

# Belgium

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## 1. Types of tax

According to Belgian law, the transfer of property is either subject to inheritance tax or gift tax, depending on whether the transfer takes place before or after the death of the testator.

### 1.1 Inheritance tax

The Belgian inheritance tax is levied on the transfer of property after the testator's decease. It consists of 2 types of tax: succession and transfer.

#### **Succession tax**

Succession tax (successierechten or droits de succession) is levied on an inheritance received from a Belgian resident. Whether or not a person is considered to be a Belgian resident is a factual matter that requires careful evaluation in every single case. The nonresident status of the beneficiary of the inheritance is irrelevant to determine whether the inheritance is subject to Belgian succession tax.

#### **Transfer tax**

Transfer tax (recht van overgang bij overlijden or droit de mutation par décès) is levied on the transfer of Belgian real estate by death, when the deceased is not a resident of Belgium. Transfer tax is only applicable to Belgian immovable goods. The nonresidence status of the beneficiary of the transfer is irrelevant to determine whether or not the transfer is subject to Belgian transfer tax.

### 1.2 Gift tax

Gift tax (schenkingsrecht or droit de donation) is levied in the form of registration duties (registratierecht or droit d'enregistrement) on the donation of movable or immovable property during the lifetime of the donor.

Registration is only required for donations made by virtue of a Belgian notary deed. Unlike the donation of movable property, the donation of a Belgian immovable property inevitably needs to be established in a notary deed.

Registration for tax purposes is not required for the donation of real estate located outside Belgian territory or the donation of movable property if the donation is not made by virtue of a Belgian notary deed. In such a case, the gift tax is only due when the gift is voluntarily submitted to be registered for tax purposes.

It is important to note, however, that donations that took place within a 3-year period prior to the donor's decease will be subject to a higher inheritance tax if the donations have not been registered in Belgium, as long as the donor is a Belgian resident for tax purposes at the time of his or her death.

### 1.3 Real estate transfer duty

In case of transfer of Belgian real estate by donation or decease, no real estate transfer duty is levied above the gift or inheritance tax due.

The transfer of Belgian real estate in return for payment as well as the transfer of most of the real estate rights in return for payment is, in principle, subject to a real estate transfer duty.

The transfer of real estate located abroad by or to a Belgian resident, as a donation or in return for payment, is not taxed in Belgium.

### 1.4 Endowment tax

There is no endowment tax in Belgium.

### 1.5 Net wealth tax

There is no net wealth tax in Belgium.

## 2. Who is liable?

### **Succession tax**

In principle, the beneficiary of the inheritance is liable for the succession tax, whether or not he or she is a resident of Belgium.

Succession tax is due on the inheritance of the worldwide property of the testator after his or her decease, if the deceased is considered a Belgian resident for tax purposes at the time of his or her decease.

Under Belgian law, the deceased person is to be considered a resident if he or she has his or her effective residence in Belgium immediately prior to his or her decease. As mentioned before, this is a factual matter. Accordingly, the place of residence is generally considered to be the place where an individual has his or her permanent home (i.e., where the family is living) or where an individual has his or her center of economic interest (i.e., place from where an individual manages bank accounts, investments, business and properties).

### **Transfer tax**

Transfer tax is due on the transfer of Belgian immovable property of the testator after his or her decease, if the deceased is considered to be a nonresident for tax purposes at the time of his or her death.

The beneficiary of the Belgian real estate is liable in principle for the transfer tax whether or not he or she is a resident of Belgium.

### **Gift tax**

Gift tax is due in principle by the beneficiary of the gift. However, it is accepted in certain cases if the donor pays the gift tax.

### **Real estate transfer duty**

Real estate transfer duty is in principle due by the purchaser.

### 3. Rates

#### Succession tax

The applicable tax rates vary depending on the region, the beneficiary and the taxable amount.

#### Brussels-capital region

##### For spouse, legal cohabitant and direct ascendant or descendant of the deceased

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€50,000	3%	€0
€50,000.01-€100,000	8%	€1,500
€100,000.01-€175,000	9%	€5,500
€175,000.01-€250,000	18%	€12,250
€250,000.01-€500,000	24%	€25,750
Above €500,000	30%	€85,750

##### For brothers and sisters of the deceased

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500	20%	€0
€12,500.01-€25,000	25%	€2,500
€25,000.01-€50,000	30%	€5,625
€50,000.01-€100,000	40%	€13,125
€100,000.01-€175,000	55%	€33,125
€175,000.01-€250,000	60%	€74,375
Above €250,000	65%	€119,375

