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## Gifts in an international context (civil and tax aspects)

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FFPE – 20 April 2021




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## Conference Cycle - Save the dates -



Seminars in <u>English</u>	Seminars in <u>French</u>
<div style="background-color: #8CC63F; color: white; padding: 10px; border: 1px solid #4F8127;"> <p><b>11 March</b> Belgian and international <u>inheritance</u> (civil and tax aspects)</p> </div>	<div style="background-color: #8CC63F; color: white; padding: 10px; border: 1px solid #4F8127;"> <p><b>23 février</b> <u>Successions</u> dans un contexte international (aspects civils &amp; fiscaux)</p> </div>
<div style="background-color: #8CC63F; color: white; padding: 10px; border: 1px solid #4F8127;"> <p><b>20 April</b> <u>Gifts</u> in an international context (civil and tax aspects)</p> </div>	<div style="background-color: #8CC63F; color: white; padding: 10px; border: 1px solid #4F8127;"> <p><b>25 mars</b> <u>Donations</u> dans un contexte international (aspects civils &amp; fiscaux)</p> </div>
<div style="background-color: #8CC63F; color: white; padding: 10px; border: 1px solid #4F8127;"> <p><b>27 May</b> <u>Real estate taxation</u> in Belgium and abroad</p> </div>	<div style="background-color: #8CC63F; color: white; padding: 10px; border: 1px solid #4F8127;"> <p><b>29 avril</b> <u>Fiscalité immobilière</u> dans un contexte international</p> </div>



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## - Agenda - Gifts in an international context


- **Introduction to taxation in a cross-border context**
  - Protocol 7 & gifts
  - Criteria for taxation
  - Risk of double taxation and remedies
  - International tax treaties (gifts)
- **Belgian tax and civil rules**
- **Rules in other EU Member States:** tax and civil aspects (Germany, Poland, Spain, Italy, France, etc.)

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## Gifts: Tax aspects in a cross-border context

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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.

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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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## Taxation of International Gifts

### - Double Tax Treaties -



**Agreements signed by Belgium**

 Gifts: ∅

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

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

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

 Gifts: Czech Republic, France, Netherlands, USA, etc.

 Gifts: UK and Austria

 Gifts: UK

 Gifts: France, Greece, etc.

 Gifts: ∅

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

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## Civil aspects (Belgian law)

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## Gifts - Belgian civil aspects -



- Basic principle:** irrevocable and definitive act (exceptions)
- BUT:** possibility to give without renouncing to most of the rights on the assets given

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

- *receive the income generated by the assets given?*
- *dispose freely of the assets given?*
- *sell the assets given and collect the sale price?*
- *etc*

- Different forms available**
- “definitive gift” vs. “advance on inheritance”?**
- Limitations**
- How to protect the donor? the surviving spouse?**

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## How to protect the donor? "Giving without stripping oneself"



**Gift with usufruct**

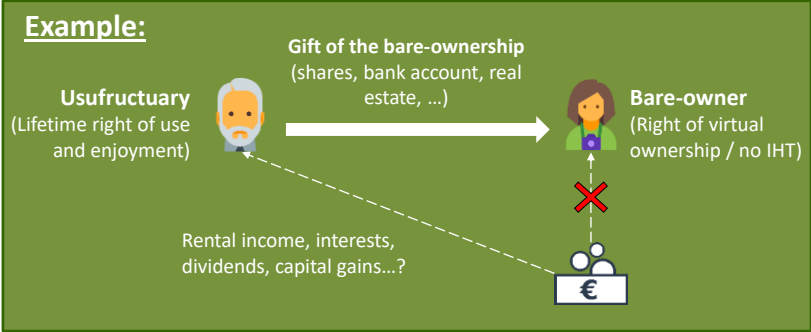
**Example:**

**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...?



**Alternatives?**

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## Spouse's protection "Continued usufruct"



**Donor (usufructuary)**

**Gift with usufruct**

**Donee (bare-owner)**

**Surviving spouse**

"Continued usufruct"


- **Conditions? (Belgian inheritance law)**
- **Taxation?**
- **Alternatives?**
- **Reform of property law (1 Sept. 2021)**

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## Belgian tax principles in a Belgian or cross-border context


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## Taxation of International Gifts - Belgian taxation of movable gifts -




- Gifts of movable assets
  - Taxation?
  - Tax exemption?
    - 3 year period (7 years in Flanders in some cases)
  - Registration duties:
    - Wallonia: 3.3% or 5.5%
    - Brussels/Flanders: 3% or 7%
  - registration not mandatory unless notarised gift

} Inheritance tax?

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## Taxation of International Gifts

### - Belgian taxation of movable gifts -



- Belgian resident (Brussels) with two children**
- Estate:**
  - Bonds: € 500,000
  - Shares: € 500,000
  - Liquid assets: € 500,000
  - Total: € 1,500,000**
- In the absence of any estate planning** ➔ tax cost = +/- €320,000
- Gifts (with a reserved usufruct, or not)** ➔ tax cost = €0 or +/- €45,000

**Tax saving of EUR 275,000 up to EUR 320,000**

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## Taxation of International Gifts

### - Belgian taxation of property gifts -



- Gift of a Belgian property?**
  - Tax rates?
 

<ul style="list-style-type: none"> <li>▪ Brussels</li> <li>▪ Wallonia</li> <li>▪ Flanders</li> </ul>	}	Children/spouse 3% to 27%	Other persons 10% to 40%
--	---	------------------------------	-----------------------------
  - If beneficiary = foreign resident ➔ risk of double taxation
- Gift of a foreign property by a Belgian resident?**
- Optimisation of the tax burden in case of gift of an immovable property?**
- Other ways to optimise the transfer of real estate?**

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## Belgian law

### - Example of a spread gift -



A Belgian resident (living in Brussels) with two children owns a building in Brussels worth €750,000

- Inheritance tax upon death: +- €110,000
- If one gift: → total tax cost: +- €70,000 (tax saving of €40,000)
- If two gifts (2x50%) spread over more than 3 years → total tax cost: €30,000 (tax saving of €80,000)

□ **Pitfalls:**

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

□ **Gift of the bare-ownership of a building:** taxable base?

□ **Risk of simulation or tax abuse?**

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## Foreign gift taxes

### - A few examples -



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## Taxation of international gifts

### - Examples of tax rules in other states -



Gift to children

	BE	DE	FR	PL	LU	PT	UK	ES	BG	IT
<b>Gift Tax</b>	∅ or → 3.3% (movable assets)	→ 30%	→ 45%	→ 7%	1.8% or 2.4%	∅ (Stamp tax)	→ 40%	→ 34%* (!Loc. Spec.)	∅	4%
	→ 27% (real estate)									
<b>Favourable measures</b>	Exemption for certain gifts	Tax rebate every 10 years (€500,000 / €400,000)	Tax rebate of €131,865 every 15 years	1) Tax rebate 2) Exemption of certain property	∅	∅	1) Tax rebate Of €325,000 every 7 years 2) Exemption for certain gifts	Fed. tax rebate (!!!Local Spec.!!!)	∅	Tax rebate €1,000,000


\* multiplied by a coefficient

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Foreign laws – update at YE 2020  
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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:** A Polish man living in Brussels gives cash to his children who reside in Spain (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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