Belgium

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1. Types of tax

According to Belgian law, the transfer of property for nil consideration is subject to either inheritance tax or gift tax, depending mainly on whether the transfer takes place before or after the gratifying party's death.

1.1 Inheritance tax

Belgian inheritance tax is levied on the transfer of property upon death. There are two types of inheritance tax: succession tax and transfer tax.

Succession tax

Succession tax (*successierechten* or *droits de succession*) is levied on the inherited (worldwide) estate upon a Belgian resident's death. Whether the deceased should be considered a Belgian resident is a factual matter that requires a case-by-case evaluation. The resident or nonresident status of the beneficiary is irrelevant to determine whether the inherited estate is subject to Belgian succession tax.

Transfer tax

Transfer tax (*recht van overgang bij overlijden* or *droits de mutation par décès*) is levied on the transfer of Belgian real estate upon a nonresident's death. Transfer tax applies only to Belgian immovable goods. The resident or nonresident status of the beneficiary is irrelevant to determine whether the inherited Belgian immovable goods are subject to Belgian transfer tax.

1.2 Gift tax

Gift tax (*schenkbelasting* or *droits de donation*) is levied in the form of registration duties (*registratierecht* or *droits d'enregistrement*) on the value of goods – movable or immovable – gifted during one's lifetime.

Registration is only required for gifts made by virtue of a Belgian notarial deed. Gifts of immovable goods must be made by Belgian notary deed, unlike gifts of movable goods.

Registration is not required for gifts of real estate when the immovable property is located outside of Belgium. The same applies to gifts of movable goods when these are not made by virtue of a Belgian notarial deed. Gift tax is due only upon voluntary registration for tax purposes. However, as from 1 December 2020, gifts made by virtue of foreign notarial deeds will also have to be registered in Belgium. From that date onwards it will no longer be possible to escape gift tax in Belgium by gifting movable property via a foreign notary.

It is important to note that gifts that have not been registered in Belgium and for which no gift tax was paid run the risk of being subject to higher inheritance taxes if the donor dies within a period of three years of the gift and is a Belgian resident at the time of his or her death. For gifts of family businesses located in the Flemish region, a seven-year period is sometimes applicable.

1.3 Real estate transfer duty

When Belgian real estate is transferred through gifting 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.

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 estate is liable for the payment of succession tax irrespective of his or her place of residence (in Belgium or not).

Succession tax is due on the deceased's worldwide estate if he or she was a Belgian resident at the time of his or her death.

Under Belgian law, the deceased is considered a resident when he or she had his or her effective place of residence in Belgium immediately prior to his or her death. If the deceased was registered in the civil register of a Belgian city, he or she is presumed to be a Belgian resident. It is possible to bring forward evidence to the contrary. The effective place of residence is the place where an individual has his or her permanent home (i.e., where the family lives) or his or her center of economic interests (i.e., place from where an individual manages bank accounts, investments, businesses and properties).

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Transfer tax

Here too, the beneficiary of the Belgian real estate is in principle liable for the payment of transfer tax irrespective of his or her place of residence (in Belgium or not).

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

Gift tax

Gift tax is due, in principle, by the beneficiary of the gift. It is, however, accepted in certain cases that the donor pays the gift tax without it constituting an additional gift.

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 the spouse, legal cohabitant and direct ascendant(s) or descendant(s) of the deceased		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-50,000	3%	Ø
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
500,000.01 and above	30%	85,750

For brothers and sisters of the deceased		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-12,500	20%	Ø
12,500.01-25,000	25%	2,500
25,000.01-50,000	30%	5,625
50,000.01-100,000	40%	13,125

For brothers and sisters of the deceased		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
100,000.01-175,000	55%	33,125
175,000.01-250,000	60%	74,375
250,000.01 and above	65%	119,375

For uncles, aunts, nieces and nephews of the deceased		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-50,000	35%	Ø
50,000.01-100,000	50%	17,500
100,000.01-175,000	60%	42,500
175,000.01 and above	70%	87,500

Any other persons		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-50,000	40%	Ø
50,000.01-75,000	55%	20,000
75,000.01-175,000	65%	33,750
175,000.01 and above	80%	98,750

Flemish region

For spouse, cohabitant and direct ascendant or descendant of the deceased		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-50,000	3%	Ø
50,000.01-250,000	9%	1,500
250,000.01 and above	27%	19,500

