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Gifts in an international context: tax & civil aspects

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FFPE – 12 December 2023



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Conference cycle 2023 - 2024

Seminars in English

9 November 2023
Belgian and international inheritance
(civil and tax aspects)

12 December 2023
Gifts in an international context
(civil and tax aspects)


Date to be confirmed
Belgian real estate
(civil and tax aspects)

Seminars in French

17 octobre 2023
Successions dans un contexte international
(aspects civils & fiscaux)

28 novembre 2023
Donations dans un contexte international
(aspects civils & fiscaux)

Date à confirmer
Immobilier belge
(aspects civils & fiscaux)




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Questions

- **Giving without being stripped off**
- **How to secure the surviving spouse's position?**
- **Does EU Protocol n°7 apply to gifts?**
- **What are the tax criteria in this area?**
- **What is the tax treatment in the different Member States?**
- **What are the remedies to prevent multiple taxation?**


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Taxation of International Gifts - Protocol EU No. 7 -




Gifts = out of scope of Protocol No. 7

└─┬─> **EU Officials living in Belgium = Belgian residents
for gift tax purposes**

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Taxation of International Gifts

- Relevant factors for taxation -

☐ Gifts: external factors:

- Nationality of the donor, beneficiary...?
- Residence of the donor, beneficiary...?
- Country of location of the assets given?
- *Etc.*


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Relevant
criteria?


Criteria vary according to the competent states

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Taxation of International Gifts

- External factors: multiple taxation -



☐ Risk of double taxation, triple taxation


Example: an active EU Official (recruited in Berlin) living in Brussels gives his Spanish home to his children residing in France

- Germany taxes?
- Belgium taxes?
- Spain taxes?
- France taxes?

☐ Remedies?

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Gifts: civil aspects

“Giving without being stripped off”



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Times are changing...


Réformes civiles

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    graph TD
      A[Matrimonial regimes reform  
(1 September 2018)] --> B[Réformes civiles]
      C[Reform of the civil law of succession  
(1 September 2018)] --> B
      D[Property law reform (e.g. usufruct)  
(1 September 2021) (exceptions)] --> B
      E[New law changes: succession / gifts / wills  
(1 July 2022)] --> B
      
