Belgium

International Estate Planning Guide

Individual Tax and Private Client Committee

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A. Will Formalities and Enforceability of Foreign Wills

Belgian law provides in three types of wills: the holograph will, the public will, and the international will.

1. Holograph Will

A holograph will is a will in its most simple form. It must (i) be written by hand by the testator, (ii) mention the date on which it has been written and (iii) be duly signed by the testator (art. 970 of the Belgian Civil Code, hereafter referred to as "BCC").

2. Public Will

A public will is an instrument drawn up by a notary public in the presence of two witnesses or an instrument drawn up by two notaries public (art. 971 BCC). The public will is subject to specific formal requirements for formal deeds and public wills. The testator must dictate his will to the notary. Afterwards, this will must be read to the testator and must be signed by him.

3. International Will

The rules concerning this type of will can be found in *the Convention Providing a Uniform Law on the Form of an International Will of 26 October 1973* (hereafter "the Convention"). The international will consists of both a private document and a formal deed drawn up by a notary. This type of will is made in writing, but it does not have to be written by the testator himself. It may be written by hand or by any other means. The testator must declare in the presence of two witnesses and a notary that the document is his last will. The two witnesses, nor the notary do know the content of the document. The testator must sign his will (each page and at the end), unless he is unable to sign, in which case the reasons for this must be indicated. The notary attaches a formal document to the will to certify that the formalities prescribed in the convention have been taken into account.

4. Validity of Foreign Wills in Belgium

Regarding the validity of foreign wills in Belgium, the *Convention of October 5th 1961 on the conflict of laws relating to the form of testamentary dispositions* applies. A testamentary disposition is valid as to its form if it complies with the internal law:

- of the place where the testator made it, or
- of a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- of a place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- of the place in which the testator had his habitual abode either at the time when he made the disposition, or at the time of his death, or
- so far as immovables are concerned, of the place where they are situated.

Beware, testamentary dispositions made only in oral form by Belgian citizens that only have the Belgian nationality will not be recognized.

B. Will Substitutes (Revocable Trusts or Entities)

1. Trusts

See below.

2. Bequest to a Private Foundation

The private foundation is a legal entity to which an amount of capital is donated for a specific altruistic purpose. A private foundation is prohibited by law from granting material benefits to its founders and/or administrators. Benefits may be awarded to third parties, provided that this is consistent with the altruistic purpose of the private foundation. Examples of such altruistic purposes are the maintenance of an arts collection, the care and representation of the interests of a disabled child, or the support of a social purpose. By extension, a private foundation may also represent the interests of a specific family and be instated to prevent the fragmentation of the family estate. The founding of a private foundation must be by authentic deed or will (*public* will, not by a holograph will nor by international will). If a private foundation is established by will, it is recommended to include the full articles in the will. The statutory object clause is to be included as accurately as possible. The will shall also designate the members of the board of directors and, as the case may be, the members of the supervisory board. Bequests may be awarded by will to an existing private foundation, or even to a private foundation established by that same will. For a bequest of which the value is higher than 100,000 EUR the authorization of the Minister of Justice is required. This authorization of the Minister of Justice is also required for donations to the foundation of which the value is higher than 100,000 EUR, except for gifts made hand-by-hand or by bank transfer. It should be noted that donations and bequests to the foundation may be subject to a reduction claim of the forced heirs (see below).

3. Donation of the Remainder ("Fideïcommis de residuo")

A donation with fideïcommis de residuo ("FDCR") is a donation according to which the donor first donates certain goods to a "first beneficiary" and afterwards, at the moment when this first beneficiary deceases, the remainder (the "residuo") is donated to a second beneficiary (the expectant). At the time of the donation, the expectant must have been born, or must be conceived and be born viably afterwards, otherwise, the FCDR is null and void. This type of donation is qualified as a double donation: the first beneficiary as well as the expectant both receive their rights directly from the donor.

The donation to the first beneficiary will be dissolved at the time of his death with respect to the remainder of the donation. The donation to the expectant is suspended until the first beneficiary dies. This donation has an aleatory object, i.e. the object consists only of the remainder of the donation at the time of the first beneficiary's death. The expectant will only know the exact object of the donation at that time. The concept of donation with fideicommis de residuo is widely accepted by jurisprudence and has also been ruled upon by the tax authorities.

C. Powers of Attorney, Directives, and Similar Disability Documents

1. Management Power-Of-Attorney ("Beheersvolmacht")

In an act containing a donation, it is possible for the donor to adopt a management power-of-attorney clause. The management power-of-attorney can be given to either the donor himself or to a third party. This clause is a way for the donor to retain control over the donated goods during a certain period of time (e.g. during his lifetime or until the recipient obtains a certain age). In certain cases, a management power-of-attorney can imply that possession of the donated goods is retained: e.g. a power-of-attorney concerning funds in a bank account does not necessarily imply possession by the manager. The manager has the right to manage the donated assets. However, he cannot dispose of them.[1] The manager also is under an obligation to account for his management. At the end of the management period, he must return the assets concerned.[2] It is advisable to stipulate the power of attorney in a separate document, in order to emphasize the free will of the donee.[3]

[1] Art. 946 BCC and R. Barbaix, "Beheersvolmacht.Last en modaliteit.", *in Handboek Estate Planning – Schenking*, Larcier 2009, 509.
[2] R. Barbaix, "Beheersvolmacht.Last en modaliteit.", *in Handboek Estate Planning – Schenking*, Larcier 2009, 511.
[3] A. Nijs, A. Van Zantbeek and A. Verbeke, "Schenken met behoud van bezit" in *Tijdschrift voor Estate Planning* 2005, 43.

2. Power of attorney

Since September 1, 2014, the legal rules concerning the protection of incapacitated adult persons radically changed.[4] The possibility was created for a capable person to appoint one or more persons, mandatories, through a simple contract, to assist him in the management of assets, for the period that he is temporarily or permanently no longer able to manage it himself. No intervention of a judge is needed for the validity of this power of attorney. The power of attorney can only arrange matters concerning the assets of the mandator.

The power of attorney itself defines the conditions that imply the presence of incapacity and when the power of attorney (temporarily or permanently) should enter into force. Successive mandatories, mandatories ad hoc and confidential councellors can also be appointed. A mandatory ad hoc has to step up when there is a conflict of interest between the mandator and the mandatory.

The mandator can chose freely which powers concerning his assets he wishes to appoint to his mandatory. Both acts of administration and acts of disposal are possible.

