What if I disinherit a protected heir?

Your heirs are entitled to a share of the estate you leave at the end of your life plus any gifts you may have made before your death. This clawback provision can go back quite far.

If they can prove a gift that reduces their share in the inheritance, each of the "protected" heirs can ask the court to cancel the gift and claim back that part of the inheritance to which they are entitled. They can also ask that the effect of the Will be limited to whatever you could freely dispose of.

However, nobody can do it for them, e.g. the tax authorities cannot file that claim on behalf of a protected heir to get more tax.

23. But I am not Belgian ...

If you live in Belgium and you are deemed to be domiciled here, the Belgian inheritance rules will apply to your estate, unless you opt for your estate to be inherited in accordance with your national law (see 24).

This means that your entire estate passes to your children in accordance with the Belgian inheritance rules or in accordance with the terms of your Will if that is consistent with Belgian law.

Belgian law – or your national law if you have opted for it in your Will – will also apply to real property in another EU Member State (but not in Denmark and Ireland.

If you own real estate that in Denmark or Ireland or outside the EU, that will pass in accordance with the local rules of that country. Please note that this does not mean that Belgium will not charge inheritance tax (see 34 about double taxation).

If you move to another country in the EU (except Denmark or Ireland), the rules of that country will apply to your entire estate (within the remit of the Regulation unless you opted for your national law.

If you move outside the EU, your estate will pass according to the rules of that country.

Real estate in Belgium will always be governed by the Belgian inheritance rules unless you live in another EU Member State (except for Denmark or Ireland) or unless you opted for your national law in another EU Member State.

24. The European Succession Regulation?

If an estate has assets in different countries, each state has its own procedures and inheritance rules; these are to be followed independently from those in another state. That can be quite cumbersome and that is why Regulation (EU) No 650/2012 has the ambition to simplify the procedure for settling international successions within the European Union. However, it will also have effect outside the European Union.

The inheritance laws of your habitual abode

In short, the European Succession Regulation provides that the state where you have your habitual residence has jurisdiction when you die to decide how your estate passes to your heirs and legatees. This does not necessarily mean that a court will have to be involved. Often, the inheritance tax return will be sufficient to settle an estate together with a certificate of succession (for the banks). That solution will then also apply in 25 EU Member States (i.e. the entire EU apart from Denmark and Ireland who opted out. The UK opted out of the Regulation and out of the EU).

The question then is what law must be applied. By default, that is the inheritance law of the State where you have your habitual residence, unless you chose for the law of the country that gave you your nationality. If you have your habitual residence in Belgium, the Belgian inheritance rules will govern your entire estate. That means that these rules will be used for assets in all 25 EU Member States where the European Succession Regulation applies. The Regulation does indeed determine that one law rules your entire estate within the EU, and that is the law of your habitual residence.

Opt for your national law

Nevertheless, you can opt - in your Will - that the law of your nationality[1] will apply to all the assets in your estate. Danes and Irish, as well as Afghans, Brits and Zimbabweans living in Belgium may opt for their national law.

The inheritance rules of your national law will then be applied by the authorities in the Member State of your habitual residence (it is not possible to opt for the jurisdiction of another State except by moving your habitual residence there).

That jurisdiction will then determine how your estate is passed on to your heirs and legatees and that solution is then applied in all 25 EU Member States.

Not for inheritance tax

An important note: even if you can choose for the inheritance rules of another state, you can NOT opt for its inheritance TAX regime. You cannot opt to avoid inheritance tax.

Avoid the forced heirship rules?

If you move to a country – or opt for your national law – that does not have forced heirship rules, you would be able to disinherit your children and leave everything to each other.

However, if you opt for your national law, that may refer back to the Belgian rules in respect of Belgian real property (that is called 'renvoi') and the Belgian laws have forced heirship rules.

European Certificate of Succession

To put that in practice, the Regulation states that any decisions and notarial deeds drawn up in the state that has jurisdiction will automatically apply in the 25 Member States that are governed by the European Succession Regulation. To simplify that procedure, one can apply for a European Certificate of Succession that constitutes proof that one is an heir or a legatee or an administrator of the succession. The certificate is recognised throughout the 25 States where the European

[1] For Brits, that is either the law of England and Wales, Scotland or Northern Ireland. For Americans, that will be the law of the State they identify themselves with.

