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**COMMISSION STAFF WORKING PAPER**

**IMPACT ASSESSMENT**

*Accompanying the document*

**COMMISSION RECOMMENDATION**

**regarding relief for double taxation of inheritances**

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## 1. INTRODUCTION AND BACKGROUND

More EU citizens than ever are moving abroad within the Internal Market to find work, marry or retire, leaving family members behind in their country of origin, or are purchasing property and investing in assets abroad. In these circumstances, the application of inheritance taxation to bequests made across borders may become an increasingly contentious issue.

Inheritance and estate taxes generate about 0,5 % of total tax revenues in the EU<sup>1</sup>. Even in countries where tax revenues are relatively important (like the United Kingdom or the United States) this share does not exceed one percent<sup>2</sup>. Tax literature lists several economic and social advantages for inheritance taxation. In terms of vertical equity, inheritance taxation is advantageous since, with high zero-rate thresholds, it can be targeted at the rich and used for redistribution. It also meets the efficiency criterion as estates always have an accidental component – the amount of wealth that is simply left over in the hands of the owner at the time of death<sup>3</sup>. Taxation of at least this part of wealth has no disincentive effect. In this sense, revenue from inheritance taxes could only be replaced by more distortive types of taxation. Social advantages include increasing the labour supply by reducing the value of inheritances to heirs of rich people and providing an incentive for charitable giving.

We have observed that some European countries have recently abolished inheritance taxation. This may be explained by certain drawbacks in such taxes. One is that the rich often avoid them by using tax planning. Therefore, the pre-crisis real estate boom which placed middle-class testators above the zero-rate threshold has meant that such testators have had to shoulder the burden of the tax as they typically had no access to tax planning.<sup>4</sup> Another disadvantage is the public perception that taxation on death is unfair in that it is taxing wealth that has already been taxed. This increases the political costs of inheritance and estate taxation. Furthermore, as countries have varying inheritance taxation rules, the interaction of these systems often creates difficulties in cross-border situations.

This initiative focuses precisely on these cross-border problems. While inheritance taxation even within a country can have significant impacts on heirs, particularly in the cases of transfers of business on the death of an owner of a small or medium sized enterprise (SME), this initiative does not call into question the existence of inheritance taxes. It looks only at the difficulties that EU citizens can face when they inherit across borders.

In the context of this Impact Assessment the term inheritance tax is used to mean taxes on both estates and beneficiaries on the occasion of the death of a person. Gifts are often made in order to anticipate later inheritances. Such gifts are in many Member States taxed under the same provisions as inheritances. This initiative would therefore cover cases where gifts are covered by the same tax provisions as inheritances.

Note also that income taxes come within the scope of this Impact Assessment only insofar as they apply to inheritances. In most Member States inheritances are taxed under separate rules to income.

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<sup>1</sup> Own calculations based on Taxes in Europe database

([http://ec.europa.eu/taxation\\_customs/taxation/gen\\_info/info\\_docs/tax\\_inventory/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/gen_info/info_docs/tax_inventory/index_en.htm)).

<sup>2</sup> 'The case for death duties', *The Economist*, 25 Oct. 2007, <https://www.economist.com/node/10024733>

<sup>3</sup> Blumkin, T. and E. Sadka, (2002), Estate taxation, CESifo Working Paper No. 558, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=283734](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=283734)

<sup>4</sup> Inheritance tax: It just won't die', *The Economist*, 26. Aug. 2004. <http://www.economist.com/node/3135923>

Where bilateral arrangements exist with other Member States on eliminating double taxation on inheritances, they are usually separate from the bilateral arrangements on income taxation<sup>5</sup>

There is currently no EU-wide legislation in the area of inheritances and EU Member States do not have comprehensive ways of relieving double taxation in this area. It appears necessary, therefore, to examine actual and potential problems in the application of inheritance taxes in cross-border situations and see how any such problems can be resolved.

Furthermore, the number of problems in the inheritance tax area is increasing. Before 2003, the Court of Justice of the European Union (Court) never dealt with the inheritance tax rules of EU Member States but since then national courts have referred ten cases to the Court. In addition the European Commission has itself received many complaints and queries in this area.

In a Communication of 2006 on "Coordinating Member States' direct tax systems in the Internal Market"<sup>6</sup>, the Commission suggested that appropriate co-ordination and co-operation between Member States can enable them to attain their tax policy goals and protect their tax bases,. The Commission said that it is considering initiatives in several areas, including inheritance tax, in this context.

The recent trends in inheritance taxation show that several Member States have abolished death taxes in recent years while others have lowered their effective taxation on inheritances and/or broadened the scope of tax reductions and exemptions. Another important feature is the relatively low share that inheritance tax represents of the overall tax revenue of all countries.<sup>7</sup> However, despite these general trends, cross-border problems for EU citizens in this area can, as will be shown below, be very significant and may increase over time.

## **2. PROCEDURAL ISSUES AND CONSULTATIONS OF INTERESTED PARTIES**

### **2.1. Organisation and timing**

The Commission Work Programme for 2011 includes the adoption of a non-legislative initiative to promote coordination of inheritance taxation between the EU Member States.

The Impact Assessment Steering Group was set up in April 2010 by the Taxation Services of the Commission with the participation of the following Commission departments and services: Economic and Financial Affairs, Enterprise, Justice, Internal Market and Services, Legal Service, Secretariat General. The Employment, Social Affairs and Equal Opportunities department was also invited and consulted. The Group has been continuously kept updated and consulted throughout the preparation of the impact assessment. It met three times, in April and May 2010 and January 2011.

This Impact Assessment was reviewed by the Impact Assessment Board of the European Commission (the Board) and has been significantly redrafted in order to take the recommendations of the Board into account. In particular, the changes requested concerned the following points: (i) an improved presentation of the scope and scale of the problem by more concisely describing the macroeconomic aspects, by elaborating examples to show the possible considerable effects of the problem for individuals and SMEs, and by further elaborating on how the functioning of the internal

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<sup>5</sup> See Annex 1 for a short comparison of income and capital taxation with inheritance taxation

<sup>6</sup> COM(2006) 823 of 19 December 2006

<sup>7</sup> Guglielmo Maisto, "Death as a taxable event and its international ramification", General report for the 2010 Rome Congress of the International Fiscal association, Cahiers de droit Fiscal international, Vol 95b, 2010. Copenhagen Economics: *Study on Inheritance Taxes in EU Member States and on Possible Mechanisms to Resolve Problems of Double Inheritance Taxation in the EU*, August 2010

market might be affected; (ii) a better explanation of the possible impacts that any change in the current regime could entail for individual cases by providing more concrete indications in the examples as regards the individual tax burden; and (iii) a better explanation of why the effects on Member States' tax revenues are difficult to determine with complete certainty, and an indication of the Member States which could be more affected than others by changes in the current regime.

## 2.2. Consultation and expertise sought

The Commission has been consulting widely and has received input from various sources on this impact assessment work.

In 2010 the Commission launched two public consultations on the internet. One concerned actual cases of double taxation<sup>8</sup>, including of inheritances. The other, which dealt exclusively with cross-border inheritance tax issues, was designed to obtain views from all interested stakeholders (individual citizens, academic representatives, tax practitioners and organisations) on the extent of cross-border inheritance tax obstacles within the EU and ideas on possible solutions<sup>9</sup>.

The latter consultation ran from 25 June to 22 September 2010, but at the request of several stakeholders, the deadline was later extended to 22 October 2010. The Commission also accepted a number of contributions after the deadline. There were in total 232 replies to the consultation from a broad range of stakeholders, including 205 individual citizens (23 replied directly while 183 responses were submitted through a newspaper with one overlap in that one of those contributions was also sent directly to the Commission); 13 academics and tax practitioners individually or through their associations; 3 non-registered and 9 registered organisations; and 2 public authorities.

Stakeholders reported on possible cases of discrimination, highlighting discrepancies between Member States' inheritance tax systems and shortcomings of existing relief mechanisms to eliminate double taxation and suggested solutions. The impact assessment work also took on board the replies on inheritance tax sent in response to the more general public consultation on double taxation problems. There were two such replies. In addition, some stakeholders expressed their views in reply to both consultations. The main feedback on inheritance taxes received from the two public consultations is summarised in an annex to the present report.<sup>10</sup> The Commission also commissioned and published, as a reference document to the inheritance tax consultation, a study by external consultants on "inheritance taxes in EU Member States and possible mechanisms to resolve problems of double inheritance taxation in the EU"<sup>11</sup> (hereafter referred to as the Copenhagen Economics Study). It explored the nature of cross-border inheritance tax problems, i.e. discrimination and double taxation; the economic significance of the problems; and possible policy solutions to the double taxation problems identified.

In addition, in early September 2010, inheritance taxation was discussed in-depth at the 64th Annual Congress of International Fiscal Association (IFA). The Commission contributed a report on the relevant case law of the court. The General Report (hereafter referred to as the IFA General Report) on this subject concluded that further coordination at EU level is necessary<sup>12</sup>.

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<sup>8</sup> This consultation ran from 24 April to 30 June 2010. For further details see at [http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2010\\_04\\_doubletax\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_04_doubletax_en.htm)  
<sup>9</sup> [http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2010\\_06\\_inheritance\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_06_inheritance_en.htm)

<sup>10</sup> See Annex 2

<sup>11</sup> Copenhagen Economics: *Study on Inheritance Taxes in EU Member States and on Possible Mechanisms to Resolve Problems of Double Inheritance Taxation in the EU*, August 2010. It is also available at the website address mentioned under 3.

<sup>12</sup> Guglielmo Maisto, "Death as a taxable event and its international ramification", General report for the 2010 Rome Congress of the International Fiscal association, Cahiers de droit Fiscal international, Vol 95b, 2010.

In the margins of the IFA conference, the Commission held a meeting with academics and practitioners on the relevant issues and possible solutions. Experts expressed the view that there may indeed be many cross-border inheritance tax problems that warrant the attention of the Commission and proposed some possible solutions. Another expert meeting was held in December 2010 to discuss both any possible impact on an EU-wide inheritance taxation initiative of the Commission's 2009 proposal for a Regulation on cross-border successions<sup>13</sup> and the possible technical features of an inheritance taxation initiative.

In November 2010 the Commission presented the main findings of the Copenhagen Economics Study to Member States' tax officials at a meeting of the Commissions' Working Party IV on Direct Taxation. Member States welcomed the Commission's initiative to explore the problems but considered any EU-wide binding solution disproportionate. However, they acknowledged that existing unilateral double taxation relief measures could in some cases be improved.

The Commission services have taken into account all of above-mentioned observations in the present impact assessment.

### 3. THE PROBLEMS TO BE ADDRESSED – THE “WHY”

#### 3.1. Identification of the problems that may require action

The Commission has established that Member States' inheritance tax rules as applied in cross-border situations may hinder EU citizens from benefiting fully from their right to move and operate freely across borders within the Internal Market and create difficulties for the transfer of small businesses on the death of owners.

The Commission's research so far indicates that citizens and businesses can face two types of inheritance tax problems in cross-border situations. First, they may be exposed to **discriminatory application of a Member State's inheritance tax rules** concerning the residence of the deceased or the beneficiary, or the location of the assets. Briefly, the term discrimination as used in the present document refers to a situation in which a Member State treats cross-border situations less favourably than purely internal situations, without this difference in treatment being justified by objective reasons.

Second, there is the **risk of unrelieved double or even multiple taxation of a single inheritance by several Member States**. The absence of appropriate ways of relieving double taxation of inheritances may lead to overall levels of taxation that are appreciably higher than those applicable in situations that are purely internal to one or the other Member State involved.

An increased tax burden, as a consequence of discrimination or unrelieved double taxation, may negatively affect the value of an inheritance and may cause great difficulties for citizens and businesses who take advantage of the right to move and operate freely across borders within the Internal Market.

Experts whom the Commission has consulted suggest that wealthier EU citizens may take account of the risk of double taxation in planning their international successions but the same may not be true of less wealthy individuals who may only realise the extent of the problems when they are actually facing cross-border inheritance tax bills.

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<sup>13</sup> Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, COM(2009)154 fin. of 14 October 2009.

As regards the problems related to transfer of business in the case of the death of an SME owner, the Copenhagen Economics Study noted, and some stakeholders (in particular tax practitioners and associations) in their responses to the inheritance tax consultation agreed, that both discrimination and double taxation can create barriers to business continuity.

Member States' tax systems must respect the fundamental freedoms, notably the rules relating to the free movement of workers, services and capital and the freedom of establishment (Articles 45, 49, 56 and 63 Treaty on the Functioning of the European Union - TFEU), as well as the general principle of non-discrimination on grounds of nationality (Art. 18 TFEU). Nevertheless, these rules do not provide protection against unrelieved double (or multiple) taxation as such<sup>14</sup>, although this phenomenon disadvantages cross-border situations compared to purely national situations. In this regard, it may also be observed that the accumulation of taxes imposed by more than one State might lead to results that, in some Member States at least, would be considered as confiscatory and thus unlawful, had these results been brought about by the provisions of that State alone.<sup>15</sup>

### 3.2. Causes and drivers

The problems arise from Member States' tax laws or private laws on inheritances, or a combination of both.

As regards the discrimination problem, when individuals inherit property or other assets across borders, they may be subject to inheritance tax rules which conflict with the EU non-discrimination principle.

The Court ruled in eight out of ten cases examined since 2003<sup>16</sup> that the inheritance tax laws at issue were incompatible with the EU treaty rules because the laws provided for less favourable rules where either the assets or the deceased person/donor or indeed the beneficiaries were located outside the Member State applying the inheritance taxation. These Court decisions have brought a certain amount of clarity and certainty to this matter. However, it is also true that Court actions may involve high costs for both taxpayers and administrations. Moreover, in many instances, it may not be entirely clear what consequences a ruling involving legislation of one Member State should have on legislation of another Member State. The current legal approach also tends to be asymmetrical in its effects in that, even where Member States are obliged as a result of a ruling to introduce new tax rules, they often do so in vastly differing ways.

With regard to the double or even multiple taxation problem, this can arise because of the significant differences in international private laws, and in the private and tax laws of Member States, in the field of inheritances in addition to the widely varying rules in Member States concerning how an inheritance is taxed.

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<sup>14</sup> Case C-67/08, *Block*. [2009] ECR I-883.

<sup>15</sup> For instance in Belgium, the Wallon tax rate of 90% for non-related persons, on inherited parts exceeding a certain threshold, has been declared unconstitutional (Decision 107/2005). The German Constitutional Court has ruled that inheritance tax must not lead to a situation in which, from the perspective of an owner whose thinking is informed by economic considerations, the inheritance appears economically meaningless: German Constitutional Court, order of 22 June 1995, 2 BvR 552/91, BVerfGE 1993, pp. 165 et seq.

<sup>16</sup> Case C-364/01 *Barbier* was the first case, followed by case C-513/03 *van Hilten-van der Heijden*, case C-464/05 *Geurts*, case C-256/06 *Jager*, case C-11/07 *Eckelkamp*, case C-43/07 *Arens-Sikken*, case C-67/08 *Block*, case C-510/08 *Mattner*, case C-25/10 *Missionswerk Werner Heukelbach* and case C-132/10 *Halley* as the most recent example.



First, there may be a conflict between Member States' rules concerning which inheritance law is applicable to a succession which involves cross-border elements<sup>17</sup>.

Second, Member States' national private laws differ considerably. There are common law and civil law systems and there are considerable variations even between those Member States that apply one or other of these two systems. A basic difference in concept between the civil law and common law systems concerns the transfer of assets. The majority of civil law countries follow the principle of direct transmission, whereby the inheritance is directly transferred from the deceased person to the heirs who are then responsible for paying the inheritance tax. Meanwhile, common law countries generally require the assets first to be transferred to a personal representative who deals with the administration of the estate including the payment of all taxes due and then transfers the net assets to the heirs. There is the possibility that tax paid by the personal representative may not be credited against inheritance tax due by another person in another country. Some contributors noted also the difficulties concerning the civil law countries' treatment of trusts, which are characteristic features of the common law concept of inheritances.

In addition to the differences in the relevant international private law and substantive inheritance law rules, Member States' domestic inheritance tax systems also differ significantly, as will be seen below. Eighteen EU Member States in total levy taxes upon the death of a person while nine (Austria, Cyprus, Estonia, Latvia, Malta, Portugal, Romania, Slovakia and Sweden) have neither an estate tax nor an inheritance tax, although some tax inheritances under other tax laws. All of these laws may clearly have an impact on cross-border mobility of people and assets within the EU.<sup>18</sup>

### **3.3. The scope and scale of the problem**

It appears from the recent increase in court cases and from the complaints and enquiries that the Commission receives, that cross-border inheritance tax issues are becoming a matter of increasing concern to EU citizens<sup>19</sup>. This conclusion can also be supported by the replies to the public consultations mentioned above

#### *3.3.1. Discrimination*

In recent years, the problems of tax discrimination related to cross-border inheritances have become increasingly evident. The Commission has commenced infringement proceedings against several Member States over aspects of their laws. Furthermore, the Court decided in eight out of ten cases examined since 2003 that the national inheritance tax and gift tax rules of the Member States in question breached EU rules on the free movement of capital (Article 56 EC Treaty, now Article 63 of the Treaty on the Functioning of the European Union – TFEU) or the freedom of establishment (Article 43 EC Treaty, now Article 49 TFEU).

The principle of non-discrimination is a central element of the Treaty freedoms. According to the well-established case-law of the Court, discrimination can result from treating differently situations which are comparable, or treating in the same way situations which are different. In order for a national scheme providing for a difference in treatment to be compatible with the Treaty freedoms,

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<sup>17</sup> The Commission has proposed a Regulation which, inter alia, would ensure that a single set of rules would apply to an inheritance, irrespective of where the different assets are located, without aiming to harmonise the national substantive rules on successions. More on the link between the draft Regulation and the present inheritance tax initiative could be found under 4.2.

<sup>18</sup> For further details see Annex 4 a survey of these national rules on taxes levied upon death, which Copenhagen Economics compiled as an attachment to its Study.

<sup>19</sup> See Annex 5 on "Approximate type and number of inheritance tax questions 2006 -2009" received by the Your Europe Advice service.

it must concern situations which are not objectively comparable or be justified by an overriding reason in the general interest. However, these provisions may not in any event be more restrictive than is necessary in order to achieve the aim pursued; they must, in other words, be consistent with the principle of proportionality.

Moreover, according to the case-law of the Court, the rules regarding equality of treatment forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead to the same result.

The Court, in applying these principles to Member States' inheritance tax provisions, has stated that such provisions may be considered in breach of the free movement of capital when:

- they provide for different rules for the valuation of assets that are part of the inheritance, depending on whether these assets are located within the taxing Member State or abroad;
- they restrict the deductibility of debts/liabilities related to assets that are part of the inheritance of non-residents;
- they provide for a higher rate or less favourable treatment in general with respect to non-residents;
- they provide for a higher rate or less favourable treatment in general with regard to inherited assets located abroad or otherwise connected with the territories of the other States, for example for inheritances of family undertakings which employ workers in another Member State, compared to family undertakings which employ workers in the same Member State.

#### **Example 1 – the *Jager* case, C - 256/06**

Mr Jager, a French resident, inherited from his mother (a German resident at the time of her death) assets situated in Germany valued at DEM119 015 and land in France used for agriculture and forestry valued at FRF 5 444 666 (DEM 1 618 152), making up together a net estate of DEM 1 737 167. The German inheritance tax rules imposed taxation on the entire estate of a person who died while domiciled in Germany. Assets situated outside Germany were also subject to German tax, albeit with a credit granted for foreign inheritance tax payable on those foreign assets. The assets located in France were valued for German tax purposes at their fair market value, whereas a special valuation procedure existed for identical German assets, the result of which meant a tax value of only 10% of their fair market value. In the present case such a 10% valuation applied to the French agriculture and forestry land would have given a taxable base of approximately DEM 160 000. After deduction of a personal tax free amount of DEM 400 000 no German tax would have been applicable to the entire inheritance. The Court ruled that the German valuation provisions were discriminatory, stating that it is illegal for a Member State to have a favourable mechanism for the calculation for inheritance tax purposes of the value of domestic immovable property, while setting the value of property situated abroad at the normal market value.

#### **Example 2 – the *Eckelkamp* case, C-11/07**

Ms Eckelkamp died in Germany. She had signed a document acknowledging a debt which she owed to one of the heirs and granted him a mandate to encumber an immovable property situated in Belgium valued at EUR 200 000 with a mortgage as a security for repayment of that debt in the amount of EUR 220 000, plus EUR 11 000 in interest. Under Belgian tax legislation, different tax regimes applied for inheritance, depending on where the testator resided at the time of his death. Inheritance tax was due on the value of the whole gathered estate if, at the time of his death, the deceased was resident in Belgium. In contrast, in the case of a person who was not resident in Belgium at the time of his death, transfer tax was charged on the value of immovable property situated in Belgium and pertaining to the gathered estate. In the first case, debts and liabilities pertaining to the inheritance were taken into account for the assessment of the inheritance tax. On

the contrary, no debt and liability could be deducted in cases where transfer tax was due. As Ms Eckelkamp was not residing in Belgium at the time of her death, the Belgian tax authority refused to take any debts into account for the purpose of assessing the transfer tax due. The transfer duties payable were estimated at EUR 110 000. Had the Belgian law allowed the deduction of the debt over the estate, the value of the estate for inheritance tax purposes would be nil. The Court decided against these Belgian rules, stating that it is illegal for a Member State not to allow mortgage-related charges to be deducted from the value of property if at the time of death the person whose estate was being administered was residing in another Member State.

### **Example 3 – the *Maria Geurts* case, C-464/05**

Mr. Vogten was a Belgian resident living in Belgium at the time of his death. His heirs, who were also resident in Belgium, inherited shares in two Dutch companies. After deduction of liabilities, the taxable estate amounted to EUR 3 598 717.33. On this estate they paid tax of EUR 839 485.60. The Belgian tax law granted an exemption from inheritance taxes for shares in a family undertaking but only on condition that the undertakings employed at least five full-time workers in the Flemish Region in the three years preceding the death of the deceased. The Dutch companies met the criteria of family business employing nine and eighteen workers, who, however, were not residents of the Flemish Region. If they were, the exemption would have applied. The Court established that Member States cannot deny an exemption to inheritances of family undertakings which employ at least five workers in another Member States when it would allow such an exemption from inheritance tax if the five workers had been employed in the same Member State.

The examples described above show that the tax discrimination of cross-border inheritances can lead to a considerably higher overall level of taxation. This may give rise to significant social and economic impacts if the individuals concerned, who are unaware of the fact that the taxation is discriminatory and therefore illegal, even have to take out a loan or sell the inherited property in order to pay the tax bills. Some Member States provide exemptions or special relief for transfers of family owned and closely held businesses upon death.<sup>20</sup> Any such exemptions must be applied in a non-discriminatory way. Indications that some of these schemes and other provisions of Member States' inheritance tax rules could contain possible discriminatory features can be found in the IFA General Report and in the various national Branch Reports discussed at the above-mentioned IFA Congress; in the Copenhagen Economics Study; and in replies to the inheritance tax public consultation. The responses to the consultation mostly concerned the tax laws of Spain, the United Kingdom, Belgium and Germany. The Copenhagen Economics Study highlights that while Member States have made progress in reducing the discriminatory elements in their national tax provisions, a large number of Member States still have potential discriminatory rules with respect to cross-border inheritance taxation. In this respect, the competent Commission services are currently examining the identified problems with a view to asking Member States to amend the relevant laws if they do indeed involve a conflict with the Treaty on the Functioning of the EU.

#### *3.3.2. Unrelieved double taxation*

### **Enormous variety of rules in Member States' inheritance tax systems**

*Different taxable person/event* Some Member States apply inheritance tax on the heirs, so that the taxable event is the enrichment of the beneficiary, while other Member States apply estate tax on basis of the estate, in which case the taxable event is the transfer of property. (Hereafter, the term "inheritance tax" refers to both types of taxes). Therefore it is possible that for the same inheritance

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<sup>20</sup> See Table 2.7 on "Main tax exemptions and reliefs granted for family owned and closely held businesses upon death" on page 26 of the Copenhagen Economics' Study

different persons can be taxed in different Member States. Tax complications may also arise if a civil law Member State considers the trust or a personal representative as a different taxable person to the beneficiary or regards the testator as the owner of the trust property and charges tax on the trust on the death of the testator.

**Table 1: Inheritance and estate taxes in the 27 Member States**

	No. of Member States	Member States
<b>Inheritance tax</b>	16	Bulgaria, Czech Republic, Denmark*, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Spain.
<b>Estate tax</b>	3	Belgium, Denmark*, United Kingdom**
<b>No inheritance or estate tax</b>	9	Austria, Cyprus, Estonia, Latvia, Malta, Portugal, Romania, Slovakia, Sweden

\* Denmark is double counted because the Danish tax is effectively both an estate and an inheritance tax.

\*\* The United Kingdom tax on inheritance is called an 'inheritance tax', but is de facto an estate tax.

Source: IFA General Report (2010), AGN International (2010), Global Property Guide, Copenhagen Economics

*Different personal nexus rules* In the case of both taxes on estates and taxes on beneficiaries, tax liability is determined on the basis of a connecting factor or "personal nexus", which can be the residence, domicile or nationality of the deceased, or the residence, domicile or nationality of the beneficiary. Some countries apply more than one of these factors. This may mean that, for instance, an individual can be "domiciled" for inheritance tax law purposes in one country and at the same time be "habitually resident" under the inheritance tax law of another and even be a national of a third country under its inheritance tax law. Some Member States even apply taxation on the basis of the personal nexus of either a deceased or an heir.

**Table 2: Principles for determining the personal nexus of the deceased or heir(s)**

Principle	Member States using principle
<b>Residence principle</b>	Belgium, Czech Republic,* Denmark, Finland, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Spain.
<b>Domicile principle</b>	France, Germany, Greece, United Kingdom.
<b>Nationality principle</b>	Bulgaria, Czech Republic, Greece, Hungary, the Netherlands, Poland.

\* Czech Republic refers to 'permanent address'. Details on the applied personal nexus rules are contained in Annex 3 Only Member States with an estate tax and/or inheritance tax are included in this table.

Source: Copenhagen Economics based on Global Property Guide and IFA General Report (2010).

*Location rules* In addition to taxing on the basis of personal nexus, most Member States apply inheritance tax to assets located in their jurisdictions. Tax can be applied on the basis of the location of the inherited property even if neither the deceased nor the beneficiary has a nexus with the country of location. Furthermore, the types of assets concerned by the "situs" taxation rules may vary from country to country.

