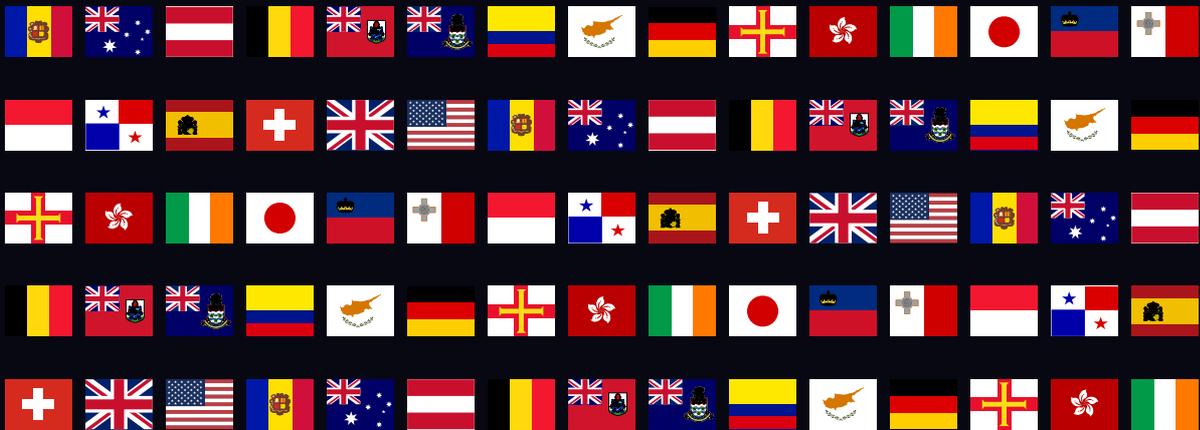


# PRIVATE CLIENT

## Belgium



# Private Client

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Quick reference guide enabling side-by-side comparison of local insights, including into tax; trusts and foundations; same-sex marriages; civil unions; succession; capacity and power of attorney; immigration; and recent trends.

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## TAX

### Residence and domicile

#### How does an individual become taxable in your jurisdiction?

An individual becomes taxable in Belgium when he or she becomes a Belgian resident. A Belgian tax resident is an individual who has his or her main residence in Belgium. An individual who does not have his or her main residence in Belgium, but who has the seat of his or her fortune in Belgium also qualifies as a Belgian resident. Residency is assessed on all relevant factual circumstances. However, the registration of the individual in the National Register creates a rebuttable presumption of residency. An individual will be irrebuttably presumed to be a Belgian resident when his or her spouse (and family) reside in Belgium.

Belgian residency triggers the liability to pay Belgian personal income taxes over the following types of income and gains:

- income of real property;
- income of capital;
- income of professional activities and pensions; and
- income of diverse sources and (capital) gains.

Gift tax and inheritance tax are a competence of the Belgian region (Flemish Region, Brussels Capital Region and Walloon Region) where the donor has or the deceased had his or her residence.

*Law stated - 28 September 2021*

### Income

#### What, if any, taxes apply to an individual's income?

Income of capital is taxed at flat rates.

In principle, dividends are taxed at a flat rate of 30 per cent, whatever the amount of dividends earned. Belgium does not grant a credit for foreign withholding tax. The foreign withholding tax can only be deducted from the gross dividend to determine the taxable basis in Belgium. Upon fulfilment of conditions and deadlines, dividends can be taxed at a flat rate of 15 per cent. Dividends received upon the liquidation of a company qualify for a flat tax rate of 10 per cent if conditions are met.

As for dividends, the basic tax rate for interest income is a flat rate of 30 per cent. Interest income from savings accounts within the European Economic Area (EEA) can qualify for a lower rate of 15 per cent if conditions are met.

Income of professional activities and pensions are taxed at progressive rates up to 50 per cent. The basic rates can be increased with surcharges up to approximately 53.5 per cent.