##### For uncles, aunts, nieces or nephews

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500	35%	€0
€12,500.01-€25,000	35%	€4,375
€25,000.01-€50,000	35%	€8,750
€50,000.01-€100,000	50%	€17,500
€100,000.01-€175,000	60%	€42,500



## Belgium

### For uncles, aunts, nieces or nephews

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€175,000.01-€250,000	70%	€87,500
Above €250,000	70%	€140,000

### Any other persons

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€50,000	40%	€0
€50,000.01-€75,000	55%	€20,000
€75,000.01-€175,000	65%	€33,750
Above €175,000	80%	€98,750

## Flemish region

### For spouse, cohabitant and direct ascendant or descendant of the deceased

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€50,000	3%	€0
€50,000.01-€250,000	9%	€1,500
Above €250,000.01	27%	€19,500

### For brothers and sisters of the deceased

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€75,000	30%	€0
€75,000.01-€125,000	55%	€22,500
Above €125,000.01	65%	€50,000

### Any other persons

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€75,000	45%	€0
€75,000.01-€125,000	55%	€33,750
Above €125,000.01	65%	€61,250

## Walloon region

## For spouse, legal cohabitant and direct ascendant or descendant of the deceased

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500	3%	€0
€12,500.01-€25,000	4%	€375
€25,000.01-€50,000	5%	€875
€50,000.01-€100,000	7%	€2,125
€100,000.01-€150,000	10%	€5,625
€150,000.01-€200,000	14%	€10,625
€200,000.01-€250,000	18%	€17,625
€250,000.01-€500,000	24%	€26,625
Above €500,000	30%	€86,625

## For brothers and sisters of the deceased

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500	20%	€0
€12,500.01-€25,000	25%	€2,500
€25,000.01-€75,000	35%	€5,625
€75,000.01-€175,000	50%	€23,125
Above €175,000	65%	€73,125

## For uncles, aunts, nieces or nephews

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500	25%	€0
€12,500.01-€25,000	30%	€3,125
€25,000.01-€75,000	40%	€6,875
€75,000.01-€175,000	55%	€26,875
Above €175,000	70%	€81,875



Any other persons		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500	30%	€0
€12,500.01-€25,000	35%	€3,750
€25,000.01-€75,000	60%	€8125
€75,000.01-€175,000	80%	€38,125
Above €175,000	80%	€118,125

### Transfer tax

The transfer tax rates are identical to the succession tax rates that are applicable in the region at hand.

### Gift tax

The gift tax rates vary within the different regions in Belgium, depending on whether movable or immovable property is concerned.

As mentioned above, donations of movable property are only subject to gift tax when the donation was established in a Belgian notary deed or voluntarily submitted to registration for tax purposes.

Donations of immovable property located outside Belgium are only subject to a fixed tax of €25 if the donation is voluntarily submitted to registration for tax purposes.

### Brussels capital region

#### Immovable property

The gift tax rates for immovable property within the Brussels capital region are identical to the succession tax rates that apply within this region.

However, the donation of a part of the family dwelling to a spouse, a legal cohabitant or direct descendant or ascendant is subject to more favorable progressive tax rates.

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€50,000	2%	€0
€50,000.01-€100,000	5.3%	€1,000
€100,000.01-€175,000	6%	€3,650
€175,000.01-€250,000	12%	€8,150
€250,000.01-€500,000	24%	€17,150
Above €500,000	30%	€77,150

### Movable property

Movable property is subject to a fixed tax rate. This tax rate amounts to 3% for donations to a spouse, a legal cohabitant or a direct ascendant or descendant. Donations to all other people are subject to a fixed tax rate of 7%.

### Flemish region

#### Immovable property

##### For spouse and direct ascendant or descendant of the deceased

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€12,500	3%	€0
€12,500.01-€25,000	4%	€375
€25,000.01-€50,000	5%	€875
€50,000.01-€100,000	7%	€2,125
€100,000.01-€150,000	10%	€5,625
€150,000.01-€200,000	14%	€10,625
€200,000.01-€250,000	18%	€17,625
€250,000.01-€500,000	24%	€26,625
Above €500,000	30%	€86,625

##### For brothers and sisters of the deceased

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€12,500	20%	€0
€12,500.01-€25,000	25%	€2,500
€25,000.01-€75,000	35%	€5,625
€75,000.01-€175,000	50%	€23,125
Above €175,000	65%	€73,125

##### For uncles, aunts, nieces or nephews

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€12,500	25%	€0
€12,500.01-€25,000	30%	€3,125
€25,000.01-€75,000	40%	€6,875
€75,000.01-€175,000	55%	€26,875
Above €175,000	70%	€81,875



Any other persons		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€12,500	30%	€0
€12,500.01-€25,000	35%	€3,750
€25,000.01-€75,000	50%	€8,125
€75,000.01-€175,000	65%	€33,125
Above €75,000	80%	€98,125

### Movable property

Movable property is subject to a fixed tax rate. This tax rate amounts to 3% for donations to a spouse, a cohabitant or direct ascendant or descendant. Donations to all other people are subject to a fixed tax rate of 7%.

