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Market: France

Relocation of a French national to Belgium: what impact on a life insurance policy?

Belgium is a country which attracts many wealthy French people for various financial or professional reasons and many French nationals settle there every year. These French nationals generally have one or more life insurance policies taken out with French insurance companies. The question then arises as to what is the best option: to keep this policy or redeem it.

The consequences of keeping the policy, followed by redemption after relocation:

Despite tax residence in Belgium, redemption of the policy is subject to taxation in France. The redemption of a life insurance policy taken out with a company established in France is subject to withholding tax in France at a rate which depends on the maturity of the policy: 35% between 0 and 4 years, 15% between 4 and 8 years, and 7.5% for more than 8 years, or 12.8% for policies entered into, or premiums paid, after 27 September 2017. On the other hand, French non-residents are exempt from the payment of social security contributions.

Redemption also carries the risk of being taxed in Belgium, particularly if the policy is invested in funds denominated in euros. Indeed, the latter could be treated in Belgium as a Branch 21 Policy[1]. The redemption would then also be taxable in Belgium at a withholding tax rate of 30% if the policy is for less than 8 years.

The double taxation treaty between France and Belgium does not make it possible to avoid double taxation in the case described. Indeed, France treats the redemption of a life insurance policy as income from debt. This double taxation treaty provides that income from debt is taxed in the beneficiary's country of residence, namely Belgium in the present case, but the country from which the income originates retains the right to deduct a withholding tax of up to 15%. Thus, in most cases, if you have a French policy, its redemption would be taxed both in France and in Belgium.

What alternatives exist in order to avoid this double taxation?

In order to avoid this double taxation, it might be beneficial to redeem the life insurance policy before leaving France, and to take out a new life insurance policy with a Luxembourg company. This could then be treated as a Branch 23 Policy[2] on which no withholding tax is levied in the event of redemptions. However, if taken out in Belgium, a 2% tax on the entry premiums would be due.

Consequence in case of death of the subscriber:

Payments made under a life insurance policy following the death of its subscriber resident in Belgium are taxable in France if the insured is a French tax resident and/or if the beneficiaries are tax resident in France at the time of death and have been tax resident there for at least 6 of the last 10 years prior to death. For example, in the case of a move to Belgium by parents who hold life insurance policies with a company established in France and whose beneficiaries are their children who remain resident in France, the latter will then be liable to French taxation in the event of death. They would have to pay a flat rate levy of up to 31.25% if the insured had taken out the policy before his 70th birthday, or French estate duty if he had taken it out after his 70th birthday.

They would also have to pay estate duty in Belgium at a rate which varies depending on the region where the subscriber is resident and his family relationship with the beneficiaries.

The double taxation treaty in the field of inheritance signed between France and Belgium in connection with life insurance, attributes the right of taxation to Belgium. Nevertheless, this convention only covers inheritance taxs. Since the flat rate levy of 31.25% is not considered as inheritance tax and therefore it does not fall within the scope of the treaty and, in such a situation, it will therefore be due in addition to inheritance tax in Belgium.

[1] Life insurance policy not linked to funds, with a guarantee of the capital and/or the return
[2] Life insurance policy linked to investment funds, with or without a guaranteed return

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What are the alternatives for avoiding this double taxation?

Gifts are an wealth planning tool very often used in Belgium for the transfer of assets. Combined with a life insurance policy, gifts make possible to achieve effective estate planning, particularly in the cross-border context of France-Belgium. Particular attention to the drafting of the beneficiary clause or the structuring of the policy are also factors which make it possible to optimise the transfer of assets in a cross-border context.

The Luxembourg life insurance policy is a preferred flexible tool for use in an international context.

For more information, please feel free to contact us.

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