The power of attorney does not have to be drawn up by a notary. It is also possible to create a private contract. If the power of attorney provides for a mandate to sell immovable property or to make donations, however, it is imperative that the power of attorney is drawn up by a notary.

The power of attorney must be recorded in a register kept by the Royal Federation of Belgian Notaries to be valid.

3. Administrator ("Bewindvoerder")

When a person becomes physically or mentally incapacitated to manage his own property, and this person did not register a power of attorney as mentioned previously or this power of attorney is not sufficient, Belgian law provides for a judicial solution: administration.[5] The protected person will not lose the capacity to act with regards to his own personal rights.[6] A request to the Magistrates Court (Justice of Peace) must be made to appoint such an administrator. The scope of the competence of the administrator will be determined by the judge or by law. The size and the complexity of the estate, as well as the health condition of the person for whom the protection is needed, will be taken into account.

For certain actions of some importance, such as the sale of assets, or the acceptance of a gift or a bequest, the temporary administrator will seek a special authorization from the judge.

II. Estate Administration

A. Overview of Administration Procedures

1. No Administration Procedures (724 BCC)

Art. 724 BCC states that heirs have automatic possession of the goods and rights of the deceased (the so-called "saisine"). However, they have the obligation to pay all the expenses related to the inheritance. Transmission of the inheritance is therefore not subject to an administration procedure (no probate). The only exception to this rule is when the Belgian State becomes legal heir by lack of qualifying heirs, since the State must seek a Court Order to obtain possession.

[4] K. ROTTHIER, "De nieuwe wet tot hervorming van het statuut van onbekamen: Een overzicht vanuit vogelperspectief", *Not. Fisc. M.* 2013, nr. 7, 182 ev.

[5] E. DE NOLF and E. EVERTS, "De nieuwe regeling inzake onbekwaamheid: kunnen meerderjarige wilsonbekwamen een huwelijkscontract aangaan, schenken en testeren, *Not en Fisc M.* 2014/7, 154.

[6] I.e.: a person to which a administrator is appointed can still marry, divorce, adopt a child, …

2. Acceptance, Renunciation, Acceptance Without Liability for Debts

Nobody can be forced to accept an inheritance, although an heir who has hidden assets belonging to the deceased can no longer reject the inheritance and remains an heir "pure and simple," without having any right in these hidden assets (art 775 and 792 BCC).

An inheritance can be accepted "purely and simply." The consequence of such an acceptance is that the person who accepts receives the benefit of all the assets of the estate as well as the burden of all the debts. The inheritance can be accepted tacitly or explicitly. Explicit acceptance occurs by acting as an heir or using the title of 'heir' in an authenticated or private document. Tacit acceptance will be deduced from an heir's behaviour. If a person acts in a manner that necessarily implies his intention to accept the inheritance, and if those acts can only be carried out in his capacity as heir (778 BCC), he will be assumed to have accepted the inheritance.

Rejection of an inheritance must be done explicitly. If a person does not want to accept an inheritance, he must make a declaration before the registry of the court of first instance within a period of 30 year after the decease (art. 789 BCC).

A third way to accept an inheritance is the acceptance with "benefit of estate description." An heir accepting in this way will only be held liable for the debts of the deceased to the extent of the assets that he receives out of the deceased's inheritance. His own property remains immune for debts of the deceased. A declaration before the registry of the court where the succession opens must be made. The declaration will be published in the Belgian Official Gazette (793 BCC). Before accepting the inheritance, a public notary inventory of the assets of the estate must be drawn up (794 BCC).

3. The Appointment of a Testamentary Executor (1025-1034 BCC)

An executor under Belgian law does not have the same tasks as an executor in common law systems. A Belgian executor can enforce the execution of a will, but he cannot liquidate the estate, nor can he administer or manage the assets. His task is to ensure that the wishes of the deceased, as set out in the will, are executed. An executor does not have "saisine," this is with the heirs, unless the will provides that he has possession of the goods (see above). He can only obtain possession of movable goods, not of immovable goods. This possession has a maximum duration of 1 year.

The duties of the executor are limited to the drawing up of an inventory, taking conservatory measures, selling movables/immovables in agreement with the heirs, and making debt-payments. More duties can be attributed in a will, but it is not possible to attribute the task of liquidating and dividing the estate. Neither can the executor be ordered to form parcels, keep goods in joint ownership, or settle disputes. Heirs can end the task of the executor when all movable bequests have been distributed or by giving the necessary sums to distribute the movable bequests to the executor. The executor can be of foreign nationality or can be a legal entity. Belgian rules on executorship only apply if and to the extent Belgian law is applicable to the succession.

B. Intestate Succession and Forced Heirship

A person who is alive or conceived (and born viable afterwards) at the time of the deceased's death (art. 720 BCC) can inherit. The nationality of the heir is not relevant, because foreigners have the same rights as Belgians to inherit (art. 726 BCC). An heir can lose his right to inherit in the following situations (art 727 BCC): (i) when he has been convicted of killing the deceased or of trying to kill him; (ii) when he has killed or tried to kill the deceased, without being convicted, because he died before conviction; or (iii) when he has been convicted of committing a crime against the deceased, as mentioned in articles 375, 398 until 400, 402, 403, 405 §§1-3 and 5, and 422bis of the Belgian Criminal Code.

1. Heirship Based on Partnership or Blood Relation

In absence of a will, only blood relatives and the surviving spouse will inherit.The legal cohabiting partner also has limited inheritance rights. A distinction is made based on whether there is a surviving spouse/legal cohabiting partner.

a. Inheritance in the Absence of a Surviving Spouse

There is an order in which blood relatives inherit:

- First order: children, grandchildren and so on;
- Second order: parents, brothers and/or sisters of the deceased;
- Third order: parents, in the absence of brothers or sisters of the deceased; grandparents and so on; and
- Fourth order: collaterals, other than brothers and sisters (e.g. aunts, cousins).

