

Belgium

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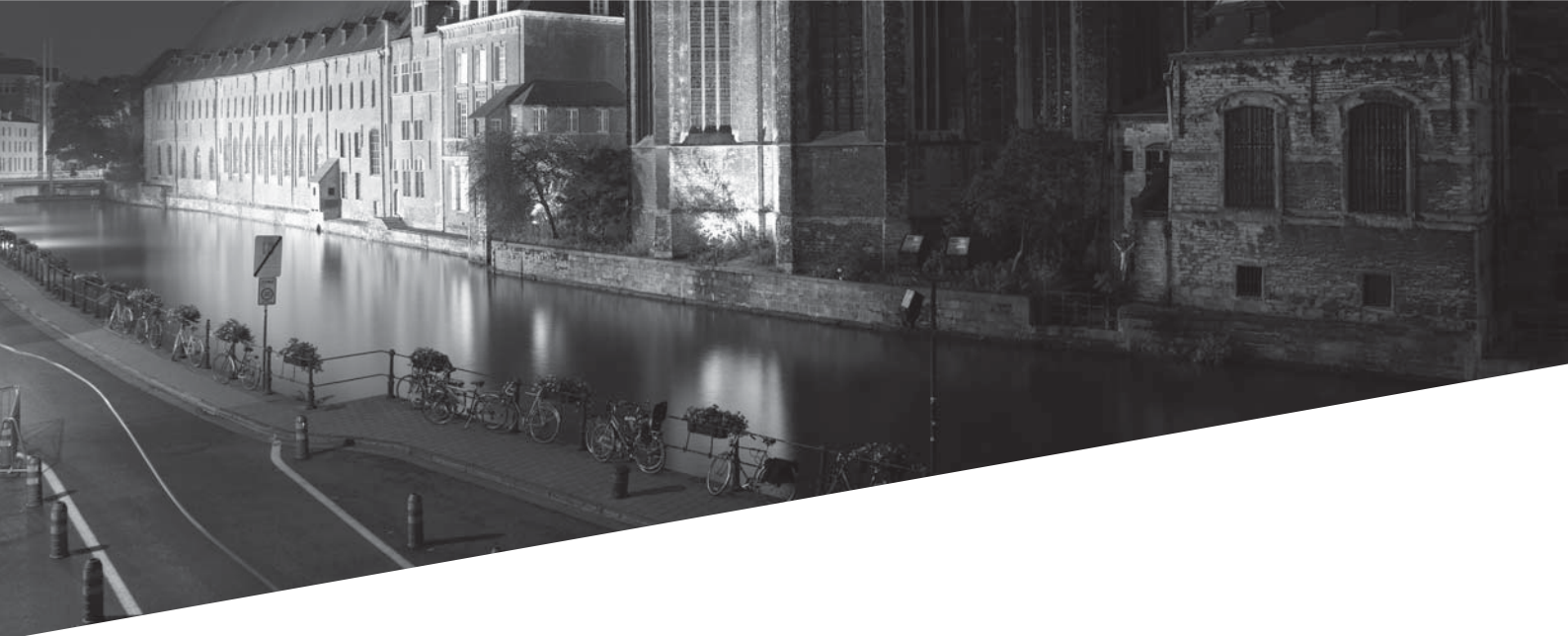
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1. Types of tax

According to Belgian law, the transfer of property is subject to either 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 death. It consists of two 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 determining 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 upon death, when the deceased is not a resident of Belgium. Transfer tax is only applicable to Belgian immovable goods. The nonresident status of the beneficiary of the transfer is irrelevant to determining 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 notarial deed. Unlike the donation of movable property, the donation of a Belgian immovable property inevitably needs to be established in a notarial 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 notarial deed. In such a case, the gift tax is due only when the gift is voluntarily submitted to be registered for tax purposes.

It is important to note that donations that took place within a three-year period prior to the donor's death will be subject to higher inheritance taxes if the donations have not been registered in Belgium and thus no gift tax has been paid, 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 upon death, 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 subject to Belgian taxation.

1.4 Endowment tax

There is no endowment tax in Belgium.

1.5 Net wealth tax

There is no net wealth tax in Belgium.



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 death, if the deceased is considered to be a Belgian resident for tax purposes at the time of his or her death.

