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Mathilde Pourplanche • *Legal and Tax Department*
www.baloise-international.lu/contact

12/10/2017
Market: Belgium

Legislative developments for flemish residents: life insurance policies where both parents are policyholders and the insured persons

In situations where parents, married or otherwise, are both the owners and insured persons of a life insurance policy held for the benefit of their children, the fiscal laws have changed and are described below.

Background

On 28 September 2015, VLABEL [the Flemish Tax Authorities] issued a decision (No. 15129) on estate taxes applied to policies involving two policyholders and two insured persons. This decision was also confirmed by Decision No. 16029 of 21 March 2016.

As a result, upon death of the first parent, the beneficiaries of the policy are required to pay estate taxes on half of the policy's surrender value as at the day of death, even if the insured event did not occur and death benefit not actually paid.

Furthermore, these beneficiaries would not have the certainty that on the policy's termination the benefit would revert to them. The surviving parent, as the policyholder, has the right to change the beneficiary clause or to surrender the policy.

Nowadays

On 23 December 2016, the Flemish legislator modified a third paragraph in Article 2.7.1.0.6, §1 of the Flemish Tax Code with the aim **to change this position described as "unfair"**.

"If the deceased had taken out a policy under which an indemnity may be paid only after the death of the deceased, the monies, annuities or securities shall be deemed to have been received gratuitously and as bequests, as follows:

1st by the person who redeems the life insurance policy after the death of the deceased, at the time of redemption;

2nd by the person who actually receives the monies, annuities or securities after the death of the deceased, at the time when an indemnity is paid".

This means that, from now on, estate taxes are payable:

(1st) by the surviving parent in the event that he/she redeems the policy,

(2nd) by the beneficiaries at the termination of the policy.

In the first case, the death benefit shall be taxable up to:

- 50% of the redemption value, if the premiums were invested as common property of the spouses or as the undivided property of the two policyholders
- 100% of the redemption value if the premiums were invested with the deceased's own assets

The legislator also introduced a second paragraph in Article 2.7.3.2.8 of the Flemish Tax Code clarifying that, as donation taxes are already collected on life insurance policies, **estate taxes can no longer be collected** in proportion to the amount of the tax base already paid.

"In the case of a life insurance policy, the taxable base of the monies, annuities or securities that may apply to the person referred to in Article 2.7.1.0.6 shall be reduced by the amount used as a taxable base to collect donation taxes if the policy was donated to that person by the deceased".

This means that the surviving parent may transfer his or her rights on the life insurance policy to the beneficiaries to optimise the estate taxes collected on the value of the policy at the time of the transfer. In exchange, the latter also has the right to impose the payment of an annuity on the beneficiaries.

The advantage of this development is that it allows the parents to retain ownership of the estate and to be protected in the event of the death of one of them.

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| Bâloise Vie Luxembourg S.A. | 23, rue du Puits Romain | L-8070 Bertrange |
| Tél. +352 290 190-1 | Fax: +352 290 190 462 | www.baloise-international.lu |