

# INHERITANCE AND GIFT PLANNING FOR BELGIAN AND LUXEMBOURG RESIDENTS



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Navigating inheritance and gift tax planning can be complex, especially for wealthy residents of Belgium and Luxembourg. In this article, Nicolaas Vancrombrugge, Senior Wealth Planner - Belgium and Luxembourg, explores the intricacies of inheritance tax rates and the flexible legislation regarding gifts in both countries.

**For wealthy Belgian residents, inheritance planning is very complex but extremely important. Belgium is a country of two extremes when it comes to inheritance and gift tax.**

On one hand, inheritance tax rates are very high. In certain cases, this tax between non-affiliated persons can amount to 80% of the value of the inheritance. But also in the direct line, high rates apply, which for relatively small inherited amounts already amount to 27% to 30%, depending on the Belgian Region where the testator resides.

On the other hand, those who consider donating their assets to their (potential) heirs in time can avoid any form of taxation. In many cases, when a gift is made during a lifetime, 0% gift tax is paid if certain conditions are met.

Belgian civil law permits donors to attach conditions to donations, allowing them to retain significant control over the donated assets. As a wealth adviser managing a Belgian resident client, it's important to consider that in many situations, a life insurance contract can be a crucial element in organising this retention of control.

In Luxembourg, similar legislation exists around inheritances and gifts by Luxembourg residents. Here too, the life insurance contract can play an important role in setting up a control reserve. However, it should be noted that inheritance planning is often less pertinent in Luxembourg, as there is generally no inheritance tax in the direct line. In contrast, these types of gifts with control retention are highly relevant if the Luxembourg resident has no spouse (or legal partner) or heirs in the direct line, in which cases the inheritance tax can also add up quickly.

## STEPS TO EFFECTIVE INHERITANCE PLANNING FOR BELGIAN RESIDENTS

### 1. Inheritance and Gift Tax Rates and Legal Set-up of the Gift

When discussing indirect taxation in Belgium, which includes inheritance taxes and gift taxes, a complexity arises from the regionalisation of these taxes. This means that the legislation varies depending on whether the giver or testator lives in the Flemish, Brussels, or Walloon Region.

A brief summary of the general principles applicable in all Regions shows that inheritance tax in the non-straight line in the Walloon and Brussels regions can be as high as 80%. However, the exact rates depend on the size of the inheritance and the degree of kinship between the testator and the heir. For inheritances in the direct line, the rate is 27% (Flemish Region) or 30% (Walloon and Brussels Region) once the inherited amount exceeds €500,000.

Gifts of bankable assets in Belgium must generally be done by a registered notary deed, which implies that, regardless of the amount given, flat gift taxes between 3% and 7.7% will have to be paid. The exact rate depends on the degree of kinship between the donor and the donee, as well as the Region where the giver is domiciled.

The second option for gifting bankable assets is to make an indirect gift (usually done by a bank transfer, accompanied by a private donation document) which does not need to be registered. The indirect gift may thus be subject to 0% gift taxes. However, this is contingent on the donor surviving the indirect gift for at least 5 years (in the Brussels Region, this waiting period is still 3 years, but it is expected to be extended to 5 years soon). If the donor does not survive the 5-year period, the gift will be subject to inheritance taxes, and the given assets will be taxed accordingly. Therefore, the parties take a risk if they opt for an unregistered gift without gift tax, but it should be noted that the gift can still be registered at any time during this waiting period (e.g., if the donor becomes ill during the current waiting period of 5 or 3 years).

When the assets are already invested in an insurance contract at the time the policyholder wishes to give the assets to potential heirs, the easiest way to organise the gift is to surrender the insurance contract and give the benefit (the cash obtained by the surrender) of the insurance contract to the donee(s). A disadvantage of surrendering the insurance contract to make the gift is that one loses the advantages of the insurance contract. If the donee(s) want(s) to subscribe to a new insurance policy, a new entrance tax of 2% (applicable from a direct tax perspective when Belgian residents subscribe to an insurance contract) will be applied.

This disadvantage could be solved by a third option, which is to assign the rights of the insurance contract to the donee. Generally, this inheritance planning technique is called the 'insurance gift'. The underlying assets of the insurance policy are always the property of the insurance company. From a Belgian legal point of view, this means that the policyholder is only the owner of a claim against the insurance company.

Belgian law accepts that the policyholder's claim towards the insurance company can be the subject of a gift to another person.

According to Belgian Insurance Law, such an assignment of the rights of the insurance contract requires formalisation in an addendum to the contract signed by the transferor, the transferee, and the insurance company.

However, from both a civil law and tax perspective, it is strongly recommended to formalise the gift in a notary deed, which implies that gift taxes will be applicable. Moreover, despite the insurance gift, inheritance taxes could be due on the capital gains realised between the insurance gift and the donor's death.

The short scope of this article does not allow us to delve into the specifics of gifts by a Belgian resident. However, the above makes it clear that it is a very complex matter. As an adviser faced with such a situation, you should always consult a Belgian specialist who can summarise the various options available in light of your client's specific needs.