**Table 3: Scope of location rules in the domestic tax rules on inheritance**

Scope of taxations	Member States
<b>All assets</b>	Czech Republic, France, Greece, Ireland, Italy, Lithuania, Slovenia, Spain, United Kingdom.
<b>Real estate (immovable assets) only</b>	Belgium, Bulgaria, Denmark*, Germany**, Finland, Hungary, Luxembourg, Poland.
<b>No taxation based only on the location of the inherited property</b>	The Netherlands

*Only Member States operating an estate tax and/or inheritance tax are included in this table.*

*\* The Danish location rule also applies to 'movable assets pertaining to permanent establishments'.*

*\*\*The German source rule does not apply to bank account in German banks.*

*Source: Copenhagen Economics based on IFA General Report (2010) and Global Property Guide.*

*Diverging definitions of terms* Furthermore definitions and meanings of the "personal nexus" and "situs" terms can differ from jurisdiction to jurisdiction, so that two countries using the same nexus (e.g. both use domicile) may both claim tax on the same estate. In addition to these divergences, stakeholders – in particular tax practitioners and associations - also highlight difficulties with determining the tax residence of the deceased, such as possible complications related to temporary residence. In addition, several Member States apply anti-abuse measures which provide for an extended concept of residence or domicile.

*Interaction with gift taxes* Another measure to combat tax avoidance (namely to avoid the circumvention of inheritance tax upon death by gifts *inter vivos*) is to levy gift taxes in addition to inheritance taxation. For this purpose, many Member States aggregate gifts made by the same donor to the same recipient during a certain period of time and tax the donor or the recipient on that basis. Such aggregation periods vary from Member State to Member State. Issues also arise with creditability of previously paid gift taxes against inheritance taxes. In general, the problems in the area of gift taxes are similar to those in the field of inheritance taxes; therefore the initiative that is the subject of this impact assessment could be applied to gift taxes as well, in particular if Member States' domestic provisions tax gifts and inheritances under the same provisions.

*High tax levels in certain cases* Double taxation problems may also be exacerbated by the fact that some Member States apply high inheritance tax rates for certain beneficiaries and the tax-free base amounts also vary to a considerable extent. The rates may be higher, reaching as much as 80%, over low thresholds in cases where the deceased and the beneficiary are not related. Many stakeholders, mostly individual citizens, point to such inordinately high rates and lack of exemptions for bequests to persons other than immediate family. The high effective tax rates in Member States are illustrated in Table 4 below. The issue is not the differences between Member States in effective tax rates but the fact that two Member States apply taxation at sometimes high levels without double taxation relief.

**Table 4: Effective tax rates applicable in selected Member States in 2010/2011 (depending on availability)**

Country	Remarks	The closest family (spouse and/or child)		Non relatives		Other remarks
		€ 50 000	€ 250 000	€ 50 000	€ 250 000	
Austria	No inheritance tax					Tax on land transfers and contribution to private foundations
Cyprus						Tax on land transfers
Estonia						Various fees
Latvia						
Malta						Transfer duty
Romania						Real estate tax
Slovakia						
Sweden						
Belgium		(Flanders)	3.00%	7.80%	41.25%	63.25%
	(Walloon)	3.50%	9.70%	46.25%	71.25%	
	(Brussels)	2.10%	10.12%	40.0%	63.50%	
Bulgaria		0%	0%	0%	between 1.61% and 3.23%	Rates set by municipal authorities
Czech Republic		0%	0%	3.68%	5.52%	
Denmark	spouse	0%	0%	28.29%	34.66%	
	child	4.38%	13.75%			
Finland	spouse	0%	8.16%	13.40%	28.04%	
	child	5%	11.28%			
France	spouse	0%	0%	58.09%	59.62%	
	child		6.54%			
Germany		0%	0%	3.60%	27.60%	
Greece	spouse	0%	0%	17.60%	26.64%	
	child	0%	0.40%			
Hungary	spouse	11.00%	16.87%	21.00%	32.50%	
	child	0%	0%			
Ireland		0%	0%	14.65%	22.93%	
Italy		0%	0%	8.00%	8.00%	
Lithuania		0%	0%	4.71%	9.88%	
Luxembourg		0%	0%	6.00%	18.00%	
Netherlands	spouse	0%	0%	28.79%	34.93%	
	child	6.18%	13.72%			
Poland		0%	0%	19.06%	19.81%	
Portugal		0%	0%	10.00%	10.00%	Stamp duty upon death. Spouses and children are exempt.
Slovenia		0%	0%	15.20%	20.68%	
Spain		0%	0%	6.16%	15.55%	Assuming the pre-existing net assets of the heir do not exceed € 402 678.11
UK		0%	0%	0%	0%	A nil rate band applies up to GBP 325 000. Above this, the rate is 40%

**Note:** For calculation purposes only lump sum allowances or general exemptions are included; personal tax deductions, such as those dependent on age or other special features are not accounted for. Effective tax rates may vary due to volatility of currency exchange rates.

*Source:* Calculations based on data in *IBFD Tax Surveys/Country Analyses* (© IBFD, 2011, [www.ibfd.org](http://www.ibfd.org)) and *Taxes in Europe database* ([http://ec.europa.eu/taxation\\_customs/taxinv/welcome.do](http://ec.europa.eu/taxation_customs/taxinv/welcome.do))

The above-mentioned great variations in the basis for taxation (further complicated by the different definitions) can give rise to double taxation. The conflicts can be categorised as follows:

**Table 5: Types of conflicts that may result in double taxation**

Type of conflict	Description of conflict
<b>Personal nexus - Situs</b>	The same bequest is taxed twice, first by the Member State where it is located under its 'situs rule', and then in the Member State where deceased or the beneficiary (or both) have their personal nexus. A frequently occurring example would be where a testator had a home both in the Member State in which he lived and died and in another Member State. Both Member States could tax the holiday home, one on the basis of personal nexus and the other on the basis of situs.
<b>Personal nexus-personal nexus</b>	Differences in the personal nexus rules or in taxation of the estate v taxation of the beneficiary mean that the same deceased or heir is taxable in two Member States or the deceased is taxed in one country and the beneficiary is taxed in the other.
<b>Situs-Situs</b>	Diverging rules for determining the location of an asset mean that the same asset is taxed by more than one Member State. Problem most likely for intangible assets such as shares.

*Source:* based on information in Rohatgi (2005) and Copenhagen Economics

### **Limitations to existing tools to eliminate the double taxation of inheritances**

At present, in the absence of appropriate tax relief mechanisms there is no comprehensive solution to the problem of double taxation.

### **Limitations of existing unilateral mechanisms to relieve double taxation**

The IFA General Report, the Copenhagen Economics Study and a broad range of respondents to the public consultations all claim that Member States generally have inadequate domestic mechanisms to relieve cross-border double taxation of inheritances. These domestic provisions are often minimal, leaving much to administrative interpretation. Furthermore, as the IFA General Report remarks, they are often modelled on relief provisions for income tax purposes and therefore they may not take into full account the specific issues regarding inheritance taxation; several sets of circumstances that can give rise to double taxation of inheritances are not common in the area of income taxation.<sup>21</sup> In general, these unilateral relief provisions are targeted at the "personal nexus – situs" conflict and the two other types of conflicts can remain unaddressed.

<sup>21</sup> See Annex 1 for more on the differences and similarities between income and inheritance taxation.

**Table 6: Unilateral relief for international double taxation on inheritances provided by Member States applying inheritance taxation**

Method	All foreign located assets*	Subset of foreign located assets**
<b>Credit method</b> Crediting inheritance taxes paid in another Member States against the domestic inheritance tax due.	Finland, France, Germany*, Ireland, Italy, Lithuania, Spain, UK, the Czech Republic***	Belgium (real estate), Denmark (real estate and business assets attributable to a permanent establishment), Greece (movable assets), the Netherlands (real estate and business assets attributable to a permanent establishment)
<b>Exemption method</b> Exemption from the tax base of the assets located in another Member State	Hungary, Slovenia	Bulgaria (real estate), Luxembourg (movable property)
<b>No unilateral relief</b>	Poland****	

\* *The definitions of foreign located assets differ. This has been highlighted with regard to Germany as a result of the Block case – see below. Unilateral relief is not normally given in cases where the assets in question would not be taxed under the location rules of the Member State concerned, if they were situated in that Member State.*

\*\* *The brackets indicate which assets are covered by unilateral relief*

\*\*\* *The Czech Republic does not have a formal unilateral relief, but the domestic rules provide the possibility to deduct foreign taxes in the domestic tax.*

\*\*\*\* *The Polish Minister of Finance has a general competence to decide to refrain from collecting taxes for a specified group of taxpayers.*

*Source: Rohatgi (2005), Copenhagen Economics, IFA General Report*

As highlighted above, there are many differences between Member States' inheritance laws and tax systems. These mismatches can potentially cause double taxation which cannot be addressed comprehensively by existing unilateral mechanisms. The following problems arise in particular:

*Taxes and persons covered* First, these unilateral mechanisms may have a limited scope as regards the taxes and persons covered. Furthermore, it may not always be possible to credit previously paid gift taxes on the same assets or foreign local inheritance taxes, i.e. taxes applied by political subdivisions at local rather than national level, or income taxes or stamp duties on inheritances. In this respect, many contributors to the inheritance tax consultation emphasised the need for a pragmatic, rather than formalistic, approach regarding the characterisation of the foreign tax to be credited.

*Assets covered* In addition, relief may only be granted for foreign taxes paid on certain foreign property, such as foreign immovable property. Furthermore, the relief may exclude foreign tax on local assets i.e. assets located within the territory of the Member State granting relief. Some contributors mentioned further limitations, deriving from the diverging definitions between the different tax systems on what qualifies as immovable or movable property. Conflicting definitions of creditable foreign located assets, in particular in relation to bank assets, were identified as a serious concern for stakeholders, especially for individual citizens and tax practitioners. In this respect a great deal of reference was made to the Block case (Case C 67/08), where bank assets held abroad did not qualify as foreign located assets eligible for unilateral relief.

*Calculation rules* The significant differences between Member States' rules for calculating the value of assets may also lead to divergences in the net amount to be taxed. Incomplete tax credit due to different valuation methods or the different allocation of debts was widely reported as a serious shortcoming. So was the fact that Member States generally limit foreign tax relief to the amount of domestic tax due on those assets. Another constraint can be limiting the amount of the foreign creditable tax to the tax paid abroad by the heir as opposed to the foreign taxes levied on the entire estate.



*Timing issues* Member States also vary considerably in their rules deeming when assets are transferred and taxes are due. This means that payment of the foreign tax may occur after the final domestic tax is levied and not all countries permit such later payment to be credited.

*Conditional relief* Another issue which stakeholders (in particular associations of tax practitioners ) mentioned was the fact that unilateral relief was subjected to reciprocity or to the discretion of the competent authority.

### **Limitations of bilateral tax conventions**

Member States have few bilateral conventions in this area and they do not seem to be negotiating more in recent years. In fact, there are only 33 bilateral inheritance tax treaties between Member States out of a possible total of 351<sup>22</sup>. Furthermore, even these few conventions are not always efficient in eliminating double taxation. Stakeholders (in particular associations of tax practitioners) highlighted the limited availability of treaty relief for foreign located property and varying rules regarding allocation of taxing rights in those tax treaties. Another problem is that the treaties do not normally cater for situations where more than two Member States may have taxing rights over an inheritance (e.g. in cases where immovable property is located in one Member State, while the deceased was previously resident in a second Member State and the heir is resident in a third). These situations can occur more frequently in this area compared to income taxation.

Many bilateral conventions are based on the OECD Model Tax Convention on estates, inheritances and gifts, which dates from 1982. The OECD Model allocates taxing rights on the basis of giving priority to the State of location in the case of immovable property and movable property of permanent establishments or fixed bases. Otherwise the property should be taxed in the Contracting State where the deceased or the donor was domiciled at the relevant moment. The Model also provides for tie-breaker rules in cases where this person is regarded as domiciled in both Contracting States. The OECD Model contains both the exemption and the credit methods, leaving it to the Contracting States to decide which method they apply to eliminate double taxation.

The IFA General Report notes several shortcomings in the OECD Model, including the following:

- The taxes covered are taxes imposed by reason of death and not on occasion of death. That means that registration taxes levied on the transfer of real estate are outside the scope as are capital gains and income taxes applied on bequests. Therefore no foreign tax credit can be provided in those cases.
- In regard to the fiscal domicile rules, the Model prevents the use of any extended domicile provision, but provides no common solution for problems related to deaths during periods of temporary residence.
- Credit for foreign taxes levied on a different taxable person (e.g. credit against inheritance tax levied on a beneficiary in respect of estate tax levied on the deceased in another country) is left for bilateral negotiations
- Discrimination is not fully eliminated, as domestic provisions that, inter alia, contain more restrictive rules for the valuation of foreign located assets or the deduction of foreign debts, compared to domestic located assets and debts, are not expressly prohibited.

Experts at the IFA Conference suggested that the main reasons why Member States are not negotiating more inheritance tax treaties may include the potential complexity of such treaties as a result of the different structures of countries' inheritance tax systems, the priority given by tax administrations to more recurrently applied taxes such as income taxes, the limited magnitude of

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<sup>22</sup> 27 X 26/2 double taxation treaties. Even those countries which do not have inheritance taxes would need to have arrangements with other countries to allow relief for other types of taxes levied on inheritances.

foreign investment made directly by individuals, and their assumption that the existing unilateral reliefs provide for comprehensive solutions. Above all, the reality is that most Member States apply taxation to heirs rather than to the deceased's estate so the Model may no longer be very relevant.

### 3.3.3. *Quantification of the problem*

The following section presents an estimate for total taxation of cross-border inheritances in the EU. Discrimination is a violation of fundamental freedoms, and as such, is a problem irrespective of the material harm it causes. For the double taxation issue, it is important to note that, due to the relief provisions in place, not all inheritances are twice taxed or are completely taxed twice. Nevertheless the total amount of taxes on cross-border inheritances is indicative of the scale of the double taxation and discrimination problems.

**Table 7**

<b>Inheritance tax revenue / death, 2008 (EUR)</b>	
Belgium	17975
Bulgaria	0
Czech Republic	0
Denmark	11544
Germany	5543
Estonia	0
Ireland	11972
Greece	1352
Spain	7552
France	14290
Italy	573
Cyprus*	1174
Latvia	0
Lithuania	0
Luxembourg	14916
Hungary**	255
Malta	0
Netherlands	13283
Austria	0
Poland	0
Portugal	0
Romania	0
Slovenia	0
Slovakia	0
Finland	13130
Sweden	0
UK	6775
<b>Total EU</b>	<b>5193</b>

*Source: Taxes in Europe, Eurostat, own calculations*

*\*Even though Cyprus does not apply a specific inheritance tax, it has provided data indicating how much revenue it derives from taxing estates.*

*\*\*See [www.origo.hu](http://www.origo.hu) for Hungary*

Unfortunately, there is no EU-wide dataset available which can provide specific information about the amount of inheritance taxes or the value of assets that are the subject of inheritance tax in more than one country. During the impact assessment process, the Commission asked an external consultant, the above mentioned Copenhagen Economics, to collect this information. The public consultation also included questions to this effect. As these attempts to collect information were not successful, it is necessary to draw on proxies, namely inheritance tax revenues in Member States.

It seems valid to assume that those who own property in a foreign country are wealthy and therefore this type of inheritance is likely to involve larger values than an average domestic inheritance case. However, since this is but one type of cross-border inheritance case, such a claim cannot be made generally in regard to cross-border inheritances. For this reason, we assume that the average value involved in cross-border inheritance cases equals the average value involved in domestic inheritance cases.

Data is available on the average inheritance tax (that is, inheritance tax or estate tax or transfer duties etc. collected per death) for each country in 2008. The weighted average of inheritance tax across the EU determined in this way is about EUR 5 200 (See table 7 for details).

The Copenhagen Economics Study estimates the annual number of cross-border inheritance cases as follows:

**Table 8: Estimate of number of cross-border inheritance cases per year in the EU**

	Number of potential cases
Cases due to foreign located assets	32 000 – 44 000
Cases due to foreign located heir	200 000 – 300 000
Cases due to foreign located deceased	75 000
Subtotal	300 000 – 400 000
Deduction due to possible double counting:	
-- 10-30 per cent of foreign located assets (10-30 per cent of mid range estimate of 38.000)	Minus 4 000 – 12 000
-- 2-10 per cent of double counting heirs and deceased both living outside their own country (2 to 10 per cent of mid range estimate for heirs 250.000)	Minus 5 000 – 25 000
Subtotal for double counting	Minus 9 000-37 000
<b>Total (rounded)</b>	<b>290 000 – 360 000</b>

*Source: Copenhagen Economics*

The Impact Assessment on the proposal for a Regulation to deal with cross-border successions (SEC (2009) 410 final - hereafter the Cross-border Succession Impact Assessment) uses a higher estimate of 450 000 cases. However, the Copenhagen Economics Study includes the caveat that the methodology used is likely to underestimate the actual figures. That is because the figures could only take account of cross-border cases of real estate ownership and not of other assets such as bank savings. Copenhagen Economics states that, as the financial crisis caused considerable fluctuation in asset prices, it is difficult to draw conclusions from the data at hand on the tendency in private portfolio investments.

Therefore, we continue using the range provided above, namely a range of **290 000-360 000** potential cases per year as a conservative estimate. Multiplying these figures by EUR 5200 yields the range of **EUR bn 1.5-1.9** as the upper limit for the aggregate extent of the problem of double taxation of inheritances per year.

To give some indications of the distributional effects across Member States, employment-related migration flows are the most significant in terms of number of people. At the same time, we can assume that the migration flow from North to South derives from individuals who can afford to move in order to enjoy a pleasant climate and are, therefore, more likely to own property abroad. Therefore, the latter migration flow seems to be more relevant as regards distributional effects across Member States.

**Table 9: Top 10 migration streams in the EU-27.**

Case#	Citizenship of migrant	Member State of residence	Double taxation treaty present	No. of migrants
1	Romania	Spain	No	799 225
2	Romania	Italy	No	796 477
3	Italy	Germany	No	560 364
4	Portugal	France	Yes	491 983
5	Poland	Germany	No	419 555
6	UK	Spain	No	375 856
7	Ireland	UK	Yes	369 470
8	Greece	Germany	No	306 402
9	Germany	Spain	No	191 080
10	Austria	Germany	No	190 150
<b>Total</b>				<b>4 500 062</b>

Source: Eurostat and Copenhagen Economics.

As mentioned above, revenue from domestic and cross-border inheritances taxes combined account for less than 0.5% of total tax revenues in EU Member States. Therefore, cross-border cases alone must account for far less than that figure. However, looking at the double taxation problem at micro level, the Copenhagen Economics Study suggests that double taxation, when it happens, can have an enormous impact on the individuals actually concerned. Note also that, while the tax rate in case of close family member heirs is low in general, it can reach 60-80% in some Member States for large inheritances received by non-relatives. Thus, while at the macro level the problem appears not to be too critical, given the small share of total tax revenues, at the individual level, some citizens can be affected heavily.

The following examples, based on cases reported through the Your Europe Advice services illustrate real-life examples of effective double taxation of cross-border inheritances. The examples show the considerable impact of the problem for the individual citizen affected. For reasons of data protection, we used false names. As taxpayers rarely provide figures in their complaints, we used our own estimations based on research to elaborate on the possible social and economic impacts of the following real-life examples. Prices of real estate are taken from the offers available on the market at the time of writing the present report.

**CASE 1** Filip, a Polish citizen resident in Poland, inherits moveable and immoveable property in Belgium from his uncle resident in Brussels. Filip must pay inheritance tax in Belgium on the property because the deceased was a Belgian resident. Belgian tax amounts to 60% of the net assets. In addition Filip must pay nearly 12% of Polish inheritance tax on the assets because he is a Polish resident. There is no bilateral treaty in place to avoid double taxation between the two countries. In addition, Poland has no domestic provision to provide relief for foreign inheritance taxes.

Assuming that the inherited property was a house in Brussels valued at EUR 232 000 and bank and investment assets valued at EUR 193 000, the Belgian tax would amount to EUR 255 000. The Polish tax would be a further 12% of the total value of the assets = 51 000. The liquid assets would not be sufficient to cover the tax bills arising in the two countries, and Filip could find himself in a situation where he had to sell the house. Since he would be under time pressure to pay the taxes, the price he gets for the house might be much below the level of valuation for inheritance tax purposes.

## CASE 2

Peter is a Dutch citizen pursuing his career in France. He inherited a property in France from his deceased life partner who was also a Dutch citizen and who had lived in France for the previous 6

years. Their relationship had not been formalised. Peter had to pay French inheritance tax in view of his residence in France and of the fact that the property concerned was located in France. However, he also had to pay inheritance tax in the Netherlands because his deceased life partner was deemed to have been resident in that State. For the purposes of inheritance tax, Dutch nationals are deemed to have resided within the national territory for 10 years following the date they leave the Netherlands to live abroad. The tax applied by France amounted to nearly 60% of the net assets. The tax applied by the Netherlands amounted to an additional 12.5%. Under the legislation applied by the Netherlands, foreign taxes are deductible as a liability on the inheritance received and, therefore, the tax applied by France led to a reduction of the taxable base in the Netherlands. Nevertheless, double taxation was not fully eliminated and the total tax due on the property concerned was higher than it would have been had the inheritance been confined to any one of the two Member States concerned.

**CASE 3** Jette, a Danish national, inherited a summer house in Portugal and a long term savings account in Denmark from her uncle who was domiciled in Denmark. Jette must pay Portuguese stamp duty amounting to 10% of the net value of the summer house because Portuguese law subjects transfers on the occasion of death to transfer tax. Moreover, she must pay Danish inheritance tax on both the Danish assets and the Portuguese summer house because under Danish rules, worldwide property of the deceased is subject to inheritance tax in the hands of Danish resident heirs, at a rate in her case of effectively 34%. The Portuguese stamp duty cannot be credited against Danish inheritance tax because it is a transfer tax and not strictly speaking inheritance tax.

Assuming that the summer house in Portugal is valued at EUR 125 000, and that there is EUR 75 000 in the long term savings account, Jette might have no other choice left but to either sell the house, in addition to liquidating the savings account, to pay the taxes due, as the Portuguese stamp duty would amount to EUR 12 500 and the Danish inheritance tax would be around EUR 68 000.

### **3.4. Who is affected?**

All EU citizens, businesses and other entities subject to inheritance taxes are potentially affected by these issues.<sup>23</sup> EU citizens may be deterred from moving or investing abroad if they or their heirs will suffer from high inheritance taxes as a result of the move or investment. SME organisations<sup>24</sup> have pointed to the particularly damaging effects of inheritance taxes on small businesses. However, in reality it is generally the actual application of inheritance taxes to transfers of businesses to which SME organisations object rather than the application of double inheritance taxes. The European Family Businesses – GEEF organisation pointed out in its response to the public consultation that even a single application of inheritance tax can pose challenges to family businesses. These problems can then be aggravated in cross-border situations. As stated above, the present report concentrates on cross-border inheritance tax obstacles and does not call into question the existence of inheritance taxes. However, solutions to the cross-border difficulties identified would also benefit those who inherit SMEs across borders.

As regards third country nationals, free movement of capital extends to flows between Member States and third countries. Thus, any action of the Commission regarding the application of the rules on free movement of capital would normally also extend to such flows. However, third country nationals would not be covered by actions of the Commission to guarantee other fundamental

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<sup>23</sup> Note that the main addressee of an inheritance tax is the individual citizen, not legal persons such as companies.

<sup>24</sup> See, for example, position paper for Conference "transfer of Ownership in Private Business – European Experiences", 25-26 March, 2010: [http://www.ownershiptransfer2010.org/wp-content/uploads/2010/03/transferofoownership\\_newsletter4\\_en.pdf](http://www.ownershiptransfer2010.org/wp-content/uploads/2010/03/transferofoownership_newsletter4_en.pdf)

freedoms, based on notions of discrimination on grounds of nationality, because such actions would be limited to nationals of Member States. It remains of course possible for Member States to unilaterally extend any rights to third country nationals. As far as double taxation is concerned, since this is not as such incompatible with Treaty freedoms, any action of the Commission in this area can be limited to intra-EU situations.

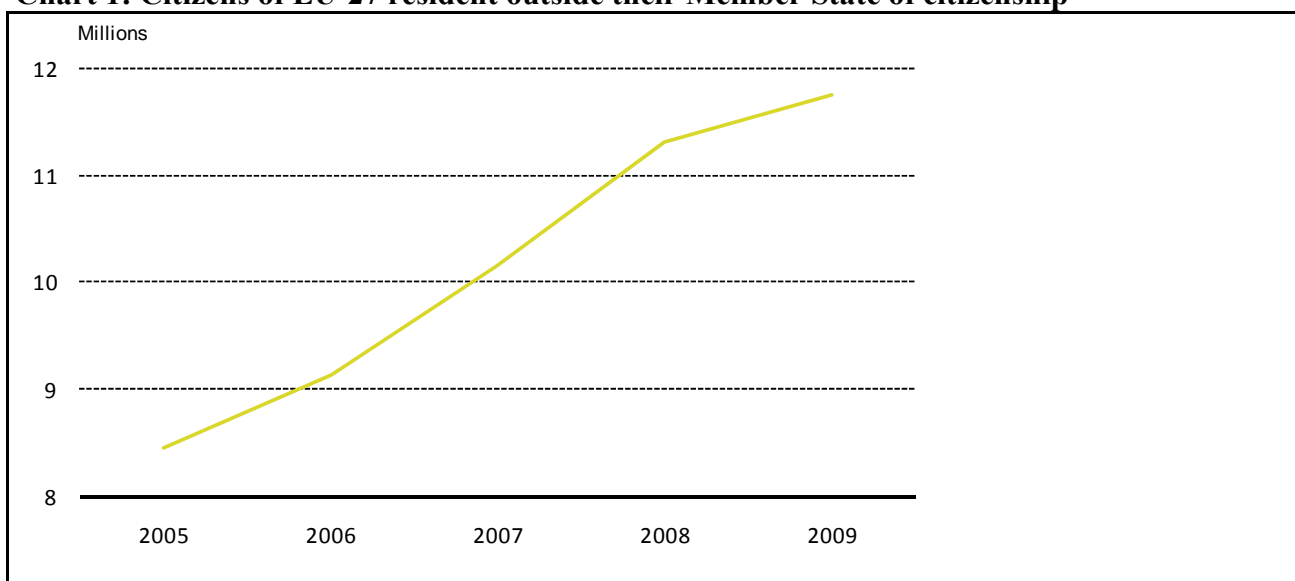
### 3.5. How would the problem evolve if no action is taken (baseline scenario)?