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 death. However, if one is registered in the civil register of a Belgian city, he will be deemed a Belgian resident. Proof of the contrary is still possible. In that case, 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 death, 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 that 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 €500,000.01	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 €250,000.01	65%	€119,375

For uncles, aunts, nieces or nephews

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€50,000	35%	€0
€50,000.01-€100,000	50%	€17,500
€100,000.01-€175,000	60%	€42,500
Above €175,000.01	70%	€87,500

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 €175,000.01	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



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

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 €500,000.01	30%	€86,625

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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 €175,000.01	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%	€8,125
Above €75,000.01	80%	€38,125

Transfer tax

The transfer tax rates are similar 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 subject to gift tax only when the gift deed was passed before a Belgian notary or the gift has been voluntarily submitted to registration for tax purposes.

Donations of immovable property located outside Belgium are subject only to a fixed taxation of €50 if the gift deed is voluntarily submitted to registration for tax purposes.

Brussels capital region

Immovable property

As of 1 January 2016, the gift tax rates for immovable property located within the Brussels capital region have been modified.

For spouse, cohabitant and direct ascendant or descendant of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€150,000	3%	€0
€150,001-250,000	9%	€4,500
€250,000.01-€450,000	18%	€13,500
Above €450,000.01	27%	€49,500



Movable property

Flemish region

Important modifications have been made to the tax rates applicable on the gift of immovable property located in the Flemish region. The Flemish tax code provides for different tax rates to the gift of real estate on the one hand and to a gift of housing land on the other hand. To make things even more complicated, the applicable tax rate on real estate can be decreased if some ecological investments will be made within a period of five years following the gift of the real estate.

For spouse, cohabitant and direct ascendant or descendant of the donor		
Taxable amount	Tax rate (normal/ecological investments)	Gift tax due on the previous amount(s) (normal/ecological investments)
€0.01-€150,000	3%/3%	€0
€150,000.01-€250,000	9%/6%	€4,500/€4,500
€250,000.01-€450,000	18%/12%	€13,500/€10,500
Above €450,000.01	27%/18%	€49,500/€34,500

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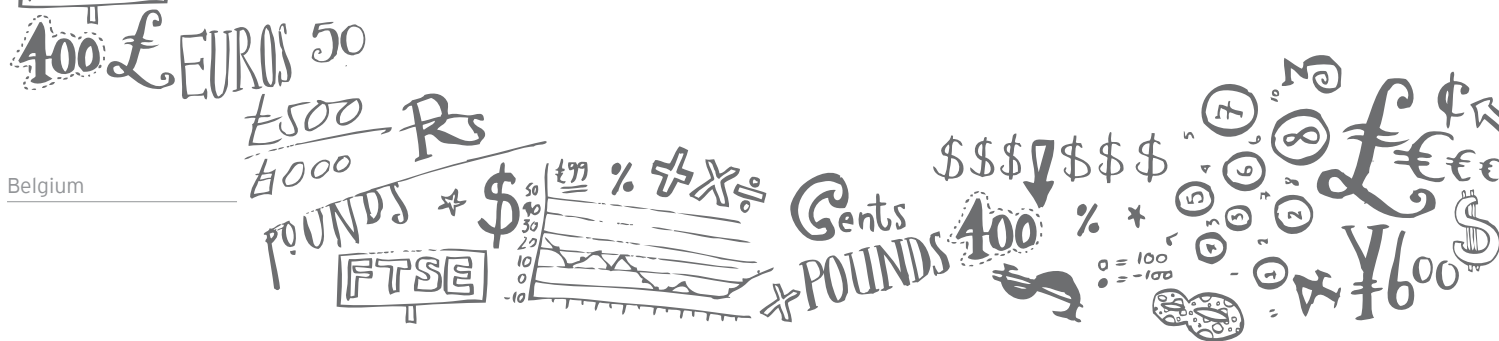
Housing land

For spouse, cohabitant and direct ascendant or descendant of the donor		
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%	€106
€200,000.01-€250,000	18%	€17,625
€250,000.01-€500,000	24%	€26,625
Above €500,000.01	30%	€86,625

For brothers and sisters of the of the donor		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€150,000	10%	€0
€150,000.01-€175,000	50%	€15,000
Above €175,000.01	65%	€27,500

For uncles, aunts, nieces or nephews		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€150,000	10%	€0
€150,000.01-€175,000	55%	€15,000
Above €175,000.01	70%	€28,750

Any other persons		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€150,000	10%	€0
€150,500.01-€175,000	65%	€15,000
Above €175,000.01	80%	€31,250



Belgium

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

As of 1 January 2016, the applicable gift tax rates for immovable property within the Walloon region have been modified.