### Walloon region

#### Immovable property

The gift tax rates for immovable property within the Walloon region are identical to the succession tax rates that apply within this region.

However, the donation of (a part) of the family dwelling to a spouse, a legal cohabitant or direct descendant or ascendant is subject to the more favorable progressive tax rates mentioned below.

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€25,000	1%	€0
€25,000.01-€50,000	2%	€250
€50,000.01-€175,000	5%	€750
€175,000.01-€250,000	12%	€7,000
€250,000.01-€500,000	24%	€16,000
Above €500,000	30%	€76,000

### Movable property

The donation of movable property is subject to the same progressive tax rates as the donation of immovable property. However, most donations of movable property are subject to a flat tax rate when certain conditions are met. This flat rate amounts to 3.3% for donations to a spouse, a legal cohabitant, or a direct ascendant or descendant; 5.5% for donations to brothers, sisters, uncles, aunts, nieces and nephews; and 7.7% for donations to any other person.

### Real estate transfer duty

The transfer of Belgian real estate in return for payment as well as the transfer of most of the real estate rights in return for payment is, in principle, subject to a real estate transfer duty at a rate of 12.5% in the Walloon and Brussels capital regions and 10% in the Flemish region.

Note that under specific conditions, a reduced rate of 1% in the Walloon and Brussels capital regions or 2.5% in the Flemish region can apply to the transfer of Belgian real estate rights between joint owners.





## 4. Exemptions and reliefs

### Inheritance tax

#### Brussels capital region

For the Brussels capital region, the first €15,000 that a direct descendant or ascendant or a spouse receives is exempted. For the deceased's child, this exemption is increased by €2,500 for each full year remaining before the child reaches the age of 21. A surviving spouse with children who are younger than 21 is allowed an additional exemption equal to half the exemption that is granted to the children who are younger than 21. In computing the taxable amount, these exemptions are deducted from the first bracket rather than the last.

For beneficiaries other than those mentioned above, a full exemption is granted if the net amount of the inheritance does not exceed €1,250.

#### Flemish region

For the Flemish region, the part of the estate passing on to a direct ascendant is split up into movable property and real estate (both are taxed separately). Several small general reliefs exist in the Flemish region, depending on the relationship between the beneficiary and the testator. Aside from those relatively small tax reliefs, the Flemish region also foresees a more substantial inheritance tax relief for severely handicapped beneficiaries and even inheritance tax exemptions for the inheritance of unbuilt immovable property situated within the Flemish Ecological Network, the inheritance of woodland and the inheritance by a spouse of the family dwelling. The exemption of inheritance tax on the transfer of family-owned businesses is discussed below.

In the Flemish region, family dwellings are exempt from succession tax if the beneficiary is the surviving spouse.

#### Walloon region

Several reliefs exist in the Walloon region, depending on the relationship between the beneficiary and the testator and/or the value of the assets transferred.

Among other reliefs, this region foresees an exemption of the region first €12,500 that a direct descendant or ascendant or a spouse receives. This exemption increases by €12,500 when the net value of the beneficiary's share in the estate does not exceed €125,000. Furthermore, for the deceased's child, the exemption is increased by €2,500 for each full year remaining before the child reaches age 21. A surviving spouse with children who are younger than 21 is entitled to an additional exemption, equal to half the exemption that is granted to the children who are younger than 21. In computing the taxable amount, these exemptions are deducted from the first bracket rather than the last.

For beneficiaries other than those mentioned above, a full exemption is granted when the net amount of the inheritance does not exceed €620.

#### Transfer of businesses and companies upon succession

In the Walloon region, upon succession the transfer of family businesses and companies is exempted from succession tax when certain conditions are met. In the Brussels capital region, the transfer of family businesses and companies upon succession can benefit from the application of succession tax with a fixed tax rate of 3%. The Flemish region foresees an applicable inheritance tax rate of 3% or a gift tax exemption if certain identical conditions are met.

The conditions that need to be fulfilled differ depending on the region (Flanders, Brussels, Wallonia) whose legislation applies.



## Flemish region

The Flemish Parliament has introduced a new legislation that includes an important reform of the registration and inheritance tax duties on the transfer of family-owned businesses.

