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Gifts in an international context: tax & civil aspects

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FFPE – 14 March 2023




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Conference Cycle - Save the dates -



Seminars in <u>English</u>	Seminars in <u>French</u>
Belgian and international <u>inheritance</u> (civil and tax aspects)	<u>Successions</u> dans un contexte international (aspects civils & fiscaux)
<u>Gifts</u> in an international context (civil and tax aspects)	<u>Donations</u> dans un contexte international (aspects civils & fiscaux)
11 May 2023 Belgian <u>real estate</u> in a crossborder context (civil and tax aspects)	20 April 2023 <u>Immobilier</u> belge dans un contexte international (aspects civils & fiscaux)


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Questions

- **What are the different types of gifts allowed?**
- **Is it possible to give assets while retaining (most) rights to secure the donor's position?**
- **How to secure the surviving spouse's position?**
- **Does EU Protocol n°7 apply to gifts?**
- **What are the tax criteria in this area?**
- **What is the tax treatment in the different Member States?**
- **What are the remedies to prevent multiple taxation?**
- *Etc.*

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Taxation of International Gifts - Protocol EU # 7 -



Gifts = out of scope of Protocol # 7


↳ **EU Officials living in Belgium = Belgian residents for gift tax purposes**

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Taxation of International Gifts

- Relevant factors for taxation -

Gifts: external factors:


- Nationality of the donor, beneficiary...?
- Residence of the donor, beneficiary...?
- Country of location of the assets given?
- *Etc.*

Relevant
criteria?


Criteria vary according to the competent states

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Taxation of International Gifts

- External factors: multiple taxation -



Risk of double taxation, triple taxation


Example: an active EU Official (recruited in Berlin) living in Brussels gives his Spanish home to his children residing in France

- Germany taxes?
- Belgium taxes?
- Spain taxes?
- France taxes?

Remedies?

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Gifts: civil aspects

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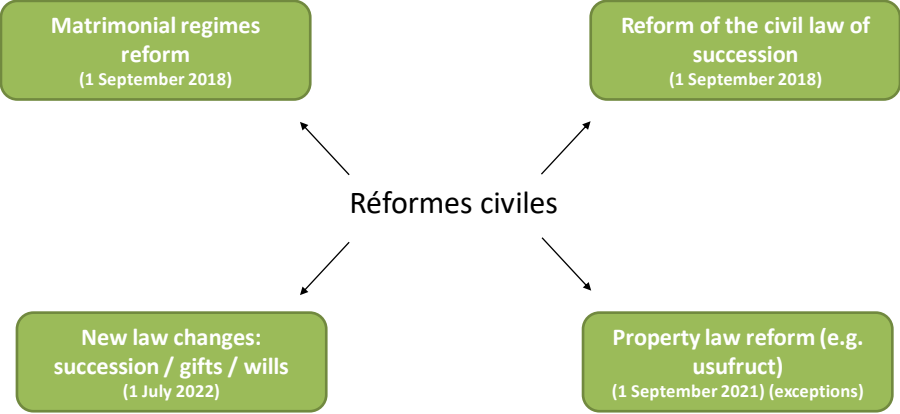
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Times are changing...

Réformes civiles




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... the fundamentals remain



Avoiding "grief tax" for your heirs

Giving while retaining most rights

Protection of spouse & loved ones

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Property law reform :
Temporal application



1 Sept. 2021

Optional application

Gifts **before 1/09/2021** may be subject to the new law

Automatic application

Donation **from 1/09/2021 onwards** are subject to the new law

Conditions:

1. Agreement of the parties
2. Formal "opt-in"

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Gifts

“Giving without being stripped off”



Principle

BUT: possibility to give without getting “stripped off”

Possibility to structure the gifts so that the donor can continue to:


- **Manage** the assets given
- Receive the **income** generated by the assets given
- **Dispose** freely, under certain circumstances, of the assets given
- Collect the **capital gains** made on these assets
- Etc.