With a steadily increasing tendency in migration and cross-border ownership of assets within the EU, there are clear and robust indications that the problems will increase in magnitude over the coming years.

The Cross-border Succession Impact Assessment also concludes that the magnitude of the problem related to cross-border successions is very likely to increase in the future.

The following chart provides for the migration indicators<sup>25</sup>:

**Chart 1: Citizens of EU-27 resident outside their Member State of citizenship**



Source: Eurostat.

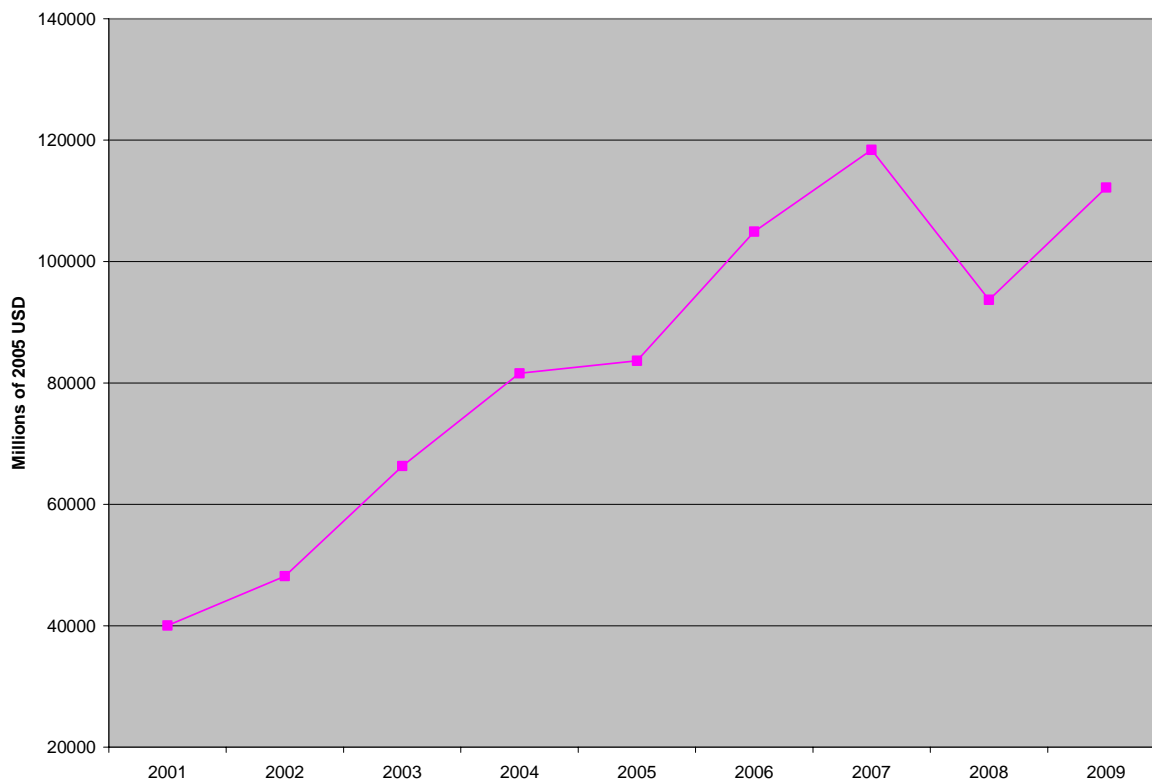
Regarding cross-border ownership of assets within the EU, several sources have concluded that the tendency to foreign home ownership is increasing.<sup>26</sup> The Copenhagen Economics Study assumes that cross-border real estate ownership in the EU increased by 10-50% between 2002 and 2010.<sup>27</sup>

<sup>25</sup> It is worth emphasising that the number of deaths of migrants (i.e. cases due to foreign-located deceased) is just one of the three main types of cross-border inheritance situations. Consequently, we took into account also the foreign-located heirs.

<sup>26</sup> See Table 4.2 on page 64 of the Copenhagen Economics' Study, on tendencies in foreign home ownership.

<sup>27</sup> See page 70 in the Copenhagen Economics Study.

**Chart 2: Cross-border portfolio investments within EU-27**



Source: IMF Coordinated Portfolio Investment Survey, <http://www.imf.org/external/np/sta/pi/datars1.htm>

This chart shows a massively growing trend in cross-border portfolio investment. Given these indicators, we may expect cross-border inheritance tax problems to grow in the future even irrespective of the trends in cross-border mobility.

With the increasing cross-border movement of EU citizens and the growing amount of cross-border ownership of assets within the EU, it can be expected that the number of complaints and referrals to the Court about discriminatory aspects of Member States' inheritance tax laws will increase, as will double taxation. Notwithstanding the trends towards lower general levels of inheritance taxation, the overall tax burden arising from the interaction of different tax systems can have a significant impact in individual cases and this may increase in the future.

### **3.6. Does the EU have the right to act?**

At the present stage of EU law, direct taxation, such as inheritance taxation, falls within the competence of the Member States, in the absence of EU harmonising rules. Nevertheless, in the exercise of this competence, Member States must respect their obligations under the Treaties. Member States are not allowed to discriminate on the basis of nationality or to apply unjustified restrictions to the exercise of the fundamental Treaty freedoms. As explained above, the Court has on several occasions in recent years investigated the compatibility of Member States inheritance tax provisions with the freedoms enshrined in the TFEU and ruled that "inheritance" comes within the compass of Article 63 TFEU on free movement of capital once its constituent elements are cross-border. The Commission has a role, as guardian of the Treaties, to ensure that Member States comply with EU law and to launch infringement proceedings where it believes that EU law has been infringed. Violations to fundamental freedoms must be eliminated as a matter of existing law, irrespective of the macroeconomic size of the problem in monetary terms.



Given the growing number of court cases, it is appropriate for the Commission to carry out an EU-wide examination of the potential and actual discrimination problems in the area of the taxation of inheritances and consider whether and what kind of action might be needed, including under Article 115 TFEU, to improve compliance with the fundamental freedoms in the area concerned. Such action could usefully complement the infringement proceedings that the Commission can, in any event, initiate.

As regards double taxation, it is clear from the complaints received, and from the replies to the public consultations, that problems of double taxation of inheritances are not currently being resolved in a satisfactory manner except to the extent that they are addressed by one of the few existing double taxation conventions dealing with, or extending to, inheritances.. This may deter individuals from exercising the right to move freely within the Internal Market. It is, therefore, also appropriate for the Commission, in the light of its responsibility for ensuring the smooth functioning of the Internal Market and promoting the general interest of the Union, to investigate the impact of the lack of appropriate mechanisms to prevent double taxation of inheritances and make recommendations or propose other action if warranted. The level of action would be proportionate to the objectives and could be a proposal for a Directive under Article 115, or a recommendation under Article 288, of the TFEU. Proportionality has been applied as one of the criteria to compare the options in section 7 below.

#### **4. OBJECTIVES – THE “WHAT”**

##### **4.1. What are the general and the more specific policy objectives?**

The general objective of the initiative is to allow citizens to exercise their right to move and operate freely within the Internal Market and not be deterred by cross-border inheritance tax obstacles. To this end, the initiative would aim at

- promoting the elimination of discrimination in the area of inheritance taxation; and
  - reducing the double taxation of inheritances within the EU,
- in particular in order to avoid an excessively high tax burden or even confiscatory rate of overall taxation.

Translation of these into operational objectives would imply:

- achieving a reduction in the number of complaints of EU citizens and requests from national courts for preliminary rules concerning discriminatory inheritance tax rules; and
- improved scope of national provisions relieving double taxation.

##### **4.2. Are these objectives consistent with other EU policies?**

Within the Internal Market, EU citizens should be able to move and operate freely across borders. In its "Europe 2020 strategy"<sup>28</sup> for smart, sustainable and inclusive growth in the EU, the European Commission concluded that an element of putting the EU economy back on track consists in empowering EU citizens to play a full part in the single market and giving them the confidence to do so. In the light of this strategy, and as announced in the Communication on "Removing cross-border tax obstacles for EU citizens"<sup>29</sup>, the Commission wants to address the most important unresolved tax problems faced by EU citizens in cross-border situations, including cross-border inheritance tax obstacles. It seems appropriate, therefore, to examine how these difficulties can be best addressed.

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<sup>28</sup> <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>

<sup>29</sup> COM (2010) 769 and Staff Working Paper SEC/2010/1576

An initiative addressing cross-border inheritance tax problems would complement the legislative proposal for a Regulation dealing with cross-border successions and wills which the Commission presented in October 2009. While that Regulation could, whether adopted or not, mean that the taxable beneficiaries of inheritances would change in some cases, it would not change Member States' laws on taxing cross-border inheritances. Thus, whether adopted or not, the Regulation will not address the situations where citizens taking advantage of the Internal Market are exposed to double taxation or to discriminatory rules on inheritances.

The Commission has been considering the problems that Member States' inheritance tax regimes could create for SMEs since 1994<sup>30</sup>. As explained above, it is generally the actual application of inheritance taxes per se to transfers of businesses which create problems for SMEs. The present report concentrates on cross-border inheritance tax obstacles and does not challenge the existence of inheritance taxes. However, as explained above, solutions to the discrimination and double taxation issues would be applicable and beneficial also to those who inherit SMEs across borders.

The present initiative would also aim at supporting and complementing the Commission's infringement actions against discriminatory inheritance tax provisions.

Furthermore, it would be in line with the fundamental rights recognised by the Charter of Fundamental Rights of the European Union (Charter) and indeed strengthen the citizens's position under certain headings (cf. below ). Thus, measures adopted in order to eliminate double taxation would have a positive impact on the freedom to conduct business (Article 16 of the Charter), in particular with regard to SMEs, as well as on the right to property (Article 17), which specifically includes the right to bequeath lawfully acquired possessions. They will also have a positive impact on free movement of EU citizens (Article 45).

## 5. POLICY OPTIONS – THE “HOW”

### 5.1. Definition of policy options

Possible policy options to address the problems identified are listed below and briefly described. The preferred option could combine elements from both of these sets.

**Definition of policy options A that address problems  
caused by tax discrimination of cross-border inheritances**

- Policy Option A1: No change. Continuation of current regime (baseline scenario)
- Policy Option A2: - Publication of principles for non-discriminatory inheritance tax systems
- Policy Option A3: Compulsory rules on abolishing discriminatory features of Member States' domestic inheritance tax legislation

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<sup>30</sup> Most recently, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "Implementing the Lisbon Community Programme for Growth and Jobs. Transfer of Business – Continuity through a new beginning" COM (2006) 117 of 14.03.2006.

**Definition of policy options B that address problems  
caused by unrelieved double taxation of cross-border inheritances**

- Policy Option B1: No change. Continuation of current regime (baseline scenario)
- Policy Option B2: Addressing the problem by means of national legislation: Commission recommendation regarding (unilateral) national provisions designed to relieve double taxation of inheritances
- Policy Option B3: Commission recommendation regarding relief of double taxation through bilateral treaties between Member States designed to relieve double taxation of inheritances
- Policy Option B4 – Binding rules governing bilateral arrangements: Adoption into EU law of a) a single basis for determining the tax liability, such as the location of assets or the residence of the deceased, etc in bilateral relations or b) minimum standard common rules for bilateral conventions
- Policy Option B5– EU- wide multilateral double tax convention
- Policy Option B6: Binding EU-wide rules on relief from double taxation and even on taxation of inheritances

## **5.2. Description of policy options**

### **5.2.1. Policy Options A: Addressing tax discrimination related to cross-border inheritances**

***Policy Option A1 – No change. Continuation of current regime (baseline scenario)***

***Policy Option A2 Publication of principles for non-discriminatory inheritance tax systems***

Under this option, a staff working paper would be developed that would assemble the principles of non-discrimination flowing from case-law and which need to be respected by national inheritance tax systems. These principles are summarised in section 3.3.1 above. Thanks to the publication of these principles, EU citizens would be more aware of the rules which Member States must respect when taxing cross-border inheritances. The document could also assist Member States in bringing their inheritance tax provisions into line with EU law. This would also support the Commission's legal action against infringements in the inheritance tax area.

***Policy Option A3 - Compulsory rules on abolishing of discriminatory features of Member States' domestic inheritance tax legislation***

Under this option, as suggested by some stakeholders in their replies to the inheritance tax consultation, the Commission would propose the principles set out in the relevant European case law for adoption as compulsory rules at EU level.

### **5.2.2. Policy Options B: Addressing unrelieved double taxation of cross-border inheritances**

***Policy Option B1 – No change. Continuation of current regime (baseline scenario)***

***Policy Option B2 –Commission recommendation regarding (unilateral) national provisions designed to relieve double taxation of inheritances*** The Commission could identify the elements that would make national tax rules interact more coherently with each other so as to eliminate double taxation in a comprehensive way and invite Member States to make changes to their laws on that basis. The recommendation would aim to be a simple solution that would not entail changes to the different systems of inheritance taxation. It is likely to, inter alia, cover inheritances of both immovable and movable property and suggest an order of priority of taxing rights in cross-border cases, for example between the country of situs of property and any other countries involved (e.g.

that of testator and that of heir). Some existing unilateral provisions may already contain some of these elements. Transparency of information on rules could also be encouraged.

***Policy Option B3 – Commission recommendation regarding relief of double taxation through bilateral agreements between Member States designed to relieve double taxation of inheritances***

The Commission could recommend that Member States complete a full network of bilateral double taxation conventions on inheritances, based either on the OECD model convention on estates, inheritances and gifts of 1982 (Policy Option B3.a) or an alternative model such as an EU model convention (Policy Option B3.b) , or else include inheritance tax provisions within the scope of existing bilateral income tax conventions (Policy Option B3.c). Bilateral double taxation conventions share taxation, in the case of two countries that have taxing rights over income, on the basis of a set of principles defining concepts such as the location of assets or income, the basis of liability and the domicile or residence of the persons involved. They contain dispute resolution provisions which are not, however, binding on the two participating countries.

***Policy Option B4 – Binding rules governing bilateral arrangements: Adoption into EU law of a) a single basis for determining the tax liability, such as the location of assets or the residence of the deceased, etc in bilateral relations, or b) minimum standard common rules for bilateral conventions.*** These suggestions were made by some stakeholders in their reply to the inheritance tax public consultation,

***Policy Option B5 – EU- wide multilateral double tax convention*** As suggested by some stakeholders and commentators, one way to ensure that measures are taken to avoid double taxation would be for Member States to conclude a multilateral double taxation convention on estates and inheritances

***Policy Option B6 - EU-wide legislative approach***

An EU-wide binding instrument, taking the form of a Directive or a Regulation, could provide for i) a single harmonised basis for taxation, e.g. taxing only where the assets or the deceased were located (***Policy Option B6.a***); ii) a combination of common definitions plus a single harmonised basis (***Policy option B6.b***); (iii) the relief of double taxation alone, by way of a binding unilateral relief provision coupled with a binding dispute resolution mechanism without making any changes in Member States' inheritance tax rules (***Policy Option B6.c***); (iv) a combination of features of Policy Options B6.a, b and c i.e. single harmonised basis, common definitions and a binding dispute settlement mechanism (***Policy Option B6.d***).

### **5.3. Options that appear less appropriate**

***Policy Option B3.a - Recommendation that Member States complete a full network of bilateral double taxation treaties on inheritances, based on the OECD model convention on inheritance taxes*** As already indicated, the OECD Model on estates, inheritances and gifts is not up to date and does not deal with triangular situations. While the OECD Model Convention on Income and Capital is constantly updated, the Model Convention on Estates, Inheritances and Gifts has not been amended to address shortcomings identified and therefore would not resolve all the problems effectively. Another reason why the Model might not be an ideal point of departure is the fact that the OECD is currently considering its update. This process may take a considerable amount of time. Furthermore, it is uncertain whether Member States would conclude bilateral agreements based on the updated Model when they have not concluded them so far. Even if Member States did decide to do so, finalisation of such agreements could be a lengthy process.

***Policy Option B4 - Binding rules governing bilateral arrangements: Adoption into EU law of a) a single basis for determining the tax liability, such as the location of assets or the residence of the***

*deceased, etc in bilateral relations, or b) minimum standard common rules for bilateral conventions.* Although suggested by some stakeholders, drawing up these rules would take a disproportionate amount of effort given that they would have to be adopted unanimously and then implemented via bilateral agreements. The effort involved in achieving this result in bilateral relations, might still leave the problem of multilateral situations unresolved, and would not solve the problem as long as Member States are not prepared to enter into bilateral inheritance tax agreements in the first place.

***Policy Option B5 – EU- wide multilateral double tax convention*** Although such an EU-wide instrument could address triangular situations, where more than two Member States have taxing rights, it is very unlikely that Member States would agree on such a convention given a previous failed attempt at such a solution for income tax<sup>31</sup>. Moreover, such a convention if proposed by the Commission could only be proposed in the form of a Directive which would fall within Policy Option B.6.

***One variation of Policy Option B6 – binding EU legislation in the format of a Regulation*** - would not be possible because the legal base (Article 115, TFEU) only provides for proposals for Directives.

***Policy Option B.6.a - a single harmonised basis for taxation*** - which was suggested by some stakeholders would be an ineffective solution unless combined with common definitions such as of assets and with rules to deal with dual residence/nexus, as proposed in another sub option (Policy Option B.6.b). Therefore, Policy Option B.6.a appears inappropriate.

## **6. ANALYSIS OF IMPACTS OF THE POLICY OPTIONS**

This chapter analyses the different Policy Options for eliminating discrimination and reducing double taxation of cross-border inheritances from the perspective of the most significant impacts. Given the nature of the proposed measures to address both problems, no direct environmental impacts are expected. Indirect environmental impacts might materialize as a consequence of increased mobility, but that factor would not be a particular consequence of any initiative addressing cross-border inheritance tax problems.

Administrative costs imposed on citizens and businesses will not be any different following any changes to current regimes, because taxpayers will always have to make declarations to two or more tax authorities in cross border situations. That is a fact of life that will not change as long as Member States have different tax systems. However, legal costs and the time and inconvenience involved in making complaints would be reduced if there was less discrimination and double taxation about which to complain. For tax administrations, again costs will not change much except that less cross-border inheritance tax problems would translate into fewer complaints and legal cases to handle.

As regards budgetary impacts on Member States' revenues, it is unlikely that the adoption of solutions to address cross-border inheritance tax problems would have a significant impact at macro level. Although some Member States could win or lose more than others depending on cross-border mobility and ownership of cross-border assets, the overall effects are likely to be small given the low share that inheritance taxes represent of Member States' total revenues (see 3.3.3). Above all, as it is not the macroeconomic but the microeconomic impact of the problem that could be significant,

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<sup>31</sup> Avant-projet 1968 de convention européenne sur la double imposition (Convention multilatérale entre les Etats membres des Communautés européennes, relative à la prévention de la double imposition du revenu et de la fortune et à l'assistance administrative mutuelle en matière d'impôts directs). 11414/XIV/68-F of 1 July 1968.

it is an issue of principle that solutions should be found even if a country only has to deal with a few cross-border inheritance tax cases per year. As far as social and economic effects are concerned, we focus on the impact of the options on the individuals concerned.

As regards the impacts on SMEs in particular, an SME test is attached.<sup>32</sup>

Any initiative of the Commission to eliminate discriminatory, and double, taxation will have positive impact on the fundamental rights recognised in the Charter, with particular regard to the principle of non-discrimination (Article 21), the right to property (Article 17), freedom to conduct a business (Article 16) and EU citizens' right to move freely within the EU (Article 45).

## **6.1. Impact of the Policy Options addressing problems of discrimination (Policy Option A)**

### **Policy Option A1 - No change. Continuation of current regime (baseline scenario)**

(i) **Fundamental freedoms:** The Commission would in any event continue to take actions against Member States that breach the non-discrimination principles in the TFEU so the relevant fundamental freedoms would not be compromised. (ii) **Costs to taxpayers and tax administrations:** Relying mainly on solutions that involve court actions implies high costs for both taxpayers and tax administrations. (iii) **Social effects:** As cross-border movement is likely to increase over the coming years, the remaining discriminatory features of Member States' domestic rules are likely to cause more problems. Continuation of the current situation is most likely to impact on the middle classes as the wealthy are likely to have tax advisers and poorer individuals are not as likely to inherit across borders. (iv) **Economic effects:** Doing nothing could affect cross-border mobility and mean that difficulties remain for those who actually move.

### **Policy Option A2 – Publication of principles for non-discriminatory inheritance tax systems**

(i) **Fundamental freedoms:** The publication of principles for non-discriminatory inheritance tax systems would promote the respect of fundamental freedoms to a greater extent than the status quo. (ii) **Costs to taxpayers and tax administrations:** Publication of the the principles applicable could reduce the need for court actions. (iii) **Social and economic effects:** This option should bring increased confidence about the implications of cross-border movement and more trust in the Internal Market.

### **Policy Option A3 - Compulsory rules on abolishing of discriminatory features of Member States' domestic inheritance tax legislation**

(i) **Fundamental freedoms:** Compulsory rules on the design of non-discriminatory inheritance tax systems would prima facie promote fundamental rights to an even greater extent than providing guidance. (ii) **Costs to taxpayers and tax administrations:** There should be increased legal certainty which could reduce the need for court actions. (iii) **Social and economic effects:** This option should bring increased confidence about the implications of cross-border movement and more trust in the Internal Market.

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<sup>32</sup> See Annex 6

## 6.2. Impact of the Policy Options addressing problems of double taxation (Policy Option B)

### Policy Option B1 - No change. Continuation of current regime (baseline scenario)

(i) **Fundamental freedoms:** Maintaining the status quo could mean that, in an increasing number of cases over time, tax payers could be confronted in cross-border inheritance tax cases with a combined tax burden higher than they would bear in a purely internal situation. In some cases, the overall burden resulting from double (or multiple) taxation can reach levels that could be considered confiscatory. Although double taxation as such has been not been considered incompatible with fundamental freedoms, it makes the exercise of these freedoms more difficult. (ii) **Costs to taxpayers and tax administrations:** The lack of availability of relief can be costly in individual cases, as indicated in the examples at Chapter 3.3.3. Member States' tax revenues, on the other hand, will benefit from continuing with their current relief systems. (iii) **Social effects:** As cross-border movement is likely to increase over the coming years, the absence of comprehensive double taxation relief is likely to cause more problems over time. The lack of comprehensive solutions is most likely to impact on the middle classes as the wealthy are likely to have tax advisers to help with tax planning and poorer individuals are not as likely to inherit across borders. (iv) **Economic effects:** Problems of double taxation do not at present appear to affect an important percentage of citizens but are likely to affect those citizens who make use of their right to engage in cross-border activity. The ensuing economic consequences might be important for those mobile citizens, depending on the individual situations.

### Policy Option B2 –Commission recommendation regarding (unilateral) national provisions designed to relieve double taxation

(i) **Fundamental freedoms:** This option could help to reduce the number of instances in which cross-border inheritances are subjected to double taxation, which would ease the exercise of fundamental freedoms. (ii) **Costs to taxpayers and tax administrations:** Extending the level of double taxation relief available in cross-border inheritance tax cases would mean a reduction of costs for taxpayers and a loss of tax revenues for Member States. Tax administrations would also face the administrative costs of making changes to their tax rules. However, fewer complaints would also mean less case-handling costs. (iii) **Social effects:** As cross-border movement is likely to increase over the coming years, the availability of comprehensive double taxation relief is likely to benefit an increasing number of taxpayers over time, in particular the middle compared to wealthier classes. (iv) **Economic effects:** The availability of comprehensive double taxation relief for cross-border inheritances would certainly benefit those citizens who make use of their right to engage in cross-border activity.

### Policy Option B3 –Commission recommendation regarding relief for double taxation through bilateral agreements between Member States

(i) **Fundamental freedoms,** (ii) **Costs to taxpayers and tax administrations,** (iii) **Social effects,** (iv) **Economic effects:** Similar to Policy Option B2 because both involve a Commission recommendation on action to be taken by Member States.

### Policy Option B6 – Binding EU legislation in the form of a Directive

(i) **Fundamental freedoms,** (ii) **Costs to taxpayers and tax administrations,**(iii) **Social effects,** (iv) **Economic effects:** Binding EU legislation which would compel Member States either to design their tax systems in such a way as to prevent the likelihood of double taxation, or to give double taxation relief, would be likely to lead to more certain effects than the previous options.

## 7. COMPARISON OF MAIN OPTIONS

### 7.1. Definition of the assessment criteria

For assessing the policy options to eliminate discrimination (Policy Options A), the following criteria will be used:

- *Incentive*: Incentive for Member States to change their discriminatory rules
- *Effectiveness*: in terms of achieving the objective of enforcing EU law and increasing certainty regarding the types of provisions that are discriminatory
- *Proportionality*: Going no further in terms of EU measures than is necessary to achieve the objective
- *Efficiency*: The extent to which the objectives can be achieved for a given level of resources/at least cost
- *Flexibility*: Ease of adjustment to reflect changes in case law and domestic legislation

For assessing the policy options to reduce double taxation (Policy Options B), the following criteria will be used:

- *Effectiveness*: in terms of achieving the objective of reducing double taxation and ensuring certainty in this regard
- *Proportionality*: Going no further in terms of EU measures/EU harmonisation than is necessary to achieve the objective
- *Efficiency, in particular ease of implementation*: The extent to which the objectives can be achieved for a given level of resources/at least cost, in particular regarding ease of implementation
- *Flexibility*: in terms of scope, ease of adjustability to reflect changes in laws and practices

### 7.2. Comparison of Policy Options A that address problems of tax discrimination related to cross-border inheritances

#### ***Policy Option A1 – No change Continuation of current regime (baseline scenario)***

*Incentive*: While infringement proceedings and Court decisions in preliminary references regarding a given Member State may induce other Member States to make corresponding changes in their laws, maintaining the status quo might mean insufficient incentive for Member States to do so, in particular in a coordinated way. Furthermore, citizens may not be sufficiently aware of the obligations imposed on Member States' inheritance tax rules by EU law. *Effectiveness*: For the same reasons, this option does not seem to achieve the objective set out in Chapter 4.1. *Proportionality*: It does not conflict with proportionality standards. *Efficiency*: With the expected increase in cross-border movement the number of infringement cases and court actions may also increase which may lead to increases in legal and administrative costs in order to meet the objective of eliminating discrimination. *Flexibility*: Not relevant.