For brothers and sisters of the deceased		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-35,000	25%	Ø
35,000.01-75,000	30%	8,750
75,000.01 and above	55%	20,750

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Any other persons		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-35,000	25%	Ø
35,000.01-75,000	45%	8,750
75,000.01 and above	55%	26,750

Walloon region

For spouse, legal cohabitant and direct ascendants or descendants of the deceased		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-12,500	3%	Ø
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
500,000.01 and above	30%	86,625

For brothers and sisters of the deceased		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-12,500	20%	Ø
12,500.01-25,000	25%	2,500
25,000.01-75,000	35%	5,625
75,000.01-175,000	50%	23,125
175,000.01 and above	65%	73,125

For uncles, aunts, nieces and nephews of the deceased		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01-12,500	25%	Ø
12,500.01-25,000	30%	3,125
25,000.01-75,000	40%	6,875
75,000.01-175,000	55%	26,875
175,000.01 and above	70%	81,875

Any other persons		
Taxable amount (EUR)	Tax rate	Inheritance tax due on the previous tax bracket(s) (EUR)
0.01–12,500	30%	Ø
12,500.01–25,000	35%	3,750
25,000.01–75,000	60%	8,125
75,000.01 and above	80%	38,125

Transfer tax

For each region, the transfer tax rates are similar to the succession tax rates listed above.

Gift tax

Gift tax rates vary, within the different regions of Belgium, depending on whether movable or immovable property is concerned.

As mentioned above, gifts of movable goods are subject to gift tax only when the gift was made by virtue of a Belgian notarial deed or when the gift is voluntarily submitted to registration for tax purposes. However, as from 1 December 2020, gifts made by virtue of foreign notarial deeds will also have to be registered in Belgium. From that date onwards it will no longer be possible to escape gift tax in Belgium by gifting movable property via a foreign notary. Gifts of immovable property located in Belgium are necessarily subject to gift tax because these require a Belgian notary deed. Gifts of immovable property located outside of Belgium are only subject to a flat tax rate of EUR50 if the gift deed is voluntarily submitted to registration for tax purposes.

Brussels capital region

Immovable property

The Brussels gift tax rates for immovable property apply when the donor is a resident of the Brussels capital region or if a nonresident donates immovable property located within the Brussels capital region.

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

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Any other persons		
Taxable amount (EUR)	Tax rate	Gift tax due on the previous tax bracket(s) (EUR)
0.01–150,000	10%	Ø
150,001–250,000	20%	15,000
250,000.01–450,000	30%	35,000
450,000.01 and above	40%	95,000

Movable property

Upon registration of a gift of movable property, a fixed tax rate applies. This tax rate is 3% for gifts made to a spouse, a legal cohabitant, or a direct ascendant or descendant. Gifts made to all other people are subject to a fixed tax rate of 7%.

Flemish region

Immovable property

The Flemish gift tax rates for immovable property apply when the donor is a resident of the Flemish region or a nonresident gifts immovable property located within the Flemish region. The applicable gift tax rates are lowered in certain circumstances, for instance when ecological investments are made within a period of five years following the gift.

Real estate

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

Movable property

Gifting movable property is subject to a fixed tax rate. This tax rate is 3% for gifts made to a spouse, a cohabitant, or an ascendant or descendant. Gifts made to all other people are subject to a fixed tax rate of 7%.

Walloon region

Immovable property

The Walloon gift tax rates for immovable property apply when the donor is a resident of the Walloon region or if a nonresident donates immovable property located within the Walloon region.

For the spouse, cohabitant and direct ascendant(s) or descendant(s) of the donor		
Taxable amount (EUR)	Tax rate	Gift tax due on the previous tax bracket(s) (EUR)
0.01–150,000	3%	Ø
150,000.01– 250,000	9%	4,500
250,000.01–450,000	18%	13,500
450,000.01 and above	27%	49,500

Any other persons		
Taxable amount (EUR)	Tax rate	Gift tax due on the previous tax bracket(s) (EUR)
0.01–150,000	10%	Ø
150,000.01–250,000	20%	15,000
250,000.01–450,000	30%	35,000
450,000.01 and above	40%	95,000

Movable property

Gifting movable property is subject to a fixed tax rate. This rate is 3.3% for gifts made to a spouse, a legal cohabitant, or a direct ascendant or descendant and 5.5% for gifts made 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 fixed rate of 12.5% in the Walloon and Brussels capital regions and 10% in the Flemish region (6% for the single home).