The new tax measures (article 140b in Registration Tax Code and article 60/1 and beyond of the Inheritance Tax Code) provide in an exemption of registration tax on the donation of shares of a family business when certain conditions are met. The inheritance tax exemption has been abolished and replaced with a reduced inheritance tax rate of 3% (for the spouse, legal cohabitant and direct ascendant or descendant of the deceased) and 7% (in all other cases) instead of the normal progressive inheritance tax rates that can go up to 65%. Both the exemption of registration tax as the beneficial inheritance tax rates are subject to the same conditions.

The conditions for the application of the exemption on registration tax or the beneficial inheritance-tax rates are briefly the following:

- ▶ A family company is a company that has his actual management inside the EEA and whose purpose is to exercise an "industrial, commercial, craft or agricultural" activity or a "liberal profession." To determine the presence of the required activity, the most important parameter is the statutory objective of the company. It is equally important to demonstrate that the company effectively exercises this statutory objective. In most of cases the yearly accounts of the company including the personnel costs and revenues prove this parameter.
- ▶ A company qualifies as a family company if the donor (and his family) holds at least the full ownership of 50% of the shares in the company. An exception to the participation condition is made for companies held by 2 or 3 families. In those cases, the donor or deceased (himself or herself together with his or her family) needs to hold the full ownership of at least 30% of the shares. This exception is only applicable if 70% of the shares (if 2 entrepreneurial families hold the majority of the shares) or 90% of the shares (if 3 entrepreneurial families hold the majority of the shares) is owned by the entrepreneurial families together.
- ▶ The Flemish Government explicitly wanted to limit the application of the registration tax exemption or beneficial inheritance tax rate for companies that provide an added value to the Flemish economy. To avoid that companies merely possessing private property could qualify, the legislator foresaw a double standard that disqualifies companies from the new rule.

As such, companies that meet both the following 2 standards are disqualified from the new rule:

- ▶ The amount of money that is annually spent on wages, social charges and pensions is lower or equal to 1.5% of the total assets of the company
- ▶ The value of the buildings and land, owned by the company exceeds 50% of the totals assets of the company

However, even if both standards are met, the taxpayer has the possibility to prove it really concerns a family company that performs a business that provides an added value to the economy.

Given that holding companies may often not meet to the activity condition as set out above, the legislator foresaw a specific exception for holding structures. When working with a holding company, the new rule only applies when the holding company directly holds at least 30% of the shares of at least one subsidiary that is situated within the EEA and that performs a real economic activity.

When it concerns a passive holding company that meets the exception and qualifies, the value on which the registration tax exemption or beneficial inheritance tax rate is applicable is limited to the value of the shares of all the active (grand)daughter companies situated within the EEA. As such, the value of the reserves or any other assets present in the top placed passive holding company will not benefit from the new rule. However, if it is possible to prove that the holding company performs an economic activity (e.g., management activities or intra-group activities such as bookkeeping, IT, IP) and doesn't meet the 2 aforementioned disqualifying standards, it will be the total value of this holding company that will be taken into account for the application of the new rules, without analyzing the underlying companies.



Only the shares that represent a part of the capital and that have voting rights will qualify for the exemption of registration tax or the reduced inheritance tax rates.

Contrary to the former legislation, the new rule will no longer be applicable on debt claims by the family on their family company.

After the acquisition (by donation or by decease) of the shares of the family company, some conditions should be met to be able to keep the advantages of the new rule. The family business or company must continue its activity without interruption for a period of at least 3 years after the donation or the decease. It's not obliged to keep the same activity, but there is only an obligation to have an uninterrupted activity within the company for 3 years. This does not mean that the company cannot be sold during this 3 year period. As long as the activity is continued (even by a third person), no harm is done. During this period of 3 years, any capital decrease that is performed, will also be taxed at the registration or inheritance tax rates that would have applied if the new rule wouldn't have applied.

Please note that in the past, registration tax on the donation of shares in a company was often avoided by performing the donation in front of a foreign (e.g., Dutch) notary public. The only risk that had to be taken into account was that the donation would still be subject to inheritance tax if the donor would die within a "suspicious" period of 3 years. Given that the risk of death within 3 years could in most cases easily be covered with a life insurance policy, this seemed like a valid solution. The new legislation changed this so-called suspicious period. As from 1 January 2012, the transfer of family businesses and companies is subject to a 7-year "suspicious period" for the levying of inheritance tax, which makes it a lot more expensive to cover the risk with a life insurance policy.

For donations that have been done before 1 January 2012, the suspicious period remains 3 years.

### Walloon region

In the Walloon region, the net value of a family business can also be exempted from inheritance tax. However, note that different rules apply from the Flemish region.