*Law stated - 28 September 2021*

### Capital gains

## What, if any, taxes apply to an individual's capital gains?

Gains realised upon the transfer of shares are not taxed in the hands of a Belgian tax resident when the sale or contribution qualifies as normal private wealth management. In principle, a sale to a third party can qualify as normal private wealth management. The sale of shares to an entity that is controlled by the seller will generally not qualify as normal private wealth management and triggers tax liability at a flat rate of 33 per cent (increased with surcharges).

Gains realised upon speculative transactions and occasional profits are always taxed. The flat rate of 33 per cent (increased with surcharges) is applicable.

The gain on the sale of shares in a Belgian company is taxed when the purchaser is a legal entity established outside the EEA and when the seller directly or indirectly, either alone or together with certain family members, has held a substantial shareholding (of more than 25 per cent) in the sold company at any time during the five years preceding the sale. The applicable flat rate is 16.5 per cent (increased with surcharges).

*Law stated - 28 September 2021*

## Lifetime gifts

### What, if any, taxes apply if an individual makes lifetime gifts?

Belgian gift tax is due when the gift is registered in Belgium. Gifts must be registered in Belgium when:

- real property situated in Belgium is gifted;
- the gift is made before a Belgian notary; or
- the gift is made before a foreign notary and the donor is a Belgian resident. The obligation to register foreign deeds of gift was introduced on 15 December 2020.

Movable assets, however, can (in principle) be gifted without liability of Belgian gift tax when the gift is made in an informal way. However, when the donor of a gift free of Belgian gift tax dies as a Belgian resident within a period of three years after the gift was made, Belgian inheritance tax is due on the gift. Some gifts always qualify as a fictitious legacy subject to inheritance tax, even if the gift was made longer than three years before the donor's decease as a Belgian resident (eg, gifts made under the condition precedent of the decease of the donor). A Belgian resident can also opt for a gift of movable assets with payment of Belgian gift tax. The gift can be made before a notary. The underlying documents of an informal gift can be voluntarily registered.

Gift tax is levied by regions. Belgium has three regions: Flanders in the north, Wallonia in the south and the capital city, Brussels, in the centre. Each region has specific rates, reliefs and exemptions in the field of gift tax. In principle, the applicable regime is the regime of the region where the donor resides.

The rates for gifts of movable assets are flat rates, irrespective of the value of the gift, and depend on the kinship between the donor and the beneficiary. For gifts in direct line and between qualifying partners, the flat rate is 3 per cent in Flanders and Brussels and 3.3 per cent in Wallonia.

All three regions have introduced a specific regime for the gifting of assets of family-owned businesses and shares in family-owned companies established in the EEA. The regions grant an exemption when conditions are met.

Real property situated in Belgium is subject to progressive gift tax rates depending on the market value of the real property and the degree of kinship between the donor and the beneficiary. The three regions uphold the same progressive gift tax rates. In direct line and between (qualifying) partners, progressive rates from 3 per cent up to 27 per

cent are applicable (27 per cent above €450,000).

Belgium does not levy gift tax when a Belgian tax resident gifts a real property that is situated outside Belgium.

*Law stated - 28 September 2021*

## **Inheritance**

**What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?**

If the deceased individual was a Belgian resident, Belgian inheritance tax is due over his or her worldwide estate.

In principle, each of the three regions applies progressive inheritance tax rates, depending on the degree of kinship between the deceased and the heir, and on the market value of the inherited assets. In direct line and between qualifying partners, the highest applicable inheritance tax rate in Flanders is 27 per cent (above €250,000). In Brussels and Wallonia, the highest rate is 30 per cent in direct line and between qualifying partners.

In Flanders, the inheritance tax due by the qualifying partner and by the heirs in direct line is calculated separately over the movable and immovable assets. This distinction does not exist in Brussels or Wallonia.

All three regions grant an exemption to the qualifying partner of the deceased from payment of inheritance tax over the value of the inherited share in the family home. No substantial exemptions are granted with respect to movable assets (eg, the exemption for the surviving (qualifying) partner in Flanders is limited to €50,000).

