

Inheritance / gift taxation: Criteria to be used to allocate the power to tax

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What exactly is an "inheritance tax" ?



- When a person dies his **property has to be accounted for**. The owned **assets must be passed on** to the heirs and the **creditors must be paid**. This process is known as succession of property, or inheritance.
- The State can levy a **specific tax on the transfer of wealth occurring upon the death of the individual** .

What exactly is an "inheritance tax" ?

Inheritance tax may be levied:

- **on the heirs** / recipient of the estate, so that the taxable event is the enrichment of the beneficiary (**Inheritance tax**)
- **on the estate** / the deceased, in which case the taxable event is the transfer of property (**Estate tax**)

	No. of Member States	Member States
Inheritance tax	15	Bulgaria, Czech Republic, Denmark,* Finland, Germany Greece, Hungary, Ireland, Italy , Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Spain.
Estate tax	4	Belgium, Denmark, * France , United Kingdom.**
No inheritance or estate tax	9	Austria, Cyprus, Estonia, Latvia, Malta, Portugal, Romania, Slovakia, Sweden.

❖ 27 MS : 18 currently have an inheritance or estate tax .

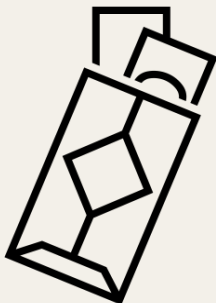
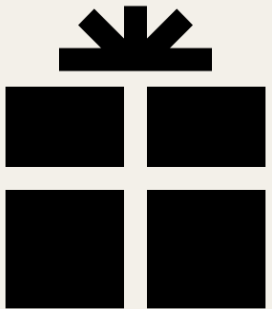
What exactly is an "inheritance tax" ?

Inheritance tax also includes gift taxes :

- Transfers of money or assets given without any value in return
- Gifts are often made in order to anticipate later inheritances
- Gifts are usually taxed under the same provisions as inheritances.
(The CJEU treats inheritance and gift taxes as the same.)



Otherwise, it would be used to circumvent
taxation of inheritances



The European framework

MS must exercise that competence **in accordance with EU law**.

□ Their tax systems must **respect the fundamental freedoms** :
(rules relating to the *free movement of persons, workers, services and capital and the freedom of establishment* , *general principle of non-discrimination on grounds of nationality*)

□ **Article 63 TFEU** : The **free movement of capital** is the most essential freedom in the area of inheritance taxation.

According to the CJEU, an inheritance involving a transfer to an individual of assets left by the deceased is a movement of capital within the meaning of Article 63 TFEU.

□ Since 2003, the CJEU has scrutinized the inheritance tax rules of MS in 10 cases.

The CJEU decided **in 8 out of the 10 cases that the national inheritance tax and gift tax rules of the MS in question breached EU rules on the free movement of capital.**