With respect to the family companies (of which the registered office has to be located in any country that is part of the EEA) the following conditions need to be met:

- ▶ Economical condition: The company and its subsidiaries must conduct their main business in industrial, commercial or agricultural activity, a craft industry, forestry or a liberal profession, on a consolidated basis for the current financial year of the company at the time of the decease, as well as for each of the last 2 financial years of the company prior to the financial year of the decease.
- ▶ Participation condition: The deceased and his or her spouse should own at least 10% of the voting rights of the company's shares. If their voting rights do not reach 50% of the totality of all voting rights, in addition to the 10% condition, there will have to be a shareholders' agreement in which at least 50% of the totality of all voting rights participates, which ensures the continuation of the business for at least 5 years after the decease.
- ▶ Employment condition: The company must have employees, but only one employee is sufficient, regardless of the amount of salary that has been paid out.

In order to fully maintain the exemption, the following conditions should be met during a period of 5 years after the decease:

- ▶ Employment condition: The number of employees should never be less than 75% of the number at the time of death.
- ▶ The equity of the business or the capital of the company should be maintained.

### Brussels capital region

In the Brussels capital region, a favorable inheritance tax rate of 3% applies to small- and/or medium-size enterprises that employ no more than 250 employees, with revenue of less than €40 million a year or a total balance that does not exceed €27 million a year. Besides these 2 conditions, the special tax law does not apply if 25% or more of the capital or voting rights are for a large company.



The following conditions need to be met for these family companies (the registered office of which must be located in any country that is part of the EEA):

- ▶ Economical condition: The company must conduct its main business in industrial, commercial or agricultural activity, a craft industry or a liberal profession at the time of the decease.
- ▶ Participation condition: The deceased should own at least 25% of the voting rights of the company's shares. If his or her voting rights do not reach 50% of the totality of all voting rights, in addition to the 25% condition, there will have to be a shareholders' agreement in which at least 50% of the totality of all voting rights participate, which ensures the continuation of the business for at least 5 years after the decease.
- ▶ Employment condition: In the Brussels capital region, no minimum employment applies.

In order to fully maintain the exemption, the following conditions should be met during a period of 5 years after the decease:

- ▶ Employment condition: The level of employment must never be less than 75% of the level at the time of death. This condition is checked every year. If the employment level falls below 75%, the company will be fully subject to inheritance tax.
- ▶ The equity of the business or the capital of the company should be maintained.

## 5. Filing procedures

### Income tax obligations

The Belgian tax authorities tax income earned on a calendar-year basis. The beneficiaries of the legacy or the personal representative will be responsible for filing the tax return of the deceased in the following terms:

- ▶ Prior-year income-tax return: If an individual dies between 1 January, and the usual filing date for the preceding year (normally 30 June), an income-tax return should be filed for him or her within the 5 months after his or her death.
- ▶ Income-tax return for year of death: This tax return is called an "income tax return" special and should be filed within the 5 months after the death of the individual.

### Inheritance tax

The filing procedures as described hereafter are applicable for Belgium in general (for the 3 regions).

In Belgium, The beneficiaries of the legacy have to file an inheritance-tax return. The region where this tax return has to be filed depends on the following:

- ▶ For a Belgian resident: His or her last place of residency. If the deceased moved his or her place of residency within Belgium, within the 5 years before his or her death, the region where he or she lived the longest within these 5 years, will be the region where the inheritance tax return should be filed and the inheritance tax rules (e.g., rates, exemptions) of that region will be applicable.
- ▶ For a Belgian nonresident: The inheritance tax will be calculated based on where his or her real estate is situated in Belgium. The inheritance-tax return should be filed in the region where the real estate is situated. The inheritance tax rules of that region will be applicable.

The terms for filing the inheritance tax return is 5 months if the deceased died in Belgium. If the deceased died in another European country, this is extended to 6 months, and if he or she died outside of Europe, it is 7 months.

### Gift tax

Registration is only required for the donations made in virtue of a Belgian notary deed. The registration of a notary deed should be done within 15 days following the date of the set up of the notary deed.

For the transfer of real estate property situated in Belgium, a Belgian notary deed is obligatory. In this case, the registration should be done within 4 months following the date of the purchase of the real estate.



## 6. Assessments and valuations

### Gift tax – taxable base

The gift tax is levied on the fair market value (FMV) of the assets. Specific valuation methods of the FMV are required for certain assets (shares listed on the stock exchange, usufruct or bare ownership of movable or immovable property).