If there are relatives of the first order, they exclude relatives of the second order of any part in the estate. Relatives of the second order exclude relatives of the third order and relatives of the third order exclude relatives of the fourth order. Within an order, the persons closest to the deceased will inherit. The closeness is calculated by the "degree" (art. 737 BCC and 738 BCC). In the descending and the ascending line, there are as many degrees as there are generations, e.g. the deceased is in first degree towards his parents and his children and in second degree towards his grandchildren and grandparents. In the collateral line, the degrees are counted from the deceased up to the common ancestor, and then down to the person of which the degree from the deceased is calculated, e.g. the deceased is in second degree towards his brothers and sisters and in third degree towards his uncles and aunts. The inheritance rights of the collaterals are restricted to the fourth degree (art. 755 BCC) There is no such restriction for the descending and ascending line.

b. Inheritance in the Presence of a Surviving Spouse

The devolution of the succession will depend on the marital property regime of the spouses. When one of the spouses dies, the marital property regime must be settled first. It is only after settling the marital property regime that the succession can be dealt with. The inheritance rights of the surviving spouse depend on the presence of other heirs (art. 745bis BCC). If there are *descendants* (children, grandchildren, etc.) present, the inheritance rights of the surviving spouse encompass the usufruct on the entire estate. The descendants' inheritance rights will be determined by the rules set out above ("inheritance rights in the absence of a surviving spouse"), but instead of inheriting full property, their rights will be limited to the bare ownership of the estate.

In the presence of *other heirs (i.e. no descendants s.a. children and grand-children)*, the surviving spouse receives the full property of the deceased spouse's half in the community property. As a consequence, when one spouse dies, the surviving spouse receives full ownership of the community property. The survivor will be given one half as a result of the settlement of the marital property regime, and another half as a result of the settlement of the succession. The surviving spouse will also receive the usufruct of the separate property of the deceased spouse. If there are *no other heirs*, the surviving spouse will receive full ownership of the entire estate.

Heirs may prefer full ownership instead of bare ownership or usufruct. The Belgian Civil Code makes it possible for heirs to request conversion of their usufruct or bare ownership into full ownership (procedure and conditions in art. 745 quater – 745 sexies BCC).

c. Inheritance Rights of the Surviving Legal Cohabiting Partner (art. 745 octies BCC)

Legal cohabitants who survive their deceased partner have (limited) inheritance rights. A surviving legal cohabitant who is not a descendant of the deceased inherits the usufruct of the immovable asset that was used as the family dwelling during the cohabitance, including the household furniture therein, notwithstanding any other heirs that have inheritance rights with regard to the succession of the deceased. If the cohabitants rented the asset that was used as the family dwelling, the surviving cohabitant who is not a descendant of the deceased has the right to the rent of the dwelling. All other heirs are excluded of this right.

2. Splitting

When there are only heirs of the third (ascendants) or fourth order (uncles, nieces, etc.), the technique of splitting must be applied. This means that the succession will be split into two lines: the line of the mother and the line of the father. Each line gets half of the succession. The succession will then go to the relative in each line that is closest in order and degree. Example: The deceased has no descendants, no spouse and no brothers or sisters. His grandfather in the father's line is still alive. In his mother's line, he only has an uncle left. As a result of splitting, his inheritance will be divided into one half for his grandfather and one half for his uncle. When there are half brothers or half sisters also a limited use of splitting is made in the second order. Example: The deceased has one brother and one half sister (same mother). His mother and father have already passed away. Limited splitting will split the inheritance into two: one half for the motherly line, one half for the fatherly line. The half in the fatherly line will be given to the brother, the half in the motherly line will be divided between the brother and the half sister.

3. Representation (art. 739 -744 BCC)

Through representation, the descendant of a predeceased heir is legally entitled to the hereditary share of his ancestor in the estate of the deceased,

4. Restitution

All gifts made by the donor/deceased to persons who have inheritance rights in his estate are presumed to be an advance on the inheritance. When the donor deceases, these donees/heirs must restitute their gift into the estate. This mechanism is in place as a way to treat all heirs equally. However, it is possible for the donor to explicitly state that a gift does not have to be restituted at the time of his death.

5. Forced Heirship

a. "Reserved Portion" and "Disposable Share"

Belgian estate law contains forced heirship rules. Some family members, such as the children, the surviving spouse and, in some cases, the parents and the grandparents, have an entitlement to a fixed share in the estate of the deceased. Forced heirs cannot be excluded from the inheritance. Even if the deceased excludes a forced heir from his inheritance by will, this heir will be able to claim the portion to which he was entitled by means of a reduction claim. To calculate the portion to which these protected heirs are entitled, the so-called "reserved portion," the fictitious hereditary mass must be determined. The fictitious hereditary mass does not only include the assets present in the estate of the deceased at the time of his death, but also lifetime gifts made by the deceased. Debts of the deceased will be deducted from this mass. This system is intended to protect the forced heirs. In this way, the deceased cannot leave forced heirs with nothing at the time of his death by giving away all his assets during his lifetime. Hence, the deceased will only be able to dispose freely with regards to a part of his estate, the so-called "disposable share."

i. Reserved Portion of the Children (913 BCC)

The reserved portion of the children of the deceased varies according to the number of children:

The deceased leaves:	Reserved portion	Disposable share
1 child	½ of the estate	½ of the estate
2 children	2/3 of the estate	1/3 of the estate
3 or more children	¾ of the estate	1/4 of the estate

If a child predeceases with issue, the rule of representation enters into effect.

In scope of the planned overall reform of Belgian succession law, it is expected that the reserved portion will be in any event ½ of the estate, regardless the number of children.

ii. Reserved Portion of the Ancestors (915 BCC)

If the deceased has no children or grandchildren, his ancestors have a reserved portion. In each line (maternal and paternal line), the reserved portion amounts to ¼ of the estate. In each line, the ancestor who is closest in degree to the deceased will have the right to claim his reserved portion. *Example*: X deceases and leaves his mother and his grandfather from his father's side. There is no other family alive. X leaves a will with a bequest of his entire estate to a non-related person Y. His mother can claim ¼ of the estate. His grandfather can claim ¼ of the estate. Y will get the disposable share, i.e. half of the estate. It should be emphasized that ancestors cannot claim their reserved portion against gifts made to the surviving spouse or to the legal cohabitating partner. A married person with no issue can give all that he possesses during his lifetime to his spouse or legal cohabitating partner in order to defeat the reserved portion of his ancestors.

iii. Reserved Portion of the Spouse (915 bis BCC)

The spouse has an *abstract reserved portion* of half of the estate in usufruct. In any case, the surviving spouse always has a *specific reserved portion* including the usufruct on the immovable property used as the family dwelling, and the furniture therein, even if the value of these assets amounts to more than half of the estate. It is up to the surviving spouse to decide whether he or she prefers the abstract or the specific reserved portion. If a surviving spouse concurs with other heirs who are entitled to a reserved portion, the reserved portion of the surviving spouse is proportionally calculated upon the reserved portion of the other forced heirs and the disposable share:

	Reserved portion surviving spouse	Reserved portion descendants or ancestors	Disposable share
Surviving spouse + 1 child	½ usufruct	¼ full ownership + ¼ bare ownership	¼ full ownership + ¼ bare ownership
Surviving spouse + 2 children	½ usufruct	1/3 full ownership + 1/3 bare ownership	1/6 full ownership + 1/6 bare ownership
Surviving spouse + 3 children	½ usufruct	3/8 full ownership + 3/8 bare ownership	1/8 full ownership + 1/8 bare ownership
Surviving spouse + 1 ancestor	½ usufruct	1/8 full ownership + 1/8 bare ownership	3/8 full ownership + 3/8 bare ownership
Surviving spouse + 2 ancestor	½ usufruct	¼ full ownership + ¼ bare ownership	¼ full ownership + ¼ bare ownership

Example: The deceased, X, leaves a wife A and a child B. X left a will giving the entire disposable portion to a charity. A chooses the abstract reserved portion. She gets ½ of the estate in usufruct. This half is calculated proportionally on the disposable share and on the reserved portion of the child. The child will get ¼ of the estate in full ownership and ¼ in bare ownership. The charity will get the same.

6. Reduction Claim

If the deceased has made too many gifts during his lifetime and/or too many bequests in his will, the forced heirs will be able to claim reduction of anything that exceeds the disposable share. The

fictitious hereditary mass is calculated as set out above 5, a)(assets present at the time of death + gifts made during the lifetime of the deceased – debts of the deceased). On this base, the disposable share is calculated. If the bequests and/or gifts exceed this disposable share, reduction can be claimed. First, bequests will be reduced, and if this is not sufficient to satisfy the forced heirs, gifts will be reduced, starting with the most recent gift.

7. Proposed reform of the succession law

The government recently announced a proposal to fundamentally reform Belgian succession law. The rules set out above, may therefore change in the near future.

For example, the reserved portion will probably be reduced to half of the inheritance, irrespective of the number of descendants. There is also a proposal to change the inheritance rights of the surviving spouse and the abolishment of the reserved potion of the ascendants. Also the prohibition of inheritance agreements is under revision.

C. Marital Property

The Belgian default regime is the regime of community property of marital gains. If spouses do not make an explicit choice before they marry, this regime will be applicable to their property. The changing of a marital regime is possible during the marriage if the applicable procedures are followed (1392, 1394 -1395 BCC). Since same-sex marriages are permissible in Belgium, the same regimes are applicable to these marriages.

1. Legal Regime of Community of Marital Gains

Under this default regime, there is a community property and each spouse also has his/her own separate property.

a. Assets

Assets belonging to the separate property of each spouse include assets they owned before marriage, strictly personal goods, such as clothes, jewelry, etc. Gifts, inheritances or bequests acquired during the marriage also are separate property. A complete list of the assets belonging to the separate property can be found in art. 1399 – 1401 BCC. The spouses' professional income, income from separate property, assets given to both spouses jointly, or to one of them with the stipulation that it shall be common are community property. Besides this, all assets that are not proven to be separate property are presumed to be community property (1405, 4° BCC).

b. Debts

The rules concerning debts are similar to those set out above (1406-1407 BCC). Debts contracted before the marriage and debts that burden gifts, bequests and inheritances are part of the separate property. Debts contracted in the exclusive interest of the separate property, debts resulting from a personal or real security contracted in another interest than the interest of the community property also are separate debts. A list of all separate debts can be found in art. 1406 and 1407 BCC. All debts that are not proven to be separate are assumed to be common. A non-restrictive list of common debts can be found in art. 1408 BCC.

c. Creditor's Rights (art. 1409 – 1414 BCC)

As a general rule, separate debts can only be recovered from the separate property and income of the spouse that has contracted the debt. There are however certain exceptions to this rule:

- debts contracted before the marriage and debts relating to inheritances;
- debts resulting from a forbidden occupation;

- debts resulting from an action a spouse was not allowed to undertake without the consent of the other spouse.

Those debts can be recovered from the community property only insofar as the community property has taken advantage of the separate property. Debts resulting from a penal sentence or from a tort committed by one spouse can be recovered from half of the net assets of the community property if the separate property of the debtor is insufficient to pay the debt. A common debt can be recovered from the community property and the two separate properties. Some exceptions, listed in art. 1414 BCC, apply, e.g. professional debts contracted by one spouse.

d. Management

In the legal regime, spouses are equal. Each spouse manages his separate property independently. The community property is managed according to the rule of concurrent management (art. 1416 BCC). Each spouse can exercise management powers on his own. The other spouse must respect the actions undertaken by his spouse. There are two exceptions to this managing of the community property. The first one is the exclusive management, which concerns professional activities of one spouse. The second exception is joint management for certain acts that are seen as important. Both spouses must consent to the acts listed in art. 1417,2, 1418 and 1419 BCC. This encompasses among others the sale of real estate or the borrowing of money.

2. Marital Regime of Separation of Property (1466-1469 BCC)

This regime to be agreed explicitly by a marital contract reduces the estate consequences of a marriage to a minimum. In this regime, everything is separated: assets, debts and management. Every spouse has his own separate property and there is no community property. It is however possible to add a (limited) community property to this regime. The general rules of civil law will apply to this joint property.

3. Full Community Property

This type of marital contracts is a modification of the legal regime. The spouses adopting a community property regime may not derogate from the management rules or the rules concerning creditor's rights of the legal regime. Moreover, professional revenues always have to be part of the community property. Besides this, the spouses enjoy a large freedom in contracting their marital regime, e.g. they can contract that all their assets (past, current and future) will be part of the community property (more examples can be found in art. 1451 BCC).

4. Proposed reform of the marital property law

D. A reform of the marital property law is also part of the agenda. Yet, a commission has been assembled to revise the current rules on the marital property relationship between spouses. Amongst other, changes are expected as regards the property of life insurances and the patrimonial consequences of a divorce. Tenancies, Survivorship Accounts, and Payable On Death Accounts

1. Accretion Clause and "Tontine"

These two concepts are mostly used in situations where unmarried couples jointly acquire real estate that will be used as the couple's dwelling. Although these concepts have no legal basis, they are widely accepted in legal practice.