#### ***Policy Option A2 – Publication of principles for non-discriminatory inheritance tax systems***

*Incentive*: The publication of these principles may make EU citizens more aware of the rules which Member States must respect when taxing cross-border inheritances. It could also assist Member States in bringing their inheritance tax provisions into line with EU law, in particular in a coordinated way. *Effectiveness*: The publication of such a set of principles would enable taxpayers to better understand the implications of EU law for Member States' inheritance tax systems and thus make it more likely that they are invoked vis-à-vis the national tax authorities in a useful manner. It would also improve the orientation of Member States as regards how to design their tax systems in a non-discriminatory way. *Proportionality*: This option would improve knowledge about the applicable principles, thereby complementing and completing the Commission's actions to tackle



incompatibilities with EU law by way of infringement proceedings. *Efficiency*: Better knowledge about the principles applicable, both on the part of the citizens and of the Member States, could contribute to improving the compatibility with EU law of Member States' legislation and practice. This in turn could minimise the number of infringement cases and court actions in this area. *Flexibility*: The set of principles can be adapted to cater for evolutions in Court of Justice case law and new developments in Member States' laws. ***Policy Option A3 - Compulsory rules on abolishing of discriminatory features of Member States' domestic inheritance tax legislation***

*Incentive*: Setting out the principles as compulsory rules at EU level would reinforce the compulsory effect of fundamental freedoms. *Effectiveness*: Within the scope of the compulsory rules thus set out, complete certainty would prevail as regards how to design tax systems in a non-discriminatory way. *Proportionality*: Proportionality standards would not be compromised by codifying case law. *Efficiency*: Even though compulsory rules would make crystal clear the principles that Member States would have to follow in the design of their tax systems, cost-effectiveness would be limited by the fact that jurisprudence had not yet time to clarify the full range of possible problems to which the very diverse national systems could give rise. This makes it difficult to formulate general principles through binding secondary legislation in a way which would add decisive value to the existing case law as such. *Flexibility*: It might not be possible to modify legislation in a sufficiently short timeframe to reflect evolutions in Court of Justice case law or new developments in Member States' tax laws.

### **7.3. Comparison of Policy Options B that address problems of unrelieved double taxation on cross-border inheritances**

#### ***Policy Option B1 - No change. Continuation of current regime (baseline scenario)***

*Effectiveness*: This option would not achieve the objective of reducing double taxation of cross-border inheritances within the EU. *Proportionality*: This option does not conflict with proportionality standards. *Efficiency*: With the expected increase in cross-border movement the cases of unrelieved double taxation in international successions may also increase. Member States may make changes to their domestic relief provisions or enter into bilateral arrangements on double taxation relief but this appears unlikely on the basis of practice to date. *Flexibility and Ease of implementation*: not relevant.

#### ***Policy Option B2 –Commission recommendation regarding (unilateral) national provisions designed to relieve double taxation***

*Effectiveness*: Member States already generally apply double taxation relief provisions under their domestic law but these are not comprehensive, and therefore improvements to these provisions would help to meet the objective set out in Chapter 4.1. This option would not, however, impose any binding obligation on Member States to eliminate double taxation. *Proportionality*: No proportionality issue would arise, since this option would not involve harmonisation of Member States' laws. *Efficiency, in particular ease of implementation*: A recommendation for appropriate self-regulation may achieve the desired results without protracted, time-consuming discussions in the Council. For Member States, changing their own laws is obviously the most easily achievable target. It may well be that they could provide for a less formalistic approach to credit for foreign taxes on an inheritance by means of administrative guidance rather than by changing laws. *Flexibility*: This option should be designed to ensure that unilateral double taxation relief measures would have a sufficiently broad scope, would be easily adjustable to reflect changes in laws, and would allow administrative interpretation and a non-formalistic approach so as to ensure that double taxation is eliminated.

### ***Policy Option B3 –Commission recommendation regarding relief of double taxation through bilateral agreements between Member States***

*Policy Option B.3.b* - *The Commission could recommend that Member States complete a full network of bilateral double taxation treaties on inheritances, based on an alternative model to the OECD model tax treaty drawn up as an EU model treaty*

*Effectiveness:* If a comprehensive network of relevant double taxation treaties existed between Member States, this would help meet the objective outlined in Chapter 4.1. This option would not, however, impose any binding obligation on Member States to eliminate double taxation. *Proportionality:* No proportionality issue would arise, since this option would not involve harmonisation of Member States' laws. *Efficiency, in particular ease of implementation:* The Commission would first, in consultation with Member States, have to draw up a model double taxation treaty. This might take a considerable amount of time and it is uncertain whether agreements based on the model convention would then effectively be concluded when Member States have not concluded them so far. Even if Member States did decide to do so, their finalisation could be an extremely lengthy process. *Flexibility:* Tax treaties would require regular updating to reflect changes in laws if they are to eliminate double taxation successfully. Furthermore, bilateral tax treaties might not be capable of addressing problems resulting from taxation by more than two countries or and might be insufficiently flexible to respond quickly to unforeseen circumstances.

*Policy Option B.3.c* – *The Commission could recommend the inclusion of inheritance tax provisions within the scope of existing bilateral income tax treaties (Policy Option B3.c).*

*Effectiveness:* If inheritance tax provisions were included in a comprehensive network of double taxation treaties between Member States, this would help meet the objective of reducing double taxation of cross-border inheritances within the EU. However, this would assume that the provisions would be sufficiently comprehensive which might not be possible given that they would be included in a treaty with a different scope. Furthermore, this option would not impose any binding obligation on Member States to eliminate double taxation. *Proportionality:* This option would be in line with proportionality standards. It would not involve harmonisation of Member States' laws. *Efficiency, in particular ease of implementation:* Member States would have to reopen their bilateral tax treaties to include inheritance tax provisions which could be time-consuming. It is not, therefore, realistic to believe that this option could be put in place quickly. *Flexibility:* Tax treaties require regular updating to reflect changes in laws if they are to eliminate double taxation successfully. Furthermore, bilateral tax treaties might not be capable of addressing problems resulting from taxation by more than two countries or insufficiently flexible to quickly respond to unforeseen circumstances.

### ***Policy Option B5 –Binding EU legislation***

*Policy Option B6.b* - *A Directive introducing common definitions and a single harmonised basis for taxation*

*Effectiveness:* If such common definitions and a single harmonised basis for taxation were agreed, the objective outlined in Chapter 4.1 would be largely met. *Proportionality:* This option would involve substantial changes to Member States tax laws which would not be proportionate to the objective to be achieved, particularly given that some Member States do not currently have inheritance taxes. *Efficiency, in particular ease of implementation:* Agreement on such vast changes to Member States' inheritance tax laws would take considerable time and, given the unanimity rule for adoption of tax proposals, is most likely unrealistic. *Flexibility:* Such an instrument would have to be renegotiated if it proved insufficient in any way.

*Policy Option B6.c – A Directive providing for binding unilateral relief coupled with a binding dispute resolution mechanism*

*Effectiveness:* If such an instrument were agreed, the objective outlined in Chapter 4.1 should be completely met. *Proportionality:* This option should not involve substantial changes to Member States' inheritance tax laws as it would deal only with the interaction of these diverse laws. However, it may not be necessary to meet the objectives sought. *Efficiency, in particular ease of implementation:* Agreement on this legal measure could take considerable time and, given the unanimity rule for adoption of tax proposals, might not be realistic. *Flexibility:* Such an instrument would have to be renegotiated if it proved insufficient in any way. Nevertheless, this provision could be made more flexible than the previous option. It would not deal with the details of Member States' inheritance tax laws so might be broad enough in scope to cater for later developments in those laws.

*Policy Option B6.d – A Directive providing for a combination of features of Policy Options B6.b and c*

*Effectiveness:* This option would fully meet the objective outlined in Chapter 4.1. *Proportionality:* This option would involve substantial changes to Member States tax laws which would probably be disproportionate to the objective to be achieved, particularly given the scale of the problem and given that some Member States do not currently have inheritance tax laws. *Efficiency, in particular ease of implementation:* Agreement on such vast changes to Member States' inheritance tax laws would take considerable time and, given the unanimity rule for adoption of tax proposals, is most likely unrealistic. *Flexibility:* Such an instrument would have to be renegotiated if it proved insufficient in any way.

#### 7.4. Comparison tables

The following tables provide a comparison of the ratings of the policy options as negative, neutral or positive.

**Table 10 – Comparison of policy options A that address problems caused by tax discrimination of cross-border inheritances**

Criteria	A1 – no change	A2 – publication of a set of principles	A3 - legislation
Incentive to change law	0	+	+
Effectiveness	0	+	+
Proportionality	+	+	0
Efficiency	-	+	0
Flexibility	n/a	+	0

*Conclusion:* As regards policy options A, **the preferred option is Policy Option A.2.** This option, by supporting the Commission's infringement actions, would address the current tax discrimination problems efficiently, flexibly and in a cost-effective way.

**Table 11 – Comparison of policy options B that address problems caused by unrelieved double taxation of cross-border inheritances**

<b>Criteria</b>	<b><u>B1</u></b>	<b><u>B2</u></b>	<b><u>B3.b</u></b>	<b><u>B3.c</u></b>	<b><u>B6.b</u></b>	<b><u>B6.c</u></b>	<b><u>B6.d</u></b>
	no change	improved unilateral relief	Inheritance tax treaties based on EU Model	Income tax treaties with inheritance provisions	Binding common definitions and basis	Binding relief plus dispute settlement	B6.b + B6.c
Effectiveness	-	+	+	+	++	++	++
Proportionality	0	+	+	+	--	-	--
Efficiency/ease implementation	0	++	--	--	--	-	--
Flexibility	n/a	++	-	-	--	-	--

*Conclusion:* As regards policy options B, **the preferred option is Policy Option B.2** as an effective and certainly proportionate way to tackle the problem. Other options would be significantly less cost-effective and there is a question mark over their political feasibility, given Member States' reactions during relevant discussions. This preference is also in line with the view of the experts consulted. Option B.6.c is one that may be considered at a later date if necessary in the light of the review of the implementation of Option B.2. The preference for Option B.2 over Options B3.b and B3.c, both of which concern solutions via bilateral actions by Member States, is also based on the fact that Member States do not seem to prioritise the conclusion or revision of double taxation treaties on inheritances.

## **8. THE PREFERRED OPTION**

The preferred solution to deal with the two problems identified is a combination of policy options A.2 and B.2 and is, in brief:

The principles flowing from the case-law on inheritance taxes that should govern the design of inheritance tax systems could be assembled in a single, published document. As explained above, Member States are obliged to take action to remove discrimination but they sometimes adapt their laws to take account of the Court's decisions in an incomplete way, or in a way that worsens the positions of taxpayers. The publication of these principles would improve the operation of the fundamental freedoms by assisting Member States in bringing their inheritance tax rules into line with EU law and by making EU citizens aware of the principles which Member States must respect when taxing cross-border inheritances. This would support the Commission's legal action against infringements in the inheritance tax area. The principles would, for example, describe the types of rules which the Court has identified as breaches of the fundamental freedoms - see 3.3.1 above.

The publication of these principles could help to ensure that EU citizens who are caught up in complicated cross-border inheritance disputes are informed in a quick and efficient way about their legal position. This could make it easier for them to invoke their rights vis-à-vis the tax authorities at an early stage, which in turn could help to reduce the incidence of these matters on the

lengthiness of any legal proceedings. It could, help to ensure that problems of EU citizens, confronted for example with a significantly higher tax burden through not qualifying for an exemption or for more beneficial valuation rules because either the assets or the deceased and/or the beneficiary were located outside the taxing Member State, are solved more rapidly.

In addition, the Commission could adopt a Recommendation identifying the elements that would make the very disparate national tax rules interact more coherently with each other, without in any way harmonising those laws, so as to eliminate double taxation in a comprehensive way. The Recommendation would suggest that Member States make changes to their domestic mechanisms for double taxation relief on that basis. It could suggest an order of priority of taxing rights in cross-border cases, for example between the country of situs of property and any other countries involved (e.g. that of the deceased and that of the heir); it could propose a less formalistic approach to credit for foreign taxes on an inheritance e.g. credit to be allowed to an heir subject to inheritance tax for foreign tax imposed on the basis of the estate; it could suggest credit for all foreign taxes on an inheritance irrespective of the type of tax and of whether it is applied at national or local level; and it could propose retroactive credit for foreign inheritance taxes applied at a later date on an inheritance. The ultimate aim could be to ensure that the overall tax burden on a cross-border inheritance would not be higher than in an internal situation.

Assuming the existence of this unilateral relief mechanism, the taxpayers referred in our examples in 3.3.2 would only bear tax comparable to a domestic situation.

Member States all subscribe to the international principle that double taxation is to be avoided and already under their domestic law apply a measure of relief for foreign inheritance taxes. They appear to do so without reference to budgetary implications. Therefore the impact of making these already-existing unilateral reliefs work better in practice should neither be considerable nor objectionable. In addition, as explained above, improving the existing unilateral relief provisions might not even involve changes in the legislation of Member States, as the objective might be achieved by means of administrative guidance interpreting the relevant provisions. In relation to the distributional effects across Member States, while the migration flow from the North to the South seems to be of particular relevance, it is an issue of principle that Member States with few cross-border inheritance complaints per year should also apply relief in those individual cases.

While the adoption of the Regulation on cross-border successions would be helpful in clarifying the civil law background, it would not address the problems presented in this report. In addition, the preferred solution outlined in this report would not interfere with the underlying private law divergences as it would not incorporate any private law concepts. The Recommendation would, therefore, have no impact on the outcome of the future Regulation.

The combination of the two options is appropriate to deal with cross-border inheritance tax problems comprehensively.

While administrative costs will not change considerably on the basis of this initiative, the legal costs and the time and inconvenience for both taxpayers and tax administrations would certainly be reduced if there was less discrimination and double taxation about which to complain.

## **9. MONITORING AND EVALUATION**

In order to monitor the success of the principles eliminating discrimination and the Recommendation on reducing double taxation, the Commission could prepare regular evaluation reports based on monitoring Member States' relevant domestic practices in areas covered by the initiatives. The first evaluation could be carried out 3 years after adoption of the initiatives. Member

States could be asked in the meantime to record cross-border inheritance tax revenues and complaints and inform the Commission of any changes made to their domestic inheritance tax laws. There are two broad areas where refined and systematic data collection appears necessary.

First, the overall extent of the problem could be monitored. Data should be collected on an annual basis on cross-border migration; cross-border ownership of assets (including financial assets and immovable property); and domestic inheritance tax rates.

Second, the legal background to cross-border inheritance cases could be examined. This would cover the amendments to Member States' domestic law to remove discrimination and reduce double taxation; the evolution of bilateral agreements; and relevant Court cases.

Regular expert meetings could take place to discuss the current state of play and possible implementation problems. The Commission's right to present a legislative proposal in the future, if deemed appropriate, would, of course, remain unaffected.

## **ANNEX 1: COMPARISON OF INCOME/CAPITAL TAXATION AND INHERITANCE/ESTATE TAXATION**

The taxation of inheritances and estates presents problems which have no exact counterpart in income/capital taxation.

In general terms, income/capital taxation is imposed on the income or capital gains of a taxable person, while inheritance and estate taxes are levied on the assets included in an inheritance, which is transferred from one person to another.

In the first case, the taxable event is the receipt of income by a taxable person. In the second case, the taxable event is either the transfer of property from one person to another (estate tax) or the enrichment of a person on the death of another (inheritance tax).

The peculiar nature of inheritance/estate taxes entails that, in the great majority of cases, they are levied on individuals, while income taxes are levied on both individuals and companies (where the revenue generated from companies are the most relevant).

Another important difference lies in the connecting factors that are normally used by countries to establish a link between one person and their territories with a view to exercising their taxation rights on that person. In accordance with internationally accepted principles, income/capital taxes are levied by countries on persons who are resident in their territories (residence principle) as well as on income that is sourced in their territories (source principle). Normally, residents are taxed on a worldwide base (i.e. on all their income, regardless of the source), while source State taxation is limited to the specific type of income that can be considered as sourced in that State.

On the other hand, in the case of inheritance/estate taxes the personal nexus may vary considerably from one country to another (residence, domicile, nationality, etc.) and may apply with respect to the deceased, the heir or both. Countries also apply a territorial nexus and therefore tax assets that are situated in their territories. In principle, if the personal nexus is satisfied, taxing rights are exercised on a worldwide base, while the territorial link gives rise to taxation solely on assets situated in the territory of the State. However, some countries exempt foreign real estate even in the presence of a personal nexus.

The lack of uniformity of connecting factors in the area of inheritance/estate taxes, unlike income/capital taxes (where connecting criteria are more or less similar and follow international practice), give rise to potential exposure of inheritances to double or even multiple taxation and justifies different solutions in the two fields. Moreover, also in general terms, it seems that rules in the inheritance/estate tax area vary much more from one Member State to another than in the income tax area.

Relief from double taxation is provided, in both cases, by means of unilateral mechanisms or by negotiating bilateral tax treaties.

Domestic rules on foreign tax credit in the field of inheritance/estate tax are generally modelled on relief provision laid down for income tax purposes. However, while the provisions related to income taxes are normally very detailed and/or accompanied by administrative guidance clarifying

their scope and functioning, the domestic rules concerning unilateral relief in the field of inheritance/estate taxes are very basic and there is very little guidance on them. Moreover, the reliance on income tax provisions is problematic because the different connecting factors and tax legislation give rise to double taxation issues which are very peculiar to the inheritance/estate tax field and not common to income/capital taxes.

As far as double taxation treaties are concerned, it should be noted that the differences between inheritance/estate taxes as opposed to income taxes led the OECD to draw up a Model Convention on Estates and Inheritances (MCEI) which constituted a self-contained document with no reference to its Model Convention on Income and Capital (MCIC).

While the rationale behind the two Models is the same (i.e. sharing of taxation powers between the two Contracting States), there are important differences, for example:

- the MCIC refers to "persons" while the MCEI refers to "the deceased";
- the connecting factors mentioned in the MCIC are "residence" and "source", while the MCEI refers to "domicile" and "source";
- the MCIC is much more detailed than the MCEI.

Of course, there are also some similarities, such as the following provisions that are included in both Models:

- tie-breaker rules;
- exchange of information;
- non-discrimination;
- methods for eliminating double taxation.

However, it should be noted that while the network of bilateral income tax treaties is almost complete and the relevant MCIC is kept updated, there are only few bilateral conventions between Member States in the inheritance tax area (there are, in fact, only 33 bilateral inheritance tax treaties between Member States out of a possible total of 351) and the MCEI dates back to 1982.



## ANNEX 2: MAIN FEEDBACK RECEIVED IN THE RELEVANT PUBLIC CONSULTATIONS

In 2010 the Commission launched a public consultation on the internet to obtain views from all interested stakeholders and individuals on the extent of cross-border inheritance tax obstacles within the EU and ideas on possible solutions. Stakeholders were also invited to comment on any actual or potential cross-border inheritance tax problems of which they are aware and to suggest solutions to these problems. The consultation paper listed possible solutions already mentioned in literature and commentaries, such as guidance on interpretation of EU case law to help Member States in designing their inheritance tax systems in a way that is compatible with EU law; and unilateral, bilateral and EU-level solutions to the problem of double taxation.

The key questions to which stakeholders were invited to reply were the following:

- 1) *Have you any information on cross-border inheritance tax problems in the EU that you would like to provide?*
- 2) *Which or which combination of the above outlined approaches do you consider as most appropriate to tackle any cross-border inheritance problems that exist? Why do you prefer that option?*
- 3) *Would you prefer a completely different solution and if so what solution do you suggest?*
- 4) *What, if anything, else do you think could be done at European level to overcome any difficulties that exist in the area of inheritance taxes?*
- 5) *Do you have knowledge of cross-border inheritance tax problems faced by SMEs and, if so, do you think that the above-mentioned or different solutions are needed for any such problems?*
- 6) *Do you have any other comment or thoughts to share as regards cross-border inheritance tax issues?*

The Commission published, as a reference document in connection with this consultation, a study by external consultants on inheritance taxes in EU Member States and possible mechanisms to resolve problems of double inheritance taxation in the EU<sup>33</sup>. The study explored the nature of cross-border inheritance tax problems, i.e. discrimination and double taxation; the economic significance of the problems; and possible policy solutions to the problems.

The consultation ran from 25 June to 22 September 2010, but at the request of several stakeholders, the deadline was later extended to 22 October 2010. The Commission also accepted a number of contributions received after the deadline.

There were in total 232 replies to the consultation from a broad range of stakeholders, including 205 individual citizens (23 replied directly while 183 responses were submitted through a newspaper with one overlap in that one of those contributions was also sent directly to the Commission), 13 academics and tax practitioners individually or through their associations, 3 non-registered and 9 registered organisations, and 2 public authorities.

This summary also takes account of the replies on inheritance tax sent in response to the more general public consultation on double taxation problems that the European Commission conducted from 24 April to 30 June 2010<sup>34</sup>. There were 2 such replies and some stakeholders expressed their views in reply to both consultations.

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<sup>33</sup> Copenhagen Economics: *Study on Inheritance Taxes in EU Member States and on Possible Mechanisms to Resolve Problems of Double Inheritance Taxation in the EU*, August 2010.

<sup>34</sup> [http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2010\\_04\\_doubletax\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_04_doubletax_en.htm)

The consultation paper and the external study can be accessed at:

[http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2010\\_06\\_inheritance\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_06_inheritance_en.htm)

## **2. GENERAL COMMENTS**

In general, respondents expressed their appreciation at the launch of this public consultation initiative and emphasised that there was a strong need to tackle tax obstacles to cross-border inheritances. The majority of replies also concurred with the main findings of the external study and with the Commission's own research.

Some stakeholders, including tax practitioners and associations, also drew attention to the in-depth discussion of cross-border inheritance tax issues at the 64th Annual Congress of the International Fiscal Association (IFA) in Rome in September. Several contributors emphasised that as people increasingly move across borders within the EU, the problems related to cross-border inheritance taxation can only increase in the future. Stakeholders therefore welcomed the Commission's efforts to put this issue on the political agenda.

## **3. KEY ISSUES**

### **A. Evidence of the existence of cross-border inheritance tax problems within the EU**

#### ***1) The discrimination problem***

Many respondents of all types (individual citizens, academic representatives, tax practitioners and organisations) reported on possible discriminatory provisions of domestic inheritance tax legislation. The competent Commission services are currently examining these complaints about discrimination with a view to asking Member States to amend the relevant laws if they do indeed involve a conflict with the Treaty on the functioning of the EU.

#### ***2) The double taxation problem***

In the recent public consultation on actual cases of double taxation, including of inheritances, some contributors, including tax practitioners and citizens provided real-life examples of double taxation of inheritances. Others provided similar responses to the present consultation.

The majority of the replies described as the underlying causes of this phenomenon the various types of mismatches between different national inheritance rules.

Many pointed out that, to start with, Member States differ considerably both as regards their civil legislation and their tax legislation in the field of inheritances. The basic difference in concept between the civil law and common law systems concerns the transfer of assets. While civil law countries follow the principle of direct transmission, where the inheritance is directly transferred from the deceased person to the heirs, under common law the assets, rights and obligations are first transferred to a personal representative who deals with the administration of the estate and then transfers the net assets to the heirs. Some contributors, including tax practitioners and lawyers, noted also the difficulties concerning the civil law countries' treatment of trusts and personal representatives, which are characteristic features of the common law concept of inheritances. For instance, double taxation may arise if a civil law Member State considers the trust or a personal

representative as a different taxable person to the beneficiary or regards the testator as the owner of the trust property and charges tax on the trust on the death of the testator.

Respondents also pointed to discrepancies between Member States' inheritance tax systems as there are great varieties in the rules, leading to different taxable persons, different taxable events and different bases of taxation.

Some Member States apply a tax on the heirs, while other Member States apply a tax on the basis of the estate. In both cases tax liability is determined on the basis of a connecting factor or "nexus", which can be the residence, domicile or nationality of the deceased, or the residence, domicile or nationality of the beneficiary, or the location of the inherited property, or a combination of these factors. Furthermore definitions and meanings of these terms can differ from jurisdiction to jurisdiction, so for instance an individual can be "domiciled" for inheritance tax law purposes in one country and at the same time be "habitually resident" under the inheritance tax law of another. In addition, several Member States apply anti-abuse measures which provide for an extended concept of residence or domicile. Difficulties with determining the tax residence of the deceased were also highlighted, such as possible complications related to temporary residence.

Other significant differences between Member States' rules that respondents emphasised were different valuation methods regarding real estates, and usufruct of personal assets and business assets; and the diverging conditions for deducting debts and liabilities. Double taxation problems could also be exacerbated by the fact that some Member States apply high inheritance tax rates for certain groups of beneficiaries. Many stakeholders, mostly individual citizens, pointed to inordinately high rates and the lack of exemptions for non-relatives or distant relatives. This was particularly a problem in regard to stepchildren.

As for the existing mechanisms in place to eliminate double taxation of cross-border inheritances, the situation is far from ideal in the view of stakeholders. They complained about the very low number of bilateral tax treaties concluded between Member States for the avoidance of double taxation on estate and inheritance tax (there are, in fact, only 33 bilateral inheritance tax treaties between Member States out of a possible total of 351) and they also pointed out that the current OECD Model Convention on Inheritance and Estate Tax has not been updated since 1982. Limited availability of treaty relief for foreign located property and varying rules regarding allocation of taxing rights in those tax treaties were also mentioned as shortcomings in the existing bilateral tax relief mechanisms.

Turning to the limitations of the current measures of double taxation relief under domestic law -the so-called unilateral relief mechanisms - many mismatches were pointed out which lead either to incomplete or non-availability of relief. Mismatches can also occur as a result of differences between common law and civil law systems. There can be different characterisations of the transfer of assets, and there can be different tax rules in place regarding what is a taxable event and who is the taxable person.

In addition, unilateral reliefs may have a limited scope as regards the taxes covered, such as applying only to inheritance or estate tax and not, for example, to income taxes on inheritances. In this respect, many contributors emphasised the importance of clear rules regarding the characterisation of taxes which apply on death.

Furthermore, it may not always be possible to credit foreign local inheritance taxes, i.e. taxes applied by political subdivisions at local rather than national level.

In addition, unilateral reliefs may not cover all cases of double taxation, for instance due to the narrow definition of "foreign located assets" used in the domestic provisions for granting tax credit.

In this regard, the conflicting definitions of domestic and foreign located assets, in particular in relation to bank assets, were identified as a serious concern for stakeholders<sup>35</sup>.

Another general problem pointed out was the limitation of credit to foreign tax paid on foreign property, thereby excluding foreign tax on assets located within the territory of the Member State granting relief.

Many contributors mentioned further limitations of the existing tax credits concerning the material scope. This included divergence between the different tax systems regarding the definition of immovable versus movable property, or when relief is limited only to real estate.

Incomplete tax credit due to different valuation methods or the different allocation of debts was also widely reported as a serious shortcoming.

Relief that was subject to reciprocity or to the discretion of the competent authority was also considered problematic.

