

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 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 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 three-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.

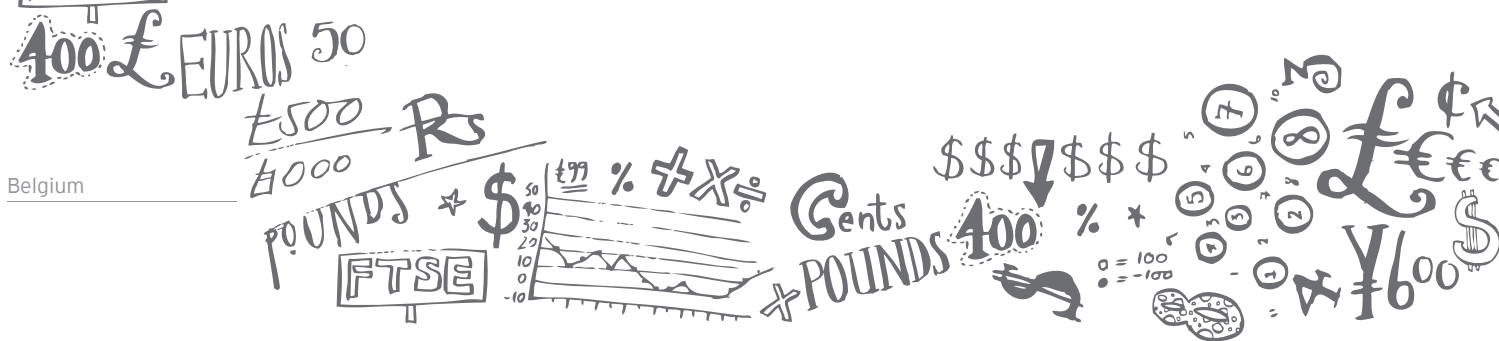
The transfer of real estate located abroad by or to a Belgian resident, as a donation or in return for payment, is not taxed in Belgium.

1.4 Endowment tax

There is no endowment tax in Belgium.

1.5 Net wealth tax

There is no net wealth tax in Belgium.



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 €500,000.01 | 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

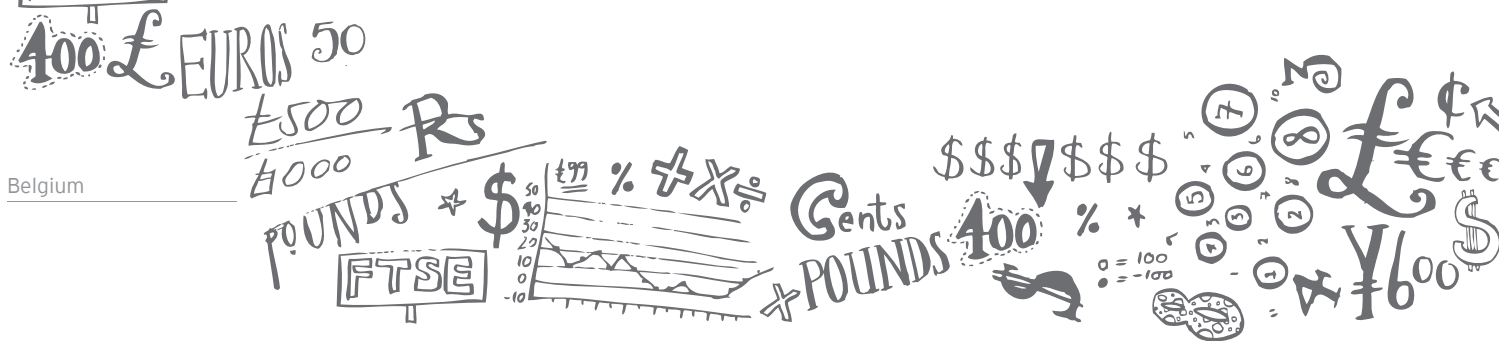
| Taxable amount | Tax rate | Inheritance tax due on the previous amount(s) |
|----------------------|----------|---|
| €0.01-€12,500 | 35% | €0 |
| €12,500.01-€25,000 | 35% | €4,375 |
| €25,000.01-€50,000 | 35% | €8,750 |
| €50,000.01-€100,000 | 50% | €17,500 |
| €100,000.01-€175,000 | 60% | €42,500 |
| €175,000.01-€250,000 | 70% | €87,500 |
| Above €250,000.01 | 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 €175,000.01 | 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 |



