



DEKEYSER & ASSOCIÉS

Belgian and International inheritance (tax and civil aspects)

Me Antoine Dekeyser
Lawyer

9 November 2023



New conference cycle 2023 - 2024

Seminars in English

9 November 2023

Belgian and international inheritance
(civil and tax aspects)

12 December 2023

Gifts in an international context
(civil and tax aspects)

Date to be confirmed

Belgian real estate
(civil and tax aspects)

Seminars in French

17 octobre 2023

Successions dans un contexte international
(aspects civils & fiscaux)

28 novembre 2023

Donations dans un contexte international
(aspects civils & fiscaux)

Date à confirmer

Immobilier belge
(aspects civils & fiscaux)

Inheritance (international context)

Civil aspects

- Who are the heirs?
- Who inherits?
- What is each heir entitled to?
- How to protect the surviving spouse/partner?
- *Etc.*

Flexibility:
choice of law?

Nationality

Country of residence

Tax aspects

- What are the taxation criteria?
- Is there a risk of double-taxation?
- What is the impact of EU PPI N°7?
- *Etc.*

**Solutions to
multi-taxation?**

Inheritance: Civil aspects

Possibility to choose the civil law applicable to one's estate (EU Regulation No.650/2012)



□ A single civil law for the entire estate?

- **If no choice**: law of the state of the “usual residence” at the time of death

↳ Exceptions?

- **Possible choice**: law of the country of nationality

↳ Recent ECJ decision C-21/22 of 12.10.2023

upon
choice

at the time
of death

How to determine one's usual residence? EU Regulation No. 650/2012



Can EU Officials be usual residents of a country where they are no tax residents (Protocol n°7)?

Usual residence = Tax residence?

Objective criteria

- Duration and regularity of the stay
- Centre of personal and family interests
- Location of the estate
- *Etc.*

Subjective criteria

- Intention to establish stable and permanent centre of vital interests in the State
- *Etc.*

How to make a choice of law? EU Regulation No. 650/2012



How to express the choice of law?

- Will
- Inheritance Agreement

Multiple nationality?

How to make a choice between the different national laws?

Civil aspects: comparison of rules in Belgium vs. some other EU Member States

Inheritance: Belgian estate Law

- Principles -



- ❑ Belgian law: When does it apply?
- ❑ Legal inheritance devolution (in the absence of a will)



- ❑ Modernisation of Belgian law
- ❑ Possible derogations:

- Will/Testament
- Inheritance agreement
- Gifts (possible to retain most rights)

} **Limits?**
Reserved portions
(cfr. next slide)

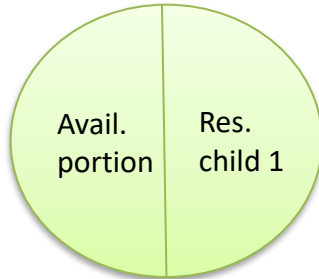
Belgian estate law



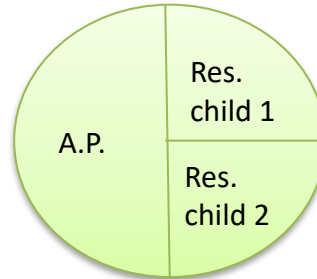
- Will vs. hereditary reserves -

Children's reserved portion (global reserve)

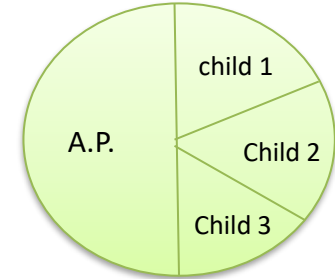
If the deceased has 1 child



If the deceased has 2 children



If the deceased has 3 children



Surviving spouse/partner's reserved portion?

Ascendants' reserved portion?

