



DEKEYSER & ASSOCIÉS

Belgian and International inheritance (tax and civil aspects)

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FFPE – 8 November 2022



New conference cycle



Seminars in English

8 November 2022
Belgian & international
inheritance

Gifts in an international context
(civil & tax aspects)

Real estate taxation in a cross-
border context

Seminars in French

24 novembre 2022
Successions belges et
internationales

Donations dans un contexte
international
(aspects civils & fiscaux)

Investissements immobiliers dans
un contexte international

Agenda

□ Civil aspects:

- Possibility of **choosing the civil law applicable to one's estate** (EU Regulation No 650/2012)
- Choice between the **civil law of the country of residence or nationality**
- **Comparison of Belgian and foreign civil inheritance rules**
 - Belgian rules
 - Foreign rules

Who are the legal heirs? What is each heir entitled to? Is it possible to derogate by will? What are the limits thereof? Is it possible to establish an inheritance agreement with the heirs? etc.

Agenda

☐ Tax aspects:

➤ Introduction to taxation

- Criteria for taxation of a gift / inheritance in a cross-border context
- Risk of double taxation and remedies

➤ Belgian inheritance tax:

- When does it apply? Inheritance duties / duties for transfers by death
- How is an inheritance taxed in Belgium?

➤ Inheritance taxes in some other EU Member States:

- Examples of foreign rules

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 applicable law vs. inheritance reserve?



Belgian estate Law

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



- ❑ Determination of the estate
- ❑ Possible derogations?

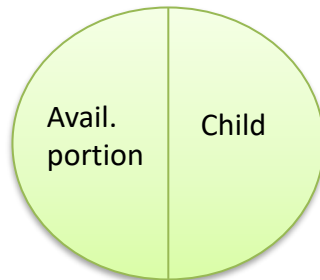
Belgian estate law

- Will vs. hereditary reserves -

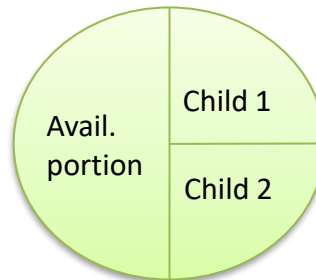


- Absolute freedom vs. respect of the inheritance reserve?
- Children's reserved portion (global reserve)

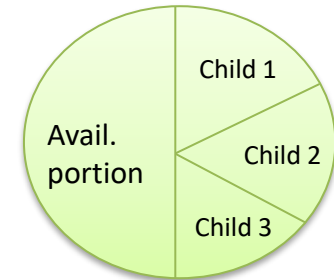
If the deceased has 1 child



If the deceased has 2 children



If the deceased has 3 children



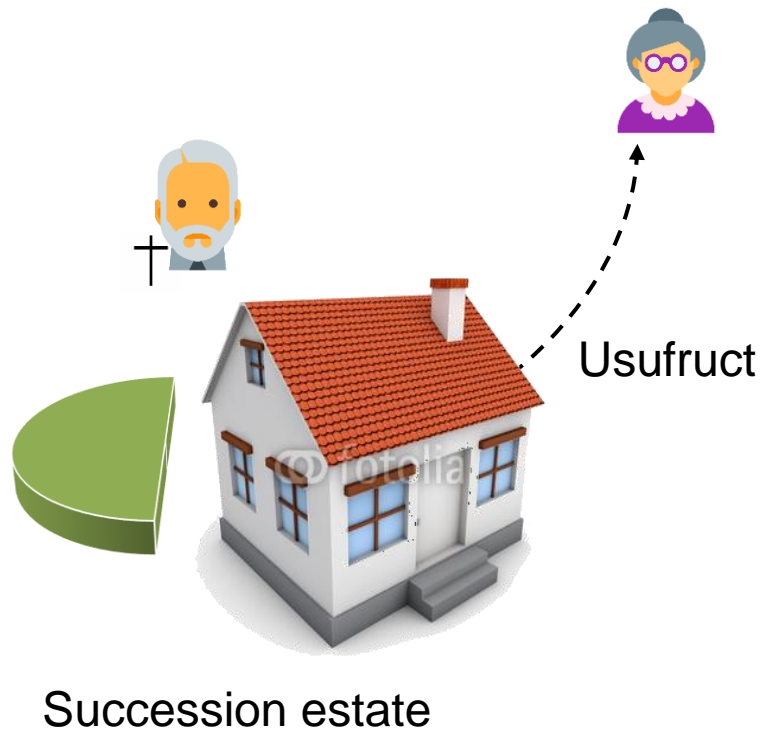
- Surviving spouse's reserved portion
- Calculation of the legal reserves
- Other specificities?