#### Brussels capital region

In determining the tax rate applicable to the donation of an immovable property, all donations of immovable property from the same donor to the same beneficiary during the 3 years preceding the gift in question are taken into account. For the Walloon region, the same rule also applies to donations of movable property to which the progressive rates are applicable.

### Transfer tax – taxable base

For the Walloon region, transfer tax is chargeable on the value of the Belgian immovable property of the deceased after deduction of all debt, especially contracted by the deceased for his or her Belgian immovable property.

For the Brussels capital and Flemish regions, the same rule applies, as long as the deceased was a resident of the European economic area. If not, the transfer tax will be chargeable on the gross value of the Belgian immovable property of the deceased.

The value that needs to be taken into account for this calculation is the FMV at the time of death.

### Succession tax – taxable base

The estate consists of all of the assets and liabilities in and outside of Belgium at the time of a person's death. The taxable base of the estate in respect of succession tax is the difference between the assets and the liabilities, also known as the net value of the estate. For purposes of taxation, the value of an asset is its FMV or sale value (verkoopwaarde or valeur vénale) at the time of death.

The succession tax is levied separately on the net value of the property going to each beneficiary, not on the estate as a whole, except for legacies between uncles and aunts, nieces and nephews or between strangers if the deceased was a resident of the Flemish region or the Brussels capital region at the time of his or her death. This is an important aspect given the fact that the inheritance tax rates in Belgium are progressive.

### Real estate tax – taxable base

The tax is in principle computed at the FMV of the real estate rights transferred. If the transfer is limited to the bare ownership and the owner keeps the usufruct, the real estate transfer tax due will be computed at the FMV of the full ownership.

Note that other rules can apply in case of transfer of Belgian real estate rights between joint owners.



## 7. Trusts, foundations and private purpose funds

Belgian law does not acknowledge the concept of trust. Foreign trusts are recognized in the Belgian international private law code under strict conditions. On no account is a trust applicable to Belgian immovable property.

Several legal authors have tried to analyze the tax consequences from a Belgian perspective, but their conclusions are still ambiguous.

In different decisions, the Belgian tax authorities have confirmed being of the opinion that gift tax or inheritance tax are eventually chargeable on distributions when a Belgian resident sets up foreign trusts for Belgian residents after the decease of the settlor.

## 8. Grants

There are no specific estate tax rules in Belgium.

## 9. Life insurance

Inheritance tax can be levied on the benefit paid by an insurance company under a life insurance policy held by a deceased if the deceased is still a Belgian resident at the time of death and the benefit is paid to the beneficiary at the time of the deceased, after the decease or within the 3 years period prior to the decease.

Note, however, that some exemptions or reductions can apply, among others for group insurance entered into by the deceased's employer if some specific conditions are met.

## 10. Civil law on succession

### 10.1 Succession and forced heirship

#### Belgian civil law on succession

Certain heirs (the surviving spouse, descendants and if the deceased had no descendant, his or her ascendants) are automatically entitled to a statutory share of the estate, even if the provisions of a will are to the contrary.

This statutory share of the estate is called the legal reserve (het voorbehouden erfdeel or la reserve héréditaire).

The deceased may benefit other parties, however limited, up to the disposable portion of the estate.

Family situation at the time of death	Legal reserve of the children	Legal reserve of the ascendants	Disposable portion
No children, ascendants on father's and mother's sides	None	1/2	1/2
No children, ascendants on either father's or mother's side	None	1/4	3/4
1 child	1/2	None	1/2
2 children	2/3	None	1/3
3 children or more	3/4	None	1/4





The statutory share of the surviving spouse is limited to the usufruct of half of the estate. However, the surviving spouse is entitled to at least the usufruct over the entire family dwelling and the furniture in it, even if the value of the family dwelling and the furniture exceeds the value of half of the estate.

Family situation at the time of death	Legal reserve of the children	Legal reserve of the ascendants	Legal reserve of the spouse	Disposable portion
No children, descendants on father's and mother's sides	None	1/4 bare ownership and 1/4 full ownership	1/2 usufruct	1/4 bare ownership and 1/4 full ownership
No children, descendants on either father's or mother's side	None	1/8 bare ownership and 1/8 full ownership	1/2 usufruct	3/8 bare ownership and 3/8 full ownership
1 child	1/4 bare ownership and 1/4 full ownership	None	1/2 usufruct	1/4 bare ownership and 1/4 full ownership
2 children	1/3 bare ownership and 1/3 full ownership	None	1/2 usufruct	1/6 bare ownership and 1/6 full ownership
3 children or more	3/8 bare ownership and 3/8 full ownership	None	1/2 usufruct	1/8 bare ownership and 1/8 full ownership

The surviving spouse can be disinherited if the spouses were separated. In such a case, specific conditions need to be fulfilled.

