



DEKEYSER & ASSOCIÉS

Belgian and International inheritance (tax and civil aspects)

Me Manoël Dekeyser - Me Antoine Dekeyser

FFPE – 11 March 2021



Conference Cycle

- Save the dates -



Seminars in English

11 March

Belgian and international inheritance
(civil and tax aspects)

20 April

Gifts in an international context
(civil and tax aspects)

27 May

Belgian real estate
(civil and tax aspects)

Seminars in French

23 février

Successions dans un contexte international
(aspects civils & fiscaux)

25 mars

Donations dans un contexte international
(aspects civils & fiscaux)

29 avril

Immobilier belge
(aspects civils & fiscaux)

Agenda

□ Civil aspects:

- Governed by the **civil law of the country of residence or nationality** (EU Regulation 650/2012)
- Possibility of **choosing the civil law applicable to one's estate** (EU Regulation No 650/2012)
- **Analysis of civil inheritance rules**
 - Belgian rules
 - Foreign rules

Who are the legal heirs? What is each heir entitled to? Does one have full freedom to distribute his/her estate? Is it possible to derogate by will? Is it possible to establish an inheritance agreement with the heirs? etc.

Agenda

☐ Tax aspects:

- Introduction to taxation
- Belgian inheritance tax
- Inheritance taxation in other EU Member States

Civil aspects

Possibility to choose the civil law applicable to the Estate (EU Regulation No.650/2012)



□ A single civil law for the entire estate?

- **If no choice**: law of the state of the “usual residence” at the time of death

↳ Exceptions?

- **Possible choice**: law of the country of nationality
 - ↗ upon choice
 - ↘ at the time of death

How to determine one's usual residence? —EU Regulation No.650/2012—



□ Autonomous Notion

□ Criteria

- Objective
- Subjective

□ Note

- Usual residence ≠ tax residence?
- EU Officials can be usual residents of a country where they are no tax residents (Protocol No. 7)?

How to make a choice of law? —EU Regulation No.650/2012—



- How to express the choice of law?

- Multiple nationality?

- Choice of the estate law vs inheritance reserve?



Belgian estate Law

(Civil Estate Reform 1st of September, 2018)

- ❑ Belgian law: when does it apply?
- ❑ Modernisation of Belgian inheritance law (civil aspects)
- ❑ Legal inheritance devolution (in the absence of a will)



Usufruct —————> Surviving spouse



Bare-ownership —————> Children



- ❑ Possible derogations?

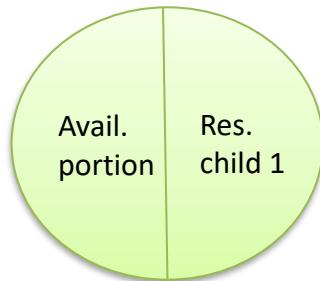
Belgian estate law

- Will vs. hereditary reserves -

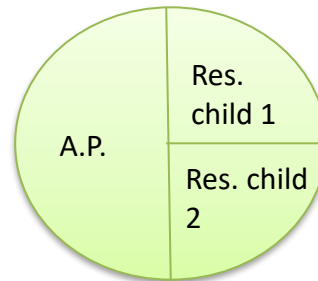


- ❑ Absolute freedom vs. respect of the inheritance reserve?
- ❑ Children's reserved portion (global reserve)

