



Assets transfer in Luxembourg with French heirs

The tax framework for the transfer of assets in Luxembourg

Luxembourg has an attractive tax system in terms of inheritance: no inheritance tax between spouses; no inheritance tax in the direct line within the limit of the extra legal part and, above this, a lower tax rate than in neighbouring European countries; low rates of gift tax, or no gift tax, when this concerns a gift of assets not registered by a notary in Luxembourg. However, estates in Luxembourg are often international in character, either because the heirs are located in one or more other countries, or because a part of the assets being inherited are located abroad.

Impact of French rules for heirs in France

When an estate in Luxembourg passes to heirs and all or some of them are located in France, the tax framework changes for these people. Indeed, France applies a very broad principle of territoriality in the area of inheritance tax and gift tax. It is enough that an heir is tax resident in France for him to be liable for inheritance tax in France, even though the deceased was not tax resident in France and the estate does not include any property in France. According to French law, anyone who has been tax resident in France for at least six out of the previous ten years is considered to be an heir who is tax resident in France.

Let us take the example of a couple who are resident in Luxembourg with two children, one resident in Luxembourg and the other in France, and the family's assets are located in Luxembourg: at the event of the parents' death, the child resident in France will be subject to inheritance tax in France, and possibly also to inheritance tax in Luxembourg if the amount of the child's statutory inheritance is exceeded. The child who is resident in Luxembourg would, potentially, only have to pay inheritance tax in Luxembourg.

In the case of a cross-border Luxembourg-France estate, a French heir is therefore liable for inheritance tax in France, which may, potentially, go up to 45% on the inherited assets

in excess of EUR 1.8 million.

In this situation of potential double taxation for the French heir, the latter may not rely on the application of a double taxation agreement, since Luxembourg has not signed one concerning estates and gifts.

What solutions might optimise a transfer to a French heir?

In this context, life insurance is a very effective asset management tool enabling the transfer of assets in an advantageous way. Indeed, if subscribed before the insured reaches 70 years of age, it enables the insured to have a capitalization wrapper for his assets available at any time; and it enables his beneficiaries to not be subject inheritance tax but only to a flat rate tax of 20% up to €700,000, and of 31.25% above this, on the value of the transferred capital, after a deduction of €152,500 per beneficiary.

The subscription of capitalization contract policy with a gift of the bare ownership of the policy to the heirs in France may also be of interest, depending on his objectives. In fact, it also enables him to accumulate his estate assets and to transmit a policy to each of his heirs, leaving them free to keep the policy and to continue the capitalization, or to dispose of it according to the personal needs and wishes of each heir. In terms of tax, only the gift of bare ownership is taxed in France, and potentially in Luxembourg if it is registered before a Luxembourg notary. At the event of death, the extinction of the usufruct (i.e. of the life interest in the income) does not entail the payment of additional inheritance tax.

Different estate plans are therefore possible. Life insurance and the capitalization contract are flexible inheritance tools to be adapted to the personal situation and objectives of each person. Please do not hesitate to contact us for more information on this subject.



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