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Market: Belgium



## New preferential scheme for the transfer of family businesses

**Transfer by means of a gift or inheritance in the Brussels Region: order of 12<sup>th</sup> December 2016 (entry into force on 1 January 2017).**

This is a new Brussels-based scheme inspired by Flemish rules which permit total exemption from gift tax, irrespective of the identity of the beneficiary, for owners of family businesses in Brussels who wish to transfer their business to their children.

### 1. Scope of application

- Owners or shareholders of family businesses;
- Who have been resident in the Brussels-Capital Region for more than 2.5 tax years during the five years preceding transfer of the family business;
- Even if a business has its head office (effective centre of management) in another region or in another country within the European Economic Area (EEA).

### 2. Transfer by inheritance

The flat rates applicable to inheritance tax remain unchanged: 3% for direct descendants (and between partners) and up to 7% where the relationship is (virtually) non-existent.

### 3. Conditions

- The scheme may be applied to transfers made of full ownership, bare ownership or usufruct.
- Businesses must have their centre of management within an EEA Member State.
- **In principle:** the scheme only applies to family businesses.

**By way of exception:** the scheme may apply to businesses developed by a sole proprietorship IF they are managed personally by the donor/testator or by his/her partner until the date of transfer.

The business may be managed by a maximum of three families, however:

- › Either the transferors must hold at least 50% of the shares belonging to the donor/testator and to their family.
- › Or the transferors must hold at least 30% of the shares belonging to the donor/testator:
  - If the latter has, with another shareholder, at least 70% of the shares in full ownership.
  - If the latter has, with two other shareholders and their family, at least 90% of the shares in full ownership.
- › The economic activity of the company itself or at least one of its direct subsidiaries, must be: industrial, commercial, artisanal or agricultural, or a licensed profession.  
For businesses developed by sole proprietorship: any assets must be invested accordingly.
- › A company without real economic activity which holds 30% or more of the shares in a direct subsidiary located in the EEA and fulfilling the conditions specified above, may also benefit from the preferential scheme.
  - The reduced rate only applies to the value of shares held by the portfolio company in its subsidiaries who comply with the activity conditions.
- › Accounting criteria determining whether there is no economic activity:
  - Where the balance sheet for at least one of the three financial years preceding the date of the gift or inheritance shows that: salaries, social charges and pensions represent 1.5% or less of the total assets and that the accounting value of land and property represents more than 50% of the total assets.
  - **Rebuttable presumption:** the person responsible for the tax may always provide evidence to the contrary.

The Brussels administration supplies a binding certificate attesting to the fulfilment or otherwise of these conditions.



## 4. Operations

These different conditions must be met, by the family business, for a period of three years calculated from the date of gift or inheritance:

- Pursuit of real economic activity
- Prohibition on using or assigning property assets which form part of the transfer as housing as a principal dwelling
- The company's capital may not be reduced due to payments or repayments to shareholders
- Prohibition on transfer of the centre of management to a State outside the EU

## 5. Prohibition

The scheme does not apply to the gift of family businesses executed by foreign lawyers to avoid payment of Belgian registration tax.

An unregistered gift is exempt from Belgian tax and from the preceding conditions. In this case, the donor must survive the gift by at least three years to avoid inheritance tax.

**In the near future, find our next “experts’ point of view” on the extension of the Belgian market tax to “foreign intermediaries”.**

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