All three regions have introduced a specific regime for the inheritance of assets of family-owned businesses and shares in family-owned companies established in the EEA. If certain conditions are met, assets in family-owned businesses and shares in family-owned companies can be inherited at a flat rate of 3 per cent in Flanders and Brussels. In Wallonia, those assets and shares can be inherited free of inheritance tax upon fulfilment of conditions.

Qualifying partners are both spouses and official cohabitants. In the Flemish Region, persons who cohabited (without establishing an official cohabitation) and formed a common household for a certain period with the deceased individual are also qualifying partners.

If the deceased individual was a non-Belgian resident, Belgium only levies inheritance tax on the deceased's Belgian real property.

*Law stated - 28 September 2021*

## **Real property**

**What, if any, taxes apply to an individual's real property?**

Upon purchase of real property situated in Belgium, registration rights are due over the purchase price at, in principle, a flat rate of 10 per cent in Flanders. If conditions are met, the flat tax rate is reduced in Flanders to 6 per cent for the purchase of the family home. Flanders has plans to reduce the rate for the purchase of the family home to 3 per cent, and to increase the basic rate from 10 per cent up to 12 per cent. The Walloon Region levies a flat tax rate of 12.5 per cent upon the purchase of real property. The Brussels Capital Region also levies a flat tax rate of 12.5 per cent but reduces the taxable basis by €175,000 for the purchase of the family home when conditions are met.

An individual who owns property situated in Belgium needs to pay a property tax on an annual basis.

When an individual rents a house situated in Belgium to another individual, income tax is due by the owner at progressive rates up to 50 per cent (increased with surcharges) over the cadastral income (ie, the fictitious rental income) of the property. If the tenant rents the house for professional use, income tax is due by the owner at

progressive rates up to 50 per cent (increased with surcharges) over the actual net rental income.

If real property situated outside Belgium is rented out by a Belgian individual, Belgium has no authority to levy taxes over the rental income according to the double tax treaties. Income of foreign real property must be declared in the Belgian income tax return to be exempted with reservation of progression. Until assessment year 2022, either the actual rental income (irrespective of the professional or non-professional use by the tenant) or a (higher) fictitious rental income (when the property is not rented out) had to be declared. As from assessment year 2022, the cadastral income will also form the basis to determine the foreign property's income. The cadastral income of foreign properties will be determined by the Belgian tax administration. Hereto, the Belgian tax administration has sent a questionnaire to Belgian residents owning a foreign property.

If a Belgian tax resident sells his or her family home, no income tax is due over the capital gain. However, if an individual sells real property that is not his or her family home, within five years of the acquisition of the property, income tax can be due over the (reduced) capital gain at a flat rate of 16.5 per cent (increased with surcharges).

Belgium has no authority, according to the double tax treaties, to levy income taxes over capital gains if real property situated outside Belgium is sold by a Belgian individual.

*Law stated - 28 September 2021*

## **Non-cash assets**

**What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?**

Customs duties, excises (only for goods that qualify as excise goods) and import value added tax (VAT) will, in principle, become due when goods are brought into Belgium from outside the European Union. However, goods having no commercial character (therefore for personal use and enjoyment) contained in personal luggage may be exempted from duties and taxes within certain limits.

There are no customs duties payable when travelling from another EU member state to Belgium. The same goes for excise duties and VAT as long as the goods are purchased tax included and they are destined for personal use.

EU and Belgian legislation foresee certain general reliefs of import duties, excises and VAT, such as for persons transferring their normal residence from outside the European Union to Belgium.

In principle, there are no customs duties, excises or VAT due if goods are taken out of Belgium (eg, export). Individuals having their residence outside of the EU can apply for a refund of the VAT paid on goods purchased in Belgium and intended for personal use when they are exported to a place outside the EU in their personal luggage.

In Belgium, the standard rate for VAT over consumer goods amounts to 21 per cent.

*Law stated - 28 September 2021*

## **Other taxes**

**What, if any, other taxes may be particularly relevant to an individual?**

There is no general wealth tax in Belgium.