Belgian estate law

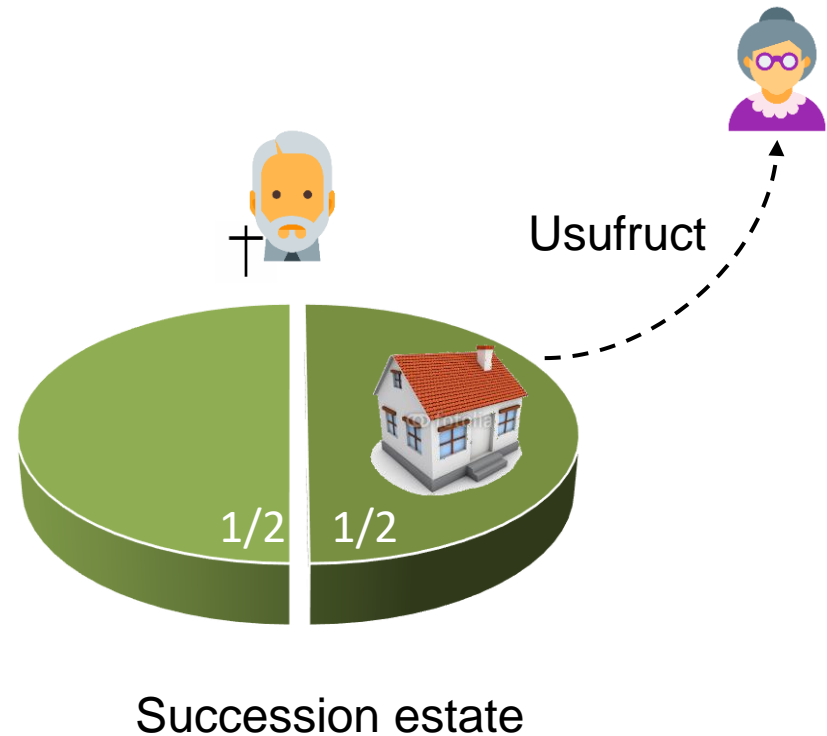


- Reserved portion of the spouse -

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














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



Compared Inheritance Law - Conclusion

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	¼ 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:

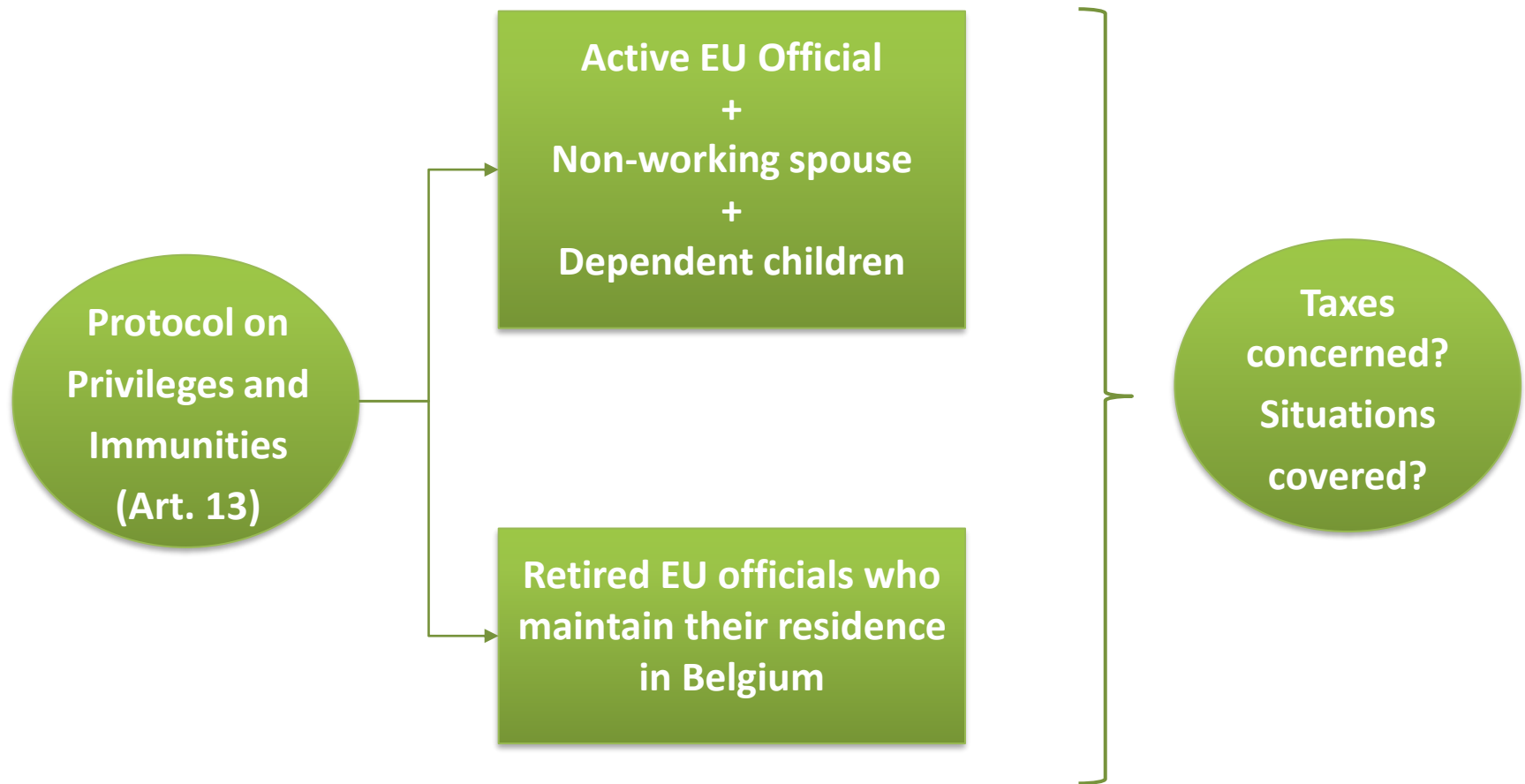
- Nationality of the deceased/heirs
- Residence of the deceased/heirs
- Location of the assets
- Place of death
- *Etc.*