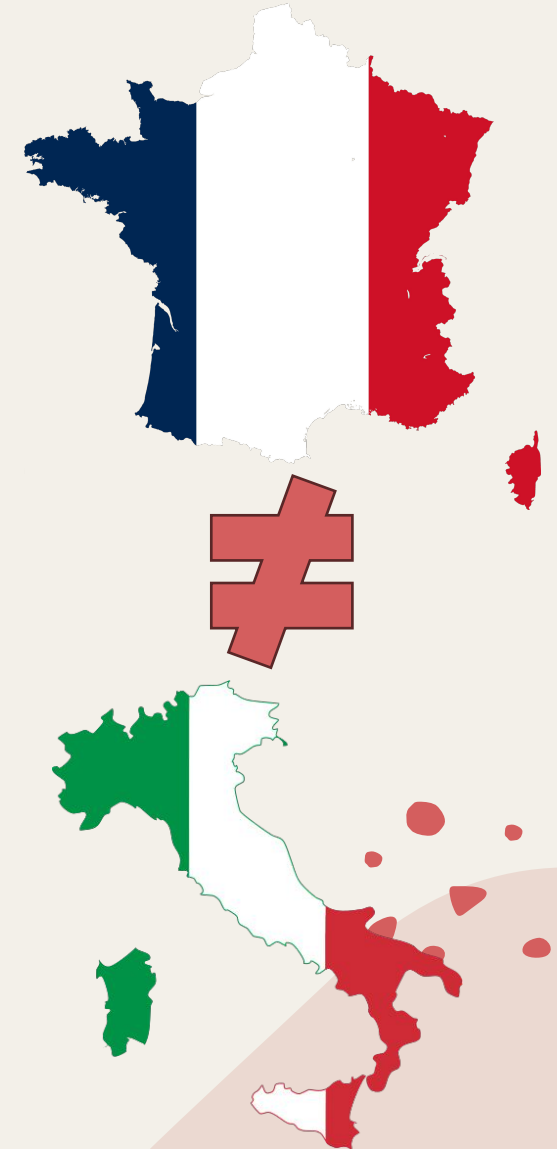


Discrepancies between Member States' inheritance tax systems

MS have broad freedom to design their tax systems and allocate taxing powers between themselves.

Therefore, the domestic rules on inheritance tax vary among the Member States of the European Union :

- 9 of them do not have either an inheritance nor an estate tax levied on the heirs or the estate of a deceased person .
- 15 Member States have an inheritance tax and 3 have an estate tax



**CJEU, 12 February 2009,
'The Block case' [C-67/08]**

The CJEU ruled that **the use of different connecting criteria for levying inheritance tax is not contrary to EU law** because there are no general criteria at EU level for the attribution of competence between the MS in relation to the elimination of double taxation within the EU.

- **Consequently, MS are free to decide their own rules on direct taxation, including the connecting factors according to which a person or an income is taxable in its territory.**
- **Since there is no harmonisation in this area, MS are free to determine the criteria for allocating their powers of taxation.**





The birth of cross-border inheritance tax problems

Many EU citizens **relocate from one country to another within the EU** to live, work and retire, purchasing property and investing in assets in the process.

Issues may arise if EU citizens :

- own assets outside their home MS
- have relatives in other EU MS.

Tax system differences can :

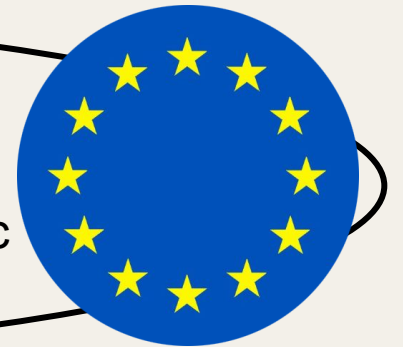
- hinder EU citizens from benefiting from their right to move freely across borders within the EU (free movement of capital)
- create difficulties for the transfer of small businesses on the death of owners.

The birth of cross-border inheritance tax issues

Citizens are exposed to **2 types of inheritance tax problems** in cross-border situations :

1) **The discriminatory application of a State's inheritance tax rules**

In such situation, non-domestic assets are subjected to higher levels of inheritance taxes than equivalent domestic estates.



2) **The double taxation of a single inheritance**

Assets end up being taxed for inheritance purposes in more than one EU tax jurisdiction



DOUBLE TAXATION



Double taxation and connecting factors

- **The main cause of double taxation is a conflict between the connecting factors of 2 or more jurisdictions.**
- **Connecting factors : rules that determine if the estate/heir is linked to the tax jurisdiction of a State.**

States have 2 connecting factors described in their domestic inheritance tax rules :

1) A personal nexus rule

2) A source rule

Principle	Condition	Member States using principle
Residence principle	The estate or inheritance is taxed if the deceased or the heirs were residents of the Member State at the time of death. The number of days spent in a Member State is normally the main basis for determining the residence Member State.	Belgium, Czech Republic,* Denmark, Finland, Germany, Hungary, Ireland, Italy , Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Spain.
Domicile principle	A person is generally domiciled where his or her permanent home is situated. A 'domicile of origin' is acquired at birth, normally from one's father.	France , Germany , Greece, United Kingdom.
Nationality principle	A personal nexus is established if the deceased or the heir is a citizen of the Member State.	Bulgaria, Czech Republic, Greece, Hungary, the Netherlands, Poland.