A tontine is an agreement in which two or more persons jointly acquire an asset, and whereby the survivor becomes the owner of whole the asset. All the parties to the agreement must have equal chances of acquiring the goods. The acquirers obtain their rights directly from the acquisition agreement. A tontine can therefore never be agreed upon without the involvement of the initial owner/original seller. This is the reason why people often prefer an accretion clause.

An accretion clause implies that all the participants in the clause agree that, at the realization of a certain event (often the death of one of the participants), the part of one participant is added

automatically to the part(s) of the other participants. Likewise a tontine, all the parties to the agreement must have equal chances of acquiring the asset. The seller of the asset is not part of the accretion agreement.

Both in case of a tontine or an accretion clause, the part that is acquired by the surviving party will not be part of the estate of the predeceased party. The asset will be treated as the property of the survivor since the conclusion of the original agreement in which the asset has been jointly acquired. As a result, no inheritance tax law is due upon the acquisition by the surviving party, but a registration duty (10% in the Flemish Region - 12,5%/15% in the Brussels-Capital and Walloon region) will apply instead (see below).

2. Split Purchase of Usufruct and Bare Property with Accretion at the Time of Death of the Usufructor

Usufruct automatically accretes to the bare property at the time of death of the usufructor. A split purchase can be advantageous. Example: Parents buy the usufruct of a house, the children buy – with their own funds - the bare property. At the death of the parents, the usufruct will automatically and without further tax accrete to the bare property held by the children. In this respect, it is advised to pay careful attention to certain anti-abuse “fictions” applicable under inheritance tax that can lead to taxation.

3. Life Insurance

Life insurance is widely used in Belgian estate planning, yet can not be used to set aside forced heirship entitlements.

III. Trusts, Foundations, and Other Planning Structures

A. Common Techniques

A common estate planning technique in Belgium is to make lifetime gifts, especially if movable assets are concerned. By doing so it is possible to structure the estate in a way to allow the donor to retain the benefits (for example retention of the usufruct) and the control over the administration and management of the assets, whilst the (bare) property is transmitted to the beneficiary. Often tax transparent entities are used such as the *société de droit civil* / *burgerlijke maatschap* or the Dutch *Stichting Administratiekantoor* which allow the founders to organise control over the administration of the assets. When transparent entities are combined, awareness is required concerning possible reporting duties for Belgian income tax under Cayman tax (see below).

If the donation is done before a Belgian notary, then the donation will be registered in Belgium and a flat rate gift tax will apply (see below). In case of a gift from hand to hand of tangible movable assets or by bank transfer, or of a donation of tangible movable assets made before a (foreign) Dutch or Swiss notary, the registration of the gift in Belgium is not required. The gift tax only applies in case of registration of the gift in Belgium. However, if the donor deceases within three years as from the date of the gift and no Belgian gift tax was paid, the assets will be deemed to be a part of the estate of the donor for the calculation of inheritance tax (art. 7 Inh TC-art. 2.7.1.0.5. of the Fl. TC). In addition, the Flemish region (though reservations are to be made with respect to this position of the Flemish inheritance tax authorities) will also consider any gift in bare ownership of securities and portfolio investments, which has not been registered in Belgium and thus has not been subject to Belgian gift tax, as part of the estate of the donor for the calculation of inheritance tax, regardless of the period that has expired between the donation and the decease, based on a “fiction” applicable under inheritance tax(art 2.7.1.0.7. Fl. TC).Another technique, possible in the regions of Flanders and Brussels Capital, is to transfer (part of the) assets (movable or immovable) to a Belgian private foundation (with an altruistic goal, for example to administer an art collection, to serve the interest of a disabled child, to entrust the interests of a family, etc.) during the lifetime of the donor or by bequest upon decease. Favorable flat rates for gift tax or inheritance tax may apply (see below).

The use of (foreign) foundations and trusts is possible in Belgium, yet caution is to be given to its tax consequences, especially as from January 1 2013 specific reporting duties may apply and as from

January 1, 2017 these 'legal constructions' are envisaged by Cayman tax. Careful planning is necessary.[7]

B. Fiduciary Duties

There are no specific rules concerning fiduciary relationships or transactions in Belgian law. For the board members of a Belgian private foundation no special rules apply. As from January 1, 2013, fiduciary relationships might be subject to specific reporting duties and as from January 1, 2015 to a transparent tax regime under Cayman tax.

C. Treatment of Foreign Trusts and Foundations

1. Foreign Trusts

Although internal Belgian civil law does not recognise the concept of trust as a 'legal institution' in its domestic law, it has been generally accepted that the recognition of a trust governed by foreign law is to be examined according to the applicable private international law rules. A trust would normally be recognised in Belgium if it was legally founded according to the applicable foreign law rules.

Belgian case law concerning trusts is scarce and mostly deals with civil law aspects, more specifically the recognition of foreign trusts. Case law states that a foreign trust can be recognised in Belgium as long as the trust (deed) is not contrary to binding Belgian rules of inheritance law.[8]

The International Private Law Act of 16 July 2004 (the IPLA) introduced a legal definition of a 'trust' in Belgian Law (Art 122 of the IPLA). The main characteristics under the Belgian definition are (1) the trust assets form a separate estate and do not belong to the estate of the trustee, (2) the legal entitlement of the trust assets is in the name of the trustee or of another person acting on behalf of the trustee, and (3) the trustee has the power and obligation, within the terms and conditions of the trust deed and the applicable legal obligations, to administer, manage and dispose of the trust assets.

Belgian courts have the power to rule on legal questions related to the internal relationship between the settlor, the trustee and the beneficiary, (a) if the trust is administered in Belgium, (b) if the trust assets that are subject of the claim brought before the court are situated in Belgium, and (c) when the trust deed grants competence to Belgian courts to rule on the trust (Art 123 of the IPLA). This will seldom be the case since trust settlements will be unlikely to appoint Belgian courts competent to deal with trust matters. It is more likely that Belgian courts will interpret trusts in the context of a real estate or forced heirship regulation.