Belgium

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 €500,000.01 | 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 €175,000.01 | 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 €175,000.01 | 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% | €8125 |
| €75,000.01-€175,000 | 80% | €38,125 |
| Above €175,000.01 | 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.



Belgium

| 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 €500,000.01 | 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, cohabitant 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% | €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 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 €175,000.01 | 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 €175,000.01 | 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 €175,000.01 | 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%.

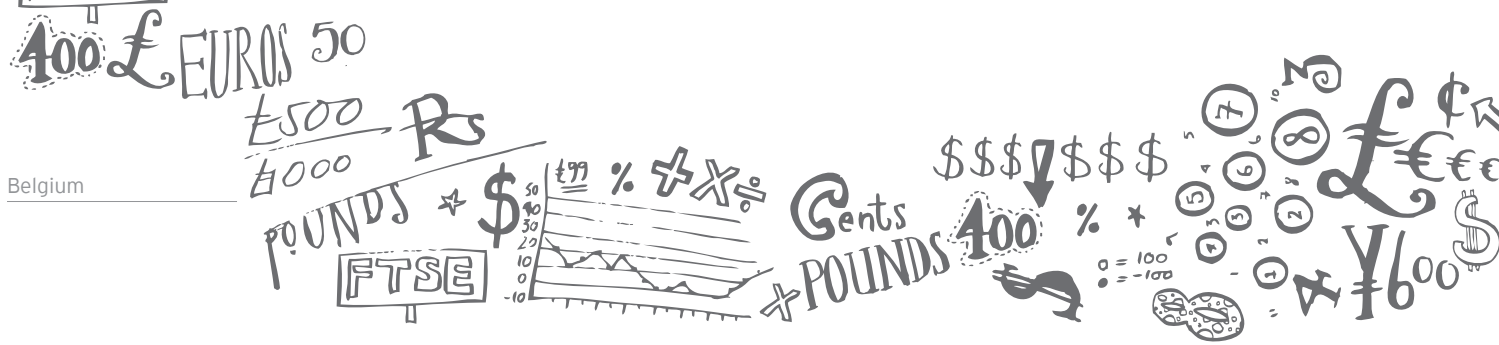
Walloon region

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 €500,000.01 | 30% | €76,000 |





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 7% 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 tax measures on the transfer of family-owned businesses (article 140bis Registration Tax Code and article 60/1 and beyond of the Inheritance Tax Code) provide an exemption of registration tax on the donation of shares of a family business. Inheritances of family-owned businesses are subject to 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 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.
- ▶ 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 two or three 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 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 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 rule on transfer of family businesses.



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 two 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 five 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 five 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 two 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. In addition, if his or her voting rights do not reach 50% of the totality of all voting rights, 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 five 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 five 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 five 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 five months after the death of the individual.

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 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 five years before his or her death, the region where he or she lived the longest within these five 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 four months if the deceased died in Belgium. If the deceased died in another European country, this is extended to five months, and if he or she died outside of Europe, it is six 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 setup of the notary 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 an 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 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 of trusts 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.

Belgian law does acknowledge the concept of foundation. Certain kinds of foundations can benefit from special inheritance tax and gift tax regimes.

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 three 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.





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 or legal cohabitant 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 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

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 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:

- ▶ 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 three years (in some cases seven 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 three-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.



Belgium

In exchange for pooling the property, the parties receive shares in the partnership in proportion to the value of their contributions.

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.

The bare ownership of the shares of the civil partnership can be donated to the children before the office of a notary. The parents will keep the usufruct.

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

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 three years (in some cases seven 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 three-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. 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 (Ci 5/2013).

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 other than 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 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