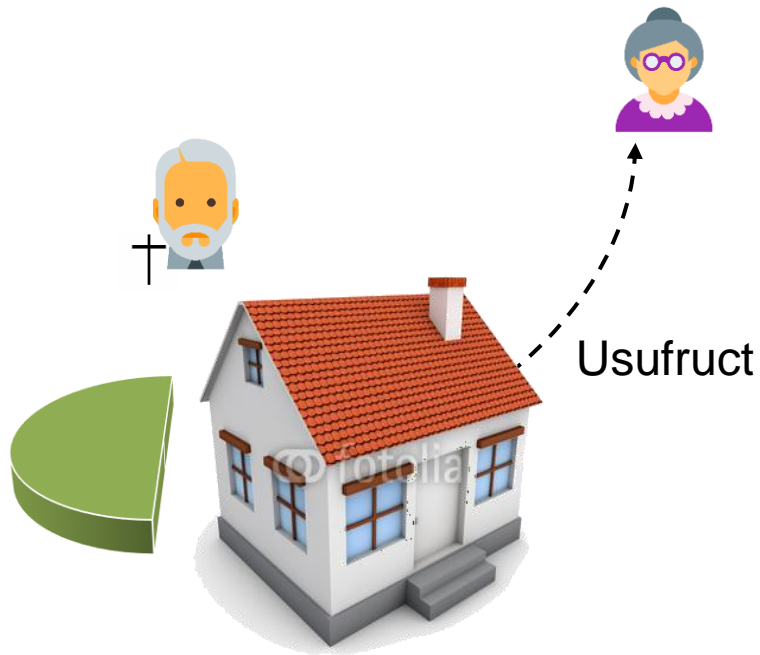
Belgian estate law



- Reserved portion of the spouse -

Tangible reserve

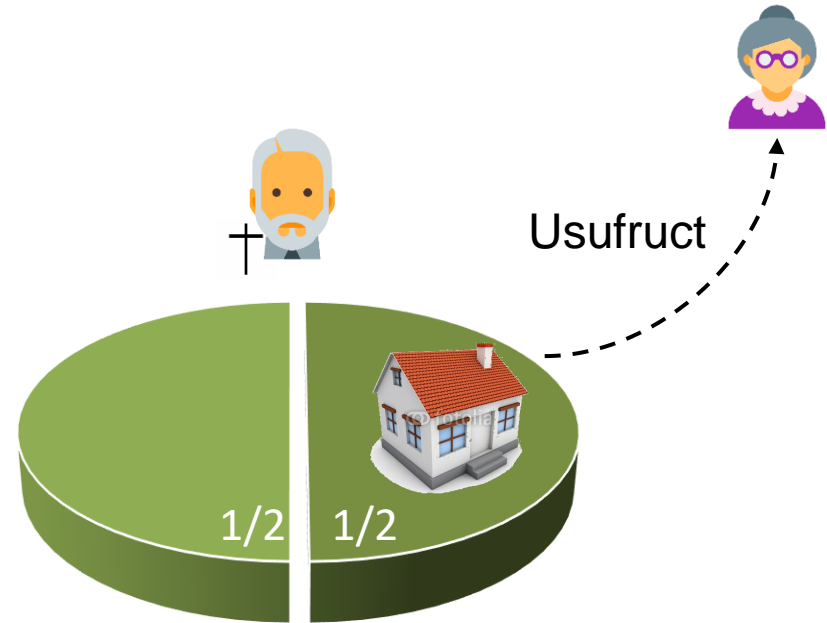
- Usufruct of the domicile > usufruct of half of the estate



Succession estate

Abstract reserve

- Usufruct of the domicile < usufruct of half of the estate



Succession estate

Articulation?



Deceased has one surviving spouse and two children.