The trust will be governed by the law of choice by the settlor, determined in accordance to art. 124 of the IPLA. This choice must be in writing, in the trust deed or otherwise. In the absence of a choice of law, the trust is governed by the law of the state where the trustee is domiciled; in addition, one must avoid a Belgium resident trustee. Thought, the law governing the trust cannot deprive an heir of his forced heirship entitlement of which he benefits according to the applicable inheritance law (Art 124 §3 of the IPLA). This rule, in reality, implies that an heir, benefiting from a forced heirship entitlement under Belgian law, may invoke this right in a Belgian court. It is clear that such a claim will only be effective for Belgian real estate held by the trustee, or for Belgian situs assets. Article 125 of the IPLA states that the law governing the trust determines the settlement thereof, the interpretation of the trust, the governance of the trust, the rights and obligations that relate to it, the consequences of the trust, and the termination of the trust. Any transactions of property and transfers to the trustee are not governed by that law and are to be ruled by their own rules of conflict that relate to the property in question (for real estate this is the lex rei sitae).

[7] Goyvaerts, Gerd D, The tax aspects of the use of foreign trusts in Belgium for private wealth purposes, The journal of international tax, trust and corporate planning, p. 267 and Goyvaerts, Gerd D, Income taxation of trusts in Belgium, Insights Volume 4 Number 1, p 17-29.

[8] Civil Court Brussels, 27 November 1947, Civil Court Antwerp, 4 March 1971, Civil Court Brussels, 31 May 1994.

Since August 17, 2015, cross-border successions in the European Union (except for the UK, Ireland and Denmark) are also subject to the International regulation on international successions nr. 650/2012 of July 4, 2012 (hereafter 'the Regulation'). Though trusts are in general excluded from the scope of this regulation, the regulation will apply with respect to the devolution of the assets and the determination of the beneficiaries as regards trusts created under a will or under statute in connection with intestate succession. Unless the deceased has chosen for the law of his nationality at the time of his choice or at the time of his decease (Art. 22 of the Regulation), the law of the state where he had his domicile at the time of his decease will apply. It is uncertain whether in application of the International Regulation an heir still can recall upon his forced heirship entitlement according to Belgian law (see above).

2. Foreign Foundations

Since the Law of 2 May 2002 on associations without profitable goal and foundations, the Belgian Private Foundation has been introduced as an "onshore foundation" with legal personality. A foreign foundation with legal personality will be recognized in Belgium if it is legally founded according to the applicable foreign law rules. The IPLA stipulates that the existence and character of foreign legal entities is to be determined by the lex societatis, the law of the country where the entity is established (art. 110-111).

IV. Taxation

A. Domicile and Residency

For inheritance tax purposes, a deceased person is considered to be a Belgian resident if the deceased has his effective residence (domicile) *or* seat of wealth in Belgium *at the moment of decease*.[9] In that case his net worldwide estate will be subject to inheritance tax. If the deceased is a resident of another country, then a tax on the transfer upon death is due only on the immovable property located in Belgium at the time of death, in principle on a gross-value basis,. The nationality of the deceased is of no influence for the calculation of Belgian death duties. No tax credit is granted for foreign death duties that are due on the basis of citizenship only (for example U.S. estate tax). Under certain conditions, foreign taxes due upon the decease of a non-resident, which are not to be considered as 'inheritance tax' but which burthen the inheritance (s.a. the Federal Estate Tax in the U.S.A.) are deductible.

The concepts "*domicile*" or "*seat of wealth*" are alternative criteria. For inheritance tax these concepts should be interpreted in the same sense as for Belgian income tax law. The *domicile* refers to the place where a person is mainly and permanently established, and is not to be confused with the meaning of the term under English law. The *seat of wealth* is the place from which a person administers his wealth or estate, regardless of the location of the underlying assets. The registration of individuals in the Belgian national register is one of the criteria used in practice to determine the fiscal tax residency of an individual for tax purposes. The inheritance tax rules of the region (Flanders, Wallonia or Brussels Capital Region) apply, where the deceased resided at the time of his death or where he has lived the longest during the 5 years before his death if he resided in more than one region in that period.

For income tax purposes, an individual is tax resident when his domicile or his seat of wealth is located in Belgium. A resident is liable to income tax on his worldwide income, whereas non-residents are liable to income tax on Belgian income only. Unlike for inheritance tax purposes, registered domicile is a refutable presumption of residency for Belgian income tax. A married person is deemed to be resident in the place where his family is residing.

The question of fiscal residency is essentially based on facts and circumstances. Indications of a Belgian tax residency are amongst others, the fact of having (had) a permanent home in Belgium, the fact that the taxpayer's personal links are or have always remained the closest with Belgium, the fact

[9] Art. 1 Inher. TC.

that the centre of his economic interest and of his wealth is or has remained located in Belgium (for example: the taxpayer manages his investments from Belgium, Belgian bank accounts, Belgian car license plate, Belgian telephone subscriptions, Belgian utility bills, a Belgian insurance, etc.).

B. Gift-, Estate-, and Inheritance Tax

1. General

Regarding gift and inheritance tax, the federal government, as well as each of the three Regions (the Flemish, Brussels Capital and Walloon region) apply their own rules on gift- and inheritance tax. Hence, all three regions apply different categories of gift- and inheritance tax rates depending on the degree of kinship between the deceased and the beneficiary, the amount and the nature (i.e. movable or immovable property) of the gift/inheritance. Also the criteria for qualifying as cohabiting persons may differ in each of the three regions.

When qualifying as a Belgian tax resident, the place of residence of the deceased will be important to determine whether the legislation of the Flemish, Brussels-Capital or Walloon Region is applicable. In order to avoid that persons would move from one region to another within a short period prior to their death, an anti-abuse measure was introduced by means of which the tax regime of the region where the deceased lived the longest during the five years prior to his death applies.

Individuals are not subject to an estate tax in the sense of wealth tax.

Non-profit associations and foundations are subject to an annual wealth tax of 0.17% on the value of their assets.

2. Gift Tax

Gift tax is a stamp duty. Donations made before a Belgian notary must be registered. On the contrary, the registration of gifts of tangible movable assets which are not made before a Belgian notary is not mandatory. In that case, no Belgian gift tax will apply, unless the gift is registered willingly in Belgium (see above). The rates differ in degree of kinship and the competent region (determined by the tax residence of the donor): Flanders, Wallonia or Brussels Capital.

a. Gift Tax Rates: Flemish Region

Under the Sixth State Reform, the Flemish region received full powers to legislate inheritance and gift tax, and as from January 1, 2015 to collect these taxes. Collection will henceforth be ensured by VLABEL (Flemish Tax Administration). The Flemish authorities also took this opportunity to incorporate the Flemish gift and inheritance tax duties into the existing *Vlaamse Codex Fiscaliteit* (Flemish Tax Code – hereafter Fl. TC). In view thereof, VLABEL issues its own interpretation of the existing rules and has set up its own Ruling Commission where taxpayers can obtain an advanced clearance on gift and inheritance tax issues.