Succession Regulation applies, eliminating the need for any new procedures in these States.

The European Certificate of Succession will not be recognized in Denmark or Ireland or in any other jurisdiction outside the EU. That does not mean that these countries will completely disregard these decisions and deeds, their own inheritance rules may take account of the inheritance rules in your country of habitual residence or citizenship.

To help understand the rules in other countries, the European Commission has set up a website where you can check the basic rules of the succession laws in the 27 EU Member States: www.successions-europe.eu.

25. I have a special tax status.

Diplomats are not considered to have a domicile in Belgium. As such, the Belgian inheritance rules will apply only to any real estate that they own in Belgium.

For income and inheritance tax purposes, officials of international organizations may not be considered to have their fiscal domicile in Belgium (see 28). However, for the inheritance rules they will normally have their domicile in Belgium.

Likewise, the Belgian expatriate tax regime as well is solely an income tax rule. It does not provide a route to circumvent the Belgian inheritance rules.

Inheritance Tax

26. Is Belgian inheritance tax due?

The Belgian inheritance tax rules follow the Belgian inheritance rules.

If you are domiciled in Belgium, Belgian inheritance tax is due on your entire estate (i.e. all real estate and all movables) including real estate outside Belgium (see 34).

If you are not domiciled in Belgium when you die, Belgian inheritance tax will be due only on Belgian real estate. Your worldwide estate is normally liable to inheritance tax in the country where you are domiciled at the time of your death.

The fact that your heirs do not live in Belgium does not prevent Belgian inheritance tax from being charged on the Belgian property.

And opting for the inheritance law of the country that gave you your citizenship (see 24) does not mean that no Belgian inheritance tax will be due.

27. Do I pay inheritance tax in Belgium when I inherit from my mother in ...

No, Belgium charges inheritance tax on the estate of someone who lived in Belgium.

Belgian inheritance tax is only due if your mother lives in Belgium. If she lives in …, no Belgian inheritance tax is due unless your mother owned real estate in Belgium. Inheritance tax will normally be due in …, her country of domicile.

Most countries apply the same rules and tax the estate of their residents.

Some countries such as France, Germany, Ireland, Poland and Spain charge inheritance tax on what a resident beneficiary inherits even if the deceased was not living there.

And some countries no longer have inheritance tax (Austria, Cyprus, Estonia, Italy, Latvia, Malta, Portugal, Slovakia or Sweden).

28. And if I have a special regime?

Only officials of the Institutions of the European Union, the European Investment Bank, NATO, the Western European Union, etc ... who are living in Belgium for the purpose of carrying out their duties are considered to have kept their domicile in their country of origin for inheritance tax purposes. If these officials are not domiciled in Belgium, their heirs will not pay Belgian inheritance tax unless they owned real estate in Belgium.

Other special tax regimes (such as the expatriate tax regime that is due to be phased out in 2022 or 2023) do not give an exemption of inheritance tax in Belgium, unless the expatriate had not taken up domicile in Belgium.

29. Calculating the inheritance tax

For each of the heirs to an estate, inheritance tax is levied on his/her share in the net value of the estate of the deceased.

However, inheritance tax may also be charged on certain assets or on money that is not in that estate of the deceased. These are rules to prevent inheritance tax avoidance in the form of e.g. lifetime gifts.

- If the deceased has made a gift less than three years before his death (five years in Wallonia), that gift will be liable to inheritance tax. This is similar to the British 7-year rule for PETs (potentially exempt transfers). Paying the inheritance tax can, however, be avoided by making the gift before a notary and pay gift tax (see 35).
- If the marriage contract gives the surviving spouse more than half of the community property (gemeenschap van goederen / communauté de biens), inheritance tax will be due on the part in excess of that half.
- If an insurance company pays out a capital or an annuity in accordance with a life insurance policy on the life of the deceased, inheritance tax will be due, except if it is a statutory insurance schemes or a group insurance scheme set up by the employer.
- If the deceased had an usufruit over an asset, and someone else had bought the bare property rights from him or with him, the taxman may presume that is a gift in disguise. He may charge inheritance tax over the assets as if it was left by the deceased in his estate. However, the other party may prove that it was not a disguised gift.