If one of the spouses has children from a previous relationship, if specific conditions are met, the spouses may agree to disinherit each other or only one of them, if specific conditions are met.

The testator can even decide by will that his or her surviving ascendants should be refused their reserve in favor of the spouse only, in case the testator dies without any descendants.

## 10.2 Matrimonial regimes

### Marriage settlement

The situation of the surviving spouse will notably depend on the matrimonial regime chosen by the couple. The main marital regimes available in Belgium are the legal regime of communal estate, the regime of universal communal estate and the regime of separate ownership:

- ▶ The default regime laid down by law is the regime of communal estate. The communal estate in principle only comprises property acquired after marriage (gemeenschap van aanwinsten or communauté réduite aux acquêts). Assets that are acquired before the marriage and assets that are acquired during the marriage through inheritance and donations remain in principle separately owned.
- ▶ The regime of universal communal estate (algehele gemeenschap van goederen or communauté universelle) stipulates that all assets are in principle owned in common by both spouses, regardless of whether the assets were acquired before or during the marriage.
- ▶ In the regime of separate ownership (scheiding van goederen or séparation de biens) each spouse retains the sole title to the assets and wealth he or she acquired before and during the marriage.

The regimes of universal communal estate and separate ownership can only be opted for by the spouses if they agree on it by means of a marriage agreement.



The regime of legal communal estate is applicable to the spouses in default of a marriage agreement, as far as Belgian law is applicable to their matrimonial settlement. The spouses can freely opt for the regime of legal communal estate and still foresee some exemptions in a marriage agreement.

In every regime of communal estate (legal or universal), the spouses can agree, by virtue of their marriage agreement, how the communal estate will be divided in case of separation. They can also define the rights of the surviving spouse regarding the communal estate after the decease of one of them.

The transfer of the communal estate (or a part of it) to the surviving spouse in accordance to a marriage agreement is in principle not regarded as a donation or a legacy, and therefore, is not subject to the forced heirship rules of the descendants. However, such a transfer is subject to inheritance tax.

An attribution clause needs to be tailor-made in order to fully reflect the wishes and desires of the spouses.

### 10.3 Intestacy

A will is a written unilateral legal document that regulates the attribution of the different elements of an individual's estate after his or her death. Belgium will normally accept the formal validity of a will drawn under one of the following laws of the deceased at the time of the draft of the will or at the time of death:

- Domicile
- Nationality
- Place of residence
- For immovable property, the place where the immovable property is situated
- The place where the deceased made his or her will

Whether an individual has the legal capacity to make the dispositions in the will is generally governed by the law of the deceased's citizenship.

Belgian civil law recognizes 3 different forms of a will:

- A holographic will (handwritten)
- An authentic will (before a notary public)
- An international will

Each type of will has its own legal form of wordings, advantages and disadvantages.

If there is no valid will at the time of death, the deceased's estate shall pass on according to predetermined rules known as the intestate succession. The intestate succession should not be confused with the forced heirship rules; the intestate succession governs the division and the settlement of the estate between legal heirs in the absence of a will, while the forced heirship rules aim at the protection of some of these legal heirs (see above). In other words, not all legal heirs are forced heirs.

The intestate succession is governed by a system that divides the possible intestate heirs into different orders depending on how they relate to the deceased. The closest applicable order excludes the more distant orders.

<b>First order</b>	Children and other descendants
<b>Second order</b>	Parents (together with brothers and sisters)
<b>Third order</b>	All other ascendants (grandparents, great-grandparents)
<b>Fourth order</b>	All other collateral heirs (uncles, aunts and their descendants)
<b>Further heirs</b>	More remote relatives and descendants
<b>No heirs</b>	The Belgian state





Within the same order, the closest heir in principle excludes the rest of the heirs (for example, the children exclude the grandchildren). However, the civil code contains several exceptions to this rule.

In Belgium, the surviving spouse is a legally recognized heir, notwithstanding that the surviving spouse is not included in one of the above orders; special rules govern his or her position.

The succession rights of the surviving spouse will depend on the other heirs of the deceased.

	The surviving spouse receives	The other heirs receive
If there are descendants	The usufruct of the total estate	The bare ownership of the total estate
If there are other heirs than descendants	The full ownership of the deceased's part in the communal estate of the spouses (if any) and the usufruct of the deceased's estate	The bare ownership of the estate of the deceased
If there are no heirs	The full ownership of the total estate	

### 10.4 Estate planning

Belgium has several interesting estate planning opportunities:

#### Donations

In the 3 regions of the country, it is possible to donate movable property without any gift tax by means of:

- ▶ Manual delivery of donations or informal donations (only advisable if the full ownership is donated, not in cases where the donation is limited to the bare ownership or the usufruct).
- ▶ Donations before a foreign notary (e.g., a Dutch or Swiss notary).