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.

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4. Exemptions and reliefs

Inheritance tax

Brussels capital region

For the Brussels capital region, the first EUR15,000 that a direct descendant or ascendant, a spouse or a legal cohabitant receives is exempted from inheritance tax. For the deceased's child, this exemption is increased by EUR2,500 for each full year remaining before the child reaches the age of 21. The surviving spouse with joint children who are younger than 21 is allowed an additional exemption, equal to half the exemption granted to the joint children who are younger than 21. In computing the taxable amount, these exemptions are applied to the first tax 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 EUR1,250.

The Brussels capital region also provides a full exemption of the family home when it is inherited by the spouse or the legal cohabitant and lower tax rates when it is inherited in direct line (ascendants and descendants).

Flemish region

In the Flemish region, the part of the estate that passes on in direct line is split into movable and immovable (real estate) goods, to be taxed separately. Several small general reliefs also exist depending on the relationship or the degree of kinship that exists between the deceased and the beneficiary.

The inheritance of the family home by a spouse or a cohabitant is tax exempt. The spouse and the cohabitant also enjoy an exemption on the first EUR50,000 in the movable goods that make up the estate. The child under the age of 21 who has been left orphaned enjoys a tax exemption on the inherited family home. The same child is granted a tax exemption on the first EUR75,000 of the movable goods in the estate.

The Flemish region also provides exemptions for unbuilt immovable property situated within the Flemish Ecological Network and woodland.

Walloon region

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

Among other reliefs, an exemption of the first EUR12,500 is granted on the part of the estate that is inherited by a direct descendant or ascendant, a spouse or a legal cohabitant. This exemption increases by EUR12,500 when the net value of the beneficiary's share in the estate does not exceed EUR125,000. Furthermore, for the deceased's child, the exemption is increased by EUR2,500 for each full year remaining before the child reaches age 21. The surviving spouse with joint children who are younger than 21 is entitled to an additional exemption equal to half the exemption that is granted to the joint children who are younger than 21. In computing the taxable amount, these exemptions are applied to the first tax bracket, at the lowest tax rates.

For beneficiaries other than those mentioned above, a full exemption is granted when the net amount of the inheritance does not exceed EUR620.

The Walloon region also provides a full exemption of the family home when it is inherited by the spouse or the legal cohabitant and lower tax rates when it is inherited in direct line (ascendants and descendants).

Hereditary transfer of businesses and companies

In the Walloon region, the transfer of family businesses and companies sees its inheritance tax rates, as well as its gift tax rate, lowered to 0% when certain conditions are met. The Flemish region and the Brussels capital region provide an applicable inheritance tax rate of 3% or 7% and a gift tax exemption if certain conditions are met.

The conditions that need to be fulfilled vary depending on the region.

Flemish region

For the transfer of family-owned businesses upon death, the Flemish Tax Code provides a reduced inheritance tax rate of 3% (for the spouse, legal cohabitant, direct ascendant or descendant of the deceased) or 7% (in all other cases) instead of the normal progressive inheritance tax rates that go up to 27% (for the spouse, cohabitant, direct ascendant or descendant) or 65% (in all other cases). Registration of a transfer of family-owned businesses via a gift is tax exempt (0%).

For both of these preferential regimes, the following conditions apply:

- Donor/deceased's domicile: the owner/shareholder of the family business has been domiciled in the Flemish region for at least 2.5 years during the 5 years preceding the death/gift.
- The family-owned company has its actual management inside the EEA and exercises an industrial, commercial, craft or agricultural activity or a liberal profession.
- Participation condition: to qualify as family-owned, the donor/deceased (and his or her family) must hold shares that represent at least 50% of the voting rights in the company. An exception to the participation condition is made for companies held by two or three families. In those cases, the donor/deceased (together with his or her family) needs to hold shares that represent 30% of the voting rights. This exception only applies if the shares that represent 70% of the voting rights (if two entrepreneurial families hold the majority of the shares) or 90% of the voting rights (if three entrepreneurial families hold the majority of the shares) are 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 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 of wages, social charges and pensions paid is lower or equal to 1.5% of the total assets at least one of the company.
  - The value of the buildings and land owned by the company exceeds 50% of the total assets of the company.