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Protection of the donor: usufruct reserve




Usufructuary
(Lifetime right of use and enjoyment)




Gift of the bare-ownership
(shares, bank account, real estate, ...)

→

Bare-owner
(Right of virtual ownership / no IHT)



Rental income, interests, dividends, capital gains...?




✗

→ Possibility of guaranteeing a minimum return for the donor?

→ Possibility for the donor to be able to sell the assets given & receive the sale price?

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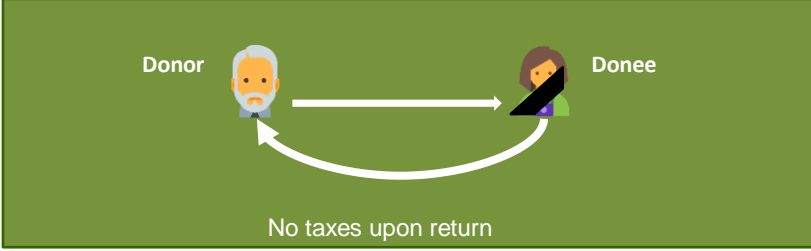


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Protection of the donor : Pre-death of the beneficiary






Donor

Donee

No taxes upon return

Be cautious:

- Anticipate the **transfer of residence** of the donee
- Anticipate the **sale** of the asset given
- *Etc.*

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Protection


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of the surviving spouse

of the loved one
(cohabitant, partner, etc.)


Belgian legislative developments: towards more simplification

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Spouse's protection: personal assets "Continued usufruct"



Gift of a personal asset with a reserve of usufruct


Donor → Donee

"Continued usufruct"


Surviving spouse

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Protection of the surviving spouse: common property



Donation of joint or undivided property with reservation of usufruct

Donor → Donee

Legal increase of usufruct

Surviving spouse/partner/...

💡 Also possible for cohabitant, etc.

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Gifts: tax aspects (Belgian & cross-border context)


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Gift of movable assets: Belgian principles


- Forms:** notarial, indirect (e.g. bank gifts), manual, etc.
- ↪ ./. terms and conditions
- Mandatory registration:** see next slide
- Risk of inheritance tax if donation not registered**

- Wallonia: extension to 5 years from 1 January 2022 (not retroactive)
- Brussels: *Ordonnance* of 6 July 2022
- Flanders: extension to 4 years? Exceptions?

Specific insurance?


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Gifts of movable assets: registration obligation?




	Mandatory registration	Concurrent registration gift	Non-registration & delay
Belgian and foreign notarial gift	✓	✓ (if foreign notary: specificities)	—
Manual gift	—	—	✓
Indirect gift (bank gift)	—	—	✓

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Gifts of movable assets: Belgian taxes




Gifts of movable assets

```


    graph TD
      A([Gifts of movable assets]) --> B[Mandatory registration  
(reservation of usufruct, etc.)]
      A --> C[Not mandatory registration  
(full property of cash, securities accounts, etc.)]
      C --> D[Spontaneously registered]
      C --> E[Not registered]
      D --> F[Gift tax  
3% or 7% (Brussels and Fl.) or 3.3% or 5.5% (Wal.)]
      E --> G[Survival > 3 or 5 years]
      E --> H[Death within 3 or 5 years]
      G --> I[No tax]
      H --> J[Inheritance tax]
      
```

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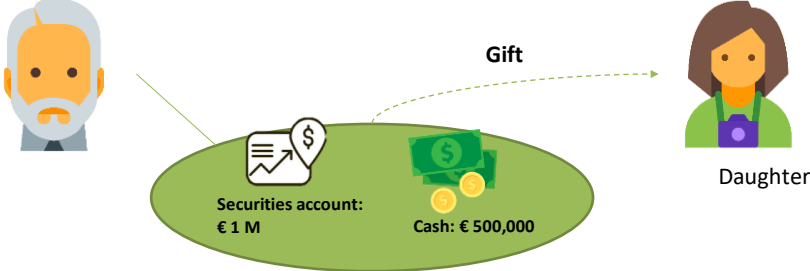
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Belgian gift tax