However, tax on stock exchange transactions (TSET) is due on stock exchange transactions entered into or carried out in Belgium and on stock exchange transactions entered into or carried out by foreign intermediaries on behalf of Belgian residents. The TSET rate due depends on the underlying financial instrument such that 0.12 per cent is due on bonds, 0.35 per cent on shares and 1.32 per cent on capitalising shares. The TSET due on a transaction is limited to

€1,300, €1,600 or €4,000 respectively.

Belgium also levies a tax on securities accounts of 0.15 per cent on securities accounts that include an average value of more than €1,000,000. All financial securities held in the account are targeted, including cash. The tax is due both on the Belgian and foreign securities accounts if the account holder is a Belgian resident. If the securities account is held by an entity targeted by the Belgian Cayman tax, the tax due will be levied in the hands of the Belgian resident who is the founder of the entity. If the account holder is a non-Belgian resident, the tax is limited to securities accounts held in Belgium. The tax is not limited to natural persons. The tax is also applicable to companies and other legal entities.

*Law stated - 28 September 2021*

## Trusts and other holding vehicles

What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

### Targeted foreign legal structures

Belgium applies the Belgian Cayman tax to Belgian residents who are the founder or beneficiary of targeted foreign legal structures. The following foreign legal structures are targeted:

1. all trusts;
2. (certain categories of entities equated with) low-taxed companies and foundations established outside the EEA, as well as (certain categories of entities equated with) low-taxed companies and foundations established in the EEA that are included in a 'blacklist' that defines the categories of targeted entities (eg, the Luxembourg SPF); and
3. insurance contracts that either provide for the distribution of assets of (1) or (2), or both, structures or have been funded with assets of (1) or (2), or both, structures.

Further, fund-linked entities are targeted when they are fully controlled by an individual (and his or her family).

Founders are both the legal founders and the economic founders as well as the persons who hold the shares of (2) structures and the persons who concluded the insurance contract and on whose behalf the premiums have been paid (3). Upon the demise of the legal and economic founder, the heirs of this founder will be subjected to the Belgian Cayman tax if they are Belgian residents. Heirs can only avoid the application of the Belgian Cayman tax if they can provide evidence that neither they nor their heirs will ever receive a benefit from the foreign legal structure.

The Belgian Cayman tax includes a transparency measure, a tax on (deemed) distributions and a reporting obligation.

First, the Cayman tax subjects founders to the 'look-through tax', a transparency measure on the basis of which founders are taxed on the income of the structure, as if they received the income directly, regardless of whether the income was actually distributed to them or not. The taxability of income and the applicable tax rates depend on the income tax regime applicable to individuals. For example, if a targeted structure sells a substantial shareholding to a third party, the look-through tax can be without consequence (capital gain exempted). If the structure concerns a double layer structure, the look-through tax can be applicable to the income of all targeted entities in the structure.

Further, beneficiaries who are Belgian residents are taxed on distributions received at the flat tax rate of 30 per cent, insofar and to the extent that evidence cannot be provided that the distribution represents the initial capital or income that has been subjected to the look-through tax. Distributions are deemed to be made on a FIFO-basis.

Moreover, the contribution of assets of targeted structures and the transfer of such assets to a state with which Belgium did not conclude an agreement on the exchange of tax information can qualify as a deemed distribution,

taxable in the hands of the founder.

Last, founders and beneficiaries (who actually received a distribution) need to report the existence of the targeted foreign legal structure in their annual income tax return and need to declare the income or the (deemed) distribution of the foreign legal structure. Income tax is due through the annual income tax assessment.

Since its introduction, the Belgian Cayman tax has been amended and extended several times. It is expected that the Cayman tax will be extended again in the future.

## Belgian holding companies

Profits of Belgium-based holding companies are subject to corporate income tax at a flat rate of 25 per cent. The basic rate of 25 per cent is (partially) increased with a surcharge of 6.75 per cent (as a penalty) if (and insofar) the tax hasn't been paid in advance during the book year. If certain conditions are met, capital gains realised on subsidiaries are 100 per cent tax exempt, and dividends received from subsidiaries are 100 per cent tax exempt as well. Dividends distributed to shareholders, who are residents of Belgium, are taxed at a flat rate of 30 per cent. Under strict conditions, dividends can be subject to a flat tax rate of 15 per cent. Dividends received upon the liquidation of a company qualify for a flat tax rate of 10 per cent when conditions are met.