As a general remark concerning the above-mentioned problems of double taxation of a single inheritance, some stakeholders, including individual citizens and tax practitioners also pointed out that expert advice is highly needed, which can prove costly and time consuming.

### 3) *Miscellaneous*

A large number of individual citizens expressed their frustration with the substantive inheritance law applicable to their cross-border successions. Their particular concern is about the forced heirship rules under civil law that allow testators less freedom about whom to make their beneficiaries.

In this context, it is worth noting that on 14 October 2009 the Commission presented a legislative proposal for a Regulation dealing with cross-border successions and wills<sup>36</sup>. This Regulation would provide for the use of a single basis for determining the competent authorities and the applicable law that would apply in the case of a succession. It would also enable citizens living abroad to choose to have the law of their country of nationality made the law applicable to their entire succession.

The proposed Regulation does not deal with tax matters so would not, therefore, reduce the number of situations where citizens taking advantage of the Internal Market are exposed to double taxation or to discriminatory rules on inheritances. In this respect, some stakeholders pointed out that a proposal to address cross-border inheritance tax obstacles would be a timely initiative.

## **B. Possible approaches to cross-border inheritance tax problems**

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<sup>35</sup> In this respect a great deal of reference was made to the *Block* case (case C-67/08 *Block*), where bank assets held abroad did not qualify as foreign located asset for being eligible for unilateral relief. Nevertheless, the CJEU stated that Member States are not obliged to eliminate double taxation on inheritance based on a parallel exercise of two tax jurisdictions.

<sup>36</sup> Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, COM(2009)154 fin. of 14 October 2009.

## **1) *Solutions to the discrimination problem***

To tackle the discrimination problem, some stakeholders agreed that it could be helpful if the Commission provided the Member States with guidelines on how to bring their inheritance tax systems into line with EU law. Some also suggested that the principles set out in the relevant European case law should be established as compulsory rules at EU level.

## **2) *Solutions to the double taxation problem***

Stakeholders were asked for their views on the most appropriate solution or solutions to address the issue of unrelieved double or multiple taxation of a single inheritance. Many suggested several different solutions.

A quarter of the opinions on the suggested solutions concerned the unilateral relief mechanisms. Even though some contributors, including tax practitioners, pointed out possible shortcomings of such a system (for instance its inability to address all double taxation problems), the vast majority advocated the need to improve such unilateral solutions.

Many of them envisaged unilateral solutions as short term measures, or as complementary solutions to completing the gaps in the relevant bilateral treaty network.

In addition, some stakeholders, including tax practitioners, suggested introducing either an EU model relief provision or an EU-wide standard in the form of a Directive.

A third of the opinions on the suggested approach concerned bilateral solutions. Some expressed the view that it would be unrealistic to expect Member States to complete the relevant treaty network. On the other hand, more stakeholders, including individual citizens, tax practitioners, organisations and a public authority, argued for a comprehensive treaty network in this area, stressing the effectiveness of such a network, even if the negotiation and conclusion of such treaties could be time-consuming. Some contributors also explicitly expressed a preference for greater treaty coverage, either by the update of the OECD Model Convention on Inheritance and Estate Tax which has remained unchanged since 1982, or by drawing up an EU Model Treaty. A few argued for including inheritance tax provisions within the scope of bilateral income tax treaties. Another idea suggested was to establish EU minimum standard common rules for bilateral conventions.

Around half of the opinions on the suggested approach concerned solutions at EU level. While a few stakeholders, including associations, considered that the introduction of binding mechanisms in this area was not an EU competence, many contributors suggested EU wide solutions to cover all situations which unilateral or bilateral solutions could not address. Many argued for harmonised common concepts and definitions – such as for location (*situs*) of inheritances or for the residence or permanent residence of the testator/beneficiary. Some suggested introducing an Arbitration Convention or a Multilateral Treaty. The majority of stakeholders, including individual citizens, academics, tax practitioners, organisations and a public authority advocated the establishment of common rules to determine the basis of taxation. Most of these were in favour of common rules regarding taxation on the basis of the location of the assets of an inheritance, though some suggested adopting as the basis of taxation that of the (last permanent) residence of the deceased, with in some cases an exception for immovable property.

As for the form of any possible EU-wide binding mechanism, more explicitly favoured a Directive than a Regulation. In addition, some stakeholders, including tax practitioners, raised the abolition of inheritance taxes as a possible solution to eliminate double taxation.

### 3) *Miscellaneous*

Some stakeholders, including tax practitioners and associations suggested that a future initiative on inheritance taxation should cover gift taxes as well.

In other contributors' views, any upcoming proposal should also address the tax treatment of usufructs, donations and distributions out of trusts and foundations.

Other stakeholders, including also tax practitioners and associations, pointed out that improved transparency in this area would be very helpful; to this end, several suggestions were made, such as a relevant website or setting up "consulates" in charge of cross-border inheritance issues.

#### **C. Cross-border inheritance tax problems faced by small and medium-sized enterprises (SMEs) and possible solutions**

As regards the problems related to transfer of business in the case of the death of an SME owner, many stakeholders expressed the view that both discrimination and double taxation can create barriers to continuity.

Possible discriminatory issues in Belgium and Germany were reported in this regard, and the difference in the level of tax exemptions available in the various Member States was also highlighted.

As for tackling cross-border inheritance tax obstacles for SMEs, the suggested solutions in the majority of replies did not differentiate between the position of individual citizens and businesses.

Nevertheless, some contributors, including tax practitioners and organisations suggested particular solutions for SMEs, such as a common EU framework for business property relief which could be set out in EU-wide harmonised exemption rules; or including a provision on the transfer of business into an EU Model Convention on inheritances.

### **ANNEX 3: SHORT OVERVIEW OF THE ESTABLISHED CASE-LAW OF THE COURT IN THE INHERITANCE TAX AREA**

#### **Inheritance/gift tax cases where the Court ruled against Member States**

The Court ruled in the *Barbier* case (Case C-364/01) that a Member State cannot apply inheritance tax rules which would allow a certain deduction from the value of an estate if the testator lived in that Member State at the time of death but would deny it if the testator resided in another Member State prior to death.

The court established in the *Maria Geurts* case (Case C-464/05) that Member States cannot deny an exemption to inheritances of family undertakings which employed at least five workers in another Member State when it would allow such an exemption from inheritance tax if the five workers had been employed in the same Member State.

In the *Jager* case (Case C-256/06), the Court ruled that the free movement of capital provisions of the Treaty prohibited Member States from applying for inheritance tax purposes a special favourable valuation system and partial exemption for assets located in that Member State while calculating the value of assets situated in other Member States according to normal fair market value rules.

In the *Eckelkamp* and *Arens-Sikken* cases (Cases C-11/07 and C-43/07 respectively) the Court found incompatible with the free movement of capital the application of different tax rules for the assessment of inheritance and transfer taxes payable in respect of assets, depending on whether the deceased resided in that Member State or abroad at the time of his/her death.

In the *Mattner* case (Case C-510/08), the Court decided that a German gift tax provision according to which the tax allowance for non-residents is smaller than that for residents is in breach of the free movement of capital.

In the *Missionswerk Werner Heukelbach* case (Case C-25/10) the Court decided that a Member State granting certain inheritance tax advantages to domestic charities has to apply the same tax treatment to foreign charities if the foreign charities satisfy the conditions laid down in that Member State for the granting of tax advantages.

In the *Halley* case (Case C-132/10) the Court found it discriminatory to set different limitation periods for the valuation of registered shares for inheritance tax purposes depending on whether the centre of effective management of the issuing company, in which the deceased was a stakeholder, was situated in the taxing Member State or in another State.

#### **Inheritance/gift tax cases where the Court ruled in favour of Member States**

The Court decided in the *Hiltten-van Der Heijden* case (Case C-513/03) that the free movement of capital provisions of the EC Treaty did not prevent a Member State from taxing the estate of a national of that Member State who lived abroad at the time of death, under rules allowing taxation if the testator dies within 10 years of ceasing to resident in that Member State. The provisions at issue were not considered discriminatory because they did not apply different rules concerning property depending on the place where the deceased was resident or depending on the location of the assets.

In the *Block* case (Case C-67/08) the Court concluded that Member States are not under any legal obligation to avoid double taxation on inheritance which arises from the exercise in parallel by

Member States of fiscal sovereignty or, therefore, to set inheritance tax paid abroad against their own inheritance tax.

### **Other relevant cases**

As a result of the *Stauffer* and *Persche* cases (Cases C-386/04 and C-318/07 respectively), it can be concluded that national provisions imposing higher inheritance or gift duties for legacies and gifts made to charities established in other Member States, or that provide for tax exemptions from inheritance/gift tax on condition that the recipient is a domestic charity, may be contrary to EU law.



## ANNEX 4: SURVEY OF THE DOMESTIC RULES ON TAXES LEVIED UPON DEATH

This attachment established by the Copenhagen Economics provides an overview of some of the domestic rules on taxes levied upon death in the 27 Member States. The survey is limited to taxes that are levied exclusively in event of death implying that taxes levied both upon death and under other circumstances are not covered by the survey.

The first section focuses on the Member States with inheritance or estate taxes, i.e. taxes that are levied upon death from the deceased or the heirs.

The second section focuses on the Member States with no inheritance or estate taxes.

### A) Member States with inheritance or estate taxes

The survey has revealed that 18 of the 27 Member States of the European Union have an inheritance or estate tax on the domestic tax rules. Most Member States have inheritance taxes, and few have estate taxes. Denmark has as the only Member State an estate tax as well as an inheritance tax, cf. Table 1.

Table 1: Inheritance taxes in the 27 Member States

	Member States
Inheritance tax	Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Spain.
Estate tax	Belgium, Denmark, United Kingdom*

*Note: \* The United Kingdom tax on inheritance is called an ‘inheritance tax’, but is de facto an estate tax.*

*Source: Maisto (2010), AGN International (2010) and Global Property Guide.*

This section provides a brief overview of the domestic rules on inheritance and estate taxes in these 18 Member States.

## Belgium

	Description
<b>Taxes levied</b>	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	Belgium has an estate tax called the ‘estate duty’ for residents and ‘right of transfer upon death’ for non-residents. The tax is collected locally by the regions Brussels, Flemish and Walloon.
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	-
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-
<b>Connecting factors</b>	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The residence principle:</b> The fiscal residence is the place where the deceased had his actual residence in the last 5 years before his death. If he resided in more than one region during these 5 years; the region where he resided most of the time is his tax residence.
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	For non-residents a source applies to Belgian real estate, where the tax is chargeable on the gross value of the estate without any deductions.

## Tax rates

Tax rates vary according to:

1. The degree of kinship between the beneficiary and the deceased,
2. The net share inherited by each of the heirs
3. The Region where the inheritance is opened.

If the deceased was a resident, the inheritance is opened in the region where his last fiscal domicile was located.

If the deceased was not a resident, the inheritance is opened, in principle, in the Region where the estate is located.

**Brussels Region:**

Inheritances between lineal relatives, between spouses and between cohabitants:

Bracket of the net share in €		Tax rate in %
From	to (including)	Upon lineal relatives and between spouses
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
More than	500,000	30

Inheritances between brothers and sisters:

Bracket of taxable amount in €		Tax rate in %
From	to (including)	between brothers and 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
More than	250,000	65

Inheritances between uncles or aunts and nephews or nieces:

Bracket of taxable amount in €		Tax rate in %
From	to (including)	between uncles or aunts and nephews or nieces
0.01	50,000	35
50,000	100,000	50
100,000	175,000	60
More than	175,000	70

Inheritances between any other persons:

Bracket of taxable amount in €		Tax rate in %
From	to (including)	between any other persons
0.01	50,000	40
50,000	75,000	55
75,000	175,000	65
More than	175,000	80

**Flemish Region:**

Inheritances between lineal relatives, between spouses and between cohabitants:

Bracket of the net share in euro		Tax rates in %
From	To	Upon lineal relatives and between spouses
0.01	50,000	3
50,000	250,000	9
More than	250,000	27

Inheritances between brothers and sisters or between "others":

Bracket of taxable amount in euro		Tax rates in %	
From	To	Between brothers and sisters	Between "others"
0.01	75,000	30	45
75,000	125,000	55	55
More than	125,000	65	65

<b>Tax rates (continued)</b>	<p>Walloon Region:</p> <p>Inheritances between lineal relatives, between spouses and between legal cohabitants:</p> <table border="1" data-bbox="491 248 987 383"> <thead> <tr> <th colspan="2">Bracket of the net share in €</th> <th>Tax rates in %</th> </tr> <tr> <th>From</th> <th>to (including)</th> <th>Upon lineal relatives and between spouses and legal cohabitants</th> </tr> </thead> <tbody> <tr> <td>0.01</td> <td>12,500.00</td> <td>3</td> </tr> <tr> <td>12,500.01</td> <td>25,000.00</td> <td>4</td> </tr> <tr> <td>25,000.01</td> <td>50,000.00</td> <td>5</td> </tr> <tr> <td>50,000.01</td> <td>100,000.00</td> <td>7</td> </tr> <tr> <td>100,000.01</td> <td>150,000.00</td> <td>10</td> </tr> <tr> <td>150,000.01</td> <td>200,000.00</td> <td>14</td> </tr> <tr> <td>200,000.01</td> <td>250,000.00</td> <td>18</td> </tr> <tr> <td>250,000.01</td> <td>500,000.00</td> <td>24</td> </tr> <tr> <td>More than</td> <td>500,000.00</td> <td>30</td> </tr> </tbody> </table> <p>Inheritances between collateral relatives and between non-relatives:</p> <table border="1" data-bbox="491 445 1027 562"> <thead> <tr> <th colspan="2">Bracket of the net share in €</th> <th colspan="3">Tax rate in %</th> </tr> <tr> <th>From</th> <th>to (including)</th> <th>Between brothers and sisters</th> <th>Between uncles or aunts and nephews or nieces</th> <th>Between all other persons</th> </tr> </thead> <tbody> <tr> <td>0.01</td> <td>12,500.00</td> <td>20</td> <td>25</td> <td>30</td> </tr> <tr> <td>12,500.01</td> <td>25,000.00</td> <td>25</td> <td>30</td> <td>35</td> </tr> <tr> <td>25,000.01</td> <td>75,000.00</td> <td>35</td> <td>40</td> <td>60</td> </tr> <tr> <td>75,000.01</td> <td>175,000.00</td> <td>50</td> <td>55</td> <td>80</td> </tr> <tr> <td>More than</td> <td>175,000.00</td> <td>65</td> <td>70</td> <td>90 (*)</td> </tr> </tbody> </table> <p>Inheritances of dwellings between lineal relatives, spouses or legal cohabitants (preferential rate):</p> <table border="1" data-bbox="491 663 1027 779"> <thead> <tr> <th colspan="2">Bracket of the net share (€)</th> <th>Tax rate in %</th> </tr> <tr> <th>from</th> <th>to (including)</th> <th>Between lineal relatives, between spouses and between legal cohabitants</th> </tr> </thead> <tbody> <tr> <td>0.01</td> <td>25,000.00</td> <td>1</td> </tr> <tr> <td>25,000.01</td> <td>50,000.00</td> <td>2</td> </tr> <tr> <td>50,000.01</td> <td>175,000.00</td> <td>5</td> </tr> <tr> <td>175,000.01</td> <td>250,000.00</td> <td>12</td> </tr> <tr> <td>250,000.01</td> <td>500,000.00</td> <td>24</td> </tr> <tr> <td>More than</td> <td>500,000.00</td> <td>30</td> </tr> </tbody> </table>	Bracket of the net share in €		Tax rates in %	From	to (including)	Upon lineal relatives and between spouses and legal 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	7	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	More than	500,000.00	30	Bracket of the net share in €		Tax rate in %			From	to (including)	Between brothers and sisters	Between uncles or aunts and nephews or nieces	Between all other persons	0.01	12,500.00	20	25	30	12,500.01	25,000.00	25	30	35	25,000.01	75,000.00	35	40	60	75,000.01	175,000.00	50	55	80	More than	175,000.00	65	70	90 (*)	Bracket of the net share (€)		Tax rate in %	from	to (including)	Between lineal relatives, between spouses and between legal cohabitants	0.01	25,000.00	1	25,000.01	50,000.00	2	50,000.01	175,000.00	5	175,000.01	250,000.00	12	250,000.01	500,000.00	24	More than	500,000.00	30
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<b>Exemptions</b>	<p>Personal exemptions:</p> <ul style="list-style-type: none"> <li>Legacies in favour of the region where the deceased has his fiscal residence are tax exempt.</li> </ul> <p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>Social rights in Undertakings for Collective Investments in Transferable Securities</li> <li>(UCITS) investing in service flats for elderly people, if recognised by the Flemish government.</li> <li>Certain land of ecological interest in Flanders and Wallonia</li> <li>Forests in Flanders.</li> </ul>																																																																																												
<b>Allowances</b>	<p>Brussels region:</p> <ul style="list-style-type: none"> <li>The spouse, direct descendants and direct ascendants are entitled to a tax-free allowance of €15,000 each.</li> <li>For children below 21 years of age, the allowance is increased by €2,500 for each year below the age of 21.</li> <li>For other beneficiaries, inheritances not exceeding €1,250 are not taxable.</li> </ul> <p>Flemish region:</p> <ul style="list-style-type: none"> <li>No allowances.</li> </ul> <p>Walloon region:</p> <ul style="list-style-type: none"> <li>The spouse, direct descendants and direct ascendants are entitled to a tax-free allowance of €12,500 each. The allowance is increased to €25,000, if the inheritance does not exceed €125,000.</li> <li>For children below 21 years of age, the allowance is increased by €2,500 for each year below the age of 21.</li> <li>For other beneficiaries, inheritances not exceeding €620 are tax-exempt.</li> </ul>																																																																																												

<b>Deductions</b>	Residents: All debts are deductible as well as the cost of the funeral.  Non-residents: Debts are deductible to some extent.
<b>Transfer of family-owned and closely held businesses</b>	Tax exemptions (full or partial) apply for this type of businesses, given some conditions on e.g. the deceased's participation in the business, capital requirements etc. are fulfilled.  The conditions vary from region to region.
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<b>The credit method:</b> Applies to foreign inheritance and estate taxes, but only for taxes levied on foreign real estate.
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	Estate tax treaties are in force between Belgium and the following Member States: Sweden (1958), and France (1960).
<b>Compatibility with EU law</b>	The following potential conflicts have been identified: <ul style="list-style-type: none"> <li>• Belgium taxes on Belgian real estate in the estate of non-residents on the gross value have different time limitation rules for foreign and domestic moveable assets.</li> <li>• There is no provision for deductibility of over-endowment debts for non-residents.</li> </ul>
<b>Tax revenue in% of total tax revenue</b>	1.23% in 2008.

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Deblauwe (2010), AGN International (2010) and Global Property Guide.*

## Bulgaria

	Description
<b>Taxes levied</b>	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	The inheritance tax is payable by the heirs by respect to their own inheritance. The tax rates are set by the municipalities within the limits of the law.
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-
<b>Connecting factors</b>	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The nationality principle:</b> Bulgarian nationals are liable to inheritance tax on all inherited property in Bulgaria or abroad, inherited by will or by law.
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	For foreign nationals in Bulgaria, inheritance tax is levied on all property within the territory of the country.
<b>Tax rates</b>	<p>The applicable tax rates, set by the municipalities within the limits of the law, depend on their relationship to the deceased and the value of their inheritance.</p> <p>The rates vary between 0.4% and 0.8% on inheritances received by relatives in the lateral line. For all other beneficiaries, the rates vary between 3.3% and 6.6%.</p>
<b>Exemptions</b>	The surviving spouse and relatives in the direct line are not liable to pay inheritance tax on their own inheritance.
<b>Allowances</b>	The first BGN 250,000 (€ 128,995) is exempt from taxation.
<b>Deductions</b>	The debts of the deceased, as evidenced to the tax authorities and certain funeral expenses up to BGN 1,000 (€ 516) are deductible.
<b>Transfer of family-owned and closely held businesses</b>	-
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>Unilateral relief</li> </ul>	<b>The exemption method:</b> Applies to properties outside Bulgaria, which is inherited by a Bulgarian national.
<ul style="list-style-type: none"> <li>Bilateral treaties</li> </ul>	No inheritance tax treaties are in force between Bulgaria and other Member States.
<b>Compatibility with EU law</b>	<p>The following potential conflicts have been identified:</p> <ul style="list-style-type: none"> <li>It is not clear how immovable property abroad, except from real estate, should be valued, which could create a potential for differential treatment.</li> <li>It is not clear whether rights and receivables transferred to a foreign state are deductible.</li> <li>Only domestic charities are exempt from the inheritance tax. However, charities established in an EU/EEA Member State are treated as local charities for inheritance tax purposes, so it is not clear if differential treatment exists under this provision.</li> </ul>
<b>Tax revenue in% of total tax revenue</b>	Not available.

Source: Survey by Deloitte, AGN International (2010) and Global Property Guide.



## Czech Republic

	Description
<b>Taxes levied</b>	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	Inheritance tax is levied on the acquisition of the deceased's estate upon death. Subject to certain exemptions, inheritance tax is chargeable on the net value of all assets.
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-
<b>Connecting factors</b>	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<p><b>The nationality and permanent address principle:</b> If at the time of his death the deceased:</p> <ol style="list-style-type: none"> <li>Was a national of Czech Republic and had his permanent address therein, tax shall be levied on all property, regardless of whether the property is located in Czech Republic or abroad.</li> <li>Was a national of Czech Republic but did not have his permanent address therein, the tax shall be levied on his movable property located in Czech Republic.</li> <li>Was not a national of Czech Republic, tax shall be levied only on his movable property located in Czech Republic.</li> </ol> <p>As regards real estate, Czech Republic does not levy inheritance tax on real estate situated abroad.</p>
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	For non-nationals and persons without a permanent address in the Czech Republic, the inheritance tax is only chargeable on assets (both movable and immovable) located in the Czech Republic.



## Tax rates

Heirs are classified according to the relationship to the deceased person into the following three groups:

- i. Direct family members (parents, children) and spouses.
- ii. Secondary relatives (siblings, nephews, nieces, aunts, uncles) and persons living with the decedent in a common household.
- iii. Other individuals and organizations.

No inheritance tax is payable by the first two categories.

Progressive rates apply for transfers to persons in the third group as follows:

TAX BASE, CZK (€)	TAX RATE
Up to 1 million (€48,916)	7%
1 million – 2 million (€97,833)	9%
2 million – 5 million (€244,583)	12%
5 million – 7 million (€342,416)	14%
7 million – 10 million (€489,165)	18%
10 million – 20 million (€978,330)	21%
20 million – 30 million (€1,467,495)	25%
30 million – 40 million (€1,956,660)	30%
40 million – 50 million (€2,445,825)	35%
Over 50 million (€2,445,825)	40%

The resulting amount is multiplied by a coefficient of 0.5 to get the final sum of inheritance tax.

<b>Exemptions</b>	<p>Personal exemptions:</p> <ul style="list-style-type: none"> <li>• Parents, children, spouses, siblings, nephews, nieces, aunts, uncles and persons living with the decedent in a common household.</li> </ul> <p>Objective exemptions (partial):</p> <ul style="list-style-type: none"> <li>• Acquisition of movable personal belongings of individuals (unless these things were included into the descendant's business property within a year prior to the acquisition).</li> <li>• Acquisition of deposits by banks or branches of foreign banks operating in Czech Republic (except for deposits on business accounts), financial means in Czech or foreign currency and securities in Czech Republic as well as on proportionate parts paid out from such property to heirs and on proportionate parts derived from the jointly owned assets of spouses which ceased to exist upon the death of one of them. More conditions apply.</li> <li>• Acquisition of property by state-registered churches, religious societies, political parties, foundations and endowment funds, insurance companies for the funds of public health insurance.</li> <li>• Acquisition of property by Czech Republic, local regional authorities, voluntarily associated municipalities, public research institutions and universities, public non-profit health care institutions and regional councils of solidarity's region.</li> </ul>
<b>Allowances</b>	-
<b>Deductions</b>	<p>The following items are regarded as tax deductible for inheritance tax purposes:</p> <ul style="list-style-type: none"> <li>• Documented debts of the decedent transferred to his/her heirs.</li> <li>• Value of property that is exempt from inheritance tax pursuant to Czech tax law.</li> <li>• Adequate expenses related to the decedent's funeral.</li> <li>• Notary's remuneration in connection with inheritance proceeding and other duties levied in inheritance proceeding and documented inheritance dues paid to another state in respect of inherited property there, if such property is also liable to inheritance tax in Czech Republic.</li> </ul>
<b>Transfer of family-owned and closely held businesses</b>	Exemption from inheritance tax is provided for the first free-of-charge acquisition of a property share in a co-operative (housing or agricultural) between relatives in the direct line of descent, siblings or a spouse as well as other persons within family or similar relationship.
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<p><b>(Credit method):</b> The tax rules does not have a clear rule, but it provides the possibility to deduct the documented inheritance taxes paid to another state in respect of inherited property there, provided that such property is also liable to inheritance tax in Czech Republic.</p>

<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	Inheritance tax treaties are in force between Czech Republic and the following Member States: Austria (1996).
<b>Compatibility with EU law</b>	The following potential conflicts have been identified: <ul style="list-style-type: none"> <li>• Czech Republic's tax-exemptions for private pension contributions do not cover those paid abroad.</li> <li>• No tax-exemption applies for foreigners in the third tax category to an acquisition of a property share in agricultural co-operatives.</li> </ul>
<b>Tax revenue in% of total tax revenue</b>	0.02% in 2008.

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Zoubek (2010), AGN International (2010) and Global Property Guide.*

## Denmark

	Description
<b>Taxes levied</b>	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	A tax is levied on the estate as a whole, but the spouse of the deceased is not liable to this tax.
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	A tax is levied on inheritance to all other than immediate family and certain other people with a closer defined relationship with the deceased.
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-
<b>Connecting factors</b>	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The residence principle:</b> If the deceased was resident in Denmark at the time of his death, all property worldwide belonging to his estate is subject to estate tax.
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	Yes, if the deceased was not resident in Denmark at the time of death, estate tax is due on immovable property including property accessory to immovable and movable business property of permanent establishments situated in Denmark.
<b>Tax rates</b>	Estate tax is a flat rate of 15% on the net value of the estate. Inheritance tax is a flat rate of 25% on the computed taxable inheritance.  The estate tax is paid first and afterwards the inheritance tax is paid on that amount with a maximum estate and inheritance tax payable of 36.25%.
<b>Exemptions</b>	Personal exemptions: <ul style="list-style-type: none"> <li>The spouse of the deceased is not liable to the estate tax.</li> <li>The spouse and certain close relatives (children/ stepchildren, and their descendants, spouses of children/ stepchildren, parents) are not subject to inheritance tax.</li> </ul> Objective exemptions: <ul style="list-style-type: none"> <li>Running payments from life insurance.</li> <li>Gifts to non-profit organizations.</li> </ul>
<b>Allowances</b>	DKK 264,000 in 2010.  This basic amount is deducted from the tax-liable inheritance including the tax-liable inheritance from a deceased resident abroad whose estate is subject to limited tax liability in Denmark.
<b>Deductions</b>	All liabilities are allowed as deductions.
<b>Transfer of family-owned and closely held businesses</b>	Denmark has no specific rules (e.g. exemption) concerning transfers upon death of going concerns or participations in family-owned or closely-held businesses.
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>Unilateral relief</li> </ul>	<b>The credit method:</b> Applies for real estate located in foreign countries where a foreign estate/inheritance tax is also imposed. The foreign tax credit cannot exceed the Danish estate tax on the relevant assets.