Relevant?

Caution: criteria vary according to the competent State

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

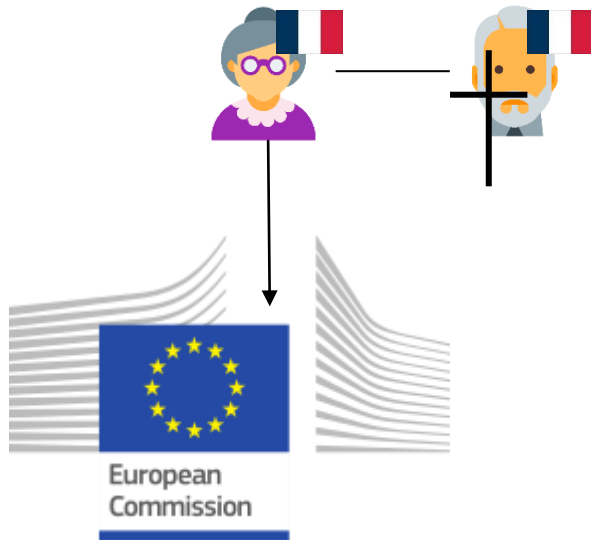


Taxation of international inheritances

- 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 died after retirement in Belgium

Case 4: 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 and Sweden → other solution in the absence of a treaty?

☐ 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, testament, etc.

Taxation of International inheritances

Belgian 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% |

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

Full exemption of
the family home for
the surviving spouse

Other reduced rates
/ specificities









* Marginal rates

Taxation of International inheritances

- Example of foreign IHT rules -



Deceased has one surviving spouse and two children

	 Belgium	 Germany	 Spain	 UK	 Italy	 Poland	 France	 Portugal
IHT rate (direct line)	3 to 30% (+ local. Spec.)	Up to 30%	Up to 34% (+ local. Spec.)	Up to 40%	Up to 4%	∅	Up to 45%	∅
Surviving spouse	Spec. exemptions /reduced rates	Tax free allowance	Tax free allowance (+ local spec.)	∅	Tax free allowance	∅	∅	∅
Children	Spec. exemptions /reduced rates	Tax free allowance	Tax free allowance (+ local spec.)	Tax free allowance	Tax free allowance	∅	Tax free allowance	∅



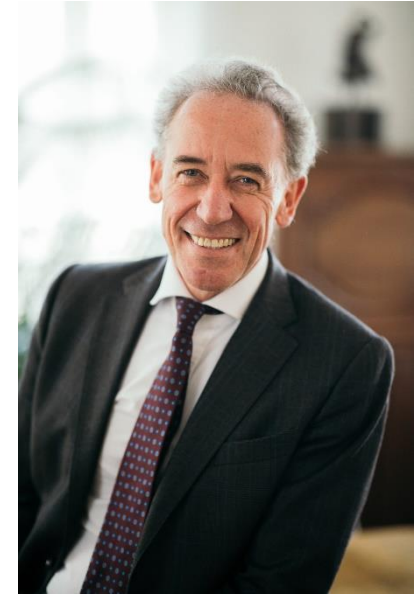
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We thank you for your attention



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