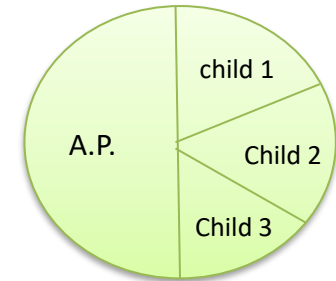
If the deceased has 1 child



If the deceased has 2 children



If the deceased has 3 children



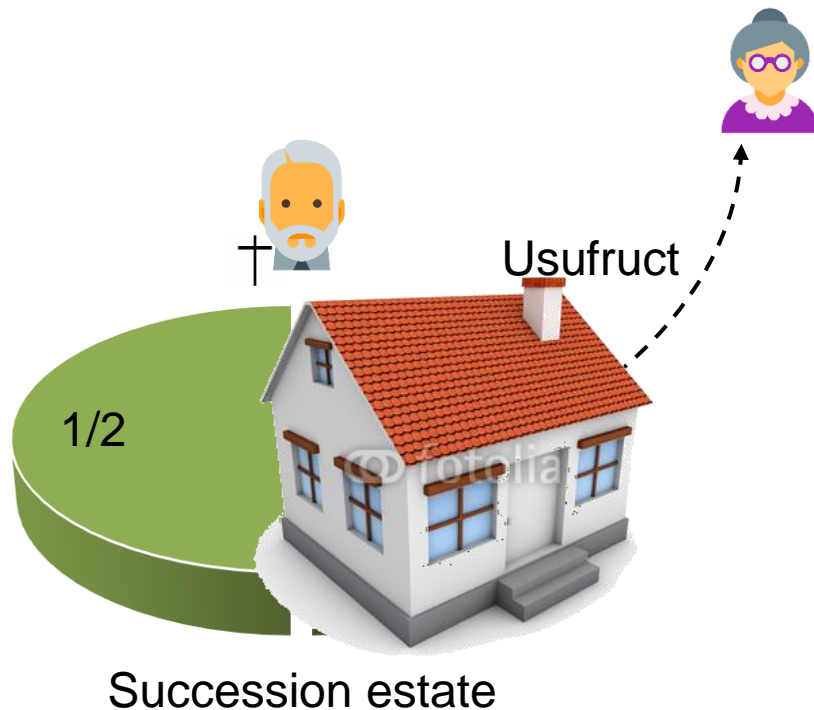
- ❑ Surviving spouse's reserved portion (double reserve)

Belgian estate law

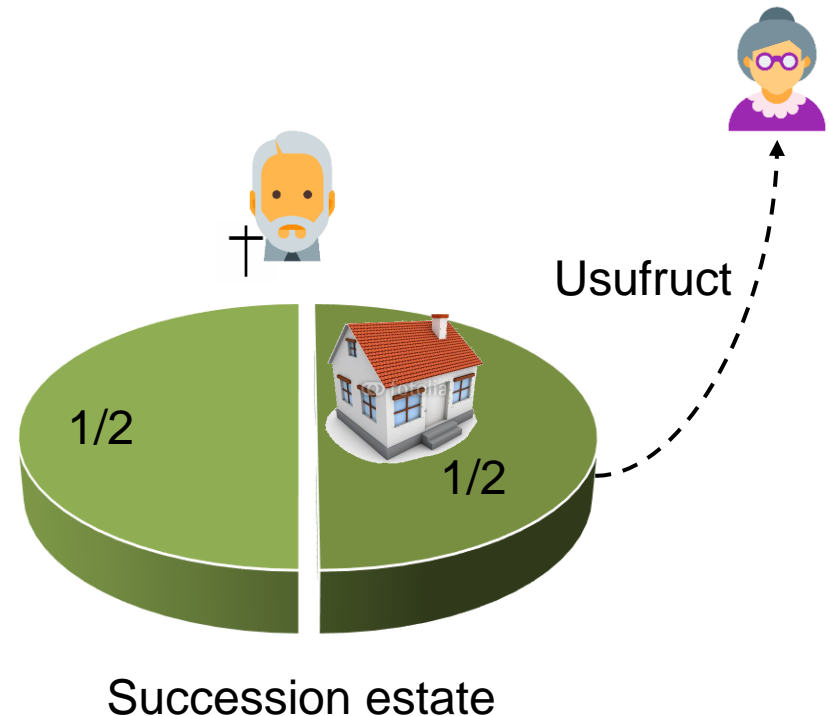


- Reserved portion of the spouse -

- Usufruct of the domicile > usufruct of half of the estate




- Usufruct of the domicile < usufruct of half of the estate



European Inheritance Laws

- Examples -

Deceased has one surviving spouse and two children

								
		Belgium	Germany	Spain	UK	Italy	Poland	France
No will		100% usufruct	1/4 or 1/2 ownership (cf. marriage contract)	1/3 usufruct	Everything up to £270K + spec. assets + part of the remainder	1/3 ownership	1/3 ownership	1/4 ownership OR 100% usufruct
		100% bare-owners	Remainder	Remainder	Residual portion	Remainder	Remainder	Remainder
Reserved portion		✓	✓	Local specif.	✗	✓	✓	✗
		✓	✓	Local specif.	✗	✓	✓	✓
Inheritance agreement?		✓	✓	✗	✓	✗	✓	✓

Tax aspects

Taxation of international inheritances

- Tax criteria -

□ External factors to consider during matters of inheritance:

