

Belgium



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 decease of the testator. It consists of two different types of tax: succession tax and 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 will only be due if the gift is voluntarily submitted to registration for tax purposes.

It is important to note, however, that donations that took place within a three-year period prior to the decease of the donor 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.

Gift tax – taxable base

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

For the Flemish and Brussels-Capital Regions, 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 applies to donations of movable property to which the progressive rates are applicable.

1.3 Real estate transfer tax

There is no real estate transfer tax in Belgium.

1.4 Endowment tax

There is no endowment tax in Belgium.

1.5 Transfer duty

Transfer tax (recht van overgang bij overlijden or droit de mutation par décès) is levied on the transfer of real estate after the decease of the testator, if the deceased is not a resident of Belgium. Transfer tax is only applicable to Belgian immovable goods. The non-residence status of the beneficiary of the transfer is irrelevant to determine whether or not the transfer is subject to Belgian transfer tax.

Transfer tax – taxable base

For the Walloon Region, the 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 fair market value at the time of death.

1.6 Net wealth tax

There is no net wealth tax in Belgium.

1.7 Succession tax

Succession tax (successierecht or droit 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 non-resident status of the beneficiary of the inheritance is irrelevant to determine whether or not the inheritance is subject to Belgian succession tax.

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 fair market value or sale value (verkoopwaarde or valeur vénale) at the time of death.

The succession tax is – in principle – 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.

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).

For the Walloon Region, the first €12,500.00 received by a direct descendant or ascendant or by a spouse is exempted. This exemption is increased by €12,500.00 if the net value of the beneficiary's share in the estate does not exceed €125,000.00. Furthermore, for a child of the deceased, the exemption is increased by €2,500.00 for each full year remaining before the child reaches 21 years of age. 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 if the net amount of the inheritance does not exceed €620.00.



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For the Brussels-Capital Region, the first €15,000.00 received by a direct descendant or ascendant or by a spouse is exempted. For a child of the deceased, this exemption is increased by €2,500.00 for each full year remaining before the child reaches the age of 21. A surviving spouse with children who are younger than 21 is allowed an additional exemption equal to half the exemption that is granted to the children who are younger than 21. In computing the taxable amount, these exemptions are deducted from the first bracket rather than the last.

For beneficiaries other than those mentioned above, a full exemption is granted if the net amount of the inheritance does not exceed €1,250.00.

The exemptions as foreseen in the Walloon and Brussels-Capital Regions do not apply in the Flemish Region.

2. Who is liable?

Succession tax

It 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 non-resident 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 gift tax is paid by the donor.

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-€50,000.00	3%	€0.00
€50,000.01-€100,000.00	8%	€1,500.00
€100,000.01-€175,000.00	9%	€5,500.00
€175,000.01-€250,000.00	18%	€12,250.00
€250,000.01-€500,000.00	24%	€25,750.00
Above €500,000.00	30%	€85,750.00

For brothers and sisters of the deceased

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500.00	20%	€0.00
€12,500.01-€25,000.00	25%	€2,500.00
€25,000.01-€50,000.00	30%	€5,625.00
€50,000.01-€100,000.00	40%	€13,125.00
€100,000.01-€175,000.00	55%	€33,125.00
€175,000.01-€250,000.00	60%	€74,375.00
Above €250,000.00	65%	€119,375.00

For uncles, aunts, nieces or nephews

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500.00	35%	€0.00
€12,500.01-€25,000.00	35%	€4,375.00
€25,000.01-€50,000.00	35%	€8,750.00
€50,000.01-€100,000.00	50%	€17,500.00
€100,000.01-€175,000.00	60%	€42,500.00
€175,000.01-€250,000.00	70%	€87,500.00
Above €250,000.00	70%	€140,000.00

**Any other persons**

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€50,000.00	40%	€0.00
€50,000.01-€75,000.00	55%	€20,000.00
€75,000.01-€175,000.00	65%	€33,750.00
Above €175,000.00	80%	€98,750.00

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-€50,000.00	3%	€0.00
€50,000.01-€250,000.00	9%	€1,500.00
Above €250,000.01	27%	€19,500.00

For brothers and sisters of the deceased

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€75,000.00	30%	€0.00
€75,000.01-€125,000.00	55%	€22,500.00
Above €125,000.01	65%	€50,000.00

Any other persons

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€75,000.00	45%	€0.00
€75,000.01-€125,000.00	55%	€33,750.00
Above €125,000.01	65%	€61,250.00



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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-€12,500.00	3%	€0.00
€12,500.01-€25,000.00	4%	€375.00
€25,000.01-€50,000.00	5%	€875.00
€50,000.01-€100,000.00	7%	€2,125.00
€100,000.01-€150,000.00	10%	€5,625.00
€150,000.01-€200,000.00	14%	€10,625.00
€200,000.01-€250,000.00	18%	€17,625.00
€250,000.01-€500,000.00	24%	€26,625.00
Above €500,000.00	30%	€86,625.00