```

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... the fundamentals remain



Avoiding "grief tax" for your heirs

Giving while retaining most rights

Protection of spouse & loved ones

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Gifts

"Giving without being stripped off"

- ❑ Basic principle
- ❑ **Specificities:** possibility to give without getting "stripped off"

Possibility to structure the gifts so that the donor can continue to:



- **Manage** the assets given
- Receive the **income** generated by the assets given
- Collect the **capital gains** made on these assets
- **Dispose** freely, under certain circumstances, of the assets given
- Etc.

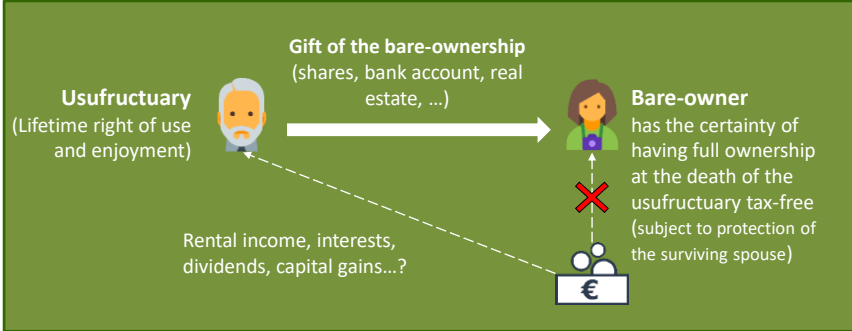
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 **Protection of the donor:
usufruct reserve** 



Usufructuary
(Lifetime right of use and enjoyment)


Gift of the bare-ownership
(shares, bank account, real estate, ...)

Bare-owner
has the certainty of having full ownership at the death of the usufructuary tax-free (subject to protection of the surviving spouse)



Rental income, interests, dividends, capital gains...?

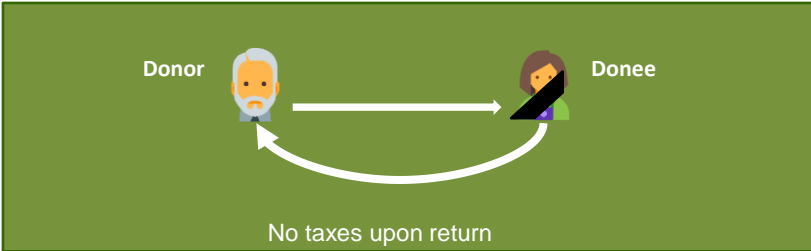
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→ Possibility of guaranteeing a minimum return for the donor?
→ Possibility for the donor to be able to sell the assets given & receive the sale price?

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 **Protection of the donor :
Pre-death of the beneficiary before the donor** 




Donor

Donee


No taxes upon return

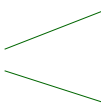
Be cautious: special arrangements required:

- Anticipate the **transfer of residence** of the donee?
- Anticipate the **sale** of the asset given?
- *Etc.*


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Protection  **of the surviving spouse**
of the loved one (cohabitant, partner, etc.)




Belgian legislative developments: towards more simplification



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Spouse's protection: personal assets 

 Donor  Gift of a personal asset with a reserve of usufruct  Donee

 "Continued usufruct"  Surviving spouse

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Protection of the surviving spouse: common property

Donor → Donation of joint or undivided property with reservation of usufruct → Donee

Legal increase of usufruct

Surviving spouse

Also possible for cohabitant, etc.

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Gifts: tax aspects (Belgian & cross-border context)

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Taxation of International Gifts - Protocol EU # 7 -



Gifts = out of scope of Protocol n°7

↳ EU Officials living in Belgium = Belgian residents for gift tax purposes


Reminder

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Gift of movable assets: Belgian tax principles




- Forms:** notarial, indirect (e.g. bank gifts), manual, etc.
 - ↳ ./ terms and conditions
- Mandatory registration:** see next slide
- Risk of inheritance tax if the gift is not registered**


- Wallonia: extension to 5 years from 1st Jan. 2022 (not retroactive)
- Brussels: new law of 6 July 2022 + new proposal for extension to 5 years from 1st Jan. 2024
- Flanders: extension to 4 years? Exceptions?

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FFPE **Gifts of movable assets: registration mandatory?** 

	Mandatory registration	Concurrent registration gift	Non-registration & delay
Belgian and foreign notarial gift	✓	✓ (if foreign notary: specificities)	—
Manual gift	—	—	✓
Indirect gift (bank gift)	—	—	✓

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FFPE **Gifts of movable assets: Belgian taxes** 

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    graph TD
      A([Gifts of movable assets]) --> B[Mandatory registration  
(reservation of usufruct, etc.)]
      A --> C[Not mandatory registration  
(full property of cash, securities accounts, etc.)]
      B --> D[Gift tax  
3% or 7% (Bru. and Fl.) or 3.3% or 5.5% (Wal.)]
      C --> E[Spontaneous registration]
      C --> F[Not registered]
      E --> D
      F --> G[Survival > 3 or 5 years*]
      F --> H[Death within 3 or 5 years*]
      G --> I[No tax]
      H --> J[Inheritance tax]
      J --> K[Special insurance?]
  
```

* Subject to some exceptions

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Gifts of movable assets: example

Securities account: € 1 M Cash: € 500,000

Daughter

- No gift → inheritance tax (Brussels) = +/- € 385,000
- Gift → 0 € (if not registered & delay) or € 45,000 (if registered)

Tax gain = between € 340K and € 385K

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Belgian taxation: real estate gifts

- ❑ **Gift of a Belgian property**
 - Beneficiary = Belgian resident
 - Brussels
 - Wallonia
 - Flanders


}	Children/spouse 3% to 27%	Other persons 10% to 40%
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- If beneficiary = foreign resident → risk of double taxation (e.g. France, Germany, Spain, etc.)