The holding needs to submit a corporate income tax return annually. Corporate income tax is due through the annual corporate income tax assessment.

*Law stated - 28 September 2021*

## Charities

### How are charities taxed in your jurisdiction?

A specific Belgian tax regime applies to charities. Mainly, this specific tax regime taxes the charitable entity on capital income, capital gains and real estate income. Private foundations and (international) non-profit associations are subject to an annual tax of 0.17 per cent on the value of certain of their assets.

*Law stated - 28 September 2021*

## Anti-avoidance and anti-abuse provisions

### What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

On the basis of the general anti-abuse provision, the Belgian tax administration can disregard a legal act or a series of legal acts that frustrate the Belgian Income Tax Code if the Belgian resident cannot demonstrate that the choice for this legal act or this series of legal acts was made for a reason other than tax reasons. The Belgian tax administration can also disregard the sale, cession or contribution of certain assets to a foreign entity that is either not subject to income tax or subject to a significantly more beneficial income tax in the jurisdiction of establishment.

A similar anti-abuse provision has been introduced for legal acts or a series of legal acts that frustrate the Belgian Income Tax Code and that are executed by foreign legal structures targeted by the Belgian Cayman tax.

Such an anti-abuse provision also exists in respect to the tax on securities accounts, for example, to prevent that the tax can be avoided when a securities account is split for tax purposes only.

Belgium also introduced a similar anti-abuse provision for inheritance tax purposes. The tax administration circulated a

'blacklist' and a 'whitelist' of legal acts that, in principle, are considered to be either tax abuse or not tax abuse.

Further, certain gifts qualify as fictitious legacies, meaning that they will be taxed in the estate of the donor.

*Law stated - 28 September 2021*

## TRUSTS AND FOUNDATIONS

### Trusts

#### Does your jurisdiction recognise trusts?

There are no trusts according to Belgian law. Belgium has not ratified the Hague Trust Convention, but generally, Belgium recognises foreign trusts. Belgium qualifies trusts as transparent for income tax purposes on the basis of the Belgian Cayman tax.

According to current Belgian legislation, trusts are not transparent for inheritance tax purposes.

If a Belgian individual is the settlor of an irrevocable discretionary trust and dies as a Belgian resident, the assets of the trust are not part of his or her estate for inheritance tax purposes. However, from the administrative standpoint of the Belgian tax authorities, distributions made by the trust to a beneficiary upon or after the decease of the settlor are deemed to be fictitious legacies made by the settlor in favour of the beneficiary. Inheritance tax is due by the beneficiary over the value of the distribution at the moment of the distribution. The inheritance tax rate depends on the value of the distribution and on the degree of kinship between the settlor and the beneficiary. If no distributions are made out of the irrevocable discretionary trust, no inheritance tax is due.

According to an administrative standpoint of the Belgian tax authorities, assets held in a non-discretionary trust are taxable in the estate of the settlor if he or she died as a Belgian resident.

*Law stated - 28 September 2021*

### Private foundations

#### Does your jurisdiction recognise private foundations?

Belgium has its own private foundations. A Belgian private foundation requires an altruistic objective. Neither the founder nor the directors of the foundation can receive an advantage from the foundation.

A specific Belgian tax regime applies to private foundations. In basic terms, this specific tax regime taxes the private foundation on capital income, capital gains and real estate income.

Distributions made by Belgian private foundations can remain without gift tax and income tax when conditions are met. According to rulings, the beneficiaries can be family members of the founder when conditions are met.

Belgium recognises private foundations governed by the laws of other jurisdictions.