For movable assets, a flat rate applies (art. 2.8.4.1.1., §2 Fl. TC): 3% for donations in the direct line, between spouses and cohabiting persons and 7% for donations to other persons.

For immovable assets, progressive rates apply (art. 2.8.4.1.1., §1 Fl. TC):

- In direct line, between spouses and cohabiting persons: 3-27%, 4 brackets, marginal rate applies from EUR 450,000.

- Between other persons: 10-40%, 4 brackets, marginal rate applies from EUR 450,000.

When certain conditions are met, reduced rates will apply for donations of immovable assets located in Flanders that are rented by the beneficiary or that the beneficiary will renovate in order to comply with more economical standards for energy consumption within a period of 5 years after the donation for a minimum amount of 10,000 EUR (2.8.4.3.1.Fl. TC)

Reduced flat rates apply (for movable and immovable assets) amongst others (art. 2.8.4.1.1., §3 Fl. TC): 5.5% government bodies,non-profit associations, international non-profit associations, private foundations and public foundations. EUR 100 between associations or foundations. Foreign associations and foundations qualify for these reduced rates if they are comparable and are subject to the law of a member state of the European Economical Area. As from 1 January 2012, a 0% rate will apply for qualifying donations of family enterprises (art. 2.8.6.0.3. a.f. Fl. TC).

b. Gift Tax Rates: Brussels Capital Region

For movable assets, a flat rate applies (art. 131 § 2 Reg C-Br): 3% for donations in the direct line, between spouses and cohabiting persons, and 7% for donations to other persons.

For immovable assets, progressive rates apply (art. 131 §1 reg. C-Br):

- In direct line, between spouses and cohabiting persons: 3-30%, 6 brackets, marginal rate applies from EUR 500,000.

- Between brothers and sisters: 20-65%, 7 brackets, marginal rate applies from EUR 250,000.

- Between uncles or aunts and nephews and nieces: 35-70%, 4 brackets, marginal rate applies from EUR 175,000.

- Between other persons: 40-80%, 4 brackets, marginal rate applies from EUR 175,000.

Reduced flat rates apply (for movable and immovable assets) amongst others (art. 140 Reg.C-Br): 6.6% government bodies; 7% non-profit associations, international non-profit associations, private foundations and public foundations EUR 100 between associations or foundations. Foreign associations and foundations qualify for these reduced rates if they are comparable and are subject to the law of a member state of the European Economical Area. A flat rate of 3% will apply for qualifying donations of enterprises (art. 140bis Reg.C-Br). The Brussels Capital Region also introduce an exemption of gift-tax for qualifying donations of enterprises similar to the Flemish Region as from January 1, 2017.

c. Gift Tax Rates: Walloon Region

For movable assets a flat rate applies (art. 131bis Reg.C-W): 3.3% for donations in the direct line, between spouses and cohabiting persons, 5.5% between brothers and sisters, uncles or aunts and nephews and nieces, and 7.7% for donations to other persons.

For immovable assets progressive rates apply (art. 131 Reg.C-W):

- In direct line and between spouses: 3-30%, 7 brackets, marginal rate applies from EUR 500,000; a reduced progressive rate applies to donation of the family dwelling (art.131ter Reg.C-W).

- Between brothers and sisters:10-40%, 4 brackets, marginal rate applies from EUR 350,000.

- Between uncles or aunts and nephews and nieces: 10-50%, 5 brackets, marginal rate applies from EUR 300,000.

- Between other persons: 20-50%, 4 brackets, marginal rate applies from EUR 300,000.

Reduced flat rates apply (for movable and immovable assets) amongst others (art. 140 Reg.C-W): 5.5% or 0% government bodies; 7% non-profit associations, international non-profit associations, private foundations and public foundations. EUR 100 between associations or foundations. Foreign associations and foundations qualify for these reduced rates if they are comparable and are subject to the law of a member state of the European Union. A 0% (or under certain circumstances 3% for the donation of agricultural land) rate applies for qualifying donations of family enterprises, yet under different conditions then in the Flemish region (art. 140bis Reg.C-W).

3. Inheritance Tax

a. Brussels Capital Region

On the net value per beneficiary (art. 48 Inh. TC-Br.):

- Direct line, spouse or cohabiting person: 3-30%, 6 brackets, marginal rate applies from EUR 500,000. A reduced rate applies to the family dwelling.

- Brothers and sisters: 20-65%, 7 brackets, marginal rate applies from EUR 250,000.

- On the total net value of the category (art. 48 Inh. TC-Br.):Uncles or aunts and nephews and nieces: 35-70%, 4 brackets, marginal rate applies from EUR 175,000.

Other persons: 40-80%, 4 brackets, marginal rate applies from EUR 175,000.If certain conditions are met, a reduced flat tax rate of 3% applies to the net value of assets invested in family-owned businesses and to the net value of shares in a family-owned company (art. 60bis Inh. TC-Br). Reduced flat rates apply (for movable and immovable assets) amongst others (art. 59 Inh TC-Br): 6.6% government bodies; 25% non-profit associations, international non-profit associations, private foundations; 12.5% accredited non-profit associations. Comparable entities of EEA may benefit from the same reduced rates.

b. Walloon Region

On the net value per beneficiary (art. 48 Inh. TC-W.):

- Direct line, spouse or cohabiting person: 3-30%, 9 brackets, marginal rate applies from EUR 500,000. A reduced rate applies to the family dwelling.Brothers and sisters: 20-65%, 5 brackets, marginal rate applies from EUR 175,000.

On the total net value of the category (art. 48 Inh. TC-W):

- Uncles or aunts and nephews and nieces: 25-70%, 5 brackets, marginal rate applies from EUR 175,000.

- Other persons: 30-80%, 5 brackets, marginal rate applies from EUR 175,000.

If certain conditions are met, a reduced flat tax rate of 0% applies to the net value of assets invested in family-owned businesses and to the net value of shares in a family-owned company (art. 60bis Inh. TC-W). Reduced flat rates apply (for movable and immovable assets) amongst others (art. 59 Inh TC-W): 5.5% government bodies; 7% non-profit associations, international non-profit associations, private foundations and public foundations. If conditions are met, entities of the EU may benefit from the same reduced rates.

c. Flemish Region

On the net value per beneficiary:

- Direct line, spouse or cohabiting person: 3-27%, 3 brackets, marginal rate applies from EUR 250,000. The assets are split into the movable and immobile assets and are taxed separately. An exemption applies for the spouse or cohabiting person for the family dwelling.

