Cross Border Estate Planning

What is *really* new in 2015

Marc Quaghebeur
What’s new

EU Succession Regulation
Flemish gift/inheritance tax
Brussels inheritance tax
Walloon inheritance tax
Cayman Tax
EU Succession Regulation
EU Succession Regulation

a great instrument

- simplify cross border successions
- one law / one jurisdiction
- choose your own national law
- EU Certificate of Succession
Inheritance Law

• Who inherits?
• How much?
• How does estate pass on?
• Forced Heirship Rules?
• Making a Will?
Jurisdiction

• Courts
• Other judicial authorities
• Professionals
  - Notaries
• Court’s clerk
Jurisdiction

Inheritance
- Courts
- Other judicial authorities
- Professionals
  - Notaries
  - Court’s clerk
Conflict of laws

- Different countries
- Private International Law
EU Succession Regulation

MISCONCEPTIONS

• does not change national rules
• has NOTHING to do with tax
EU Succession Regulation

MISCONCEPTIONS
• does not change national rules
• has NOTHING to do with tax
EU Succession Regulation

WHERE?
25 EU MEMBER STATES
NOT Denmark
Ireland
United Kingdom

opt out
EU Succession Regulation

CAN AFFECT Brits, Danes, Irish if
— they live in 25 EU Member States
— they have property in 25 EU States
— they have dual nationality and opt

• Citizens or other states
EU Succession Regulation

ONE LAW / ONE JURISDICTION

State of habitual residence

- Note: "State" not "Member State"

- Denmark, Ireland, UK

- Third State (outside EU)

Exceptions: closer connections
EU Succession Regulation

ONE LAW
Opt for law of nationality
- other EU Member State
- Denmark, Ireland or UK
- Third State (outside EU)
  dual or triple nationality?
EU Succession Regulation

CAN OPT FOR LAW OF NATIONALITY

- in a Will
- for entire estate
- all or nothing
EU Succession Regulation

THAT ONE LAW WILL GOVERN
- Who inherits
- How much they inherit
- Rights of spouse/partner
- Claims of spouse/partner
EU Succession Regulation

THAT ONE LAW WILL GOVERN
- What is in my estate
- Liability for debts?
- How to accept / waive inheritance
- Powers of heirs
  executor/administrator
IF I MAKE A WILL

- How legatee receives bequest?
- Can I impose conditions?
- Forced heirship rules?
- Can I freely dispose of my estate?
EU Succession Regulation

IF I MAKE A WILL

- Can I «disinherit»?
- Is there a clawback for lifetime gifts?
EU Succession Regulation

ONE LAW APPLIES
WHO APPLIES THE LAW
- Court
- Officials
- Notaries
EU Succession Regulation

WHO APPLIES THE LAW
Which Jurisdiction?
*Member* State of habitual residence
Not optional
EU Succession Regulation

IF YOU OPT FOR LAW OF ONE OF 25
- Parties can opt for jurisdiction
- Court can decline jurisdiction
EU Succession Regulation

HABITUAL RESIDENCE OUTSIDE EU

- Member State of habitual residence
- Member State of previous habitual residence (< 5 years)
EU Succession Regulation

DECISIONS are recognized and enforceable in 25 Member States

European Certificate of Succession
European Certificate of Succession is optional explains rules as set by jurisdiction heirs legatees executor/administrator
EU Succession Regulation

HOW DOES IT HELP ME?

• Easier to anticipate and plan
• Chose law applicable and possibly jurisdiction
• Simplify cross border planning
• Enable succession agreements
Italian
living in Belgium
with family
Property in France
in Portugal
Dies in France
-> Belgian rules
Belgian living in Germany
Property in Germany in Portugal
Germany: Belgian law
-> now German rules
Frenchman

lives in Belgium

has Swiss property

-> Belgium : Belgian law

Switzerland: Belgian law
Brit living in Belgium
Can opt for English law
Can he disinherit children?
Public Policy/ordre public?
"manifestly" incompatible?
EU Succession Regulation

HOW MUCH PLANNING CAN I DO?