For spouse, cohabitant and direct ascendant or descendant of the donor

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€25,000	3%	€0
€25,000.01-€100,000	4%	€750
€100,000.01-€175,000	9%	€3,750
€175,000.01-€200,000	12%	€10,500
€200,000.01-€400,000	18%	€13,500
€400,000.01-€500,000	24%	€49,500
Above €500,000.01	30%	€73,500

For brothers and sisters

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€75,000	10%	€0
€75,000.01-€175,000	20%	€7,500
€175,000.01-€350,000	30%	€27,500
Above €350,000.01	40%	€80,000

For uncles, aunts, nieces or nephews

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€50,000	10%	€0
€50,000.01-€150,000	20%	€5,000
€150,000.01-€300,000	30%	€25,000
€300,000.01-€450,000	40%	€70,000
Above €450,000.01	50%	€130,000



Any other persons		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€50,000	20%	€0
€50,000.01-€150,000	30%	€10,000
€150,000.01-€300,000	40%	€40,000
Above €300,000.01	50%	€100,000

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-€100,000	4%	€750
€100,000.01-€175,000	5%	€2,750
€175,000.01-€250,000	9%	€6,500
€250,000.01-€400,000	18%	€13,250
€400,000.01-€500,000	24%	€40,250
Above €500,000.01	30%	€64,250

Movable property

Most donations of movable property are subject to a flat tax rate. 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

Brussels capital region

Inheritance tax

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, at the lowest tax rates.

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

The Brussels capital region also foresees an inheritance tax exemption for the inheritance by a spouse or legal cohabitant of the family dwelling and lower inheritance tax rates for the inheritance of the family dwelling in direct line (ascendants and descendants).

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 and the inheritance of woodland. The inheritance by a spouse or cohabitant of the family dwelling is tax exempt. The reduction of inheritance tax on the transfer of family-owned businesses is discussed below.

Walloon region

In the Walloon region a reduced tax rate of 0% is applicable on the first taxable bracket of €160,000 inherited by the surviving spouse or the surviving legal cohabitant in the family dwelling located in the 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 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.

Hereditary transfer of businesses and companies

In the Walloon region, a hereditary transfer of family businesses and companies is exempted from succession tax when certain conditions are met. In the Brussels capital region, the hereditary transfer of family businesses and companies can benefit from the application of a fixed tax rate of 3%. The Flemish region foresees an applicable inheritance tax rate of 3% or 7% or a gift tax exemption if certain conditions are met.

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



Flemish region

The Flemish Tax Code provides a reduced inheritance tax rate of 3% (for the spouse, legal cohabitant and direct ascendant or descendant of the deceased) or 7% (in all other cases) instead of the normal progressive inheritance tax rates up to 65% for the transfer of family-owned businesses. The registration of a transfer of family-owned businesses via a gift is tax exempt. For both the aforementioned beneficial regimes for transferring family-owned businesses, the following conditions apply:

- ▶ A family-owned company is a company that has its actual management inside the European Economic Area (EEA) and whose purpose is to exercise an industrial, commercial, craft or agricultural activity or a liberal profession. In order to determine the presence of the required activity, the statutory objective of the company will be taken into account.
- ▶ A company qualifies as a family-owned company if the donor/testator (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 two or three families. In those cases, the donor/testator (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 two entrepreneurial families hold the majority of the shares) or 90% of the shares (if three 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 this favorable regime to companies that provide an added value to the Flemish economy. Therefore companies that are not engaged in a "genuine economic activity" are explicitly excluded from this regime. A company is deemed not to have a "genuine economic activity" if the annual accounts of the last three years reveal that:
 - ▶ The total amount paid 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 criteria are met, the taxpayer may still prove it operates a family-owned company that performs a business that provides an added value to the economy.