30. Special rules

The value of usufruit is calculated as a percentage of the value of the assets on which the usufruit is given. The percentage depends of the age of the beneficiary of the usufruit as set out below.

Age	Usufruit	Bare property
51 - 55	52%	48%
56 - 60	44%	56%
61 - 65	38%	62%
66 - 70	32%	68%
71 - 75	24%	76%
76 - 80	16%	84%
over 80	8%	92%

The value of the bare property is calculated by deducting the value of the usufruit from the full value

31. Can my heirs take any deductions?

Against the value of the assets, one can set off a number of debts and liabilities that the deceased had at the time of his death. These include his/her tax liabilities, any outstanding loans, professional liabilities, maintenance payments, the last hospital bills, and the cost of the funeral.

The mortgage can be deducted from the value of the property, but if the mortgage is covered by an insurance policy, the mortgage capital paid out by the insurance company will cancel out that deduction.

32. Inheritance tax rates

Within Belgium, the inheritance tax rates vary from one region to another. The applicable rate is the rate of the region where the deceased was living at the time of his death. If he moved within the last five years, it is the region where he lived longest in the last five years.

There are different tables with inheritance tax rates depending on the relationship between the deceased and the beneficiary. For children the rates vary between 3% and 30%. For friends, between 30% and 80%.

The inheritance tax is calculated, for each heir separately, on his share of the estate, according to the following rates.

In Wallonia

Spouse, registered partner, children	
€ 1 – € 12,500	3%
€ 12,500 – 25,000	4%
€ 25,000 – 50,000	5%
€ 50,000 – 100,000	7%
€ 100,000 – 150,000	10%
€ 150,000 – 200,000	14%
€ 200,000 – 250,000	18%
€ 250,000 – 500,000	24%
above € 500,000	30%

There is a tax-free allowance of €12,500 for these heirs (€25,000 if the estate is worth less than €125,000). For children under 21, €2,500 is added to the allowance for each year under 21. If the deceased owned or co-owned his principal residence, there is a tax reduction.

Wallonia gives a tax exemption when a spouse or a registered partner inherits the family home. In Wallonia that exemption is only granted if the family has served as such for at least five years.

The other inheritance tax rates are:

	brothers sisters	uncles/aunts nephews/nieces	others
€0 - 12,500	20%	25%	30%
€12,500 - 25,000	25%	30%	35%
€25,000 - 75,000	35%	40%	60%
€75,000 - 175,000	50%	55%	80%
Over €175,000	65%	70%	80%

In Brussels

Each heir is taxed on his own share.

There is a tax-free allowance of €15,000 for spouses and children. For children under 21, €2,500 is added for each year under 21. If the deceased owned or co-owned his principal residence, there is a reduction of the inheritance tax.

Brussels has an inheritance tax exemption in Brussels for the family home when it is inherited by the spouse or civil partner if the family has lived there for five years.

Spouses, registered partners, children	
€ 1 – 50,000	3%
€ 50,000 – 100,000	8%
€ 100,000 – 175,000	9%
€ 175,000 – 250,000	18%
€ 250,000 – 500,000	24%
Above € 500,000	30%

	brothers sisters	uncles/aunts nephews/ nieces	other
€0 - €12,500	20%	35%	40%
€12,500 - 25,000	25%	35%	40%
€25,000 - 50,000	30%	35%	40%
€50,000 - 75,000	40%	50%	55%
€75,000 - 100,000	40%	50%	65%
€100,000 - 175,000	55%	60%	65%
€175,000 - 250,000	60%	70%	80%
Over €250,000	65%	70%	80%

In Flanders,

Spouses, registered partners, cohabitating partners and children pay inheritance tax at the following rates:

€ 1 – 50,000	3%
€ 50,000 – 250,000	9%
Above € 250,000	27%

Each heir is taxed on his own share. The inheritance tax due is calculated separately for real estate and moveable assets. Liabilities are set off against the moveable assets, unless they have been specifically incurred to acquire real estate.

Spouses and live-in partners do not pay inheritance tax on the family home or the usufruit on the family home.