*Law stated - 28 September 2021*

## SAME-SEX MARRIAGES AND CIVIL UNIONS

### Same-sex relationships

#### Does your jurisdiction have any form of legally recognised same-sex relationship?

Belgium recognises same-sex marriages and official cohabitation. Same-sex relationships benefit from the same (preferential) regimes as heterosexual relationships in income tax, gift tax and inheritance tax.

**Heterosexual civil unions**

Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

As an alternative for marriage, a heterosexual couple may submit a declaration of official cohabitation at their municipality.

Official cohabitants benefit from the same (preferential) regimes and specific exemptions as spouses in income tax, gift tax and inheritance tax. The Flemish Region extends this preferential regime to persons who have cohabited (without establishing an official cohabitation) and formed a common household for a certain period of time.

With respect to civil law, a surviving spouse has a forced heirship in the estate of his or her deceased spouse. In principle, when there is no will, the surviving spouse is entitled to the usufruct (eg, right of income) of the estate of the deceased spouse. According to the forced heirship rules, the surviving spouse is entitled to the usufruct of half of the estate of the deceased spouse.

With respect to civil law, a surviving official cohabitant has no forced heirship. When there is no will, the surviving official cohabitant receives the usufruct of the family home. In a will, the surviving official cohabitant can be disinherited.

Law stated - 28 September 2021

**SUCCESSION****Estate constitution**

What property constitutes an individual's estate for succession purposes?

From a Belgian inheritance tax perspective, an individual's estate consists of all the assets left after he or she has died. Gifts of movable assets made within three years prior to the donor's decease without payment of gift tax are added to the taxable basis as fictitious legacies. Certain gifts, irrespective of when they were made, will always qualify as fictitious legacies that must be added to the taxable basis (eg, gifts made on the condition precedent of the decease of the donor).

According to current Belgian legislation, trusts are not transparent for inheritance tax purposes. If a Belgian individual is the settlor of an irrevocable discretionary trust and dies as a Belgian resident, the assets of the trust are not part of his or her estate for inheritance tax purposes. However, from the administrative standpoint of the Belgian tax authorities, distributions made by the trust to a beneficiary upon or after the decease of the settlor are deemed to be fictitious legacies made by the settlor in favour of the beneficiary. Inheritance tax is due by the beneficiary over the value of the distribution at the moment of the distribution. The inheritance tax rate depends on the value of the distribution and on the degree of kinship between the settlor and the beneficiary. If no distributions are made out of the irrevocable discretionary trust, no inheritance tax is due.

According to an administrative standpoint of the Belgian tax authorities, assets held in a non-discretionary trust are taxable in the estate of the settlor if he or she died as a Belgian resident.

From a civil law perspective, an individual's estate consists, in principle, of all assets an individual leaves upon decease. However, Belgian inheritance law contains forced heirship rules. In order to safeguard the forced heirship rules, gifts made during the deceased's lifetime are also taken into account to calculate the reserved portion of forced heirs.

## Disposition

### To what extent do individuals have freedom of disposition over their estate during their lifetime?

In principle, individuals can gift everything they own during their lifetime. However, certain legal restrictions apply.

Individuals married under the regime of community of property cannot give away common goods without the consent and approval of their spouse. An individual cannot give in such a way that he or she endangers the family interests (eg, he or she cannot give away the family home, not even if the family home is personal property).

Also, an individual must take into account that children and the surviving spouse have forced heirship rights according to Belgian inheritance law. The basis on which forced heirship is calculated includes not only the estate at the date of decease, but also all the gifts that have been made by the deceased during his or her lifetime ('fictitious mass'). Therefore, if forced heirs cannot receive their reserved portion because of gifts made, they can claim for gifts to be reduced.

A new inheritance law entered into force on 1 September 2018. The rules on forced heirship of children have been rewritten.

Law stated - 28 September 2021

### To what extent do individuals have freedom of disposition over their estate on death?

In a will, an individual can freely dispose of his or her estate. However, in the event that Belgian law applies to the succession, or in the event that Belgium can impose the Belgian forced heirship rules on the basis of the applicable conflict of law rules, both the surviving spouse and the children of the deceased can invoke a forced heirship on the basis of Belgian forced heirship rules.