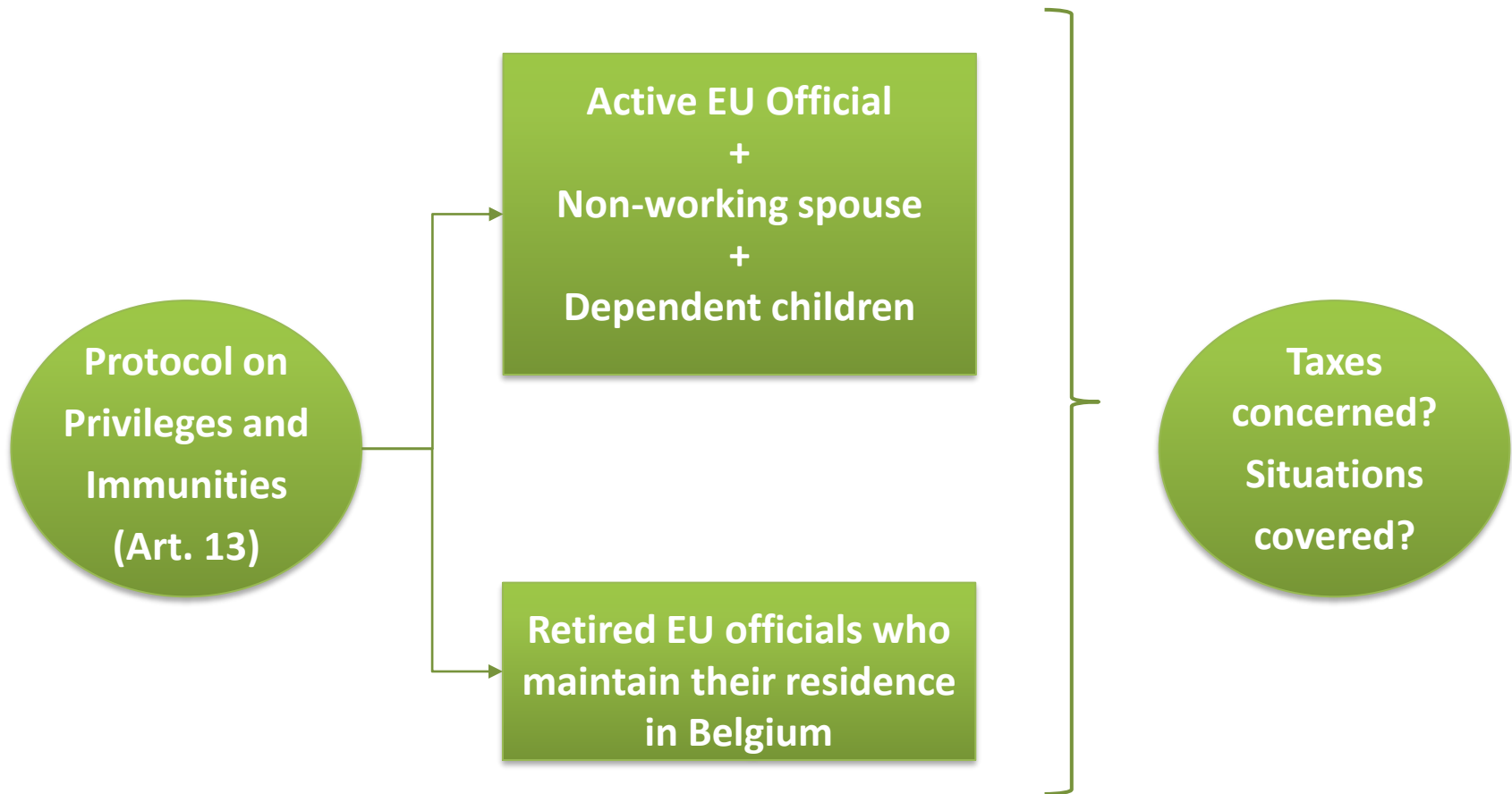
- Nationality of the deceased/heirs
- Residence of the deceased/heirs
- Location of the inherited property
- Place of death
- *Etc.*



Relevant?