However, even if both criteria are met, the taxpayer can still bring forward evidence to the contrary.

A passive holding company may qualify as a family-owned company with genuine economic activity if the company directly holds at least 30% of the shares of at least one active subsidiary that is situated within the EEA. In that case, the preferential regime only applies to the part of the shares' value that represent the participation in the active subsidiary.

It is also possible to prove that the holding company itself performs a "genuine economic activity" (e.g., intragroup activities such as bookkeeping, information technology or intellectual property). In this case, the total value of the holding company will be taken into account, irrespective of the activities of the underlying companies.

To fully maintain the exemption, the following conditions should be met during a period of three years following the person's death or gift:

- The company must maintain a genuine economic activity. This condition does not exclude the possibility of sale of the business or company shares, as long as the genuine economic activity is continued by the third party/buyer.
- The company stays within the EEA.
- The business's equity or the company's capital should be maintained.

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Walloon region

The Walloon region provides an inheritance tax rate lowered to 0% (essentially, a tax exemption) on the net value of a family business instead of the normal progressive rates that go up to 30% (for the spouse, cohabitant, direct ascendant or descendant), 65%, 70 % and 80 % (in all other cases). Gifting a family-owned business is also subject to a flat rate lowered to 0%.

Different rules apply from those applicable in the Flemish and Brussels capital regions.

The following conditions must be met for family-owned businesses that have a registered office in the EEA:

- Donor/deceased's domicile: the owner/shareholder of the family business has been domiciled in the Walloon region for at least 2.5 years during the 5 years preceding the death/gift.
- Economic activity condition: the company and its subsidiaries must conduct their main business in an 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 death, as well as for each of the last two financial years of the company prior to the financial year of the person's death. A holding company may therefore qualify for the economic activity condition if it primarily carries out, with its subsidiaries, one of the activities listed on a consolidated basis.
- Participation condition: the deceased and his or her spouse must own at least 10% of the voting rights of the company's shares. If their voting rights do not reach 50% of the total voting rights, in addition to the 10% condition, there will have to be a shareholders' agreement in which at least 50% of the total voting rights participates, which ensures the continuation of the business for at least five years after the person's death.
- Employment condition: the company must have employees in the EEA on its payroll, regardless of the amount of salary paid. One employee is sufficient.

In order to fully maintain the exemption, the following conditions should be met during a period of five years following the person's death or gift:

- Economic activity condition: the company must continue one of the accepted businesses.
- Employment condition: the number of employees should never be lower than 75% of the number of employees at the time of death.
- The business's equity or the company's capital should be maintained.

Brussels capital region

As of 1 January 2017, the Brussels capital region has adopted a regime similar to the one applicable in the Flemish region. In cases involving the transfer of family-owned businesses upon death, a reduced inheritance tax rate of 3% (for the spouse, legal cohabitant and direct ascendant or descendant) or 7% (in all other cases) applies instead of the normal progressive inheritance tax rates of up to 30% (for the spouse, cohabitant and direct ascendant or descendant) or 65%, 70% and 80% (in all other cases). The registration of a transfer of family-owned businesses via a gift is tax exempt.

For both of these preferential regimes, the following conditions apply:

- Donor/deceased's domicile: the owner/shareholder of the family business has been domiciled in the Brussels capital region for at least 2.5 years during the 5 years preceding the death/gift.
- The family-owned company has its actual management inside the EEA and exercises an industrial, commercial, craft or agricultural activity or a liberal profession.
- Participation condition: the donor/deceased (and his family) holds at least 50% of the company shares in full ownership. An exception to the participation condition is made for companies held by two or three families. In those cases, the donor/deceased (himself or herself, together with his or her family) needs to hold at least 30% of the shares in full ownership. This exception only applies 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.

- A passive holding company may qualify as a family-owned company if the company directly holds at least 30% of the shares of at least one active subsidiary that is situated within the EEA.
- Genuine economic activity condition: the application of this favorable regime is limited to companies that are engaged in a "genuine economic activity." A company is deemed not to have a "genuine economic activity" if at least one of the annual accounts of the last three years reveals 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 total assets of the company.

However, even if both criteria are met, the taxpayer can still bring forward evidence to the contrary.

A passive holding company may qualify as a family-owned company with genuine economic activity if the company directly holds at least 30% of the shares of at least one active subsidiary that is situated within the EEA. In that case, the preferential regime only applies to the part of the shares' value that represent the participation in the active subsidiary.