- ❑ **Gift of foreign property by a Belgian resident?**


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Belgian taxation of donations

- Real estate gift : example -



☐ **Case: Mr (Brussels) has 2 children and 1 property worth € 750,000**

- Inheritance tax upon death: +- €110,000
- If one gift: total tax cost: +- €70,000 (tax saving of €40,000)
- If two gifts (2x50%) (min. 3 years and 1 day) : total tax cost +- €30,000 (tax saving of €80,000)


☐ **Disadvantages of a gift in 2 parts**

- Risk of decease of the donor prior to the second gift
- Increase in value of the building
- Multiple notarial deeds (cost)
- Legislative change
- Etc.


☐ **Taxable base in case of gift of bare-ownership of a property ?**

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Belgian taxation of donations

- What's new in Brussels in 2024 -



☐ **New ordonnance of 6 July 2023 (E.V 1^{er} January 2024)**

➤ **Extension of preferential rates to *de facto* cohabitants (conditions)**

- Spouse
- Cohabitant
- Legal cohabitant (shared household for at least one year)

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Assimilation to spouse:

- 3 to 27% for real estate gifts
- 3% for movable assets gifts


➤ **Exemption family business** → extension to *de facto* cohabitation (conditions)

➤ **Other inheritance novelties:**

- Assimilation de facto cohabitation + certain persons not related to direct descendants
- Bequests between « friends »
- Etc.

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Other ways to optimise the transfer of your properties?



See you at our next seminars in 2024 😊

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Gifts: taxation abroad

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Taxation of international gifts
- Examples of taxation in other EU Member States -

Gift to children

	 BE	 DE	 FR	 PL	 LU	 PT	 ES	 IT
Gift Tax	Movable asset: ∅ or 3% / 3.3%	→30%	→45%	→7%	∅ or 1.8% or 2.4%	∅	→34% (Loc. Spec.)	4%
	Immovable asset: →27%							
Favourable measures	Exemption for certain gifts	Tax rebate of €400,000 + local. spec.	Tax rebate of €131,865 every 15 years	Tax rebate + exemption for certain gifts	∅	∅	Fed. tax rebate (local Spec.)	Tax rebate of € 1 M

Some countries do not levy any gift tax (Austria, Sweden, Slovakia, Estonia, Latvia, Romania, Cyprus, etc.) → beware that other taxes may apply (stamp duty, etc.)

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Gift in a crossborder context: key questions

- What are the relevant tax criteria in the countries involved?
- Are there any applicable gift tax treaties?
- Are there remedies for double taxation under domestic law?
- What is the tax treatment of gifts under domestic law?
- Are there mechanisms to reduce the tax burden?

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Taxation of International Gifts - Double Tax Treaties -



☐ **Agreements signed by Belgium**

 Gifts: ∅

☐ **Other EU Member States have signed more treaties (examples)**

 Gifts: Germany, Italy, Austria, USA, etc.

 Gifts: France, Denmark, Switzerland, USA, etc.

 Gifts: France


 Gifts: France, etc.

 Gifts: ∅


 *The U.S. has concluded only 8 treaties relating to gift taxes of which 6 with EU Member States*

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Taxation of international gifts - Examples of crossborder situations-




Case 1: Belgian couple (60 yo) give the bare ownership of their second residence in France (€400,000) to their two children residing in Germany

Case 2: Mister is a Belgian tax resident and gives cash to his Spanish resident children (Andalusia)

Case 3: Italian woman working in Brussels for the EU Institutions (recruited in Rome) gives an immovable property in Italy (€800,000) to her two children (living in Berlin and in Brussels)

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