Given that holding companies may often not meet the activity condition as set out above, a specific exception for holding companies is foreseen. A holding company may qualify as a family-owned company if the company directly holds at least 30% of the shares of at least one subsidiary that is situated within the EEA and that performs a "genuine economic activity."

When it concerns a passive holding company that meets the exception and thus qualifies via its subsidiary, solely the value on which the favorable tax regime is applicable is limited to the value of the shares of all the active (sub)subsidiary companies situated within the EEA. It is, however, possible to prove that the holding company itself performs a "genuine economic activity" (e.g., management activities or intragroup activities such as bookkeeping, IT, IP). If so, the total value of the holding company will be taken into account, irrespective of the activities of the underlying companies.

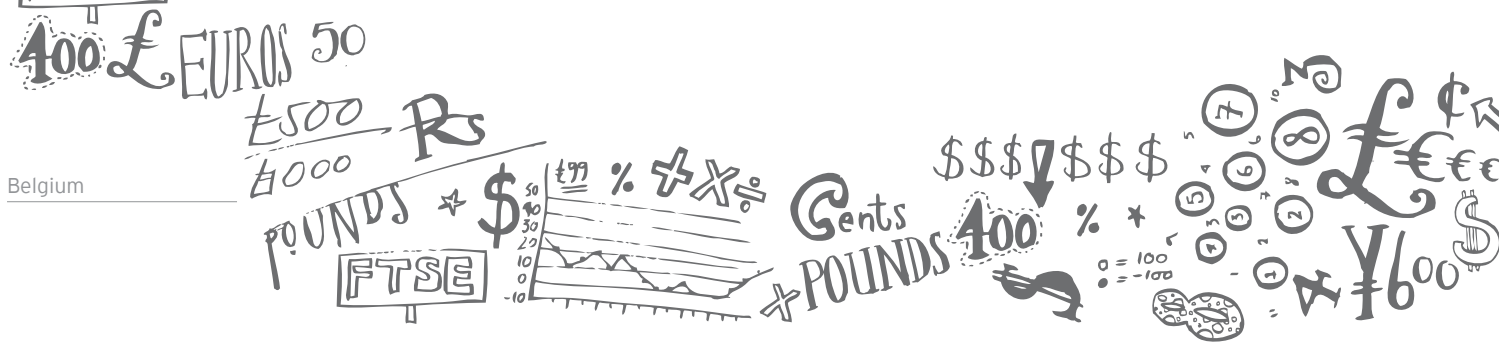
Only the shares that represent a part of the capital and that have voting rights will qualify for the favorable tax regime.

This tax regime does not apply to debt claims on family-owned businesses.

Following the acquisition of the shares of the family-owned company, the activity must be maintained during a period of three years. This does not mean that the company cannot be sold during this three-year period. As long as the activity is continued (even by a third person), no harm is done. Note that a capital decrease performed during the period of three years will trigger normal gift tax (3%) or inheritance tax (27%).

Please note that no gift tax on the donation of shares in a company is due when performing the donation in front of a foreign (e.g., Dutch) notary. The only risk that has to be taken into account is the fact that the donation would still be subject to inheritance tax if the donor were to die within a "suspicious" period of three years following the date of the gift. Given that the risk of a death within three years could in most cases easily be covered with a life insurance policy, it is common to have such donations passed before a foreign notary. The transfer, however, of family-owned businesses and companies is subject to a seven-year "suspicious period," which makes it a lot more expensive to cover the risk with a life insurance policy.

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





5. Filing procedures

Income tax obligations

Income is subject to Belgian income tax on a calendar-year basis. The beneficiaries of the inheritance 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 passes away 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 five months following 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 five months following the death.

Inheritance tax

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

In Belgium, the heirs or beneficiaries of the inheritance 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 in the period of five years before his or her death, the competent region for filing the tax return, as well as the applicable tax rules (e.g., rates, exemptions), is the region where the deceased resided the longest within this five-year period.
- ▶ 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, and the inheritance tax rules of that region will be applicable.

The deadline for filing the inheritance tax return is four months if the deceased passed away in Belgium. If the deceased passed away in another European country, the period is extended to five months, and if he or she passed away outside of Europe, it is six months.