### 2. Conditions Linked to the Gift and the Potential of the Insurance Contract as an Instrument to Maintain Control Over the Given Assets

A specificity of Belgian civil law is that it allows a number of conditions to be attached to the gift, enabling the donor to exercise a certain degree of control over the donated assets. Examples of such conditions include an annual rent in favour of the giver (generally 4% per year of the total value of the given assets), a conventional clause of return if the beneficiary of the gift dies before the giver (whereby the assets return to the giver exempt from inheritance taxes), and a prohibition on bringing the donated assets into a community, such as a matrimonial community.

A question that arises here is how the donor can ensure the execution of these conditions by the donee. The insurance contract can play a crucial role in this, especially through its beneficiary clause, which can be made irrevocable. In Belgian law, this is known as the 'accepting' beneficiary clause of the insurance contract.

Specifically, in this planning mechanism, the donor will be designated as the beneficiary of the life insurance contract by the policyholder(s) donee(s) who subscribe to an insurance contract with the given assets. The donor will then accept this beneficiary designation, making it irrevocable. If the beneficiary of the insurance contract has accepted the beneficiary clause by an addendum to the contract, most of the rights in the insurance contract are considered locked (i.e., the rights to make surrenders, assign the rights, pledge the rights, etc.). In other words, once the beneficiary has accepted the beneficiary clause, the policyholder will no longer be able to exercise their rights as policyholder without the agreement of the accepting beneficiary.

By using the accepting beneficiary clause, the giver can ensure that the conditions linked to the gift are upheld. If the giver is designated as the beneficiary of the insurance contract and accepts the beneficiary clause, they will have the guarantee that the beneficiary of the gift will not be able to perform certain actions on the insurance contract without their consent. As such, the giver will not be able to intervene actively in the management of the given assets, but they can organise a "passive" retention of control to guarantee the execution of the conditions linked to the gift.

This is in full conformity with Belgian civil law provisions on gifts. It is even possible to integrate this technique into holistic family planning, allowing for the set-up of a common investment strategy for all family members through the 'Family Shared Dedicated Investment Fund'.

The beneficiary clause could also be accepted by a beneficiary who is not the main beneficiary of the contract, but, for example, only a subsidiary beneficiary in the second or third rank. It is thus not mandatory to appoint the giver as the first-rank beneficiary, which is practical if the giver wants to use the blocking mechanism of the accepting beneficiary clause to enforce the conditions of the gift but prefers to privilege other beneficiaries when the insurance contract is unwound.

From a legal perspective, it is also possible to modulate the acceptance of the beneficiary clause as this belongs to the contractual freedom of the parties involved. This makes it possible to specify in the addendum regarding the acceptance of the beneficiary clause that the insurance policy will only be partially blocked by the acceptance of the beneficiary clause. For example, the policyholder could be granted the right to surrender annually 5% of the total value of the insurance contract without needing the consent of the accepting beneficiary.

## SETTING UP PROPER INHERITANCE PLANNING AS A LUXEMBOURG RESIDENT

In Luxembourg, similar legislation exists around inheritances and gifts by Luxembourg residents as in Belgium. However, the applicable rates are much more favourable than in Belgium.

Regarding inheritance taxes, the rate in Luxembourg is 0% for inheritances between spouses (or legal partners) and in the direct line between parents and children (provided that equal shares are given to the children as part of the inheritance). However, inheritance tax between all other persons receiving an inheritance from a Luxembourg resident can rise sharply to a maximum of 48%.

Gifts of bankable assets in Luxembourg must generally be done by a registered notary deed, which implies that, regardless of the amount given, flat gift taxes between 1.8% (in the direct line) and 14.4% (between non-related persons) will have to be paid. The exact rate depends on the degree of kinship between the donor and the donee.

The second option to organise an indirect gift also exists in Luxembourg. The indirect gift may be subject to 0% gift taxes, linked to the condition that the donor survives the indirect gift for at least 1 year.

Luxembourg law on insurance contracts, like Belgian law, accepts the assignment of the rights of the insurance contract. Similar to Belgium, the assignment requires formalisation in an addendum to the contract signed by the transferor, the transferee, and the insurance company.

Despite the absence of inheritance taxes in Luxembourg, it is often stated that inheritance planning is unnecessary for a Luxembourg resident. This is incorrect, as inheritance tax can become significant in specific situations, such as when a parent wishes to attribute a larger share to one of the children or if there is no spouse (or legal partner) and no heir in the direct line.

Just as in Belgian civil law, Luxembourg civil law allows conditions to be attached to the donation, enabling the donor to exercise control over the donated assets. In the Luxembourg context, the insurance contract can also play a crucial role, especially through its beneficiary clause, which can be made irrevocable, similar to the Belgian context.

As an adviser faced with a Belgian or Luxembourg resident client, it is always important to prioritise inheritance planning when discussing the structuring of the client's investment assets. This is especially essential in Belgium to avoid high inheritance taxes.

Creative and customised planning solutions are available, and insurance contracts can play an essential role in this.

However, given the complexity of this matter, it is highly recommended to consult a Belgian or Luxembourg specialist who can summarise the various options available in light of your client's specific needs.

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