It is also possible to prove that the holding company itself performs a "genuine economic activity" (e.g., intragroup activities such as bookkeeping, information technology or intellectual property). In this case, the total value of the holding company will be taken into account, irrespective of the activities of the underlying companies.

In order to fully maintain the exemption, the following conditions should be met during a period of three years following the person's death or gift:

- The company must maintain a genuine economic activity.
- The company stays within the EEA.
- The equity of the business or the capital of the company should be maintained.

Please note, for all three regions, that until 30 November 2020 no gift tax is due when the company shares are gifted by way of a foreign notary deed. The risk to take into account in that case is the possibility for the gift to be subject to inheritance tax if the donor were to die within a period of three years (in the Flemish region: seven years) following the gift.

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 deceased's tax return:

- Income tax return for the year prior to death: 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 five months of 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 of the death.

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Inheritance tax

The filing procedures as described hereafter are applicable for all 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: the deceased's last place of residency. If he or she moved within Belgium in the period of five years prior to his or her death, the competent region for filing the tax return is the region where the deceased resided the longest within this five-year period. The same applies for determining the applicable tax rules (e.g., rates, exemptions).
- For a Belgian nonresident: 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 death occurred in Belgium. The period is extended to five months if the death occurred in another European country and six months if the death occurred outside of Europe.

Gift tax

Registration is only required for gifts made by virtue of a Belgian notarial deed and, from the 1 December 2020 onwards, for gifts of movable goods made by virtue of a foreign notarial deed. The registration of a notarial deed should be done within 15 days of the deed's signature.

6. Assessments and valuations

Gift tax — taxable base and progression method

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 rates applicable to a gift of immovable property, all gifts of immovable property from the same donor to the same beneficiary during the three years preceding the gift in question are taken into account and added to the taxable base.

Transfer tax — taxable base

For the Walloon region, transfer tax is calculated on the value of the deceased's Belgian immovable property 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, transfer tax is due on the gross value of the deceased's Belgian immovable property.

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 comprises all of the assets and liabilities inside and outside of Belgium at the time of death. The taxable base for the calculation 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.

In the Flemish region, for the category of ascendants or descendants in direct line, as well as for partners, succession tax is levied separately on the net value of the movable property and on the net value of the immovable property received by each beneficiary. This distinction between movable and immovable property is not made in the Brussels or Walloon regions where succession tax due by heirs in direct line and partners is levied on the net value of both the movable and immovable property inherited by each beneficiary.

For the category of brothers and sisters, succession tax is levied on the net value of the goods (movable and immovable) inherited by each beneficiary in all three regions.

Succession tax applicable between uncles and aunts, nieces and nephews or between people who are not related is levied on the entire portion inherited by this category of heirs if the deceased was a resident of the Flemish or the Brussels capital region at the time of his or her death. If the deceased was a resident of the Walloon region, succession tax on is levied on the net value of the goods (movable and immovable) received by each beneficiary. The impact of this difference between the three regions is important given the fact that 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 retains the usufruct, the real estate transfer tax due will be computed at the FMV of the full ownership.

Note that other rules can apply when a transfer of Belgian real estate rights occurs between joint owners.

7. Trusts, foundations and private purpose funds

Belgian law does not know the concept of trust. Foreign trusts are recognized in the Belgian international private law code under strict conditions.

The Belgian tax implications of a distribution by a trust are uncertain. In different decisions, the Belgian tax authorities confirmed that they are of the opinion that inheritance tax is due — for discretionary trusts, at the time of distribution or, for fixed interest trusts, upon the settlor/Belgian resident's death.

Belgian law does acknowledge the concept of foundation. Gifts and bequests made 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 in execution of a life insurance policy held by the deceased are subject to inheritance tax if the deceased was a Belgian resident and if the payment is made to the estate's beneficiary upon death, after the death or within the three-year period prior to the death.

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

B

10. Civil law on succession

10.1 Succession and forced heirship

Belgian civil law on succession

Certain heirs (the surviving spouse and the descendants) are automatically entitled to a statutory share of the estate, even if a will provides the contrary. This statutory share is called the reserved portion (*het voorbehouden erfdeel* or *la réserve héréditaire*).

Ascendants are no longer entitled to a reserved portion of the estate. Their reserved portion has been replaced by a maintenance obligation borne by the estate.