Gift tax

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

6. Assessments and valuations

Gift tax – taxable base and progression method

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).

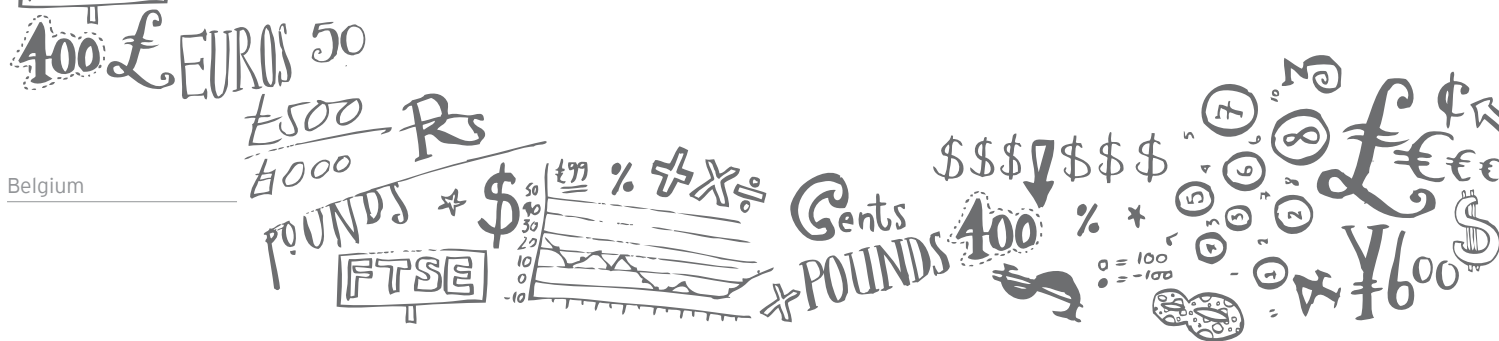
In determining the tax rate applicable to the donation of immovable property, all donations of immovable property from the same donor to the same beneficiary during the three years preceding the gift in question are taken into account. For the Walloon region, the same rule also applies to donations of 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 specifically 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 EEA. If not, the transfer tax will be due 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 cases of a 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.

The Belgian tax implications of a distribution by a trust during the lifetime of the settlor or after his death are uncertain. In different decisions, the Belgian tax authorities confirmed that they were of the opinion that gift tax or inheritance tax may be due on distributions by a trust settled by a Belgian resident following the death of the settlor.

Belgian law does acknowledge the concept of foundation. Gifts as well as legacies to certain kinds of foundations are subject to favorable inheritance tax and gift tax regimes.

8. Grants

There are no specific estate tax rules in Belgium.

9. Life insurance

Distributions by an insurance company relating to a life insurance policy held by a deceased are subject to Inheritance tax 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 death, after death or within the three-year period prior to death.

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 descendants, 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.

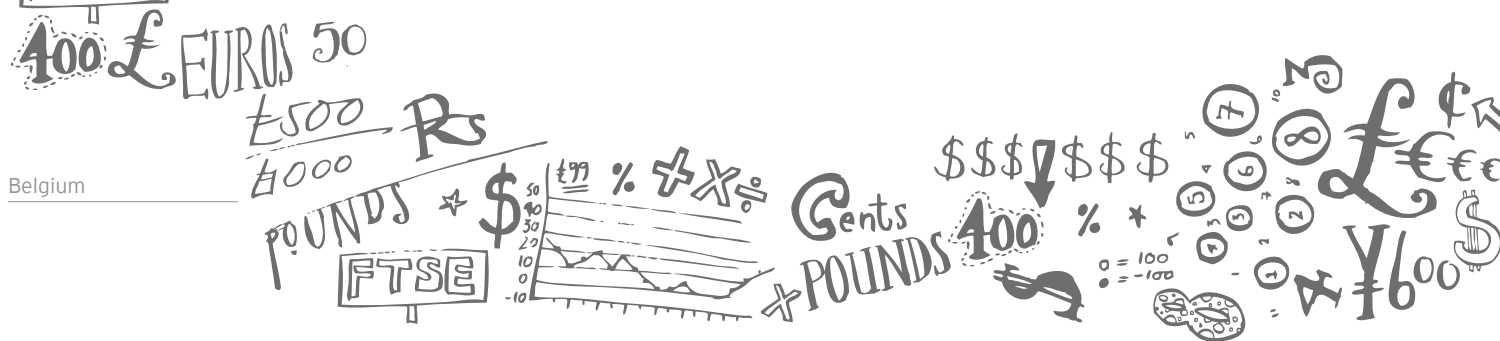
This statutory share of the estate is called the reserved portion (*het voorbehouden erfdeel* or *la reserve héréditaire*).