<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	Estate and inheritance tax treaties are in force between Denmark and the following Member States: Italy (1968), Finland (1989), and Germany (1996).
<b>Compatibility with EU law</b>	No potential conflicts identified.
<b>Tax revenue in% of total tax revenue</b>	0.42% in 2006.

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Michelsen (2010), AGN International (2010) and Global Property Guide.*

## Finland

	Description																								
<b>Taxes levied</b>																									
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-																								
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	The inheritance tax is payable to the state by the heirs and any testamentary beneficiaries. The beneficiaries of the deceased are liable to pay inheritance tax on their portion of the estate.																								
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<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The residence principle:</b> Inheritance tax will be payable to Finnish tax authorities, if decedent, heir or a testate beneficiary was a resident in Finland at date of death. The inheritance tax concerns both movable and immovable property, and both domestically and foreign-located property.																								
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	Yes, real property of non-residents is taxable. A stock of a corporation is to be equated with real property if more than 50% of the assets are made up of it.																								
<b>Tax rates</b>	<p>Beneficiaries are taxed differently, depending on their relationship with the deceased:</p> <p>1) Category I - Spouses, children, spouse's children, adopted children, parents, adoptive parents, and direct heirs of children or adopted children, betrothed in certain circumstances, and common-law spouses if the couple has been married before or if they have had a child.</p> <table border="1"> <thead> <tr> <th>Value of Taxation Property (EUR)</th> <th>Basic Tax Amount</th> <th>Plus Percent on the Excess</th> </tr> </thead> <tbody> <tr> <td>20,000 - 40,000</td> <td>100</td> <td>7</td> </tr> <tr> <td>40,001 - 60,000</td> <td>1,5</td> <td>10</td> </tr> <tr> <td>60,001 - over</td> <td>3,5</td> <td>13</td> </tr> </tbody> </table> <p>2) Category II - Other relatives and strangers.</p> <table border="1"> <thead> <tr> <th>Value of Taxation Property (EUR)</th> <th>Basic Tax Amount</th> <th>Plus Percent on the Excess</th> </tr> </thead> <tbody> <tr> <td>20,001 - 40,000</td> <td>100</td> <td>20</td> </tr> <tr> <td>40,001 - 60,000</td> <td>4,1</td> <td>26</td> </tr> <tr> <td>60,001 - over</td> <td>9,3</td> <td>32</td> </tr> </tbody> </table>	Value of Taxation Property (EUR)	Basic Tax Amount	Plus Percent on the Excess	20,000 - 40,000	100	7	40,001 - 60,000	1,5	10	60,001 - over	3,5	13	Value of Taxation Property (EUR)	Basic Tax Amount	Plus Percent on the Excess	20,001 - 40,000	100	20	40,001 - 60,000	4,1	26	60,001 - over	9,3	32
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<b>Exemptions</b>	<p>Personal exemptions:</p> <ul style="list-style-type: none"> <li>If there has been a life insurance contract, and the beneficiary is a close relative, he or she can receive €35,000 as a tax-deductible indemnity for death. If the life insurance is going to a more distant relative, the payment will be taxed as capital gains, assessed at the 28% rate.</li> <li>If the beneficiary is the spouse, he or she can receive half of the entire indemnity payment, or alternatively, at least €35,000 as tax-deductible.</li> <li>Decedent's and his family's usual home furniture and chattel are tax-free up to €4,000.</li> </ul>																								

	<p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>• Annuities, pensions and entitlements to be paid to someone are not taxable if stated in the will or testament.</li> <li>• If the testate beneficiary is a state, county, municipality, parish or other religious community or school, no inheritance tax will be levied on the received assets.</li> <li>• Non-profit associations or foundations do not pay tax on received assets.</li> </ul>
<b>Allowances</b>	<p>The surviving spouse is entitled to a deduction of €60,000 (concerns spouses in marriage and partners equated with spouses).</p> <p>An heir under 18 years of age is entitled to a deduction of €40,000 if he or she is the decedent's lineal descendant.</p>
<b>Deductions</b>	<p>The following deductions apply:</p> <ul style="list-style-type: none"> <li>• All decedent's debts at date of death as well as funeral costs, expenses for drawing up the Deed of Inventory, and for purchasing a tombstone.</li> <li>• Burdens associated with the assets received by an heir/beneficiary as well as the profit derived from using another person's property.</li> <li>• For non-resident descendants, only debts and burdens directly related to taxable real property in Finland.</li> <li>• Gift tax for gifts given to the heir during three years preceding date of death.</li> <li>• See also other deductions mentioned under 'Exemptions'.</li> </ul>
<b>Transfer of family-owned and closely held businesses</b>	<p>A partial exemption of inheritance tax will be granted for transfers of (domestic and foreign) businesses and agricultural/forestry entities if:</p> <ul style="list-style-type: none"> <li>• Taxable inheritance includes a farm, other business or participation.</li> <li>• Beneficiary will go on conducting business or practicing agriculture/forestry with assets received.</li> <li>• The amount of relevant inheritance tax would be more than €850 considering the proportions of business or farm assets in relation to other inherited assets.</li> </ul> <p>If the form of legal entity is corporate, exemption can only be granted if the heir receives at least 10%. As a further relief, the maximum of five years of interest-free payment time will be granted to the part of inheritance tax related to business or farm assets.</p>
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<p><b>The credit method:</b> It applies to heirs resident in Finland. Maximum credit will equal the Finnish inheritance tax payable on the same receipt of assets.</p>
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	<p>Inheritance tax treaties are in force between Finland and the following Member States: Netherlands (1955), France (1959) and Denmark (1992). The credit method is applied in the treaty with Denmark in contrast to the</p>

	treaties with the Netherlands and France, which rely on exemptions.
<b>Compatibility with EU law</b>	The following potential conflict has been identified: <ul style="list-style-type: none"> <li>• Finland restricts deductions of debts pertaining to the estate of non-residents.</li> </ul>
<b>Tax revenue in% of total tax revenue</b>	0.81% in 2008 (incl. revenue from both inheritance and gift tax. In 2006, the share of inheritance tax was estimated to be about 84% of the total revenue from inheritance and gift tax).

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Finland (2010), AGN International (2010) and Global Property Guide.*



## France

	Description																
<b>Taxes levied</b>																	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	Estate taxes are due in respect of all conveyances of properties resulting from death, whether the conveyance is made pursuant to statutory devolution rules or provisions of a will (universal bequest, general or special bequest).																
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	-																
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-																
<b>Connecting factors</b>																	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<p><b>The domicile principle:</b> The tax is due in France in the following instances:</p> <ul style="list-style-type: none"> <li>All transfers in which the decedent or donor is domiciled in France.</li> <li>All transfers if the beneficiary is domiciled in France and has been domiciled in France for at least six years during the last ten years.</li> </ul>																
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	<p>A source rule applies to all transfers covering French Property or property located in France if the deceased was not resident in France at the time of death.</p> <p>The term “French Property” broadly covers immovable property, amounts due by a French debtor, investment securities issued by a French company as well as interests in companies holding immovable property.</p>																
<b>Tax rates</b>	<p>Estate taxes are calculated in three stages on the net fraction accruing to each heir or legatee. The duties are calculated taking into account any gifts made beforehand by the decedent, except however for gifts made more than six years earlier:</p> <ol style="list-style-type: none"> <li>Application of deductions to the net share of each taxpayer.</li> <li>Calculation of the taxes on the basis of a price scale whose rate varies according to the relationship existing between the decedent and the beneficiary.</li> <li>Where applicable, reduction of the estate taxes.</li> </ol> <p><u>Tax rates for direct-line heirs (2010):</u></p> <table border="1"> <thead> <tr> <th>TAXABLE INHERITANCE (€)</th> <th>TAX RATE</th> </tr> </thead> <tbody> <tr> <td>Up to €7,699</td> <td>5%</td> </tr> <tr> <td>€7,699 to €11,548</td> <td>10%</td> </tr> <tr> <td>€11,548 to €15,195</td> <td>15%</td> </tr> <tr> <td>€15,195 to €526,760</td> <td>20%</td> </tr> <tr> <td>€526,760 to €861,050</td> <td>30%</td> </tr> <tr> <td>€861,050 to €1,722,100</td> <td>35%</td> </tr> <tr> <td>Over €1,722,100</td> <td>40%</td> </tr> </tbody> </table>	TAXABLE INHERITANCE (€)	TAX RATE	Up to €7,699	5%	€7,699 to €11,548	10%	€11,548 to €15,195	15%	€15,195 to €526,760	20%	€526,760 to €861,050	30%	€861,050 to €1,722,100	35%	Over €1,722,100	40%
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	<p><u>Tax rates for siblings (2010):</u></p> <table border="1"> <thead> <tr> <th>TAXABLE INHERITANCE (€)</th> <th>TAX RATE</th> </tr> </thead> <tbody> <tr> <td>Not exceeding €24,069</td> <td>35%</td> </tr> <tr> <td>Beyond</td> <td>45%</td> </tr> </tbody> </table> <p><u>Tax rates for others (2010):</u></p> <table border="1"> <thead> <tr> <th>TAXABLE INHERITANCE (€)</th> <th>TAX RATE</th> </tr> </thead> <tbody> <tr> <td>Between relatives to the</td> <td></td> </tr> <tr> <td>Fourth degree inclusively:</td> <td>55%</td> </tr> <tr> <td>Between parents beyond the</td> <td></td> </tr> <tr> <td>Fourth degree and between</td> <td></td> </tr> <tr> <td>Persons who are not relatives:</td> <td>45%</td> </tr> </tbody> </table>	TAXABLE INHERITANCE (€)	TAX RATE	Not exceeding €24,069	35%	Beyond	45%	TAXABLE INHERITANCE (€)	TAX RATE	Between relatives to the		Fourth degree inclusively:	55%	Between parents beyond the		Fourth degree and between		Persons who are not relatives:	45%
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<b>Exemptions</b>	<p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>• Conveyances upon death of certain agricultural properties (land and forests, interests in forestry groupings, interests in land property groupings, rural properties leased for the long term) may be partly exempt from estate taxes, if numerous conditions are satisfied.</li> <li>• Bequests made to the State, to local authorities, to scientific and educational State agencies and to institutions exclusively engaged in support and welfare endeavours.</li> <li>• Certain associations and foundations serving the public and general interest.</li> </ul>																		
<b>Allowances</b>	<p>Allowances (2010):</p> <ul style="list-style-type: none"> <li>• Ascendants and children: €156,974</li> <li>• Grandchildren and great grandchildren: €1,570</li> <li>• Siblings: €15,697</li> <li>• Nephews and nieces: €7,849</li> <li>• Other beneficiaries: €1,570</li> </ul>																		
<b>Deductions</b>	<p>Domiciles: The decedent's (domestic and foreign) liabilities are deducted from the estate, on the basis of supporting documentation submitted by the heirs.</p> <p>Non-domiciles: Only those liabilities related to the property located in France may be deducted.</p>																		
<b>Transfer or family-owned and closely held businesses</b>	<p>Heirs or legatees are exempt from estate taxes up to 75% of the enterprise's value (without any limitation applicable to the amount), given that they agree not to sell the enterprise's shares is.</p> <p>Tax reduction is given on the following items:</p>																		

	<ul style="list-style-type: none"> <li>• Companies (regardless of the applicable tax rules) conducting industrial, commercial, crafts, agricultural or professional operations covered by a collective commitment in accordance with the above terms.</li> <li>• Shares or interests of intermediary companies.</li> <li>• Movable and immovable property.</li> <li>• Tangible and intangible assets earmarked for the operation of a sole proprietorship engaged in industrial, commercial, crafts, agricultural or professional activities.</li> </ul>
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<p><b>The credit method:</b> It applies to, against the estate and gift taxes due in France, the corresponding duties paid in a foreign country.</p> <p>The foreign tax may only be applied against the French tax within the limit of the said tax related to movable and immovable property located abroad. The foreign tax may not be applied against the French tax, if it covers French property proper.</p>
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	Estate tax treaties are in force between France and the following Member States: Finland (1959), Belgium (1960), Spain (1963), UK (1964), Austria (1994), Italy (1995), Sweden (1996), and Germany (2006)
<b>Compatibility with EU law</b>	<p>The following potential conflict has been identified:</p> <ul style="list-style-type: none"> <li>• The preferential rule of exemption in favour of the reversion of life annuities between spouses or relatives in direct line do not apply to property located abroad.</li> </ul>
<b>Tax revenue in% of total tax revenue</b>	2.31% in 2008 (covers both estate and gift conveyance taxes of aggregate state's revenues. Estate taxes comprise around 90% in 2008).

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Monassier (2010), AGN International (2010) and Global Property Guide.*

## Germany

	Description
<b>Taxes levied</b>	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	An inheritance tax is applicable to the transfer of property. If a person makes a gift, this transfer is regulated by the inheritance tax as well. The inheritance tax is reduced if the estate is divided among more heirs.
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-
<b>Connecting factors</b>	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<p><b>The residence and domicile principle:</b> It is applied on a worldwide basis to all foreign property if a person has a residence or domicile in Germany.</p> <p>Residence is defined as the possession of housing space. A domicile is given when a person stays continuously for more than six months in Germany.</p> <p>For emigrants and German officials abroad, their nationality is a criterion for determining tax liability. Every German official, e.g. diplomat or soldier, who receives remuneration from a German governmental body, is taxable in Germany on a worldwide basis regardless of her place of residence. Inheritance tax applies to a broader concept of tax liability in the first 10 years after the emigration of a German citizen.</p> <p>Not all assets being effectively situated in Germany are taxable, but only those named in Section 121 BewG. These assets are mainly real estate situated in Germany, business assets located in Germany, shares in a corporation if the company has its seat or place of principal management in Germany and the decedent or donor, either alone or together with persons closely connected with him in terms of Section 1 Subsection 2 AStG, holds directly or indirectly at least 10 % of the nominal or share capital of the company, as well as some immaterial rights.</p>
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	For non-residents a source applies only to assets situated in Germany. Bank accounts with German banks, for example, are not subject to taxation because of situs.
<b>Tax rates</b>	<p>There are three different tax classes. The closer the relationship to the deceased is, the lower is the tax burden is.</p> <ul style="list-style-type: none"> <li>Tax Class I: Spouses, children, stepchildren, grandchildren, great grandchildren, parents and grandparents.</li> <li>Tax Class II: Brothers, sisters, nephews, nieces, stepparents, sons-in-law, daughters-in-law, parents-in-law and divorced spouses</li> </ul>

and, in the case of gifts, parents and grandparents.

- Tax Class III: All other persons, including legal entities and same sex partners.

Basis of assessment

up to and including...	Tax Class I	Tax Class II	Tax Class III
€75,000	7%	15%	30%
€300,000	11%	20%	30%
€600,000	15%	25%	30%
€6,000,000	19%	30%	30%
€13,000,000	23%	35%	50%
€26,000,000	27%	40%	50%
>€26,000,000	30%	43%	50%

The above rates apply for the entire acquisition of the heir and are not taxed at progressive rates.

<b>Exemptions</b>	<p>Personal exemptions (for definition of Tax Class I, II and III, see under 'Tax rates'):</p> <ul style="list-style-type: none"> <li>• Tax Class I: There is a special exemption for household property of up to €41,000 and for other moveable assets of up to €12,000. Children in Tax Class I get a special allowance.</li> <li>• Tax Class II and III: The exemption for all current assets is €12,000.</li> <li>• For the surviving spouse or the same sex partner (after the civil partnership act), an additional exemption of €256,000 is given.</li> <li>• Self-occupied houses or apartments can be transferred tax-free to spouses, same sex partners and children if the new owner immediately uses the house for his own residence purposes.</li> <li>• For spouses (and same-sex partners) living under the statutory regime of joint ownership, an increase in the capital value of assets during marriage is tax-free.</li> </ul> <p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>• Art, art collections, science collections, libraries and archives are 60% tax free if the objects are important for the arts, history or science and the regular income from these objects is lower than the costs.</li> <li>• Foundations can be tax-free depending on whether they are charitable or not.</li> </ul>												
<b>Allowances</b>	<p><u>Personal allowances</u></p> <table border="0"> <tr> <td>Spouse and same sex partner of a civil partnership:</td> <td>€500,000</td> </tr> <tr> <td>Children:</td> <td>€400,000</td> </tr> <tr> <td>Grandchildren:</td> <td>€200,000</td> </tr> <tr> <td>Other persons taxable in Tax Class I:</td> <td>€100,000</td> </tr> <tr> <td>Persons taxable in Tax Class II:</td> <td>€20,000</td> </tr> <tr> <td>Persons taxable in Tax Class III:</td> <td>€20,000</td> </tr> </table> <p>In the case of taxation based on the location of the assets, the allowance is €2,000, unless a double taxation treaty provides otherwise.</p>	Spouse and same sex partner of a civil partnership:	€500,000	Children:	€400,000	Grandchildren:	€200,000	Other persons taxable in Tax Class I:	€100,000	Persons taxable in Tax Class II:	€20,000	Persons taxable in Tax Class III:	€20,000
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Persons taxable in Tax Class III:	€20,000												
<b>Deductions</b>	<p>The heir can deduct all debt of the deceased that has a connection to assets subject to the inheritance tax. Without any proof, an amount of €10,300 can be deducted for the costs of the funeral. Furthermore all bequests and liabilities arising because of the death can be subtracted.</p> <p>Non-residents can deduct only debt that has an economic connection to the assets taxed under the provisions of the German inheritance tax.</p>												
<b>Transfer of family-owned or closely held businesses</b>	<p>Business relief is applicable to all sole proprietorships, participation in partnerships and forestry/agricultural businesses.</p> <p>Shareholdings are subject to business relief if the deceased holds more</p>												

	<p>than 25% of the corporation's share capital. Shareholders can form a share pool to achieve the threshold of 25%. There is no minimum participation for partnerships.</p> <p>The business relief requires that not more than 50% of the business property is invested in non-operating property. Furthermore, the aggregate wages for the next five years must be at least 400% of the average aggregate wages during the last five years before the transfer.</p> <p>The acquisition of business property for which the business relief is applicable always falls under the tariff of Class I, regardless of the relationship between the deceased and the heir.</p>
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<p><b>The credit method:</b> Foreign estate taxes, as well as foreign inheritance and gift taxes, can be credited against the German tax (except from the Canadian capital gains tax, the Austrian withholding tax, stamp duties and inheritance taxes included in income taxes).</p> <p>The foreign tax has to be levied on foreign assets. For every foreign country, the maximum credit is calculated in accordance with the following formula: Max tax credit = German tax * (foreign estate / worldwide estate).</p>
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	Inheritance tax treaties are in force between Germany and the following Member States: Greece (1910), Sweden (1995), and Denmark (1997).
<b>Compatibility with EU law</b>	<p>The following potential conflict has been :</p> <ul style="list-style-type: none"> <li>• Grants to foreign charities are only exempt from the inheritance tax if the two governments have exchanged notes that reciprocity is guaranteed and, thereby, does not allow the taxpayer to bring the necessary information about the activities of the foreign charity.</li> </ul>
<b>Tax revenue in% of total tax revenue</b>	0.48% in 2008.

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Watrin (2010), AGN International (2010) and Global Property Guide.*

## Greece

	Description															
<b>Taxes levied</b>																
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-															
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	An inheritance tax is levied on the transfer of property and is imposed on each beneficiary of the estate.															
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-															
<b>Connecting factors</b>																
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The nationality and domicile principle:</b> Greek nationals or people domiciled in Greece at the time of their death are liable to inheritance tax on all their assets, both those located in Greece and abroad. Immovable property situated in a foreign State is not subject to Greek inheritance taxation.															
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	Yes, a source applies to all estate assets (movable and immovable), which at the time of succession are situated in Greece, irrespective of the nationality and domicile of the decedent or the heir/legatee.															
<b>Tax rates</b>	<p>The net value of each particular heir's or legatee's share in the estate is subject to taxation at flat or progressive tax rates depending on the degree of kinship with the decedent. They are grouped into three classes:</p> <ul style="list-style-type: none"> <li>Class A includes spouses, children, grandchildren and parents.</li> <li>Class B includes other ascendants and descendants, brothers and sisters, stepbrothers and stepsisters, nephews and nieces, uncles and aunts, foster parents, children from a previous marriage of the spouse, and sons or daughters in law.</li> <li>Class C includes all other beneficiaries not contained in Classes A and B.</li> </ul> <p>Class A and Class B beneficiaries are taxed at flat rates, which vary depending on the type of estate assets whereas Class C is still taxed according to a system of tax brackets.</p> <p><u>Tax rates for Class A and B:</u></p> <table border="1"> <thead> <tr> <th></th> <th>Real Property</th> <th>Stocks, shares and bonds</th> <th>Non-listed stocks and shares</th> <th>All other estate assets</th> </tr> </thead> <tbody> <tr> <td>Class A</td> <td>1%</td> <td>0.6%</td> <td>1.2%</td> <td>10%</td> </tr> <tr> <td>Class B</td> <td>1%</td> <td>1.2%</td> <td>2.4%</td> <td>10%</td> </tr> </tbody> </table> <p><u>Tax rates for Class C:</u></p>		Real Property	Stocks, shares and bonds	Non-listed stocks and shares	All other estate assets	Class A	1%	0.6%	1.2%	10%	Class B	1%	1.2%	2.4%	10%
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Over €267,000	40%										
<b>Exemptions</b>	<p>Personal exemptions:</p> <ul style="list-style-type: none"> <li>• Transfer of crop and livestock farming land.</li> <li>• Acquisition of first house.</li> <li>• Reduction in tax rate for gifts (depends on the beneficiary's class and physical mobility).</li> <li>• Spouses or underage children are further tax exempt for an amount of € 400,000.</li> </ul> <p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>• The State and municipalities, churches, monasteries, the community of the Holy Sepulchre, the monastery of Mount Sinai, the Orthodox Church of Albania and legal persons governed by public law.</li> <li>• Non-profit making legal entities established or to be established in Greece, provided that they are shown to be pursuing charitable or educative purposes, or purposes of national interest.</li> <li>• Foreign natural entities where exemption is provided for by international agreement, subject to there being reciprocity.</li> <li>• Greek political parties provided that they are recognised by Parliament.</li> <li>• Universities and public hospitals.</li> <li>• Any person expressly exempted by legal provision.</li> <li>• A reduction in parental provision for immovable property on minor islands.</li> </ul>										
<b>Allowances</b>	<ul style="list-style-type: none"> <li>• Class A (spouses, children, grandchildren and parents): €95,000</li> <li>• Class B (ascendants and descendants, brothers and sisters, stepbrothers and stepsisters, nephews and nieces, uncles and aunts, foster parents, children from a previous marriage of the spouse, and sons or daughters in law): €20,000</li> <li>• Class C (all other beneficiaries): €6,000</li> </ul> <p>In case the estate consists of more than one type of assets and its entire value exceeds the before mentioned threshold, the tax-free amount is first allocated to real property, second, to stocks or shares, and then to all other estate assets.</p>										
<b>Deductions</b>	<p>Both liabilities and charges can be deducted from the value of the estate:</p> <ul style="list-style-type: none"> <li>• Liabilities include outstanding debts incurred prior to death, tax debts of the decedent, expenses for hospital and medical care for the decedent in the last 6 months, claims by the spouse for participation to profits and gains as well as the value of the legacy.</li> </ul>										

	<ul style="list-style-type: none"> <li>Charges allowed for deduction include expenses of probate proceedings, expenses for the issuance of an inheritance certificate, expenses incurred for performing an inventory of the decedent's estate, expenses for declaring the decedent legally dead (death in absentia), expenses incurred for the administration of estate assets located in a foreign country and funeral expenses.</li> </ul>
<b>Transfer of family-owned or closely held businesses</b>	No favourable treatment applies for family-owned or closely held businesses per se. Instead, tax incentives rely on the degree of kinship between the transferor and the transferee rather than on the business characteristics.
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>Unilateral relief</li> </ul>	<b>The credit method:</b> Foreign movable assets in the event of death of the decedent can be credited. There is no formal requirement that the foreign tax to be credited must be of the same nature as domestic inheritance tax but have to fulfil certain requirements.
<ul style="list-style-type: none"> <li>Bilateral treaties*</li> </ul>	Inheritance tax treaties are in force between Greece and the following Member States: Germany (1910), Spain (1919), and Italy (1964).
<b>Compatibility with EU law</b>	The following potential conflicts have been identified: <ul style="list-style-type: none"> <li>The descendant's children or surviving spouse have to have lived in Greece for one full year to get the tax exemptions on house or land acquired by virtue of succession, in case they do not own real property that is sufficient for their dwelling needs.</li> <li>The favourable tax regime is denied to transfers upon death of shares in foreign companies, which are then taxed at regular rates.</li> </ul>
<b>Tax revenue in% of total tax revenue</b>	0.20% in 2008.