Axis n°1: Estate distribution WITHOUT will

- Spouse: usufruct of the entire estate
- Children: bare ownership of the entire estate

Axis n°2: Inheritance WITH will

- Freedom vs hereditary reserve?
 - Spouse: usufruct of $\frac{1}{2}$ the entire estate
 - Children: each is given $\frac{1}{4}$ of the entire estate (global reserve)
- Joint will: prohibited

Axis n° 3: Inheritance agreement: authorised

Compared Inheritance Law - Conclusion

Deceased has one surviving spouse and two children

								
		Belgium	Germany	Spain	UK	Italy	Poland	France
No will		100% usufruct	1/4 or 1/2 ownership (cf. marriage contract)	1/3 usufruct	Everything up to £270K + spec. assets + part of the remainder	1/3 ownership	1/3 ownership	¼ ownership OR 100% usufruct
		100% bare-owners	Remainder	Remainder	Residual portion	Remainder	Remainder	Remainder
Reserved portion		✓	✓	Local specif.	✗	✓	✓	✗
		✓	✓	Local specif.	✗	✓	✓	✓
Inheritance agreement?		✓	✓	✗	✓	✗	✓	✓

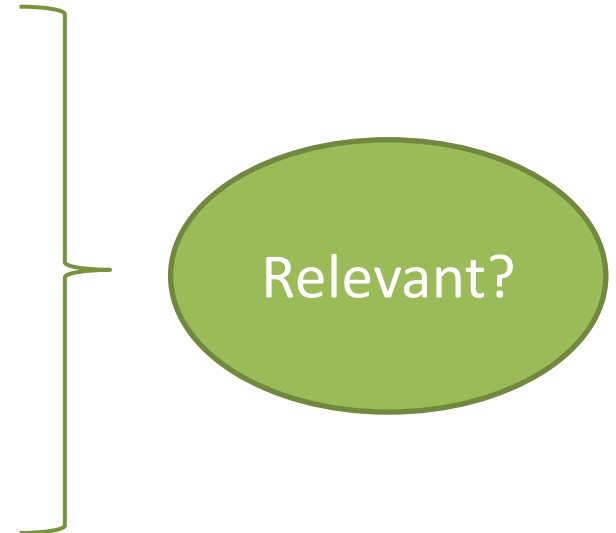
Inheritance: Tax aspects

Taxation of international inheritances

- Tax criteria -

□ External factors to consider during matters of inheritance:

- Nationality of the deceased/heirs
- Residence of the deceased
- Residence of the heirs
- Location of the assets
- Place of death
- *Etc.*



**Caution: criteria vary according to the competent State
→ risk of multiple taxation**

Taxation of International inheritances

- External elements: multiple taxation -



☐ Agreements signed by Belgium



- Inheritance: France & Sweden

☐ Other EU countries have signed more treaties:



- Inheritance: Ireland, South Africa, USA, Netherlands, Sweden, Switzerland, *etc.*



