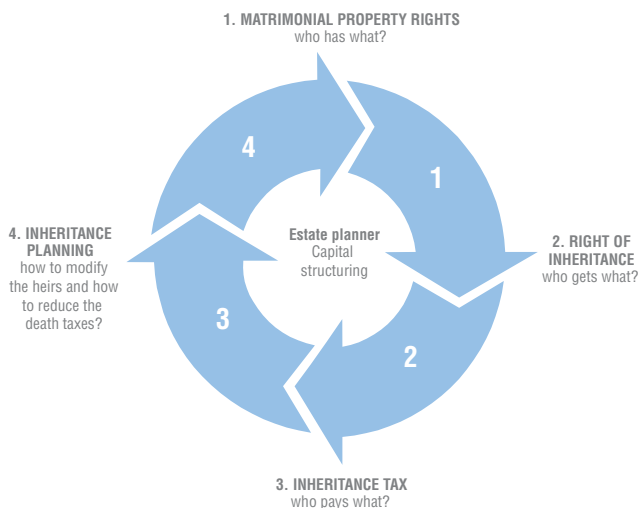


Inheritance planning: back to basics!

“Who will my money go to and how can I have control over this? Which inheritance taxes will be due, and how can we avoid them?” Sooner or later, any person who has accumulated some degree of wealth, through hard work and persistent saving, will be confronted with these questions.

The answers to these questions can only be formulated by examining the correlation between matrimonial property rights, law of inheritance and inheritance tax. It is therefore the aim of this brief contribution to provide a route map to the legal organization of personal wealth.



The basis of a good inheritance planning for spouses is the law governing matrimonial property rights, often formalized in a marriage settlement, which since the marriage date has probably been lying long forgotten in the safe. Matrimonial property rights determine the respective rights of ownership of both partners (who has what).

Consequently, matrimonial property rights have a decisive impact on the law of inheritance and thus on the inheritance (who inherits what) of the predeceased partner.

In the end, the sections of the law on inheritance tax determine the order of magnitude of the ultimate taxation (who pays what).

The advice of an estate planner towards his wealthy client will consist in a look-through of each of these subdomains, an inventory of his wealth, a detection and evaluation of his problems and needs, and where necessary a customizing of a wealth structure to suit the family.

1. Matrimonial property rights – who has what?

The (intending) spouses have free choice in the matrimonial property system and may opt to fix their choice in a marriage settlement. This settlement can determine which assets will be individual to each spouse or common to both of them, and can set out each spouse's freedom of movement and disposition.

If spouses do not opt to use this freedom of choice, the law will govern their matrimonial property system: the provided legal system is a system of separation of property with a community of acquisitions.

This system consists in two types of property: the own property of each spouse individually and the common property. Important to know however from the taxation and legal point of view: a bank account is deemed to be common even when it has been opened on behalf of one spouse only.

The spouses can add a particular clause to this legal system, generally defined as the clause 'surviving spouse takes all': in case of death of one spouse, all the common assets will belong in full property to the surviving spouse.

A system that is still seldom applied because of the far-reaching consequences is the joint estate. Spouses opting for this system have decided to introduce all of their present and future property into one common estate.

Apart from some specific exceptions, all professional earnings, all movable and immovable assets, all gifts and inheritances are common. Consequently the 'less diligent' partner can become rich, that's why this system is often called 'the contract of passion'.

In the event that protection of the assets of one's family for any future in-law is desired or protection of one's assets for potential creditors of its partner, it is recommended to choose for the system of pure separation of assets. This system only consists in two individual properties of each spouse. So the account/share portfolio in the name of one spouse is deemed to belong to this spouse only.

These three systems can additionally be personalized by way of tailor-made clauses regulating the devolution of the common and individual property.

This article will however be dedicated to the general outlines, we will be examining the tailor-made clauses in future publications.