The forced heirship is calculated on the estate of an individual at the moment of death as well as on all assets that have been gifted by the individual during his or her lifetime (fictitious mass).

The new inheritance law limits the combined forced heirship of children to half of the fictitious mass (in bare ownership when there is a surviving spouse), irrespective of the number of children.

In principle, the surviving spouse is entitled to a forced heirship of at least half of the fictitious mass in usufruct (at least the usufruct on the family home). As usufructuary, the surviving spouse is entitled to the income of the goods (eg, rental income or interests and dividends). The bare owner is, in principle, entitled to the capital gains. Usufruct will end automatically upon decease of the usufructuary. In that case, the bare owner of the goods acquires full ownership.

In the event that at least one spouse has children from a previous marriage, it is possible to limit the inheritance rights of the surviving spouse in a marriage contract.

The new Belgian inheritance law makes it possible for a parent to come to a valid agreement with his or her children on the division of the estate upon the demise. The agreement is binding on all parties involved.

Law stated - 28 September 2021

## Intestacy

### If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

If the deceased leaves a surviving spouse and children, the surviving spouse receives the estate in usufruct. The children receive the estate in bare ownership, each in equal shares.

In the event that there is no surviving spouse, the children receive the estate in full property, each in equal shares.

If the deceased leaves a surviving spouse but no children, the surviving spouse receives the deceased's share in the community property in full ownership, the full ownership of the deceased's share in the assets jointly held by the spouses, as well as the usufruct of the deceased's personal property. The bare ownership of the deceased's personal property is divided between the surviving blood relatives on the basis of the degree of kinship with the deceased.

If the deceased leaves no surviving spouse nor children, the estate is divided between the surviving blood relatives on the basis of the degree of kinship with the deceased.

In a marriage contract, gifts can be made to the surviving spouse.

*Law stated - 28 September 2021*

### **Adopted and illegitimate children**

**In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?**

Only children for whom legal parentage has been established can inherit from their parents.

It is not required for the parents to be married in order to establish legal parentage.

In principle, maternity is established automatically, as the name of the mother of the child is included in the birth certificate.

In the event that the mother is married, in principle, paternity (or co-maternity) is established automatically through the presumption that the mother's spouse is the father (or co-mother) of the child.

In the event the parents of the child are not married, the father (or co-mother) of the child needs to acknowledge the child in order to establish legal parentage.

An adopted child has the same rights to the estate of his or her adoptive parent as other children for whom the legal parentage has been established.

*Law stated - 28 September 2021*

### **Distribution**

**What law governs the distribution of an individual's estate and does this depend on the type of property within it?**

Since 17 August 2015, the European Union's Succession Regulation (EU) No. 650/2012 has determined the conflict of law rules. In the event that no choice of law has been made in a will, in principle, the law of the state in which the individual had his or her last habitual residence is applicable. However, if it is clear from all circumstances that, at the moment of death, the deceased had a manifestly closer connection with another state, the law of that state is applicable. The applicable law governs the distribution of both the movable and the immovable estate.

A choice of law can be made in the will for the law of the state of which the resident has nationality. This law governs the distribution of both the movable and the immovable estate.

On the basis of the European Union's Succession Regulation, Belgium will respect the application of non-Belgian law, even if the foreign law infringes Belgian forced heirship rules.

## Formalities

### What formalities are required for an individual to make a valid will in your jurisdiction?

According to Belgian law, an individual can make either a public or notarial will, a holographic or handwritten will or an international will.

A public or notarial will must be drafted by the notary. The will must be read out by the notary to the testator in the presence of either two witnesses or another notary. The will must be dated and signed by the testator.

A testator can also personally draft his or her will. To be valid, the entire content of the will must be handwritten by the testator. The will needs to be dated and signed by the testator.

An international will can be drafted by the notary, by the testator or by a third party. To be valid, the international will does not need to be handwritten. The testator needs to sign the will in the presence of a notary and two witnesses.