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Tsourouflis (2010), AGN International (2010) and Global Property Guide.*

## Hungary

	Description												
<b>Taxes levied</b>													
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-												
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	Inheritance tax is levied on property transferred on the basis of an estate, a legacy or will, an acquisition of a mandatory share of an estate and a donation in the event of death.												
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-												
<b>Connecting factors</b>													
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The nationality and residence principle:</b> Estate located in Hungary as well as moveable property located outside Hungary is subject to inheritance tax if the heirs are either nationals or residents in Hungary.												
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	Yes, a source applies to all property located in Hungary for all non-nationals and non-residents.												
<b>Tax rates</b>	<p>Inheritance tax rates depend on the proximity of the deceased to the beneficiary, and the amounts of tax due are calculated on the basis of the applicable rate and the net value of the estate.</p> <table border="1"> <thead> <tr> <th>Category</th> <th>General rate</th> <th>Rate in cases of residential property</th> </tr> </thead> <tbody> <tr> <td>If the heir is the spouse/foster parent</td> <td>U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF</td> <td>U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF</td> </tr> <tr> <td>Siblings</td> <td>U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF</td> <td>U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF</td> </tr> <tr> <td>Other legatee</td> <td>U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF</td> <td>U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF</td> </tr> </tbody> </table> <p>In the case of inheritance of vehicles (including rights with monetary value regarding vehicles), the respective transfer tax rates are doubled.</p>	Category	General rate	Rate in cases of residential property	If the heir is the spouse/foster parent	U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF	U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF	Siblings	U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF	U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF	Other legatee	U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF	U -to 18 million HUF P From 18 million HUF to 35 million HUF From 35 million HUF
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<b>Exemptions</b>	<p>Personal exemptions:</p> <ul style="list-style-type: none"> <li>Any property inherited by the descendants or ascendants of the deceased person</li> <li>Inheritance of an estate by the spouse of the deceased person up to the net value of HUF 20 million.</li> <li>Inheritance of a right to use a residential property or a right to profit on a residential property by the surviving spouse.</li> <li>Estate where the deceased was a minor and the beneficiary is his/her parent.</li> </ul>												

	<p>Objective exemptions:</p> <ul style="list-style-type: none"><li>• Estates donated for national scientific, artistic, educational, cultural or social purposes.</li><li>• Inheritance of certain interests in business associations (excluding shares) and savings deposits.</li><li>• Inheritance of movable property up to HUF 300,000 per beneficiary (excluding vehicles).</li><li>• Inheritance of land suitable for constructing a residential property or inheritance of rights with monetary value on such land if the beneficiary builds a residential property on it within four years.</li><li>• Beneficiaries of inherited art, cultural property, collections or any of part of a collection in the case of a donation to the state, a municipality or an institution of higher education.</li></ul> <p>In addition, lower rates apply for inherited agricultural land or rights with monetary value.</p>
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<b>Allowances</b>	-
<b>Deductions</b>	<p>The following items are deductible from the fair market value when establishing the net value of the estate:</p> <ul style="list-style-type: none"> <li>• Funeral costs of the deceased.</li> <li>• Costs of acquiring, securing and handling the estate as well as the public notary's costs (administration of the estate).</li> <li>• The deceased's debts/obligations and obligations relating to the forced share rules.</li> <li>• Liabilities based on legacies and enjoinders.</li> <li>• Debts/obligations relating to guardianship/administration.</li> </ul>
<b>Transfer of family-owned or closely held businesses</b>	The inheritance of a number of business assets, such as business shares, is currently exempt. Special rules apply if agricultural land is inherited.
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<b>The exemption method:</b> There is no explicit unilateral relief. However, movable property located outside Hungary and rights on it that are inherited by a Hungarian citizen or a non-Hungarian citizen who lives in Hungary are only subject to inheritance tax if no such tax is levied in the respective foreign country. No tax is payable on the inheritance of immovable property located abroad.
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	Inheritance tax treaties are in force between Hungary and the following Member States: Sweden (1938), Romania (1949), and Austria (1976).
<b>Compatibility with EU law</b>	No potential conflicts identified.
<b>Tax revenue in% of total tax revenue</b>	0.1% in 2008.

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Csikós and Lócsei (2010), AGN International (2010) and Global Property Guide.*

## Ireland

	Description												
<b>Taxes levied</b>													
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-												
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	A tax called the ‘Capital Acquisitions Tax’ is levied on inheritances in Ireland and is charged on property passing on death. It also consists of a gift tax charged on lifetime gifts. The beneficiary is liable to pay the tax.												
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-												
<b>Connecting factors</b>													
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The residence principle:</b> If either the donor or the beneficiary is a resident or ordinarily resident in Ireland at the date of the inheritance the taxable inheritance consists of the whole of the property taken by the successor. A foreign domiciled person is only considered to be a resident if he/she has been resident in Ireland for the five consecutive tax years prior to the inheritance.												
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	For non-residents a source applies to all assets situated in Ireland.												
<b>Tax rates</b>	A flat rate of 25% applies to any taxable assets over the threshold (see ‘Allowances’).												
<b>Exemptions</b>	<p>Personal exemptions:</p> <ul style="list-style-type: none"> <li>Inheritances and gifts taken by one spouse from the other.</li> <li>Normal and reasonable expenditure by a disponent on his/her immediate family.</li> </ul> <p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>Heritage property, that is houses, gardens, articles of national scientific, historic or artistic significance which fulfil certain conditions.</li> <li>A dwelling house which has been occupied by the recipient subject to certain conditions being complied with.</li> <li>An inheritance taken for public or charitable purposes.</li> <li>Payments and pensions to retired employees.</li> <li>Certain government securities and interests in certain unit trusts when taken by foreigners.</li> <li>Moneys payable under a qualifying insurance policy to the extent that such monies are used to pay inheritance tax.</li> <li>Payments to permanently incapacitated individuals from trust funds contributed by means of public subscriptions.</li> </ul>												
<b>Allowances</b>	<table border="1"> <thead> <tr> <th>Group</th> <th>Threshold (€)</th> <th>Relationship</th> </tr> </thead> <tbody> <tr> <td>Group A</td> <td>434,000</td> <td>Son/ daughter/ foster-child</td> </tr> <tr> <td>Group B</td> <td>43,400</td> <td>Parent/ niece/ neph ew/ brother/ sister/ grandchild</td> </tr> <tr> <td>Group C</td> <td>21,700</td> <td>Stranger/ cousin</td> </tr> </tbody> </table>	Group	Threshold (€)	Relationship	Group A	434,000	Son/ daughter/ foster-child	Group B	43,400	Parent/ niece/ neph ew/ brother/ sister/ grandchild	Group C	21,700	Stranger/ cousin
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<b>Deductions</b>	<p>The following deductions apply:</p> <ul style="list-style-type: none"> <li>Liabilities (not further specified).</li> <li>90% of the market value of agricultural land and buildings taken by a donee or successor who is a farmer.</li> <li>90% of the market value of trees and underwood.</li> <li>90% of the market value of relevant business property.</li> </ul>												

<b>Transfer of family-owned and closely held businesses</b>	-
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<b>The credit method:</b> It applies to foreign taxes, which arises upon the death of a person. It concerns property located in the foreign state and cannot exceed the payable amount of the Capital Acquisitions Tax.
<ul style="list-style-type: none"> <li>• Bilateral treaties</li> </ul>	Inheritance tax treaties are in force between Ireland and the following Member States: UK.
<b>Compatibility with EU law</b>	The following potential conflict has been identified: <ul style="list-style-type: none"> <li>• A reduction in the valuation of business property requires shares to be held in an Irish incorporated company and thereby excludes businesses not carried on mainly in Ireland.</li> </ul>
<b>Tax revenue in% of total tax revenue</b>	0.64% in 2008 (incl. revenue from both inheritance and gift taxes).

*Source: Survey by Deloitte, Maisto (2010), AGN International (2010) and Global Property Guide.*

## Italy

	Description
<b>Taxes levied</b>	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	An inheritance tax is levied in the case of transfers upon death to the heir/legatee, who is the person liable to tax. In particular, each heir is subject to tax on the corresponding quota of the overall estate transferred to the heirs and each legatee is subject to tax on the corresponding legacy.
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	Transfers upon death of real estate located in Italy (and rights on real estate located in Italy) are also subject to mortgage and cadastral taxes. Such taxes apply to the transfer of real estate located in Italy regardless of whether such a transfer happens upon death, is at gratuitous title or for consideration (and irrespective of the residence of the transferor and of the transferee). Since these taxes do not only occur in the event of death, no further information will be provided.
<b>Connecting factors</b>	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The residence principle:</b> It applies to all properties and rights transferred, if the deceased is a resident of Italy at the time of his/her death, whether situated in Italy or abroad.
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	<p>Yes, a source applies to all properties and rights situated at the date of his/her death in Italy in the case where the deceased is not a resident of Italy at the time of his/her death.</p> <p>The following assets are deemed to be situated in Italy:</p> <ol style="list-style-type: none"> <li>i. Assets enrolled in the public registers of Italy (such as real estate, ships and aircrafts, trademarks and patents) and connected rights of enjoyment.</li> <li>ii. Shares and quotas of companies with either the legal seat or the seat of management or the main object in Italy.</li> <li>iii. Quotas of entities, other than companies, with either the legal seat or the seat of management or the main object in Italy.</li> <li>iv. Bonds and other securities in series, other than shares, issued by Italy or by companies and entities under points (ii) and (iii) above.</li> <li>v. Securities representing goods if the goods are situated in Italy.</li> <li>vi. Receivables and cheques if the debtor or the issuer is a resident of Italy (irrespective of the location of the security, if any).</li> <li>vii. Receivables secured by property situated within Italy up to the value of the property, irrespective of the residence of the debtor.</li> <li>viii. Goods-in-transit with the point of destination within Italy or restricted by the export/import laws covering temporary export.</li> <li>ix. Assets not mentioned but effectively located in Italy are also subject to inheritance tax.</li> </ol>



<b>Tax rates</b>	<p>The following tax rates apply depending on the relationship between the deceased and the beneficiary:</p> <ul style="list-style-type: none"> <li>• 4%, if the transfer is made to spouses and direct descendants or ancestors.</li> <li>• 6%, if the transfer is made to brothers and sisters.</li> <li>• 6%, if the transfer is made to relatives up to the fourth degree, to persons related by direct affinity as well as to persons related by collateral affinity up to the third degree.</li> <li>• 8%, in all other cases.</li> </ul>
<b>Exemptions</b>	<p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>• Transfers to (domestic and foreign) public entities or legally recognized foundations or associations having the exclusive purpose of assistance, study, scientific research, education, instruction or any other purpose with public benefit.</li> <li>• Transfers to legally recognized (domestic and foreign) public entities and foundations and associations other than those mentioned above, as long as such transfers be made for the purposes indicated above (assistance, etc.).</li> <li>• Certain assets with cultural value.</li> </ul>
<b>Allowances</b>	<p>For spouses, direct descendants, ancestors, brothers and sisters: €1,000,000 for each beneficiary.</p> <p>If the transfer is in favour of an individual that suffers from a qualifying handicap, an exempt amount of €1,500,000 applies, in lieu of the ordinary exempt amounts.</p>
<b>Deductions</b>	<p>Deductible items:</p> <ul style="list-style-type: none"> <li>• The (domestic and foreign) debts of the deceased upon death according to their quota in the tax base (e.g. if only partially included in the tax base, only the included share can be deducted). Debts incurred by the deceased in the last six months prior to his/her demise (other than debt incurred in the furtherance of a business or profession) should not be deductible.</li> <li>• Tax debts if the taxable event occurs prior to the demise irrespective of the date of assessment.</li> <li>• Debts resulting from a foreign final judicial decision to the extent that such a decision is recognized in Italy.</li> <li>• Legacies by the heirs that are subject to such legacies and burdens that the heirs/legatees may be subject to.</li> </ul>
<b>Transfer of family-owned or closely held businesses</b>	<p>An exemption from inheritance tax applies to majority transfers of a business or of a participation in companies or partnerships to the spouse or descendants provided the spouse or descendants carry out an effective business activity (rather than passively enjoy the ownership of assets). It is not clear if the exemption applies to participations into non-resident companies and partnerships.</p>
<b>Double taxation relief</b>	

<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<p><b>The credit method:</b> Foreign tax credits can be granted (per country) against the Italian inheritance tax equal to taxes paid to a foreign State, in relation to the same succession and in relation to the assets situated in such a State, up to the amount of the Italian inheritance tax that is attributable to such assets.</p>
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	<p>Inheritance tax treaties are in force between Italy and the following Member States: Sweden (1956), Greece (1964), Denmark (1966), the UK (1966), and France (1990).</p>
<p><b>Compatibility with EU law</b></p>	<p>The following potential conflicts have been identified:</p> <ul style="list-style-type: none"> <li>• Italy values foreign-located assets differently than assets located in Italy.</li> <li>• Transfers to EU public entities, associations and foundations from non-residents are denied exemption from inheritance tax.</li> <li>• No exemption is made for public debt securities from other EU Member States.</li> <li>• Foreign assets of cultural value cannot be partial or full exempt for the inheritance tax as can assets located in Italy.</li> <li>• The tax authorities cannot dispute the value of the Italian real estate if at least equal to the cadastral value. This rule does not apply to foreign real estate.</li> <li>• Debts incurred by a non-resident are wholly non-deductible.</li> </ul>
<p><b>Tax revenue in% of total tax revenue</b></p>	<p>0.09% in 2008 (covers both inheritance and gift tax revenue).</p>

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Saccardo (2010), AGN International (2010) and Global Property Guide.*

## Lithuania

	Description
<b>Taxes levied</b>	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	An inheritance tax applies to the market value of the property.
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-
<b>Connecting factors</b>	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The residence principle:</b> The taxable base of resident beneficiaries includes all kinds of inherited property, irrespective of whether their source is in Lithuania or abroad.
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	Non-resident beneficiaries are subject to inheritance tax only on movable property subject to legal registration in Lithuania and on immovable property located in Lithuania.
<b>Tax rates</b>	The tax rate is 5% for inherited property up to LTL 500,000 (€144,810). If the value exceeds LTL 500,000 (€144,810), the whole amount is subject to a 10% rate.
<b>Exemptions</b>	Personal exemptions: <ul style="list-style-type: none"> <li>Property inherited from a spouse.</li> <li>Property inherited by children (adopted children), parents (foster parents), by persons under guardianship, guardians, grandparents, grandchildren, brothers, or sisters.</li> </ul>
<b>Allowances</b>	Property with a taxable value not exceeding of LTL 10,000 (€ 2,896) are exempt from inheritance tax.
<b>Deductions</b>	-
<b>Transfer of family-owned or closely held businesses</b>	-
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>Unilateral relief</li> </ul>	<b>The credit method:</b> It is applicable to all EU countries.
<ul style="list-style-type: none"> <li>Bilateral treaties</li> </ul>	-
<b>Compatibility with EU law</b>	No potential conflicts identified.
<b>Tax revenue in% of total tax revenue</b>	In 2009 it was 6,140, 000 LTL (266,000 LTL from cross-border inheritances). In 2008 it was 6,076,000 LTL (81, 000 LTL from cross-border inheritances)*

Source: Survey performed by Deloitte for Copenhagen Economics, AGN International (2010) and Global Property Guide.

\* Information provided by Lithuania upon invitation of the Commission to the Member States

## Luxembourg

	Description
<b>Taxes levied</b>	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	<p>Inheritance taxes consists of both a succession tax levied on the estate of a deceased who was a Luxembourg resident at the time of his/her death, and a death transfer tax on Luxembourg situated real estate owned by a deceased who was not resident in Luxembourg at the time of his/her death.</p> <p>Inheritance tax is not levied on the total estate of the deceased but only on the portion transferred to each heir and in view of the relationship between the deceased and the heir.</p>
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-
<b>Connecting factors</b>	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The residence principle:</b> It applies to, with the exception of real estate located abroad, on the worldwide assets of the Luxembourg tax resident.
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	Yes, if the deceased is a non-resident Luxembourg inheritance tax is due only on real estate located in Luxembourg, held by the deceased in ownership or in bare ownership.
<b>Tax rates</b>	<p>The basic rates of succession and death transfer taxes depend on the degree of kinship between the heir and the deceased.</p> <p>For residents (succession tax):</p> <ol style="list-style-type: none"> <li>i. Between spouses without common descendants: 5%</li> <li>ii. Between declared partners for more than 3 years prior to the opening of the succession without common descendants: 5%</li> <li>iii. Between brothers and sisters:             <ul style="list-style-type: none"> <li>o on their intestate portion: 6%</li> <li>o on the exceeding portion: 15%</li> </ul> </li> <li>i. Between uncles or aunts and nephews or nieces, as well as between adoptant and adopted: 9%             <ul style="list-style-type: none"> <li>o on their intestate portion: 9%</li> <li>o on the exceeding portion: 15%</li> </ul> </li> <li>ii. Between great-uncles or great-aunts and great-nephew or great-niece, as well as between the adoptant and the adopted descendants             <ul style="list-style-type: none"> <li>o on their intestate portion: 10%</li> <li>o on the exceeding portion: 15%</li> </ul> </li> <li>iii. Between other relatives or third parties 15%</li> </ol>

In addition, a progressive surcharge is levied depending on the value of the estate inherited or the real estate transferred:

€ 10,000 without exceeding € 20,000:	1/10
€ 20,000 without exceeding € 30,000:	2/10
€ 30,000 without exceeding € 40,000:	3/10
€ 40,000 without exceeding € 50,000:	4/10
€ 50,000 without exceeding € 75,000:	5/10
€ 75,000 without exceeding € 100,000:	6/10
€ 100,000 without exceeding € 150,000:	7/10
€ 150,000 without exceeding € 200,000:	8/10
€ 200,000 without exceeding € 250,000:	9/10
€ 250,000 without exceeding € 380,000:	12/10
€ 380,000 without exceeding € 500,000:	13/10
€ 500,000 without exceeding € 620,000:	14/10
€ 620,000 without exceeding € 750,000:	15/10
€ 750,000 without exceeding € 870,000:	16/10
€ 870,000 without exceeding € 1,000,000:	17/10
€ 1,000,000 without exceeding € 1,250,000:	18/10
€ 1,250,000 without exceeding € 1,500,000:	19/10
€ 1,500,000 without exceeding € 1,750,000:	20/10
€ 1,750,000 and exceeding:	22/10

For instance, in the case of legacy to an unrelated person, the basic rate is 15%. If the beneficiary receives assets worth of EUR 140,000, the surcharge will be 7/10, so that the effective rate is 25.5%.

For non-residents (death transfer tax):

	<ul style="list-style-type: none"><li>i. In the direct ascending line: 2%</li><li>ii. Between spouse having common children or descendants: 5%</li><li>iii. Between partners, connected by a declaration of partnership registered for more than three years before the opening of the succession, having common children or descendants: 5%</li></ul>
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<b>Exemptions</b>	<p>Personal exemptions:</p> <ul style="list-style-type: none"> <li>• The entire share inherited in direct line (except for the share exceeding the intestate share).</li> <li>• The entire share inherited from a spouse or a declared partner for more than 3 years prior to the opening of the succession with whom the heir has common descendants.</li> <li>• The entire share inherited either with the right to derive profit from property, as a pension or as a periodic retribution by the surviving spouse or declared partner more than 3 years prior to the opening of the succession where the descendants of a prior marriage or partnership of the deceased have inherited the full ownership of the assets or are liable for the pension or retribution.</li> <li>• The deceased's real estate located abroad when the deceased is a Luxembourg resident.</li> <li>• Families and personnel of diplomatic agents and European Union officials under certain circumstances.</li> </ul> <p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>• Successions where the aggregate value of the estate, net of any debts, does not exceed €1,250.</li> </ul> <p>Furthermore, successions received by charitable organisations are subject to the same rates as those applicable to unrelated persons. However, several subjective exemptions apply.</p>
<b>Allowances</b>	<p>A € 38,000 relief is available for the determination of the tax base of the succession tax on the estate inherited by the surviving spouse or declared partner without common descendants with the deceased.</p>
<b>Deductions</b>	<p>The following liabilities are deductible:</p> <ul style="list-style-type: none"> <li>• Debts of the deceased, including accrued interest, debts relating to the deceased's profession.</li> <li>• Debts in relation to domestic expenses, regional or municipal charges.</li> <li>• Taxes levied for the maintenance of polders, water mills and other contributions of the same nature.</li> <li>• Funeral expenses.</li> </ul> <p>Debts relating to real estate situated abroad are not deductible and a lump-sum amount proportional to their value is deducted from the qualifying debts of the succession.</p>
<b>Transfer of family-owned or closely held businesses</b>	<p>Luxembourg does not provide specific rules of taxation for inheritance of going concerns, participations in family-owned or closely-held business.</p>
<b>Double taxation relief</b>	

<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<p><b>The exemption method:</b> It only applies to movable properties for Luxembourg nationals. There are currently no rules for the avoidance of double taxation where the deceased was a non-resident.</p>
<ul style="list-style-type: none"> <li>• Bilateral treaties</li> </ul>	<p>No inheritance tax treaties are in force between Luxembourg and other Member States.</p>
<p><b>Compatibility with EU law</b></p>	<p>No potential conflicts identified.</p>
<p><b>Tax revenue in% of total tax revenue</b></p>	<p>0.34% in 2007.</p>

*Source: Maisto (2010), Goebel and Schaffner (2010), AGN International (2010) and Global Property Guide.*



## Netherlands

	Description												
<b>Taxes levied</b>													
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-												
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	Dutch inheritance tax is due on the value of all that is acquired by an individual or a legal entity as a result of the death of a person. The tax payable is calculated per beneficiary.												
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-												
<b>Connecting factors</b>													
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<p><b>The residence and nationality principle:</b> If the deceased is a resident (or a deemed resident) of the Netherlands at the time of his death, inheritance tax is due on any value (worldwide) acquired on account of a person's death.</p> <p>A person who dies within ten years after leaving the Netherlands, is deemed resident in the Netherlands if he was a Dutch national at the time of his emigration and of his death.</p>												
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	No, if the deceased is neither a resident of the Netherlands nor a deemed resident at the time of his death no Dutch transfer tax is due with regard to property located in the Netherlands (this system was put in place as of January 1, 2010).												
<b>Tax rates</b>	<p>The tax rates for spouses, registered partners, (under conditions) unmarried people living together and children (group I) and for other beneficiaries (group II) are as follows:</p> <table border="1"> <thead> <tr> <th>Taxable acquisition</th> <th>Inheritance tax Group I</th> <th>Inheritance tax Group I.a</th> <th>Inheritance tax Group II</th> </tr> </thead> <tbody> <tr> <td>0 - €118.000</td> <td>10%</td> <td>18%</td> <td>30%</td> </tr> <tr> <td>€118.000 - and more</td> <td>20%</td> <td>36%</td> <td>40%</td> </tr> </tbody> </table> <p>Properties inherited by two married people (incl. registered partners) are considered one acquisition for inheritance tax purposes unless they are living separated. For descendants of the second or further degree there are special rates in order to avoid generation skipping. The rates are acquired by applying a multiplier of 1.8 to the rates in group I.</p>	Taxable acquisition	Inheritance tax Group I	Inheritance tax Group I.a	Inheritance tax Group II	0 - €118.000	10%	18%	30%	€118.000 - and more	20%	36%	40%
Taxable acquisition	Inheritance tax Group I	Inheritance tax Group I.a	Inheritance tax Group II										
0 - €118.000	10%	18%	30%										
€118.000 - and more	20%	36%	40%										
<b>Exemptions</b>	<p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>Acquisitions by the State, province or a municipality in the Netherlands, e.g. acquisitions of pension rights or certain annuities comparable to pension rights.</li> <li>Acquisitions of public benefit organizations, i.e. charities or social benefit organizations.</li> <li>Pension rights.</li> </ul>												
<b>Allowances</b>	<ul style="list-style-type: none"> <li>Spouses, registered partners and (under conditions) unmarried</li> </ul>												

	<p>people living together: € 600.000. Deducted from this amount is half of the cash value of pension rights derived by a spouse etc. from the death of the deceased. However, a minimum exemption of € 155.000 always remains.</p> <ul style="list-style-type: none"> <li>• (Grand) children: € 19.000.</li> <li>• Disabled children: € 57.000.</li> <li>• Parents: € 45.000.</li> <li>• Others: € 2.000.</li> </ul>
<b>Deductions</b>	Deductible are funeral expenses, debts (only if they are enforceable by law at the time of death), legacies and charges as far as they may be taken into account according to article 20 IGTA 1956.
<b>Transfer of family-owned or closely held businesses</b>	<p>In case a family business is inherited, relief can be provided if the deceased possess a qualifying business for one year and the recipient continues this business for a period of five years after the death of the deceased.</p> <p>The business succession facilities apply to both personal enterprises and enterprises run in the form of a limited liability company in which the deceased had an interest of at least 5% of the issued share capital.</p>
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<p><b>The credit method:</b> It applies to the inheritance tax levied in the country of residence of the deceased and for inheritance tax on foreign immovable property and assets belonging to a foreign permanent establishment.</p> <p>The credit is limited to the tax actually levied abroad (first maximum) or the Dutch tax attributable to the assets situated abroad (second maximum), whichever is lower. The foreign inheritance tax has to be comparable with the Dutch inheritance tax. The second maximum is calculated as follows: (foreign property /total property x total Netherlands tax due on total taxable income).</p> <p>The credit method also applies to deemed residents.</p>
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	Inheritance tax treaties are in force between the Netherlands and the following Member States: Sweden (1952), Finland (1954), the UK (1979), and Austria (2001).
<b>Compatibility with EU law</b>	No potential conflicts identified.
<b>Tax revenue in% of total tax revenue</b>	0.77% in 2008 (covers revenue from both inheritance and gift tax).

Note: \* Years in bracket is the year where the treaty entered into force.

Source: Maisto (2010), Sonneveldt (2010), AGN International (2010) and Global Property Guide.