2. Right of inheritance – who gets what?

When somebody passes away, the property of the deceased person continues to exist. The destination of his/her assets is then governed by the dispositions of the law of inheritance: they will determine whether and how the title to the assets of the deceased will transfer, in other words 'who inherits what'. In general, the closest heir inherits and this in equal portions if there is more than one heir. Within certain legal limits, any person is able to tinker with these statutory succession rules by means of wills, bequests, and marriage settlements.

Otherwise, the destination of the assets of a married person largely depends on the marriage settlement. First of all, it determines whether somebody's assets belonged to him personally or common with his partner: the answer to it is important to know the size of the inheritance (and therefore, the part that is legally accruing to the surviving spouse). When spouses are married under the system of separation of estate, the inheritance only comprises the individual wealth of the predeceased spouse. When however a common estate existed, this estate is to be divided into two equal halves among the spouses, save as otherwise agreed in the marriage settlement (for example through the clause of 'Surviving spouse takes all').

The more extensive the common estate, the more extensive the inheritance of the surviving spouse of course.

If the married couple has children, the inheritance law allocates the surviving spouse only with the right of usufruct over the deceased's assets, meaning his part in the common estate and/or his individual assets. If there are no descendants but collateral kin or ascendants, the surviving spouse has the right to the entire common estate in full title, and the usufruct to the individual estate. If the predeceased leaves no heirs as described above, the surviving spouse inherits the entire inheritance (common and individual estate) in full title. These rules will be commented in a more profound way in future publications.

3. Inheritance tax - who pays what?

Once the receiving heirs and the size of the inheritance are known, following a study of the notary or any other legal advisor, the next step is to estimate the due inheritance taxes. The taxes are indeed only due on the individual estate of the predeceased spouse, when he was married with separation of estate. In the event of a common estate, the taxable basis would be composed by the individual estate and 50% of the common estate.

In order to know the applicable rate, one should look at the rules of the (Belgian) Region where the deceased person had his last (fiscal) domicile within the last five years preceding his death (see tables on p. 17). The three Belgian Regions have different rates and separate ways to compute:

the only similarities between the Regions are that (i) the closer one is related to the deceased person, the lower the rates on his share will be and (ii) that the rates go upwards according to the remoteness of kinship and the amount of the inheritance.

4. Inheritance planning – how to modify the heirs and how to reduce the death taxes?

Inheritance planning has become a very popular notion, yet we would like to point out that inheritance planning is still far more than purely avoiding death taxes. A good inheritance planner, or better estate planner, advises his client with the benefit of legal-fiscal expertise, so that his wealthy client is able to realize his/her short- and long-term objectives in the most tax effective way.

The estate planner makes an inventory and an evaluation of the various components of the estate (movable, immovable, family company shares, real estate company, works of art, etc.) and has the challenge of finding the perfect balance between the family, financial, emotional, and fiscal wishes of the wealthy individual.

The actual legislation provides for numerous tax-effective techniques for reducing the inheritance burden. The best way to save money is to act during your life: transfer a part of your wealth to your partner or the subsequent generation(s) through gifts, so that your taxable assets by the time of your death are lowered...

Moreover, an experienced 'estate planner' is able to build in a number of 'airbags', which are sure to guarantee you a high degree of peace of mind. The ideal mix therefore can be reached by executing gifts to your chosen beneficiaries and retaining control and income on the given assets. Within the framework of this kind of inheritance planning (bequest, legacy, etcetera) or for any other form of disposition, it is of the utmost importance for the estate planner to fall back on the law governing matrimonial property rights, in order to know exactly the owner of the property involved. After all, only the owner is able to perform a valid bequest or any other kind of disposition whatsoever.

The different ways in Belgium to transfer wealth easily and inexpensively, in combination with the absence of wealth tax has turned the country into a fiscal magnet for wealthy foreigners. From that point of view, we may rest assured that Belgium is a tax paradise for residents who are less dependent on (heavily taxed) professional incomes, in other words persons of independent means.