- Gifts of movable assets: example -






- No gift → inheritance tax (Brussels) = +/- € 385,000
- Gift → 0 € (if not registered & delay) or € 45,000 (if registered)

Tax gain = between € 340K and € 385K

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Belgian taxation: real estate gifts



- ❑ **Gift of a Belgian property**
 - Beneficiary = Belgian resident


<ul style="list-style-type: none"> ▪ Brussels ▪ Wallonia ▪ Flanders 	}	Children/spouse 3% to 27%	Other persons 10% to 40%
--	---	------------------------------	-----------------------------
 - If beneficiary = foreign resident → risk of double taxation (e.g. France, Germany, Spain, etc.)
- ❑ **Gift of foreign property by a Belgian resident?**

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Belgian taxation of donations

- Real estate gift : example -



□ Case: Mr (Brussels) has 2 children and 1 property worth € 750,000

- Inheritance tax upon death: +- €110,000
- If one gift: total tax cost: +- €72,000 (tax saving of **€42,000**)
- If two gifts (2x50%) (min. 3 years and 1 day) : total tax cost +- €32,000 (tax saving of **€80,000**)

□ Disadvantages of a gift in 2 parts

- Risk of decease of the donor prior to the second gift
- Increase in value of the building
- Multiple notarial deeds (cost)
- Legislative change
- *Etc.*

□ Taxable base in case of gift of bare-ownership of a property ?

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Other ways to optimise the transfer of your properties?



See you at our next seminar on 11 May 2023 😊

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Gifts: taxation abroad

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Taxation of international gifts - Examples of tax rules in other states -

Gift to children

								
	BE	DE	FR	PL	LU	PT	ES	IT
Gift Tax	Movable asset: ∅ or 3% / 3.3% Immovable asset: → 27%	→ 30%	→ 45%	→ 7%	∅ or 1.8% or 2.4%	∅	→ 34% (Loc. Spec.)	4%
Favourable measures	Exemption for certain gifts	Tax rebate of €400,000 + local. spec.	Tax rebate up to €131,865 every 15 years	Tax rebate + exemption for certain gifts	∅	∅	Fed. tax rebate (ocal Spec.)	Tax rebate of € 1 M

Some countries do not levy any gift tax (Austria, Sweden, Slovakia, Estonia, Latvia, Romania, Cyprus, etc.) → beware that other taxes may apply (stamp duty, etc.)

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Taxation of International Gifts - Double Tax Treaties -



☐ Agreements signed by Belgium

 Gifts: ∅

☐ Other EU Member States have signed more treaties (examples)

 Gifts: Germany, Italy, Austria, USA, etc.

 Gifts: France, Denmark, Switzerland, USA, etc.

 Gifts: France

 Gifts: UK and Austria

 Gifts: France, etc.

 Gifts: ∅


 *The U.S. has concluded only 8 treaties relating to gift taxes of which 6 with EU Member States*

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Gift in a crossborder context: key questions




- **What are the relevant tax criteria in the countries involved?**
- **Are there any applicable gift tax treaties?**
- **Are there remedies for double taxation under domestic law?**
- **What is the tax treatment of gifts under domestic law?**
- **Are there mechanisms to reduce the tax burden?**

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Taxation in other EU Member States

- Examples of crossborder situations-




Case 1: Belgian couple (60 yo) give the bare ownership of their second residence in France (€400,000) to their two children residing in Germany

Case 2: EU Official is Belgian tax resident and gives cash to his Spanish resident children (Andalusia)

Case 3: Italian woman working in Brussels for the EU Institutions (recruited in Rome) gives an immovable property in Italy (€800,000) to her two children (living in Berlin and in Brussels)

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We thank you for your attention



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