7. *The personal nexus rules*

MS use these nexus connections between the **deceased/heir** and the **territory of the State** to establish their right to tax .

- Personal nexus rules imply **worldwide taxation** as they link the individual to the State.



7. *The personal nexus rules*

Personal nexus rules imply **worldwide taxation** as they link the individual to the State.

3 main principles are applied by the States :

The residence principle

The inheritance is taxed if the deceased or the heir were residents of the State at the time of death.

- Basis for determining the residence State :
number of days spent, if you spend more than 183 days per year.



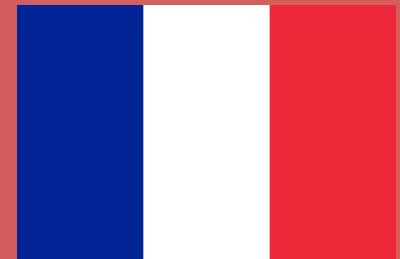
The domicile principle

A personal nexus is established where the permanent home is situated.

- Living in another State is not conclusive evidence of an intention to change domicile, the individual needs to move permanently or indefinitely.

The nationality principle

A genuine link is established if the deceased or the heir is a citizen of the State.



7. *The personal nexus rules in Germany*



There are extensive personal nexus rules in Germany:

- domicile (= permanent home)
- ordinary residence (temporary residence of at least 6 months)
- registered office or management

7. *The personal nexus rules in Germany*



In exceptional cases link to Nationality principle:

□ For **German citizen who are :**

A) not resident in Germany but have not resided abroad for more than 5 years

- Intention: complicate emigration in order to avoid German inheritance tax

B) employed by a public employer.

2. The source nexus rules

- Whenever **assets** are located within a State's jurisdiction, but are not covered by the personal nexus rule, the State can also levy taxes upon death as there is a link .
- It may cover all assets : bank account, shares, stocks and real estate
- but is sometimes limited to real estate.



Scope of taxations	Member States
All assets	Czech Republic, France, Germany, Greece, Ireland, Italy, Lithuania, Slovenia, Spain, United Kingdom.
Real estate (immovable assets) only	Belgium, Bulgaria, Denmark*, Finland, Hungary, Luxembourg, Poland.
No source taxation	The Netherlands.

Source nexus rules lead to the taxation of **all domestically located assets**.

2. The source nexus rules in Germany

Domestic assets do not include all assets located in Germany.

It only includes :

- Domestic agricultural and forestry assets
- Domestic real estate
- Domestic business property
- Shares in a domestic corporation (registered office or management in Germany) if at least of minimum 10% of the shares are held
- Some intangible assets registered in a domestic register
- Rights secured by domestic real estate

Bank Accounts are not considered domestic assets even if they are located in Germany.



A juridical double taxation resulting from conflicts between the connecting factors