## Poland

	Description																				
<b>Taxes levied</b>																					
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-																				
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	The inheritance tax is imposed on a person who acquires the deceased's estate. This specific inheritance tax concerns only natural (and not legal) persons. Minors may be payers of this tax. The parents of a minor submit a tax declaration in his or her name; however, they shall not be obliged to pay this tax out of their assets.																				
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-																				
<b>Connecting factors</b>																					
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The nationality and residence principle:</b> It applies to acquisitions of goods and property rights, if at the moment the decedent dies the beneficiary has Polish nationality or has a place of permanent residence in Poland.																				
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	<p>Inheritance tax is levied on the acquisition, inter alia, by way of inheritance of things (assets) located in Poland and property rights executed on the territory of Poland.</p> <p>Inheritance tax is not applicable to inherited movable property located in Poland or rights executed on the territory of Poland if neither heir nor the deceased at the moment of death were citizens of Poland or had a permanent place of residence/stay in Poland.</p>																				
<b>Tax rates</b>	<p>Individuals acquiring the estate belong to different groups:</p> <ul style="list-style-type: none"> <li>Group I includes the spouse, descendants, ascendants, the stepchild, the son-in-law, the daughter-in-law, siblings, the stepfather, the stepmother and in-laws.</li> <li>Group II includes descendants of the siblings, siblings of the parents, descendants and spouses of the stepchild, spouses of the siblings and siblings of the spouses, spouses of the siblings of the spouses, spouses of other descendants.</li> <li>Group III includes the remaining individuals.</li> </ul> <table border="1"> <thead> <tr> <th>TAXABLE INHERITANCE, PLN (€) (Excess over Tax-Free Amount)</th> <th colspan="3">TAXABLE RATE ON DIFFERENT CATEGORIES</th> </tr> <tr> <th></th> <th>I</th> <th>II</th> <th>III</th> </tr> </thead> <tbody> <tr> <td>Up to 10,278 (€2,743)</td> <td>3%</td> <td>7%</td> <td>12%</td> </tr> <tr> <td>10,278 – 20,556 (€5,485)</td> <td>5%</td> <td>9%</td> <td>16%</td> </tr> <tr> <td>Over 20,556 (€5,485)</td> <td>7%</td> <td>12%</td> <td>20%</td> </tr> </tbody> </table>	TAXABLE INHERITANCE, PLN (€) (Excess over Tax-Free Amount)	TAXABLE RATE ON DIFFERENT CATEGORIES				I	II	III	Up to 10,278 (€2,743)	3%	7%	12%	10,278 – 20,556 (€5,485)	5%	9%	16%	Over 20,556 (€5,485)	7%	12%	20%
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<p><b>Exemptions</b></p>	<p>Polish inheritance tax is imposed only on natural persons. Legal persons are not liable to inheritance tax, so there cannot be any special exemption rules for legal persons.</p> <p>Exemptions apply for individuals who, at the moment of acquiring the estate, were citizens of Poland or any other country in the European Union or EFTA, or whose place of residence was situated in the territory of the Republic of Poland or EU &amp; EFTA in the following instances (independent of location):</p> <p>Personal exemption:</p> <ul style="list-style-type: none"> <li>• Acquisition of ownership of things [assets] or property rights, including family-owned businesses, by the spouse, descendants, ascendants, stepchildren, siblings, stepfather and stepmother, if the acquirer notifies the competent Head of Tax Office about the acquisition of ownership within six months from the date on which the court verdict on inheritance becomes final.</li> <li>• Acquisition by individuals from groups I and II of furnishings, bed linen, clothes, underwear and tools used in the household.</li> <li>• Acquisition by individuals from groups I and II of immovable historic monuments entered onto the list of historic monuments if the acquiring person ensures their protection and conservation in accordance with the binding regulations.</li> <li>• Special exemption rules, dependent on which group the beneficiary belongs to, apply if the estate is composed of a house or a flat.</li> </ul> <p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>• Acquisition of works of art and manuscripts being the output of the testator as well as of library materials if the testator dealt with artistic, scientific, educational, literary or publishing work.</li> <li>• Acquisition of movable historic monuments and collections entered onto the list of historic monuments as well as monuments lent to a museum for scientific or exhibition purposes for a period not shorter than 2 years.</li> <li>• Acquisition of copyrights and related rights, rights to inventive designs, trademarks and decorative patterns, and of claims resulting from the acquisition of such rights (in Poland and abroad).</li> <li>• Funds from an employee pension scheme, funds collected on the account of the deceased member of an open pension fund, and funds collected on the individual retirement account.</li> </ul>
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<b>Allowances</b>	<p>Group I: PLN 9,637.</p> <p>Group II: PLN 7,276.</p> <p>Group III: PLN 4,902.</p> <p>See under ‘Tax rates’ for a definition of the different groups of beneficiaries.</p>
<b>Deductions</b>	<p>Debts and liabilities such as:</p> <ul style="list-style-type: none"> <li>• The costs of medical treatment and care during the last disease of the deceased if these costs were not covered during his time and by his funds.</li> <li>• The costs of the funeral and gravestone.</li> <li>• The costs of inheritance proceedings, remuneration of the executor of the will, legacies and testamentary instructions.</li> <li>• Legitim payments and other liabilities under the inheritance provisions of the Civil Code.</li> </ul>
<b>Transfer of family-owned or closely held businesses</b>	<p>Inheritance tax exemption applies to natural persons (in every tax group) acquiring an arable farm or its part provided that the acquiring person runs this farm for at least 5 years from its acquisition date. This exemption concerns only these individuals who, at the moment of acquiring the estate, were citizens of Poland or any other country of the European Union or EFTA, or whose place of residence was situated in the territory of the Republic of Poland or EU &amp; EFTA.</p> <p>The exemption does not cover residential buildings, buildings used for breeding poultry or animals, greenhouses, and fruit storehouses.</p>
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<p>No unilateral relief exists in Poland. The only measure applicable for the purposes of avoidance of double taxation of inheritance is the general competence provided to the Minister of Finance to decide in a way of regulation/decreed to refrain from collecting particular tax.</p>
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	<p>Inheritance and estate tax treaties are in force between Poland and the following Member States: Czech Republic (1925), Slovakia (1925), Austria (1928), and Hungary (1931).</p>
<b>Compatibility with EU law</b>	<p>No potential conflicts identified.</p>
<b>Tax revenue in% of total tax revenue</b>	<p>0.14% in 2009 (covering revenue from both inheritance and gift taxes).</p>

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Kardach and Olesinska (2010), AGN International (2010) and Global Property Guide.*



## Slovenia

	Description																																			
<b>Taxes levied</b>																																				
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-																																			
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	Inheritance tax is levied on the transfer of properties upon death and are payable to the municipal government by the beneficiary.																																			
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-																																			
<b>Connecting factors</b>																																				
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The residence principle:</b> It applies to immovable property, movable property, or property right and rights in Slovenia. Securities and cash are considered as movable property.																																			
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	Yes, inheritance tax is paid on property inherited, including securities, by a non-resident that inherits property located in Slovenia.																																			
<b>Tax rates</b>	<p>The heirs are classified as follows:</p> <ul style="list-style-type: none"> <li>Class 1: Parents, siblings, and their descendants</li> <li>Class 2: Grandparents</li> <li>Class 3: Others</li> </ul> <table border="1"> <thead> <tr> <th rowspan="2">TAX BASE, €</th> <th colspan="3">TAX RATE</th> </tr> <tr> <th>Class 1</th> <th>Class 2</th> <th>Class 3</th> </tr> </thead> <tbody> <tr> <td>Up to €10,000</td> <td>5%</td> <td>8%</td> <td>12%</td> </tr> <tr> <td>€10,000 - €60,000</td> <td>6%</td> <td>9%</td> <td>16%</td> </tr> <tr> <td>€60,000 - €160,000</td> <td>7%</td> <td>10%</td> <td>20%</td> </tr> <tr> <td>€160,000 - €360,000</td> <td>8%</td> <td>11%</td> <td>25%</td> </tr> <tr> <td>€360,000 - €660,000</td> <td>10%</td> <td>13%</td> <td>30%</td> </tr> <tr> <td>€660,000 - €1,060,000</td> <td>12%</td> <td>15%</td> <td>35%</td> </tr> <tr> <td>€1,060,000 - €1,460,000</td> <td>14%</td> <td>17%</td> <td>39%</td> </tr> </tbody> </table> <p>The taxable base for immovable property is 80% of its market value.</p>	TAX BASE, €	TAX RATE			Class 1	Class 2	Class 3	Up to €10,000	5%	8%	12%	€10,000 - €60,000	6%	9%	16%	€60,000 - €160,000	7%	10%	20%	€160,000 - €360,000	8%	11%	25%	€360,000 - €660,000	10%	13%	30%	€660,000 - €1,060,000	12%	15%	35%	€1,060,000 - €1,460,000	14%	17%	39%
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<b>Exemptions</b>	<p>Personal exemptions:</p> <ul style="list-style-type: none"> <li>The spouse, children and grandchildren.</li> </ul> <p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>Taxpayers who inherit a house or apartment and who own only one house or apartment themselves and have lived in the same house as the decedent;</li> <li>Farmers who inherit agricultural land or an entire farm; Legal persons of private law established for religious, humanitarian, educational, cultural, charitable and certain other activities.</li> <li>Movable property up to a value of € 5,000.</li> </ul>																																			
<b>Allowances</b>	A tax threshold of € 5,000 applies.																																			
<b>Deductions</b>	-																																			
<b>Transfer of family-owned or closely held businesses</b>	-																																			
<b>Double taxation relief</b>																																				
<ul style="list-style-type: none"> <li>Unilateral relief</li> </ul>	<b>The exemption method:</b> It applies to the full inheritance if the taxpayers have declared their liabilities to the local tax authority within 15 days of																																			

	receiving an inheritance.
• Bilateral treaties	-
<b>Compatibility with EU law</b>	No potential conflicts identified.
<b>Tax revenue in% of total tax revenue</b>	-

*Source: Survey performed by Deloitte for Copenhagen Economics, AGN International (2010) and Global Property Guide.*



## Spain

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<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	-																																																																				
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	The inheritance tax is “a transferred tax”, which means that the legislative and revenue powers of the tax are shared between the State and the Autonomous Communities.																																																																				
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	A transfer tax and stamp duty is levied upon the beneficiary when the ownership of an asset or right, which may be entered into a public register, is to be changed. The taxable base is the value declared, although there are special valuation rules.																																																																				
<b>Connecting factors</b>																																																																					
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The residence principle:</b> Residents in Spain has to pay the inheritance tax in the Autonomous Community they reside in and thereby also determines which tax system they are under.																																																																				
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	Non-residents are taxed under State legislation (in contrary to residents) and a source applies to movable and immovable assets and rights located in Spain.																																																																				
<b>Tax rates</b>	<p>In the Autonomous Communities that have adopted their own scale (the Balearic Islands, Cantabria, Catalonia, Madrid and the Valencian Community), the total tax liability and the coefficient used to obtain the amount of tax to be actually paid is calculated applying these scales (not listed here).</p> <p>In the rest of the Autonomous Communities the State legislation is applied. The State scale to be applied to the assessment base is as follows:</p> <table border="1"> <thead> <tr> <th>ASSESSMENT BASE (UP TO)</th> <th>TOTAL TAX LIABILITY (EUROS)</th> <th>REST OF ASSESSMENT BASE, UP TO (EUROS)</th> <th>PERCENTAGE RATE APPLICABLE</th> </tr> </thead> <tbody> <tr> <td>0.00</td> <td>-</td> <td>7,993.46</td> <td>7.65</td> </tr> <tr> <td>7,993.46</td> <td>611.50</td> <td>7,987.45</td> <td>8.50</td> </tr> <tr> <td>15,980.91</td> <td>1,290.43</td> <td>7,987.45</td> <td>9.35</td> </tr> <tr> <td>23,968.36</td> <td>2,037.26</td> <td>7,987.45</td> <td>10.20</td> </tr> <tr> <td>31,955.81</td> <td>2,851.98</td> <td>7,987.45</td> <td>11.05</td> </tr> <tr> <td>39,943.26</td> <td>3,734.59</td> <td>7,987.45</td> <td>11.90</td> </tr> <tr> <td>47,930.72</td> <td>4,685.10</td> <td>7,987.45</td> <td>12.75</td> </tr> <tr> <td>55,918.17</td> <td>5,703.50</td> <td>7,987.45</td> <td>13.60</td> </tr> <tr> <td>63,905.62</td> <td>6,789.79</td> <td>7,987.45</td> <td>14.45</td> </tr> <tr> <td>71,893.07</td> <td>7,943.98</td> <td>7,987.45</td> <td>15.30</td> </tr> <tr> <td>79,880.52</td> <td>9,166.06</td> <td>39,877.15</td> <td>16.15</td> </tr> <tr> <td>119,757.67</td> <td>15,606.22</td> <td>39,877.16</td> <td>18.70</td> </tr> <tr> <td>159,634.3</td> <td>23,063.25</td> <td>79,754.30</td> <td>21.25</td> </tr> <tr> <td>239,389.13</td> <td>40,011.04</td> <td>159,388.4</td> <td>25.50</td> </tr> <tr> <td>398,777.54</td> <td>80,655.08</td> <td>398,777.5</td> <td>29.74</td> </tr> <tr> <td>797,555.08</td> <td>199,291.4</td> <td>above</td> <td>34.00</td> </tr> </tbody> </table> <p>The coefficient depends on both kinship and pre-existing wealth of the</p>	ASSESSMENT BASE (UP TO)	TOTAL TAX LIABILITY (EUROS)	REST OF ASSESSMENT BASE, UP TO (EUROS)	PERCENTAGE RATE APPLICABLE	0.00	-	7,993.46	7.65	7,993.46	611.50	7,987.45	8.50	15,980.91	1,290.43	7,987.45	9.35	23,968.36	2,037.26	7,987.45	10.20	31,955.81	2,851.98	7,987.45	11.05	39,943.26	3,734.59	7,987.45	11.90	47,930.72	4,685.10	7,987.45	12.75	55,918.17	5,703.50	7,987.45	13.60	63,905.62	6,789.79	7,987.45	14.45	71,893.07	7,943.98	7,987.45	15.30	79,880.52	9,166.06	39,877.15	16.15	119,757.67	15,606.22	39,877.16	18.70	159,634.3	23,063.25	79,754.30	21.25	239,389.13	40,011.04	159,388.4	25.50	398,777.54	80,655.08	398,777.5	29.74	797,555.08	199,291.4	above	34.00
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PRE-EXISTING WEALTH (EUROS)	KINSHIP Groups I and II	KINSHIP Group III	KINSHIP Group IV																			
0 - 402,678.11	10.000	15.882	20.000																			
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2,007,380.43 - 4,020,770.98	11.000	17.471	2.200																			
Over 4,020,770.98	12.000	19.059	24.000																			
<b>Exemptions</b>	-																					
<b>Allowances</b>	<table border="1"> <thead> <tr> <th>CATEGORY</th> <th>GROUP RELATIONSHIP</th> <th>ALLOWANCE</th> </tr> </thead> <tbody> <tr> <td>I</td> <td>direct and legally adopted descendants under 21 years of age:</td> <td>€47,859 max.</td> </tr> <tr> <td>II</td> <td>direct and legally adopted descendants of 21 years or more, spouse, and direct and adoptive ascendants:</td> <td>€15,957</td> </tr> <tr> <td>III</td> <td>siblings, uncles, aunts, nephews, nieces, and ascendants or descendants by marriage:</td> <td>€7,993</td> </tr> <tr> <td>IV</td> <td>cousins and other more distant relatives and unrelated persons or unknown heirs:</td> <td>none</td> </tr> </tbody> </table> <p>With the different categories being the same as those stated under 'Tax rates'.</p> <p>Special allowances apply to disabled individuals:</p> <table border="1"> <thead> <tr> <th>CONDITION OF BENEFICIARY</th> <th>ALLOWANCE</th> </tr> </thead> <tbody> <tr> <td>Disability: 65% and below:</td> <td>€47,859</td> </tr> <tr> <td>Disability: more than 65%:</td> <td>€150,253</td> </tr> </tbody> </table> <p>In addition to these tax reductions, other specific ones are also envisaged depending on the type of assets transferred.</p>	CATEGORY	GROUP RELATIONSHIP	ALLOWANCE	I	direct and legally adopted descendants under 21 years of age:	€47,859 max.	II	direct and legally adopted descendants of 21 years or more, spouse, and direct and adoptive ascendants:	€15,957	III	siblings, uncles, aunts, nephews, nieces, and ascendants or descendants by marriage:	€7,993	IV	cousins and other more distant relatives and unrelated persons or unknown heirs:	none	CONDITION OF BENEFICIARY	ALLOWANCE	Disability: 65% and below:	€47,859	Disability: more than 65%:	€150,253
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<b>Deductions</b>	<p>A deduction of 50% - or 99% when the successor is the spouse, descendant or adopted child- is applied if the deceased had his habitual residence at the time of his death and during the five years prior to the day before the tax becomes due in Ceuta or Melilla.</p> <p>The Autonomous Communities may regulate new deductions.</p>																					

	Description
<b>Transfer of family-owned or closely held businesses</b>	A reduction of 95% of the value of the business may be made in addition to any other applicable reductions, provided that the acquisition is kept for at least ten years after the death of the deceased.
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<p><b>The credit method:</b> Applies only for residents and allows them to deduct from their tax liability the smaller of the two amounts mentioned below:</p> <ul style="list-style-type: none"> <li>• The amount of a similar tax paid abroad on the capital gains subject to tax in Spain.</li> <li>• The amount obtained applying the effective mean tax rate to the capital gains corresponding to the assets and rights abroad when a similar tax has been levied on them abroad.</li> </ul>
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	Inheritance treaties are in force between Spain and the following Member States: Greece (1919), Sweden (1963), and France (1963).
<b>Compatibility with EU law</b>	<p>The following potential conflict has been identified:</p> <ul style="list-style-type: none"> <li>• Beneficiaries are subject to different tax systems (Autonomous Community or State law) in the Basque Country depending on when they resided in the area.</li> </ul>
<b>Tax revenue in% of total tax revenue</b>	0.81% in 2008 (incl. revenue from both inheritance and gift tax).

Note: \* Years in bracket is the year where the treaty entered into force.

Source: Maisto (2010), Spain (2010), AGN International (2010) and Global Property Guide.

## United Kingdom

	Description
<b>Taxes levied</b>	
<ul style="list-style-type: none"> <li>Estate tax</li> </ul>	Estate tax imposes a charge on the value of an individual's estate on death.
<ul style="list-style-type: none"> <li>Inheritance tax</li> </ul>	-
<ul style="list-style-type: none"> <li>Other taxes</li> </ul>	-
<b>Connecting factors</b>	
<ul style="list-style-type: none"> <li>Personal nexus rule</li> </ul>	<b>The domicile principle:</b> An individual who is domiciled in the UK is subject to inheritance tax on his worldwide estate. Nationality and residence are irrelevant for these purposes (except in relation to deemed domicile).
<ul style="list-style-type: none"> <li>Source rule</li> </ul>	Yes, an individual who is not domiciled in the UK is subject to inheritance tax only on their estate situated in the UK. This is achieved by excluding "excluded property" from their estate.
<b>Tax rates</b>	<p>Assets over the value of the tax threshold are charged a 40% inheritance tax.</p> <p>If the deceased dies within 7 years of making a Potentially Exempt Transfer (PET) the transfer becomes chargeable to inheritance tax upon death at the death rate subject to a sliding scale based on the length of time the deceased lives after making the transfer. This ranges from 80% (3 to 4 years before death) down to 20% (6 to 7 years before death). Lifetime transfers that are chargeable when made are taxable at half the death rate. If the deceased dies within 7 years of the transfer, an amount equal to the death rate as adjusted by the sliding scale becomes chargeable to the extent that it is in excess of the amount originally paid.</p> <p>Some lifetime gifts are exempt from the inheritance tax.</p>
<b>Exemptions</b>	<p>Personal exemptions:</p> <ul style="list-style-type: none"> <li>Legacies to spouses and civil partners (unlimited).</li> </ul> <p>Objective exemptions:</p> <ul style="list-style-type: none"> <li>Legacies to charities (unlimited).</li> <li>Political parties, housing associations, business and agricultural properties as well as legacies for national purposes (fully or partly).</li> </ul>
<b>Allowances</b>	The tax threshold per person is £325,000. The allowance is transferable between spouses and civil partners.
<b>Deductions</b>	The debts of the deceased can be deducted as well as any liability for income tax arising on death. Liabilities that are encumbrances on any property shall reduce its value. Deductions can also be made for reasonable funeral expenses and the administration of non-UK assets.

<b>Transfer of family-owned and closely held businesses</b>	Any transfer of value (under the inheritance tax rules) made by a close company shall be apportioned to its shareholders, and inheritance tax charged according to those individuals' particular circumstances, albeit that any tax due is primarily recoverable from the company.
<b>Double taxation relief</b>	
<ul style="list-style-type: none"> <li>• Unilateral relief</li> </ul>	<b>The credit method:</b> The credit available against UK tax applies to any foreign tax similar to the inheritance tax or, even if not similar, if it is chargeable on death or a lifetime gift. It is available on assets of all kinds and wherever situated outside the UK.
<ul style="list-style-type: none"> <li>• Bilateral treaties*</li> </ul>	Inheritance tax treaties are in force between UK and the following Member States: France (1963), Italy (1968), Ireland (1978), Netherlands (1980), and Sweden (1981).
<b>Compatibility with EU law</b>	No potential conflicts identified.
<b>Tax revenue in% of total tax revenue</b>	0.68% in 2005.

*Note: \* Years in bracket is the year where the treaty entered into force.*

*Source: Maisto (2010), Mckeever and Skeffington (2010), AGN International (2010) and Global Property Guide.*

*B) Member States without inheritance or estate taxes*

The survey has revealed that 9 of the 27 Member States do not have an inheritance or estate tax.

The absence of inheritance and estate taxes does not imply that no tax is levied on transfers upon death. In all Member States with no inheritance or estate taxes, except Slovakia, other more general taxes may apply to the transfer to the heirs. All of these taxes are, however, not only payable upon death, but also under other circumstances where the value of the assets is realized. A few of the Member States have entered into inheritance tax treaties despite they do not have an inheritance tax themselves.

This section provides a brief overview of the relevant other taxes in these 9 Member States.

Relevant taxes upon death in Member States without inheritance and estate tax

Relevant taxes and bilateral tax treaties	
Austria	<p>Acquisitions of land upon death are subject to land transfer tax.</p> <p>Inheritance tax treaties are in force between Austria and the following Member States: Sweden (1963), Hungary (1976), France (1994), the Czech Republic (2000) and the Netherlands (2003).</p>
Cyprus	<p>Donation taxes are imposed on the transfer of real estate by donation between family members. The tax is levied on the value at the written deed at varying rates, depending on the relationship between the donor and the beneficiary.</p>
Estonia	<p>A state fee is payable on the issue of a succession certificate. Notary fees are also payable on different procedures. There are up to 11 different fees that are payable for deeds related to succession. Most of them are lump sum.</p>
Latvia	<p>Income or assets derived through inheritance are exempt from personal income tax, with the exception of royalties gained from inherited intellectual/artistic property. Sale of an inherited asset would however be subject to capital gains tax, where the taxable profit would be calculated as a difference between the sales price and the inheritance value. The legislation does not differentiate taxation approach, values or rates based on the location of the asset.</p>
Malta	<p>A stamp duty is payable by the heir at 5% of the declared property value. If the property is jointly owned by spouses, and one of the spouses has died, 5% is levied on only half the value of the property.</p> <p>While no relief for double taxation is available in Malta with respect to Maltese stamp duty, current revenue practice is not to impose stamp duty on transfers of foreign immoveable property and foreign marketable securities upon death.</p>
Portugal	<p>A stamp duty applies upon the death of an individual on the transfer of the assets that constitute the succession estate. The stamp duty is a territorial tax of 10%. Descendants, spouses and people living as married couples are tax exempt on transfer upon death, regardless of tax residency.</p>
Romania	<p>A real estate tax is applicable in case of real estate properties transferred from the personal patrimony of individuals.</p> <p>It is provided that in case of transfer of the ownership right over real estate properties by way of inheritance, if the inheritance procedures are not completed in two years periods, the heirs (individuals, both residents and non-residents) are liable to pay towards the State Budget a 1% tax applicable to the value of the real estate properties included in the inheritance.</p>
Slovakia	-
Sweden	<p>-</p> <p>Inheritance tax treaties are in force between Sweden and the following Member States: Hungary (1936), the Netherlands (1952), Belgium ( 1958), Italy (1958), Austria (1963), Spain (1963), the UK (1980), Nordic countries (1989), Germany (1992), and Germany (1994).</p>

Source: Survey performed by Deloitte for Copenhagen Economics, Fraberger and Stangl (2010), Fernandes Ferreira and Gonçalves (2010), Riiikjäär and Vanasaun (2010), Kristoffersson (2010), Maisto (2010), AGN International (2010) and Global Property Guide.

**ANNEX 5: APPROXIMATE TYPE AND NUMBER OF INHERITANCE TAX QUESTIONS RECEIVED BY THE "YOUR EUROPE ADVICE SERVICE"<sup>37</sup> DURING 2006 -2009**

<b>No.</b>	<b>Issue</b>	<b>NUMBER OF QUERIES</b>	<b>Countries involved</b>
1.	Lack or complexity of inheritance and gift tax information <sup>38</sup>	41	DE, FR, UK, MT, GR, ES, HU, CZ, NL, IE, IT,PT, AT, SE, FI, LT
2.	Explicit double/ higher taxation of inheritances <sup>39</sup>	25	BE, NL, PL, DE, IE, UK, FR, GR, IT, PL, MT
3.	Scope of allowances, tax reliefs and deductions <sup>40</sup>	8	UK, FR, ES
4.	Burdensome tax procedures/ difficulties with foreign tax administrations <sup>41</sup>	3	ES, DE, IT

37 Your Europe Advice provides personalised answers to individual enquiries on the EU rights of citizens in real situation. The service is managed by the European Commission and provided by an external contractor with a network of lawyers in all Member States. It functions in all 23 official EU languages and ensures replies within a week

38 Citizens lack information on inheritance tax when moving assets or changing residence with particular view of risk of double taxation of inheritance; inheritance tax implied as a potential deterring factor to change of residence; queries regarding inheritance taxation of second house, inheritance and gift tax on real estate abroad; concerns about double taxation of inheritance trust.

39 Higher inheritance tax as a result of double residence or deemed residence (even many years after leaving the country); double taxation due to location of assets and (different country) residence of the heirs; heavier taxation of a heir being a participant of a same-sex union concluded in another Member State; double taxation due to relocation to another Member States after deaths of family members in first Member State; concerns about lack of adequate domestic and international mechanisms for the avoidance of double taxation for gifts and inheritances.

40 Limited scope of inheritance tax benefit for non-residents; limited scope of reliefs for civil partners; limited scope of tax benefits for residents outside the region.

41 Problems with proving that inheritance tax has been paid in another country.; the tax number has not been granted to foreign resident despite numerous calls and attempts



## ANNEX 6: SME TEST

<p><b>(1) Consultation with SMEs representatives</b></p>	<p>See section 2.2.</p> <p>A summary of the stakeholders' replies is available on the consultation website. The contribution of the European Family Businesses-GEEF (the pan-European umbrella federation for national associations representing long-term family owned enterprises, including small, medium-sized and larger companies) is also available on its website<sup>42</sup>.</p>
<p><b>(2) Preliminary assessment of businesses likely to be affected</b></p>	<p>See section 3.4 ("Who is affected") as well as Copenhagen Economics Study, subchapter 2.3 "Transfer of family-owned business". See also section 3.3.1 and 3.3.2 and Annex 4 for an analysis of the inheritance tax rules in Member States.</p>
<p><b>(3) Measurement of the impact on SMEs</b></p>	<p>See section 4.2 and 6. The policy options other than "Do nothing" could benefit those who inherit SMEs across borders .</p>
<p><b>(4) Assess alternative options and mitigating measures</b></p>	<p>The conclusion of the impact assessment contains no indication that the selected options might result in a disproportionate burden for SMEs. Consequently, there is no need for SME specific measures.</p>

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<sup>42</sup> <http://www.efb-geef.eu/documents/EFB-GEEF%20contribution%20to%20EU%20consultation%20on%20inheritance%20tax.pdf>