

#GuestContributor

GUEST CONTRIBUTION

How inheritance in Luxembourg works when children have left to work abroad

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Julien Bellony is the head of wealth planning at Edmond de Rothschild Luxembourg. Photo: Edmond de Rothschild Luxembourg



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In this guest contribution, Julien Bellony from Edmond de Rothschild Luxembourg talks about how inheritance taxes in Luxembourg work.

Inheritance taxes are not subject to any harmonisation and are therefore likely to differ from one country to the next, both in terms of rates, calculation methods and territoriality rules, including within the European Union.

While some countries apply inheritance tax only when the deceased had their tax residence in that country (United Kingdom, Denmark, United States, etc.), others have a more extensive scope and also levy taxes when the heir is a tax resident in their territory, even though the deceased was a resident of another country (France, Spain, etc.).

Other countries do not apply any inheritance tax, at least directly (Norway, Sweden, Australia and Luxembourg).

Since it is not uncommon for one or more family members to abandon the comfort of the grand duchy to move to other countries, it is therefore important to find out about the rules applicable in their new host country and to plan in advance for the transfer of assets.

As a reminder, when the deceased has their last domicile in the grand duchy, inheritance tax is payable on all their movable assets, wherever they are located, as well as on buildings located in Luxembourg.

Inheritance tax is calculated based on a rate that varies according to the family relationship between the deceased and the heir, increased according to the value of the assets transferred (increase of up to 22/10th above €1,750,000).



Applicable rates for inheritance tax

Relationship	Applicable rates on the legal share (excluding increase)	Applicable rates on the extra-legal share (excluding increase)
In a direct line	0%	2.5% and/or 5%
Between spouses	0%	0%
Between partners linked by a partnership declaration for at least three years	0%	0%
Between brothers and sisters	6%	15%
Between uncles or aunts and nephews or nieces	9%	15%
Between the adopter and the adoptee (in case of single adoption)	9%	15%
Between great-uncles or great-aunts and grandnephews or grandnieces	10%	15%
Between the adopter and the descendants of the adoptee (in case of simple adoption)	10%	15%

It should therefore be noted that inheritances are exempt in a direct line (on the legal share) and between spouses, and up to 48% between third parties (taking into account the increase).

If the heir resides in Luxembourg or in any other country whose domestic law provides that inheritance tax is payable only when the deceased was resident in its territory, then no additional tax will be due, such as in Belgium, Switzerland and the United Kingdom. However, some countries provide that inheritance tax must be paid when the heir/beneficiary is resident in its territory even if the deceased was a Luxembourg resident. That is particularly the case for France and Spain.

In France, Article 750 *ter* of the French General Tax Code provides that, in the event that the deceased was resident outside France, duties are still payable on all movable or immovable property



located in France or outside France if the heir is domiciled in France on the date of the transfer and has been domiciled in France for at least six years during the last 10 years. Providing there is no preventive agreement in terms of double taxation on inheritance tax, the assets of a deceased Luxembourg resident whose child has resided in France for more than six years would therefore be subject to French inheritance tax, which may be as high as 45% for a direct line.

The same applies for Spain, where inheritance tax will be payable if the heir is resident there. Although Madrid residents can benefit from a 99% allowance, those living in Barcelona can be liable for duties of up to 32% for a direct line.

Anticipating and controlling the cost of asset transfer through donation

In Luxembourg, donations can encompass all of the donor's assets, whether movable or immovable.

In principle, any donation must be formalised before a notary, which results in the payment of registration fees. However, case law admits that certain donations may be made without being subject to this obligation.

So although formalisation by a notary is mandatory when the donation relates to a building located in Luxembourg (donations of buildings are not subject to any formalities in Luxembourg), this is not necessarily the case for donations relating to movable property, commonly referred to as “manual donations”, which can therefore be made without the requirement to pay duties.

However, it is specified that if the donor dies within one year of the donation, the transferred assets are reintegrated into the deceased's assets for the calculation of inheritance tax. The impact is however limited in the absence of direct inheritance tax or inheritance tax between spouses.



In addition, registration of a donation secures that donation by giving an official date to the deed, making it enforceable against a foreign authority if necessary, in particular if the donation is followed by a change of residence.

When it is subject to registration fees, these are calculated on the market value of the property transferred (market value of the movable or immovable property) on the date of the donation, without any deduction of related charges.

The applicable rate depends on the relationship between the donor and the donee. Unlike inheritance taxes, there is no increase in the rate depending on the value of the assets transferred.

Applicable rates with regards to donations

Relationship between donor and donee	Applicable rates
In a direct line	1.8% without exemption on inclusion in the estate, 2.4% with exemption on inclusion
Between spouses	4.8%
Between partners linked by a partnership declaration for at least three years	4.8%
Between brothers and sisters	6%
Between uncles or aunts and nephews or nieces	8.4%
Between father-in-law or mother-in-law and son-in-law or daughter-in-law	8.4%
Between great uncles or great-aunts and grandnephews or grandnieces	9.6%
Between all relations at a degree lower than those referred to above	14.4%
Between non-relations	14.4%

It should be noted that the territoriality rules applicable to inheritances in France and Spain also apply to donations, so if the donation is made when the beneficiary has already changed residence (for France for at least six years), duties may be payable.



For those who do not wish to transfer assets in advance, believing that it is not the right time and that they need the income generated by the property that would be transferred, it is useful to remember that the donation can be made with a retention of usufruct. This is referred to as a donation by division of ownership in which the usufructuary retains the possibility of using the transferred property or receiving the income from it. The advantage lies in particular in the fact that the donation relates only to bare ownership, the value of which depends on the age of the usufructuary and, on the death of the usufructuary, the bare owner becomes full owner without having to pay any additional duties.

An example

Take, for example, the case of Mrs M, a resident of the grand duchy:

- She is 55 years old, owns a building in Luxembourg worth €1.5m and wishes to make a donation to her son, while continuing to receive the rent generated.
- Mrs M could give the bare ownership to her son. The taxable base for registration fees would be €750,000 (50% of the full ownership given Mrs M's age) and the fees will amount to €13,500.
- On the death of Mrs M, the son will become full owner of the building without having to pay any additional duties, even if he has moved to France.

By comparison, if nothing is done, and her son settles in France and she dies more than six years later, then inheritance tax will be payable in France in the amount of €412,678.

As we have just seen, when considering the cost of an asset transfer, it is important to consider not only the domicile of the deceased, but also--assuming that it can be determined in advance--that of the beneficiary or beneficiaries. Making of



donations during their lifetime makes it possible to confirm the applicable taxation and prevent any unpleasant surprises.

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