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

Family situation at the time of death	Reserved portion of the children	Reserved portion 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	Reserved portion of the children	Reserved portion of the ascendants	Reserved portion 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.

The testator can even decide by will that his or her surviving ascendants should be refused their reserved portion in favor of the spouse or legal cohabitant, but only if the testator were to die without any descendants.

Marriage settlement

- ▶ The default regime laid down by law is the regime of legal communal estate (*gemeenschap van aanwinsten* or *communauté réduite aux acquêts*). The communal estate in principle comprises only property acquired after marriage. 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 separation of goods (*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 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 death 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 of more than half of the communal estate to the surviving spouse 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



Belgian civil law recognizes three 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.

First order	Children and other descendants
Second order	Parents together with brothers and sisters
Third order	Ascendants (parents, grandparents, great-grandparents)
Fourth order	All other collateral heirs (uncles, aunts and their descendants)
Further heirs	More remote relatives and descendants
No heirs	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	

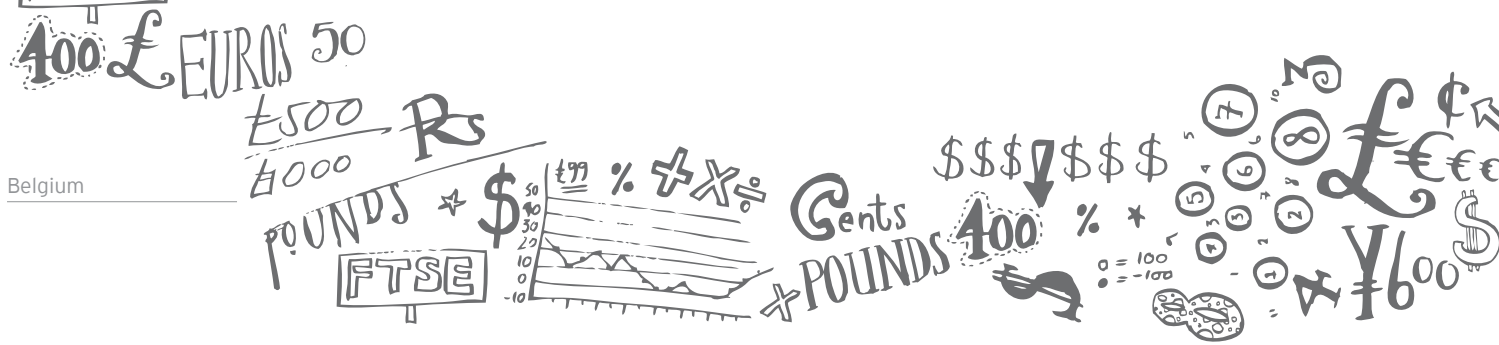
10.4 Estate planning

Belgium has several interesting estate planning opportunities:

Donations

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

- ▶ Gifts by hand 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)





11. Estate tax treaties

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

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

12. Abuse of tax law

The tax authorities published an administrative circular on the anti-abuse provision for registration duties and inheritance tax purposes.

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 in principle 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 of non-tax motives):

- ▶ Distribution clause of a matrimonial community property to one specific spouse
- ▶ Long-term lease constructions between affiliated companies

No abuse of tax law

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

- ▶ Gift by hand/donation made by a bank transfer between accounts
- ▶ Donation executed before a foreign notary (Please note that as of 1 June 2016, the Flemish tax authorities will no longer accept donations with usufruct executed before a foreign notary. Notwithstanding the donation, inheritance taxes will still be due.)
- ▶ Successive partial donations of immovable property
- ▶ Donations with retention of usufruct or any other lifetime right