- Brothers and sisters: 30-65%, 3 brackets, marginal rate applies from EUR 125,000.

On the total net value of this category:

- Other persons: 45-65%, 3 brackets, marginal rate applies from EUR 125,000.

For deceases as from 1 January 2012 a reduced flat rate of 3% or7% tax rate applies on the net value of assets invested in family owned businesses and to the net value of shares in a family owned company ((with place of effective management in the EU) when specific conditions and attestations are met (art. 2.7.4.2.2. a.f. FL. TC). Reduced flat rates apply (for movable and immovable assets) amongst others (art. 59 Inh TC-Fl): 6.6% for government bodies; 8.8% for non-profit associations, international non-profit associations, private foundations and public foundations. Comparable entities of the EEA may benefit from the same reduced rates.

C. Tax on Income and Capital

1. Individual Income Tax

Belgian individuals are subject to individual income tax. For income tax purposes a distinction must be made between the different income categories. Particular rules apply to each category. The categories are a) real estate income; b) movable property income (including dividends, interest and royalties); c) earned income (including business profits, employment and pension income) and d) miscellaneous income.

a. Income From Real Estate

The taxable income from real estate is either the deemed income ('cadastral income') or the net rental income. Income from real estate is taxed globally together with the earned income at the progressive rates (see below).

b. Income From Movable Property

In general there are five categories of movable property for tax purposes: a) dividends, b) interest; c) rental income from movable property, d) income included in annuities and e) income from the cession or concession of author rights or licenses.

Income from movable property is in principle subject to a final withholding tax if paid in Belgium (article 313 ITC). If no withholding tax is levied, a tax equal to the withholding tax rate will be levied following assessment. Since January 1, 2016, the withholding tax on dividends and interest amounts 27%.For income year 2017, assessment year 2018, this rate will be increased up to 30%.

Under certain conditions reduced rates will apply amongst others on interest income derived from so-called Leterme Government Bonds, dividends distributed by small and medium-sized enterprises and income derived from the cession or concession of author's rights. Certain interest income (such as interest from saving deposits) benefits from an exemption.

c. Professional Income

Professional income consists of business profits (profits from commercial, industrial activities), gains (income from professional services), employment income, profits and gains from a former professional activity and pension income. The taxable profit, gain or remuneration is in general calculated by reducing the gross profit, gain and remuneration by business expenses and operating losses of the relevant year and losses of preceding years. Earned income is subject to progressive tax rates (assessment year 2017): 25-50%, 5 brackets, marginal rate applies from EUR 38,080. The amount of the tax will be increased with the communal tax (of 7% on average). There are however several exemptions such as the exemption for child allowances, allowances to disabled, or handicapped person, etc.

d. Miscellaneous Income

Income that does not fall under any of the above categories of taxable income is considered as miscellaneous income if listed in one of the categories of article 90 ITC. This income is taxed separately, without adding it to the other income. The most important types of miscellaneous income include profits from services, operations or transactions with speculative intent (33%), capital gains realized by individuals not engaged in business activities and realized on the sale of shares through abnormal transactions (33%), capital gains in case of the sale of a substantial participation (of 25% or more) in a Belgian resident company to a non-EEA resident legal entity (16.5%) and capital gains on Belgian-situs real estate within 5 or 8 years after its acquisition (16.5% or 33%).

For income year 2016, assessment year 2017, the so-called speculation tax has been introduced on capital gains realized, outside the exercise of a professional activity, on qualifying listed shares, warrants and other listed financial instruments which have been acquired for consideration less than 6 months before the alienation for consideration. The speculation tax applies on shares, options, warrants or other quoted financial instruments acquired as of 1 January 2016, except in case of short selling where the tax applies in case of a sale as of 1 January 2016. As from income year 2017 this speculation tax has been abolished though. Capital gains on privately held shares are forthwith tax exempt.

As from January 1, 2017, also a new type of income in the category of “miscellaneous income” for income from the sharing economy or peer-to-peer economy has been introduced. This new type of miscellaneous income aims to subject income realised, outside a professional activity, by way of services by an individual to another individual by way of a recognized digital platform, for instance services rendered by the taxi service UBER. A taxation at a flat rate of 10% on the income for the service rendered will be withheld at source by the digital platform and paid to the tax authorities.

e. Individual income tax – computation of tax

An individual’s global income is computed by aggregating all his or her net income from all sources, i.e. income from real estate, movable property, earned income and miscellaneous income. Some items of income are taxed separately at a flat rate (as reflected above), unless aggregation with other income would be more beneficial (i.e. when the tax rate for the aggregate income would be lower than the separate rate).

2. Cayman tax

Since January 1, 2013 (tax year 2014), Belgian resident founders or beneficiaries of foreign private wealth structures (PWS) are subject to a reporting duty in their annual income tax return of the existence thereof.

With effect from January 1, 2015, new tax provisions in relation to ‘legal constructions’ (in extension of the aforementioned reporting duty of PWS) have been introduced, commonly referred to as ‘Cayman tax’. Cayman tax basically aims to introduce a tax transparent treatment of income generated by these legal constructions. This so-called ‘look-through’ approach does not only envisage the founders (which are broadly defined by the law as the legal founders, the heirs, as well as those that have transferred assets to the legal entity and those that hold legal or economic rights in the structure) but also third-party beneficiaries of the legal entity.In general Cayman tax envisages two different types of legal entities (i) fiduciary agreements such as trusts and (ii) foreign legal entities (including foundations) that are not subject to corporate income tax or that are subject to a regime that is more beneficial(less than 15% of the tax due according to the Belgian system) than the ordinary Belgian corporate tax regime. As Cayman tax is a very complex matter and the new provisions are subject to interpretation in various ways, a case-by-case analysis is required.

3. Legal Entities Income Tax

Legal entities income tax applies to legal entities having their statutory seat or seat of management in Belgium and which do not exploit an enterprise or other profit generating activity, such as 'nonprofit associations,' Belgian private foundations, and associations without profitable goal.

Income from real estate, movable property and capital gains tax on Belgian situs real estate within 5 or 8 years after its acquisition, capital gains tax on the sale of a substantial participation (of 25% or more) in a Belgian resident company to a non-EEA resident legal entity. The flat tax rates vary from 16.5% to 33%.

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