The deceased's children enjoy a reserved portion in the estate of 1/2. This means that the disposable share of the estate (the part of the estate that is not reserved for forced heirs) is also 1/2. This disposable share allows the deceased a certain amount of freedom to endow third parties or one of his children in particular.

Family situation at the time of death	Reserved portion of the children	Reserved portion of the ascendants	Disposable portion
No children	None	None	1/1
Children	1/2	None	1/2

The reserved portion 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 of the family home and the furniture it contains, even if the value of the family home and furniture exceeds the value of half of the estate. If the deceased gifted certain goods during his or her lifetime in bare ownership and withheld the usufruct, the surviving spouse is also automatically entitled to continue the deceased's right of usufruct during his or her own lifetime. For the surviving spouse to continue the deceased's usufruct, he or she must have already been married with the deceased at the time the gift was made and the right of usufruct must still exist at the time of death. The surviving spouse can also choose to waive his or her right to continue the usufruct.

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 but there are descendants on the father's and mother's side	None	None	1/2 usufruct	1/2 bare ownership and 1/2 full ownership
No children and no descendants on either the father's or mother's side	None	None	1/2 usufruct	1/2 bare ownership and 1/2 full ownership
Children	1/2 in full ownership	None	1/2 usufruct	1/2 bare ownership

The deceased can disown the surviving spouse only 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, the spouses may agree to disown each other or only one of them. In this case also, specific conditions must be met.

As for the surviving legal cohabitant, he or she is entitled to the usufruct of the family home and the furniture it contains or, in case of lease, he or she has a right to continue the lease agreement on the family home. However, the surviving legal cohabitant is not a forced heir of the estate and the deceased may deprive him or her of those rights in a will.

10.2 Matrimonial regimes

Marriage settlement

Upon death, the surviving spouse's situation will depend, among other things, 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 separation of goods:

- 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 all goods acquired during the marriage, except goods inherited by or donated to a spouse during the marriage. Those goods as well as all assets acquired before the marriage remain, in principle, separately owned.
- In the regime of universal communal estate (*algehele gemeenschap van goederen* or *communauté universelle*), 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 ownership over all assets he or she acquired before and during the marriage.
- A variant of the regime of separation of goods is the regime of separation of goods with an acquisitions settlement clause (*scheiding van goederen met verrekening van aanwinsten* or *séparation de biens avec clause de participation aux acquêts*). The spouses are married under the regime of separation of goods and a clause in their marriage contract provides that in case of dissolution of the marriage, the spouses' income (mainly their professional income) shall be settled between them following a predetermined allocation key.

The regimes of universal communal estate and separation of goods can only be chosen by the spouses in the form of a marriage contract. If the future spouses opt for the latter option, the notary has on obligation to inform them on the advantages and disadvantages of the regime of separation of goods as well as on other solidarity-based solutions that exist.

The regime of legal communal estate is automatically applicable in all cases where the spouses have not concluded a marriage contract insofar as Belgian law is applicable to their matrimonial settlement. The spouses are also free to choose this regime in a marriage contract in which case they may also add exceptions or other particular clauses to the legal regime.

An example of such a particular clause is a clause whereby the spouses agree on the manner in which the communal estate will be divided between themselves in case of a separation. They may also define the rights of the surviving spouse in the communal estate in the event of the other spouse's death. An attribution clause needs to be tailor made in order to fully reflect the wishes and desires of the spouses. These types of clauses can be inserted in a marriage contract for "regular" or for universal communal estate.

When the surviving spouse receives the whole communal estate (or more than half) in accordance with the couple's marriage contract, such a transfer is, in principle, not considered under civil law as a gift nor a bequest from the deceased to the surviving spouse. Therefore, this gift is not taken into account when determining the shared descendant's reserved portion. From a tax point of view however, such a transfer of more than half of the communal estate to the surviving spouse is subject to inheritance tax.

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. Since the European Succession Regulation entered into force on 17 August 2015, one can opt in his/her will that the law applicable to the succession should be that of the last habitual residence or that of his/her nationality. Since Belgium agreed to the Regulation, it will accept the choice that has been made. Note that there is some uncertainty concerning the consequences of the Belgian reserved portion (see Section 10.1) if one has opted for a foreign law whereby the Belgian reserved portion is not respected. However, the majority of the doctrine agrees that the Belgian reserved portion can be disabled.