Caution: criteria vary according to the competent State

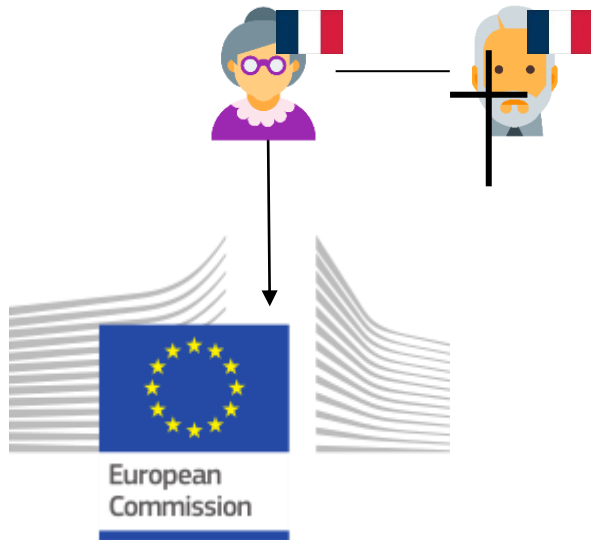
Taxation of international inheritances - EU Officials: Protocol No. 7 -



Taxation of international inheritances - EU Officials: Protocol No. 7 -



□ The surviving spouse issue



Case 1: Mr died while working as an executive in a Brussels company

Case 2: Mr died while working as an EU official

Case 3: Mr. met his wife in Brussels when she was already working at the European Commission. He was inactive when he died

Taxation of International inheritances

- External elements: multiple taxation -



□ Risk of double taxation, triple taxation

Example: a retired EU official (recruited in Germany) living in Belgium dies with a villa on the Costa del Sol (Spain). His heirs are his children residing in France.

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

□ Solutions?

- Personal planning
- Preventive treaties of double taxation
- Domestic Laws

Taxation of International inheritances

- External elements: multiple taxation -



☐ Agreements signed by Belgium



- Inheritance: France & Sweden → in the absence of an agreement: solution under domestic law?

☐ Other EU countries have signed more treaties:



- Inheritance: Ireland, South Africa, USA, Netherlands, Sweden, Switzerland, *etc.*



- Inheritance: Austria, Czech Republic, Hungary, *etc.*



- Inheritance: USA, UK, France, Sweden, Denmark, Greece, *etc.*



- Inheritance: France, Sweden, *etc.*



- Inheritance: USA, Canada, Germany, Italy, Spain, Portugal, UK, Qatar, Bahrain, U.A.E., *etc.*



- Inheritance: USA, France, Denmark, Sweden, Switzerland, Greece, *etc.*

- Taxation of International inheritances

- Belgian Inheritance Tax -



- ❑ **Inheritance tax** upon death of a **Belgian resident**
 - Taxable base?
 - Rates?
 - Persons liable?

- ❑ **Transfer of duties** upon the death of a **non-Belgian resident** (e.g. active EU officials)
 - Taxable base?
 - Rates?
 - Persons liable?

Possible reduction / elimination of IHT via gifts, life insurances, split acquisitions, foundations, will, etc.

Taxation of International inheritances

- Inheritance tax rates -



□ Brussels

- | | |
|--------------------|------------|
| • Children/spouse | 3% to 30% |
| • Brothers/sisters | 20% to 65% |
| • Uncles/nephews | 35% to 70% |
| • Third parties | 40% to 80% |

□ Walloon Region

- | | |
|--------------------|------------|
| • Children/spouse | 3% to 30% |
| • Brothers/sisters | 20% to 65% |
| • Uncles/nephews | 25% to 70% |
| • Third parties | 30% to 80% |

□ Flanders

- | | |
|-------------------|------------|
| • Children/spouse | 3% to 27% |
| • Others | 25% to 55% |

Total exemption of
the family home for
the surviving spouse









- Distinction between movable assets and real estate
- Exemption of €50.000 for the spouse on movable assets

Taxation of International inheritances

- Inheritance Tax of other Countries -



Deceased has one surviving spouse and two children

	 Belgium	 Germany	 Spain	 UK	 Italy	 Poland	 France	 Portugal
IHT rate (direct line)	Up to 30% (+ local. Spec.)	Up to 30%	Up to 34% (+ local. Spec.)	∅	Up to 4%	∅	Up to 45%	∅
Surviving spouse	Up to 30% / domicile exempted (+ local. Spec.)	Tax free allowance	Tax free allowance (+ local spec.)	∅	Tax free allowance	∅	∅	∅
Children	Up to 30% (+ local. Spec.)	Tax free allowance	Tax free allowance (+ local spec.)	Up to 40% / Tax free allowance	Tax free allowance	∅	Tax free allowance	∅



DEKEYSER & ASSOCIÉS

We thank you for your attention



Me Antoine Dekeyser

You can subscribe to our [Newsletter](#) and our [LinkedIn](#) page for more regular updates



Me Manoël Dekeyser