The CapitalatWork Capital Structuring team is able to advise and assist you in these matters.

For more information: www.capitalatwork.com

Vincent Lambrecht

1. Flanders

Inheritance parts in €	Between spouses & cohabitants*	
0,01 – 50.000	3 %	
50.000 – 250.000	9 %	
> 250.000	27 %	
Inheritance parts in €	Between brothers – sisters**	Between all other persons***
0,01 – 75.000	30 %	45 %
75.000 – 125.000	55 %	55 %
> 125.000	65 %	65 %

2. Brussels

Inheritance parts in €	Between spouses & cohabitants**
0,01 – 50.000	3%
50.000 – 100.000	8%
100.000 – 175.000	9%
175.000 – 250.000	18%
250.000 – 500.000	24%
> 500.000	30%

Inheritance parts in €	Between brothers – sisters**
0,01 – 12.500	20%
12.500 – 25.000	25%
25.000 – 50.000	30%
50.000 – 100.000	40%
100.000 – 175.000	55%
175.000 – 250.000	60%
> 250.000	65%

Inheritance parts in €	Between uncles – aunts & cousins***
0,01 – 50.000	35%
50.000 – 100.000	50%
100.000 – 175.000	60%
> 175.000	70%

Inheritance parts in €	Between all other persons***
0,01 – 50.000	40%
50.000 – 75.000	55%
75.000 – 175.000	65%
> 175.000	80%

3. Wallonia

Inheritance parts in €	Between spouses – cohabitants**
0,01 – 12.500,00	3%
12.500,01 – 25.000,00	4%
25.000,01 – 50.000,00	5%
50.000,01 – 100.000,00	5%
100.000,01 – 150.000,00	10%
150.000,01 – 200.000,00	14%
200.000,01 – 250.000,00	18%
250.000,01 – 500.000,00	24%
> 500.000,00	30%

Inheritance parts in €	Between brothers – sisters**
0,01 – 12.500,00	20%
12.500,01 – 25.000,00	25%
25.000,01 – 75.000,00	35%
75.000,01 – 175.000,00	50%
> 175.000, 00	65%

Inheritance parts in €	Between uncles – aunts & cousins**
0,01 – 12.500,00	25%
12.500,01 – 25.000,00	30%
25.000,01 – 75.000,00	40%
75.000,01 – 175.000,00	55%
> 175.000, 00	70%

Inheritance parts in €	Between all others persons**
0,01 – 12.500,00	30%
12.500,01 – 25.000,00	35%
25.000,01 – 75.000,00	60%
75.000,01 – 175.000,00	80%
> 175.000, 00	90%

* applicable rate for each heir, on the net portion of movable and immovable goods.

** applicable rate on the net portion of each heir.

*** applicable rate on the total inheritance received by this group.



Vincent Lambrecht, *Legal Advisor - Estate Planner*

Master in Law
Fiscal Science
Personal Financial Planner (BVB)

Vincent Lambrecht began his career in 1999 with Bank Brussel Lambert NV as assistant office manager and account manager. Since 2002, he has been advising wealthy private individuals within the framework of their asset and estate planning in relation to their worldwide assets. Vincent Lambrecht is also known as co-founder and senior lecturer of the Asset and Inheritance planning course at Syntra West. Since June 2007 he joined us as Legal Advisor - Estate Planner.



Kaat Lauwers, *Legal Advisor - Estate Planner*

7 years Estate Planning experience
Master in Law - Master in Civil Notaryship

Kaat Lauwers started her career in 1999 in notary offices in Brussels and in Amsterdam. Between 2001 and 2002 she assisted an Estate Planning attorney-at-law in the US. Until 2005 Kaat Lauwers developed her Estate Planning knowledge in a specialized notary office in Antwerp. The same year, she joined CapitalatWork, where she gives legal advice to clients and assists them with the execution of their personal planning; in close co-operation with external advisors.