	Siblings	others
€0 - €35,000	25%	25%
€35,000 - €75,000	30%	45%
Over €75,000	55%	55%

33. New families

The tax rates under 32 are for all children even for children from your first marriage.

The children of your spouse or partner do not automatically inherit from you if you do not include them in your will. They would normally be taxed at the high rates for strangers, but each region has rules to give them the same rate as children under certain conditions.

34. Double taxation

As a rule, Belgium grants relief for double taxation, for the estate tax or the inheritance tax paid abroad. This means that the estate tax or inheritance tax can be deducted from the Belgian inheritance tax.

A decision of the Constitutional Court of 3 June 2021 grants the same "foreign tax credit" for movables.

In practice, this means that, even if there is no inheritance tax between spouses in e.g. the UK, they will have to declare that property in the inheritance tax return in Belgium, and pay Belgian inheritance tax. They cannot offset the UK inheritance tax as they have not paid it. Belgian inheritance tax will be due in full.

The double taxation treaties which Belgium has signed with most European countries, relate only to income tax and not to inheritance tax. Belgium has signed two double taxation treaties relating to inheritance tax, with France and Sweden, but Sweden has no inheritance tax.

35. Pay gift tax to avoid inheritance tax

Gift tax is due on any gift before a notary; however the gift tax is much less than the inheritance tax. A lot of estate planning in Belgium is done with gifts.

If gift tax has been paid, no further inheritance tax will be due.

For real property in Belgium, there is no alternative but to gift the property before notary. The gift tax rates are comparable to the inheritance tax rates although the rates have been significantly reduced in 2015.

Gift tax on **real estate** is calculated on the value of the gift

On the band between	Rate	Tax on bands before
Spouses, registered partners, children, …		
€0 - €150,000	3%	
€150,000 - €250,000	9%	+ €4,500
€250,000 - €450,000	18%	+ €13,500
over €450,000	27%	+ €49,500
Between other persons		
€0 - €150,000	10%	
€150,000 - €250,000	20%	+ €15,000
€250,000 - €450,000	30%	+ €35,000
over €450,000	40%	+ €95,000

The gift tax on real estate can be mitigated by making gifts over time with intervals of three years. Any gifts of real property within a period of three years are added to the previous gift to calculate the gift tax.

Gifts of real property outside Belgium are not liable to Belgian gift tax.

For gifts of movables before a notary, there is a flat tax rate. The rate is 3% for descendants, ascendants, spouses and civil partners, 7% for all others. In Wallonia the rates are 3.3% and 5.5%.

It is not obligatory to make gifts of movables before a notary. Hand-to-hand gifts and bank gifts are valid and exempt of gift tax. However, if the donor does not live for another three years (five years in Wallonia) after the gift, the gift is added back to the estate to calculate the inheritance tax.

36. The situation of US citizens

The situation of US citizens living in Belgium is special. They are liable to inheritance tax in Belgium because they live here and they are liable to estate tax in the US because they are a US citizen (but only over the federal estate tax exemption of $12,060,000 per spouse, as of 2022).

If they also have property in the UK and children living in France, inheritance tax may be due in the UK on the property there, and your children may be liable to

inheritance tax in France because France charges inheritance tax when an heir lives in France.

Fortunately, the USA have signed estate tax treaties with France, Germany and the UK covering estates and gifts.

Belgium does not have an estate tax treaty with the US. Therefore, we need to look at the domestic rules in the US and in Belgium.

My spouse is not an American citizen

The US charges gift tax and estate tax at 40% on an estate in excess of $12,060,000 (per spouse, as of 2022). In practice, the estate tax is calculated tentatively on the entire estate at a rate between 18 and 40%. Against that tax several credits can be set off, the most important is the "unified credit" which exempts the first $12,060,000 (for 2022) for estate tax and for gift tax.

Spouses do not pay estate tax, because they can deduct an "unlimited marital deduction" that eliminates any federal estate tax between husband and wife for property passing to the surviving spouse. If your spouse is not a US citizen, this unlimited deduction does not apply.