For brothers and sisters of the deceased

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500.00	20%	€0.00
€12,500.01-€25,000.00	25%	€2,500.00
€25,000.01-€75,000.00	35%	€5,625.00
€75,000.01-€175,000.00	50%	€23,125.00
Above €175,000.00	65%	€73,125.00

For uncles, aunts, nieces or nephews

Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500.00	25%	€0.00
€12,500.01-€25,000.00	30%	€3,125.00
€25,000.01-€75,000.00	40%	€6,875.00
€75,000.01-€175,000.00	55%	€26,875.00
Above €175,000.00	70%	€81,875.00



Any other persons		
Taxable amount	Tax rate	Inheritance tax due on the previous amount(s)
€0.01-€12,500.00	30%	€0.00
€12,500.01-€25,000.00	35%	€3,750.00
€25,000.01-€75,000.00	60%	€8125.00
€75,000.01-€175,000.00	80%	€38,125.00
Above €175,000.00	80%	€118,125.00

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

In the Walloon and the Brussels-Capital Regions, family dwellings benefit from reduced inheritance tax rates.

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 if 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 €25.00 if the donation is voluntarily submitted to registration for tax purposes.

Brussels-Capital Region

Immovable property

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

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

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€50,000.00	2%	€0.00
€50,000.01-€100,000.00	5.3%	€1,000.00
€100,000.01-€175,000.00	6%	€3,650.00
€175,000.01-€250,000.00	12%	€8,150.00
€250,000.01-€500,000.00	24%	€17,150.00
€Above 500,000.00	30%	€77,150.00



Movable property

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

Flemish Region

Immovable property

For spouse and direct ascendant or descendant of the deceased

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€12,500.00	3%	€0.00
€12,500.01-€25,000.00	4%	€375.00
€25,000.01-€50,000.00	5%	€875.00
€50,000.01-€100,000.00	7%	€2,125.00
€100,000.01-€150,000.00	10%	€ 5,625.00
€150,000.01-€200,000.00	14%	€10,625.00
€200,000.01-€250,000.00	18%	€17,625.00
€250,000.01-€500,000.00	24%	€26,625.00
Above €500,000.00	30%	€86,625.00

For brothers and sisters of the deceased

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€12,500.00	20%	€0.00
€12,500.01-€25,000.00	25%	€2,500.00
€25,000.01-€75,000.00	35%	€5,625.00
€75,000.01-€175,000.00	50%	€23,125.00
Above €175,000.00	65%	€73,125.00

For uncles, aunts, nieces or nephews

Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€12,500.00	25%	€0.00
€12,500.01-€25,000.00	30%	€3,125.00
€25,000.01-€75,000.00	40%	€6,875.00
€75,000.01-€175,000.00	55%	€26,875.00
Above €175,000.00	70%	€81,875.00



Any other persons		
Taxable amount	Tax rate	Gift tax due on the previous amount(s)
€0.01-€12,500.00	30%	€0.00
€12,500.01-€25,000.00	35%	€3,750.00
€25,000.01-€75,000.00	50%	€8,125.00
€75,000.01-€175,000.00	65%	€33,125.00
Above €75,000.00	80%	€98,125.00

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-€25,000.00	1%	€0.00
€25,000.01-€50,000.00	2%	€250.00
€50,000.01-€175,000.00	5%	€750.00
€175,000.01-€250,000.00	12%	€7,000.00
€250,000.01-€500,000.00	24%	€16,000.00
Above €500,000.00	30%	€76,000.00

Movable property

In principle, the donation of movable property is subject to the same progressive tax rates as the donation of immovable property.

However, most donations of movable property are subject to a flat tax rate when certain conditions are met. This flat rate amounts to 3% for donations to a spouse, a legal cohabitant or a direct ascendant or descendant, 5% for donations to brothers, sisters, uncles, aunts, nieces and nephews and 7% for donations to any other person.

4. Exemptions and reliefs

This is not applicable in Belgium.



5. Filing procedures

This is not applicable in Belgium.

6. Assessments and valuations

This is not applicable in Belgium.

7. Trusts, foundations and private purpose funds

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

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

In different decisions, the Belgian tax authorities have confirmed being of the opinion that gift tax or inheritance tax are eventually chargeable on distributions made by a foreign trust set up by a Belgian resident to Belgian residents after the decease of the settler.

8. Grants

With regard to estate taxes, there are no specific rules in Belgium.

9. Life insurance

With regard to estate taxes, there are no specific rules in Belgium.

10. Civil law on succession

10.1 Estate planning

Belgium has several interesting estate planning opportunities, such as:

Donations

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

- Donations by manual delivery 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 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.