- Inheritance: Austria, Czech Republic, Hungary, *etc.*



- Inheritance: USA, UK, France, Sweden, Denmark, Greece, *etc.*



- Inheritance: France, Sweden, *etc.*



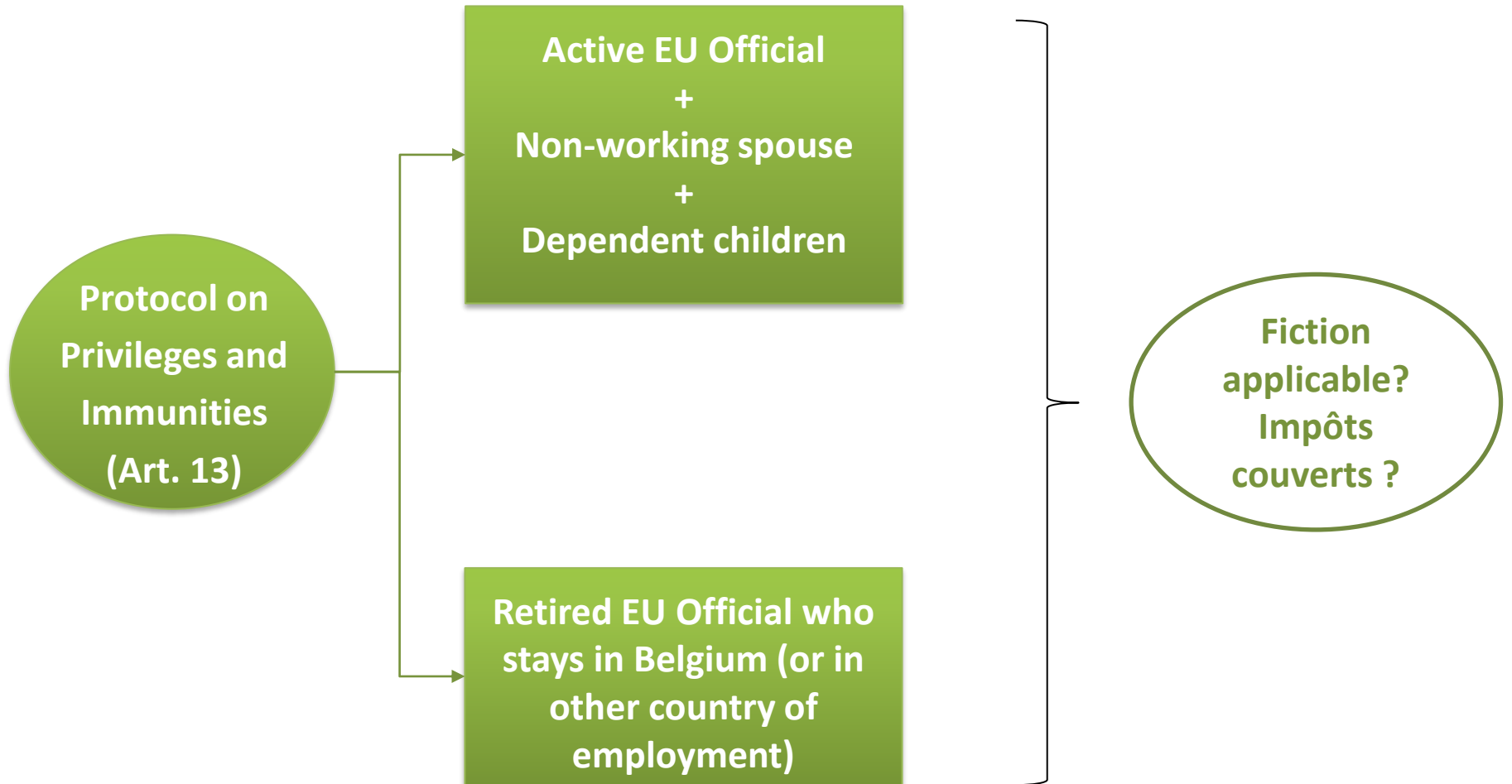
- Inheritance: USA, Canada, Germany, Italy, Spain, Portugal, UK, Qatar, Bahrain, U.A.E., *etc.*



- Inheritance: USA, France, Denmark, Sweden, Switzerland, Greece, *etc.*

Taxation of international inheritances

- EU Officials: Protocol No. 7 -

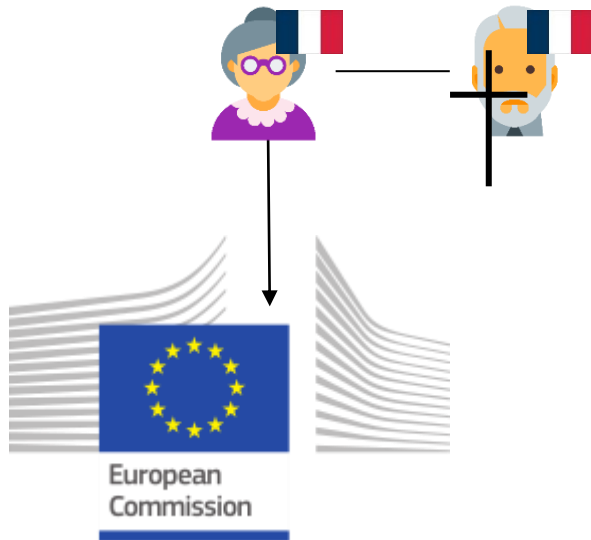


Please note that some EU Officials are covered by special protocols

Taxation of international inheritances - EU Officials: Protocol N°7 -



Does the surviving spouse benefit of EU Protocol n°7?