Law stated - 28 September 2021

## Foreign wills

### Are foreign wills recognised in your jurisdiction and how is this achieved?

If a Belgian resident who is not a Belgian national has drafted a will in accordance with the laws of his or her state of nationality, in principle, Belgium will recognise the will provided that it is valid according to the laws of the state of nationality. In principle, it will not be possible for the heirs to challenge the content of the foreign will on the basis of the forced heirship rules of Belgian inheritance law.

Law stated - 28 September 2021

## Administration

### Who has the right to administer an estate?

The executor appointed in the will has the right to administer the estate. However, such a testamentary executor has very limited rights. If no executor has been appointed, the heirs administer the estate.

Law stated - 28 September 2021

### How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

Title to a deceased's assets passes to the heirs and successors on the basis of a notarial certificate of succession.

Provided that there is no executor, the notarial certificate of inheritance gives the heirs the authorisation to administer the estate. They must take all precautionary measures to preserve the assets until the estate is divided between the heirs.

Law stated - 28 September 2021

## Challenge

Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

Disappointed heirs may start a procedure before the court of first instance.

*Law stated - 28 September 2021*

## CAPACITY AND POWER OF ATTORNEY

### Minors

What are the rules for holding and managing the property of a minor in your jurisdiction?

When both parents are alive, they jointly hold and manage the property of a minor. Upon the death of a parent, the surviving parent holds and manages the property. After the death of both parents, a guardian who has been appointed in the parents' will can take over the holding and management of the property of the minor. If there is no will, a guardian will be appointed by the court.

*Law stated - 28 September 2021*

### Age of majority

At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

At the age of 18.

*Law stated - 28 September 2021*

### Loss of capacity

If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

In a specific will on personal matters, individuals can give the power of attorney to persons of their choice to manage their assets in case they lose legal capacity. If no such will has been made, any interested party can ask the court to declare that a person has lost the capacity to manage his or her affairs. The court will appoint an administrator. The administrator must report to the court.

*Law stated - 28 September 2021*

## IMMIGRATION

### Visitors' visas

Do foreign nationals require a visa to visit your jurisdiction?

Nationals of EU member states do not need a visa to visit Belgium for a period of a maximum of three months. If the EU national wants to visit Belgium for more than three months, he or she needs a residency permit. A national of a

country outside the EU may need a visa to visit Belgium.

*Law stated - 28 September 2021*

### **High net worth individuals**

Is there a visa programme targeted specifically at high net worth individuals?

There is no specific visa programme for those individuals.

*Law stated - 28 September 2021*

## **UPDATE & TRENDS**

### **Key developments**

Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

The Flemish Region announced that the registration rights due upon the purchase of the family home will be lowered from 6 per cent to 3 per cent. The registration rights to upon the purchase of a second residence will be augmented from 10 per cent to 12 per cent.

A major income tax reform has also been announced by the Minister of Finance.

*Law stated - 28 September 2021*

## Jurisdictions

	<b>Andorra</b>	Cases & Lacambra Abogados SLP
	<b>Australia</b>	Kalus Kenny Intalex
	<b>Austria</b>	DORDA
	<b>Belgium</b>	Loyens & Loeff
	<b>Bermuda</b>	Butterfield Trust
	<b>Cayman Islands</b>	Butterfield Trust
	<b>Colombia</b>	Rimôn
	<b>Cyprus</b>	Patrikios Pavlou & Associates LLC
	<b>Germany</b>	POELLATH
	<b>Guernsey</b>	Butterfield Trust
	<b>Hong Kong</b>	Charles Russell Speechlys LLP
	<b>Ireland</b>	Matheson
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Liechtenstein</b>	Gasser Partner
	<b>Malta</b>	GVZH Advocates
	<b>Monaco</b>	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
	<b>Panama</b>	Pardini & Asociados
	<b>Spain</b>	Cases & Lacambra Abogados SLP
	<b>Switzerland</b>	Kellerhals Carrard
	<b>United Kingdom - England &amp; Wales</b>	McDermott Will & Emery
	<b>USA</b>	Holland & Knight LLP