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



Transfer of businesses and companies upon succession

In the Flemish and Walloon Regions, the transfer of family businesses and companies upon succession is exempted from succession tax if 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 conditions that need to be fulfilled differ depending on the region (Flanders, Brussels, Wallonia) whose legislation applies.

The Flemish Region

In the Flemish Region, the net value of (1) the assets of a family business or (2) the certificates of shares and the account receivables on a family company can be exempted from succession tax.

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

- ▶ Participation condition: 50% of the shares should be in family hands (maximum second order – see section 10.4).
- ▶ Employment condition: in the three-year period before the decease, the company should have paid out at least €500,000.00 worth of salaries. If this condition is only partially met, the special regime still applies pro rata to the actual amount of salary 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 amount of salary paid out should be at least five-thirds of the amount of salary paid out during the three years before the decease.
- ▶ The equity of the business or the capital of the company should be maintained.
- ▶ The company should fill an annual account.

In 2009, the Flemish Parliament adopted a new law due to the economic crisis, temporarily suspending the employment condition as follows:

- ▶ If the decease took place between 1 January 2004 and 31 March 2011, the employment condition is suspended during the five years after the decease.
- ▶ If the decease took place between 1 April 2009 and 31 March 2011, the employment condition is completely suspended before and after the decease.
- ▶ If the decease took place between 31 March 2011 and 30 June 2014, the employment condition is suspended during the three years before the decease.

With the temporary suspension, the Flemish Parliament was hoping to spare the Belgian entrepreneurs who already suffered a great deal from the economic downturn.

The Flemish Parliament has promised to evaluate the Flemish exemption, and more specifically its conditions, by the end of 2011. According to our contacts within the Flemish Parliament, the evaluation will most likely lead to a rewriting of the current regulation and its conditions in the course of 2011-2012. We anticipate the new regulation to be much more stringent toward patrimonial companies. Please do not hesitate to contact any team member for an update on this legislative process.

Walloon Region

In the Walloon Region, the net value of a family business can also be exempted from inheritance tax. However, please note that different rules apply than in 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 EU) 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 amount of employees should never be less than 75% of the amount 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- or medium-size enterprises employing 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. On top of these two conditions, the special tax regime does not apply if 25% or more of the capital or voting rights are owned by a large company that would not meet these conditions.

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

- ▶ Economical condition: the company must conduct its main business in industrial, commercial or agricultural activity, a craft industry or a liberal profession at the time of the decease.
- ▶ Participation condition: the deceased should own at least 25% of the voting rights of the company's shares. If their voting rights do not reach 50% of the totality of all voting rights, in addition to the 25% condition, there will have to be a shareholders' agreement in which at least 50% of the totality of all voting rights participate, which ensures the continuation of the business for at least 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 year after 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.

10.2 Succession and forced heirship

Belgian civil law on succession

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

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

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



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

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

Family situation at the time of death	Legal reserve of the children	Legal reserve of the ascendants	Legal reserve of the spouse	Disposable portion
No children, descendants on father's and mother's sides	None	1/4 bare ownership and 1/4 full ownership	1/2 usufruct	1/4 bare ownership and 1/4 full ownership
No children, descendants on either father's or mother's side	None	1/8 bare ownership and 1/8 full ownership	1/2 usufruct	3/8 bare ownership and 3/8 full ownership
One child	1/4 bare ownership and 1/4 full ownership	None	1/2 usufruct	1/4 bare ownership and 1/4 full ownership
Two children	1/3 bare ownership and 1/3 full ownership	None	1/2 usufruct	1/6 bare ownership and 1/6 full ownership
Three 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 that case, specific conditions should be fulfilled.

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

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

10.3 Matrimonial regimes and civil partnerships

Marriage settlement

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

- The default regime laid down by law is the regime of communal estate. The communal estate in principle only comprises property acquired after marriage (gemeenschap van aanwinsten or communauté réduite aux acquêts). Assets that are



acquired before the marriage and assets that are acquired during the marriage through inheritance and donations remain in principle separately owned.

- ▶ The regime of universal communal estate (*algehele gemeenschap van goederen* or *communauté universelle*) stipulates that all assets are in principle owned in common by both spouses, regardless of whether the assets were acquired before or during the marriage.
- ▶ In the regime of separate ownership (*scheiding van goederen* or *séparation de biens*) each spouse retains the sole title to the assets and wealth he or she acquired before and during the marriage.

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

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

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

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

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

The civil partnership

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

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

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

The control will arise from the fact that the *paterfamilias* (and potentially the spouse upon his death) will be designated in the articles of association as the manager of the partnership. Given the fact that unanimity is required to make any changes to the articles of association, it will be impossible to discharge the *paterfamilias* without his consent. The agreement will be effective in principle until the death of the *paterfamilias* and his spouse.

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

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

However, should a foreign (e.g., Dutch or Swiss) notary be used, there would not be any gift tax 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; 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.

10.4 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	All other ascendants (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	

11. Estate tax treaties

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

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

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