Compare

Belgian rules

Rules of national law

Country where I want to live

www.successions-europe.eu
EU Succession Regulation

Successions in Europe
09/09/2015

www.successions-europe.eu
EU Succession Regulation

HOW CAN I USE IT?
• Move to another country?
• Check: is it necessary? any alternatives?
• Give up all connections
• Do not die for five years
The EU Succession Regulation does not allow you to opt out of paying inheritance tax.
Leave Belgium
EU Member States
No Inheritance tax
EU Member States
No Inheritance Tax for children
EU Member States
No Inheritance tax for Spouse
EU Member States
large Inheritance tax allowances
EU Member States
Inheritance Tax Rates
Use the exemptions
The family home is exempt between spouses/partners.

- Flanders
- Brussels
- Wallonia (€160,000)
Brussels **may** give inheritance tax rate for family to one friend

<table>
<thead>
<tr>
<th>&lt; 50,000 euro</th>
<th>40%</th>
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</thead>
<tbody>
<tr>
<td>50,000 - 75,000 euro</td>
<td>55%</td>
</tr>
<tr>
<td>75,000 - 175,000 euro</td>
<td>65%</td>
</tr>
<tr>
<td>&gt; 175,000 euro</td>
<td>80%</td>
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opportunity for singles/childless

<table>
<thead>
<tr>
<th>&lt; 50,000 euro</th>
<th>3%</th>
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<tbody>
<tr>
<td>50,000 - 100,000 euro</td>
<td>8%</td>
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<tr>
<td>100,000 - 175,000 euro</td>
<td>18%</td>
</tr>
<tr>
<td>175,000 - 250,000 euro</td>
<td>24%</td>
</tr>
<tr>
<td>&gt; 250,000 euro</td>
<td>30%</td>
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</tbody>
</table>
Pass on an inheritance

You inherit from a non resident
No Belgian Inheritance Tax
Get an obligation to pass on
Pass on an inheritance.

Get an obligation to pass on.
Do know what you own

What is your marriage contract?
≠ prenuptial agreement!
- community property
- separate properties
Donate

Moveables

Gift tax is optional

But inheritance tax

if you die within three years
Donate

Moveables

Gift tax before notary

3 – 7 % Flanders

Brussels

3.3 – 5.5 – 7.7 % Wallonia
Donate

Real property
always before notary
Gift tax rates = inheritance tax rates
except in Flanders
## Flanders

<table>
<thead>
<tr>
<th>Income Range</th>
<th>2016</th>
<th>2015</th>
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<tbody>
<tr>
<td>0 to € 150,000</td>
<td>3%</td>
<td>10%</td>
</tr>
<tr>
<td>€ 150,000 to € 250,000</td>
<td>9%</td>
<td>20%</td>
</tr>
<tr>
<td>€ 250,000 to € 450,000</td>
<td>18%</td>
<td>30%</td>
</tr>
<tr>
<td>Over € 450,000</td>
<td>27%</td>
<td>40%</td>
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</table>
Do start planning

Wills

Marriage contract

Donations

Life Insurance
a will?

No inheritance tax savings
Can be attacked by the protected heirs
Do I need a will?

- you do not like inheritance rules
- opt for your national law
- leave family home to your spouse
- to disinherit mother(-in-law)
- decide who gets what
- make bequests
Do I need a will?

- deny conversion of usufruit
- appoint a guardian
- funeral arrangements
- For tax reasons
  - leave the family home to your spouse
  - skip a generation
Change your Marriage Contract

No inheritance tax savings can be attacked by the protected heirs can disinheret joint children very flexible – 11 options
Contracts

Tontine
Split purchase with the children
Family partnership
Life insurance contracts
Take out life insurance

Beware the inheritance tax!
Donate the premium
Donate the policy
Beware the claw back!
Joint life insurance
Mutual life insurance
Buy with the kids

Children buy bare ownership
Parents buy usufruct
Avoids inheritance tax
Possibly gift tax
Or donate in Flanders
Cayman Tax

Transparant taxation of trusts companies in tax havens
Cayman Tax

Transparant taxation of first the founder / sponsor then his heirs . . . Forever if they live in Belgium