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Belgian civil law recognizes three different forms of will:

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

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

If there is no valid will at the time of death, the deceased's estate passes 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 to protect specific 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 (half) brothers and (half) sisters and their descendants
Third order	Ascendants (parents, grandparents, great-grandparents)
Fourth order	All other collateral heirs (uncles, aunts and their descendants, up to the 4th degree)
Further heirs	The Belgian State

Within the same order, the heir closest in rank excludes those that are further (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 the fact 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 deceased's other heirs.

	The surviving spouse receives	The other heirs receive
If there are descendants	Usufruct of the whole estate	Bare ownership of the whole estate
If there are heirs from the 2nd or 3rd order	Usufruct of the deceased's individual estate and the full ownership of the communal estate and/or all the goods that are held in joint ownership between the spouses	Bare ownership of the deceased's individual estate
If there are only heirs from the 4th order or if there are no heirs	Full ownership of the whole estate	

As for the legal cohabitant, he or she is entitled to the usufruct over the family home and the furniture it contains.

10.4 Estate planning

Belgium has several interesting estate planning opportunities.

Donations

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

- Gifts by hand or informal gifts (only advisable if the full ownership is gifted, not in cases where the gift is limited to the bare ownership or the usufruct)
- Until 30 November 2020: Gifts 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 three years (in some cases, seven years or more) following the date of the gift and (2) the gift has not been registered in Belgium for tax purposes (see above).

However, it is sometimes possible to limit this risk by means of insurance or a specific "in extremis" backup plan allowing for these gifts to be registered in time, should the donor's life come to an end within the three/seven-year period following the gift.

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

The civil partnership

The partnership agreement is a planning instrument that is frequently used by parents who wish to transfer movable property to the next generation while maintaining a certain control over the transferred assets.

A partnership agreement is entered into by the *pater and/or mater familias* and their children with whom they will pool goods and/or cash that they want to transfer. A partnership can easily be used to transfer company shares as well as portfolios. In exchange for pooling assets, each party receives shares in the partnership proportionate to the value of their contributions.

Control over the transferred assets by the *pater and/or mater familias* is ensured by his and/or her appointment as manager(s) of the partnership in the articles of association. Given the fact that unanimity is required to make any changes to the articles of association, it will be impossible to discharge the *pater and/or mater familias* without his and/or her consent.

Bare ownership of the civil partnership shares can be gifted by the parents to the children by way of a notary deed. The parents can withhold the usufruct.

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

If the gift deed is signed before a foreign (e.g., Dutch or Swiss) notary and before 1 December 2020, no gift tax will be due. In this case, it is important to take into account the rule according to which the donor must remain alive for a period of three years following the gift (in some cases, seven years) as in case of death within this period, inheritance tax will be due on the gift's value. If a sudden change in the donor's health were to occur, it is still possible to voluntarily submit the deed to registration and pay gift tax in Belgium. This will allow the beneficiaries to exclude the application of higher inheritance tax rates. This solution is unfortunately not possible in the event of a sudden death. It is useful to note that it is possible to ensure all succession tax due as a result of a death within the three-year period.

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

- The *pater and/or mater familias* retains the income generated by the gifted 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 *pater and/or mater familias* is be in charge of managing the assets.

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 Belgian registration duty and inheritance tax codes each contain a provision concerning abuse of tax law. When transactions or transfers of property are considered to fall under this provision, these will not be binding toward the tax authorities.

The Belgian tax authorities have published an administrative circular to help interpret these provisions. The circular lists examples of transactions and indicates whether or not these constitute abuse of tax law.

Non-exhaustive lists

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 an exhaustive list of safe, non-suspicious, transactions.

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

Abuse of tax law

The following transactions are, among others, considered abuse of tax law (unless the taxpayer is able to prove the existence of nontax-related motives):

- Insertion of an asset into the communal estate by one spouse followed, immediately or within a short period of time, by the gifting of this asset by both spouses
- Long-term building lease, also called emphyteusis, between affiliated companies

No abuse of tax law

The following transactions are, among others, not considered abuse of tax law (unless they are part of a broader and abusive tax-saving scheme):

- Gift by hand/gift made by a bank transfer
- Gift executed by a foreign notary authenticated deed
- Successive partial gifts of immovable property
- Gifts with withheld usufruct or any other lifetime right