Case 1: Mr dies while working as an executive in a Brussels company

Case 2: Mr dies while working as an EU Official

Case 3: Mr was an EU Official. He died after retirement in Belgium

Case 4: Mr. met his wife in Brussels when she was already working for the EC. He was never employed (stay-at-home-dad) before he died

- Taxation of International inheritances - Belgian Inheritance Tax -



- ❑ **Inheritance tax** upon death of a **Belgian resident**
 - Taxable base?
 - Rates?
 - Persons liable?

- ❑ **Transfer of duties** upon the death of a **non-Belgian resident** (e.g. active EU officials)
 - Taxable base?
 - Rates?
 - Persons liable?



Possible reduction / elimination of IHT via gifts, life insurances, split acquisitions, foundations, testaments (eg. family home), etc.

Taxation of International inheritances

Belgian Inheritance Tax rates*



□ Brussels

- Children/spouse 3% to 30%
- Brothers/sisters 20% to 65%
- Uncles/nephews 35% to 70%
- Third parties 40% to 80%

New rules from 1st January 2024

□ Walloon Region

- Children/spouse 3% to 30%
- Brothers/sisters 20% to 65%
- Uncles/nephews 25% to 70%
- Third parties 30% to 80%

□ Flanders

- Children/spouse 3% to 27%
- Others 25% to 55%

Specificities: Distinction between movable and immovable property + € 50,000 exemption for the spouse on movable property

Full exemption of the family home for:

- the surviving spouse?
- cohabitants?

Other reduced rates or specificities?









* By default

Taxation of International inheritances

- Major disparities between countries -



Deceased has one surviving spouse and two children

	 Belgium	 Germany	 Spain	 UK	 Italy	 Poland	 France	 Portugal
IHT rate (direct line)	Up to 30% (local. Spec.)	Up to 30%	Up to 34% (+ local. Spec.)	40%	Up to 4%	∅	Up to 45%	∅
Surviving spouse	Up to 30% / domicile exempted (local. Spec.)	Tax free allowance	Tax free allowance (+ local spec.)	∅	Tax free allowance	∅	∅	∅
Children	Up to 30% (local. Spec.)	Tax free allowance	Tax free allowance (local spec.)	Tax free allowance	Tax free allowance	∅	Tax free allowance	∅

Taxation of International inheritances - Major disparities between countries -



Deceased has one surviving spouse and two children.



No IHT due



Taxation of International inheritances

Risks of multiple taxation

□ Practical case

Example: a retired EU official (recruited in Germany) living in Belgium dies with a villa on the Costa del Sol (Spain). His heirs are his children residing in France.

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

□ Solutions?

- Personal planning (cfr. our next seminars)
- Double taxation treaties (if any)
- Domestic Laws



DEKEYSER & ASSOCIÉS

Dekeyser & Associés is a Brussels-based boutique law firm specializing in estate law (inheritance, gifts, etc.) and in **Belgian and international tax law**.

It is renowned for its rigor, its degree of expertise and its ethics.

We offer our clients **tailor-made solutions** that guarantee the best legal and fiscal security and family peace.

We offer **full support** and propose **different fee formulas** (hourly rate, fixed rate, etc.).

Fixed fee of €250 excl. VAT for the first meeting in person or via videocall.

More information on www.dekeyser-associes.com

Contact and reservations +32(0).2.533.99.60 - office@dekeyser-associes.com



DEKEYSER & ASSOCIÉS

Thank you for your attention



Me Antoine Dekeyser

You can write us at office@dekeyser-associes.com if you wish a copy of our presentation

You can also subscribe to our [Newsletter](#) and [LinkedIn](#) page for regular updates

More info on our website:



www.dekeyser-associes.com