There is a solution, though, a "Qualified Domestic Trust" (QDOT) can be used to obtain an unlimited marital deduction for otherwise disqualified spouses. The estate of the deceased then passes into a "Bypass Trust" (or "Family Trust") and a QDOT (the "Marital Trust"). Usually assets for a value up to the unified credit ($12.060,000 pass tax free into the Family Trust, the remaining assets go into the Marital Trust.

The surviving spouse is the sole beneficiary of the Marital Trust. The QDOT can, however, only pay income to the surviving spouse free of estate tax; distributions of principal are liable to estate tax. U.S. Estate Tax is due when the surviving spouse receives a distribution of the principal or when the surviving spouse dies.

A US taxpayer asked the Ruling Committee to give a decision to the effect that the Marital Trust was discretionary and irrevocable in order to delay Belgian inheritance tax until the surviving spouse passed away or received a distribution of the principal. The Ruling Committee did, however, not accept that the QDOT was discretionary and irrevocable and concluded that inheritance tax would be due when the US taxpayer died. Moreover, the Ruling Committee recharacterised the income received by the spouse as investment income that was taxable at a fixed rate of 30%.

If inheritance tax is due upon the first death in Belgium and estate tax in the US upon the second death, there will be no credit for the estate tax in Belgium and it may prove difficult to get a credit for the Belgian inheritance tax against the US estate tax.

When setting up a QDOT, one must take account of both tax regimes.

IRAs and 401(k)

When you die, an individual retirement account or an employer sponsored pension plan like a 401(k) becomes part of your taxable estate. Estate tax will be due if it is more than the "unified credit" (for the first $12.060,000 (for 2021)), but appointing the surviving spouse as the beneficiary usually triggers the "unlimited marital deduction" (see above).

In Belgium, inheritance tax will also be due on the IRA or 401(k). Belgium only exempts lump sum payments and annuities paid by an employer sponsored group insurance contract or a pension fund to the surviving spouse or, if the spouse died before, to the children under 21.

Any income from the IRA or the 401(k) is deferred income and taxable as such. The tax regime in Belgium must be analysed on a case-by-case basis.

Gift tax?

In the US gift tax and estate tax in principle are unified. As long as the US citizen does not make gifts for more than $12.060,000 (the "unified credit") during his lifetime and keeps a tally of his donations and reports these donations, no gift tax is due, and as long as his lifetime gifts and his estate upon his death do not exceed the unified credit, no inheritance tax will be due.

However, a US taxpayer can make tax exempt gifts of $16,000 per year per beneficiary (as of 2022; for a married couple that is $32,000 per recipient). Gifts to

one's spouse are tax-free, as long as the spouse is a US citizen. If not, the limit on tax-free gifts is $164,000 (from 2022).

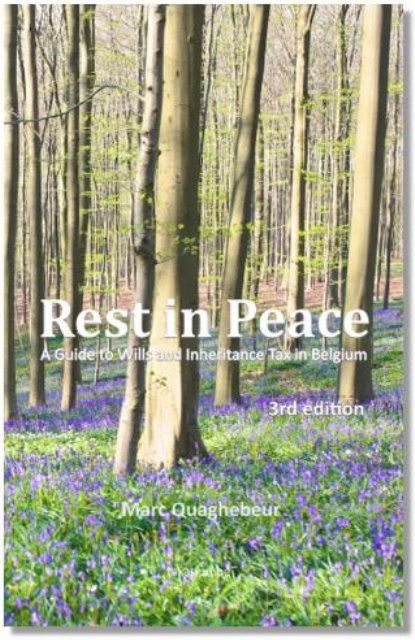
In Belgium, gift tax is due if the donation is made before a notary. That cannot be avoided on Belgian real estate, but no Belgian gift tax is due on gifts of real property outside Belgium or hand-to-hand gifts of movables (see 35).

For real property, there is no alternative but to pass a donation before notary. The gift tax rates are comparable to the inheritance tax rates although the rates have been significantly reduced in 2015.

When gift tax is due in Belgium, there may well not be any gift tax in the US, getting a tax credit will be tricky. Moreover, when Belgian inheritance tax is due on a gift made in the past three years (without paying gift tax), there will be no credit against the federal estate tax.

25 November 2021

For further reading: Rest in Peace, A guide to Wills and Inheritance Tax in Belgium (3rd edition), that can be ordered via Amazon or from Waterstone's.



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