An important disadvantage of informal gifts or gifts before a foreign notary is that the transferred ownership will be subject to succession tax if (1) the donor dies within a period of 3 years following the date of the gift and (2) the gift has not been registered in Belgium for tax purposes (see above).

However, it is possible to limit this risk by means of insurance or a specific “in-extremis” backup plan allowing for these donations to be registered in time, should the donor’s life come to an end within the 3-year period following the donation.

Note that it is possible to make a donation subject to different conditions and burdens.

#### The civil partnership

The civil partnership is a planning instrument that is frequently used for the transfer of movable property to the next generation while maintaining control over the proceeds of the assets.

The civil partnership agreement is entered into by the *paterfamilias* and his spouse or his children with whom they will pool the property or cash that they want to transfer. The civil partnership can easily be used for the transfer of shares of companies.

In exchange for pooling the property, the parties receive shares in the partnership in proportion to the value of their contributions. The usufruct of all of these shares will belong to the parents.

The control will arise from the fact that the *paterfamilias* (and potentially the spouse upon his death) will be designated in the articles of association as the manager of the partnership. Given the fact that unanimity is required to make any changes to the



articles of association, it will be impossible to discharge the *paterfamilias* without his consent. The agreement will be effective in principle until the death of the *paterfamilias* and his spouse.

Bare ownership (the majority) of the civil partnership can be donated to the children before the office of a notary.

If the deed recording the donation is executed before a Belgian notary, Belgian gift tax will be due (see Section 1.2, Gift tax).

However, should a foreign (e.g., Dutch or Swiss) notary be used, no gift tax will be due in Belgium or abroad (depending on the country, but certainly not for the Netherlands or Switzerland). One must also take into account that the donor must live for a period of 3 years; if not, there will still be inheritance tax due on the amount donated. If the donation has taken place in front of a foreign (Dutch or Swiss) notary, it is still possible to voluntarily pay gift taxes in Belgium in order to avoid succession tax in the event of changing circumstances (e.g., serious illness). However, this is not possible in the event of a sudden death. It is useful to note that it is possible to ensure the succession tax due as a result of a death within a 3-year period.

The consequences of succession planning by means of a civil partnership are as follows:

- ▶ The *paterfamilias* would retain the income generated by the donated assets.
- ▶ In the event of sale of any of the pooled assets, the value of the sale will be reinvested in other assets, which will still be subject to the civil partnership regime.
- ▶ The *paterfamilias* and his spouse will be in charge of the management of the assets.
- ▶ In principle, the civil partnership would be dissolved after the death of the manager(s) (*paterfamilias* and his spouse) in accordance with the statutory provisions. At that time, the assets will automatically flow to the children without being subject to succession tax.

## 11. Abuse of tax law

On 20 July 2012, the tax authorities published an administrative circular on the new anti-abuse provision for registration duties and inheritance-tax purposes, which was introduced in the Program Law of 29 March 2012.

The circular lists examples of transactions indicating whether or not they constitute abuse of tax law.

### Non-exhaustive lists

It should be noted that the assessment of the existence of abuse of tax law must be done on a case-by-case basis. As a result, it is not possible for the tax authorities to provide for an exhaustive list of safe e.g., suspicious transactions.

However, the administrative circular lists some transactions that do or do not constitute abuse of tax law according to the tax authorities.

### Abuse of tax law

For example, the following transactions are considered to constitute abuse of tax law (unless the taxpayer is able to prove the existence other than tax motives):

- ▶ Distribution clause of a matrimonial community property to one specific spouse
- ▶ Split purchase of property preceded by the donation of money by the buyer of the usufruct to the buyer of the bare property with unity of intent
- ▶ Long-term lease constructions between affiliated companies



## Belgium

### No abuse of tax law

The following transactions (among other) are considered not to constitute abuse of tax law (unless they are part of a broader abusive construction):

- ▶ Manual donation/donation made by a bank transfer between accounts
- ▶ Donation executed before a foreign notary
- ▶ Successive partial donations of immovable property
- ▶ Donations with retention of usufruct or any other lifetime right
- ▶ Accruer and accretion clauses
- ▶ Dual legacy in so far it results in a substantial net advantage for the charity association

## 12. Estate tax treaties

Belgium has entered into a treaty regarding succession tax with France and Sweden. Negotiations have started with the US regarding an estate tax treaty.

Belgium has not entered into any international agreements regarding gift tax.



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