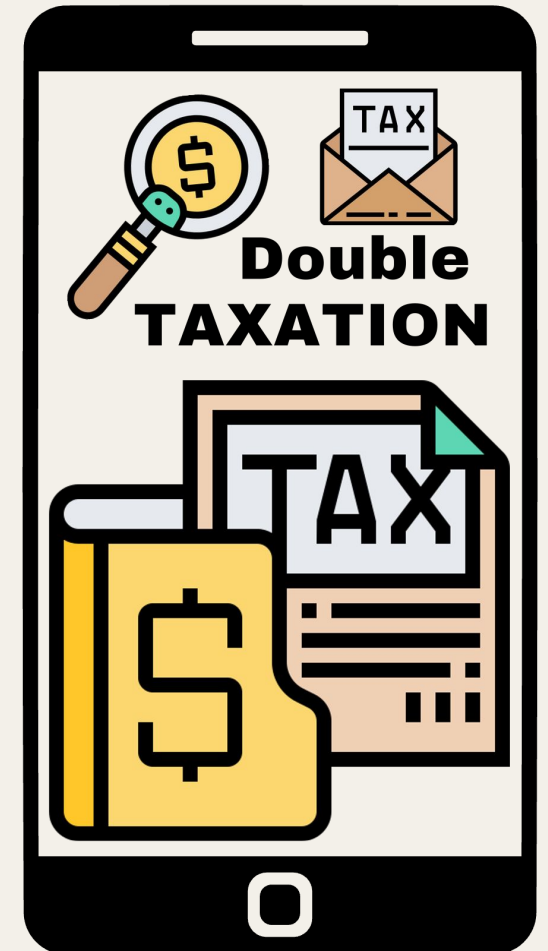
Ø Juridical double taxation of inheritance :

The taxpayer is taxed on the same inheritance in 2 States due to differences in the connecting factors.



3 main reasons :

- 1) The **genuine links in different jurisdictions are often in conflict with each other** which is a source of double taxation.
- 2) There are **few bilateral tax treaties** for the avoidance of double taxation in the field of inheritance tax.
- 3) Even then, the **treaty may not bring a full unilateral relief** for double taxation.



Conflicts between the connecting factors : The origins of the double taxation

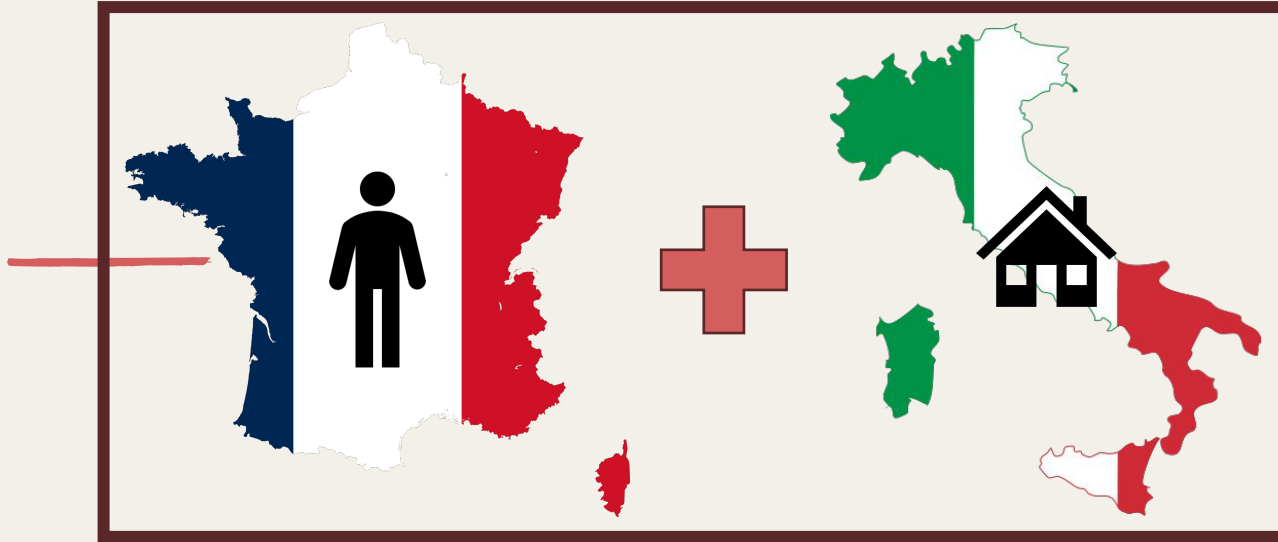
∅ An issue not solved by EU Law : **MS are not obliged to eliminate the double taxation** of inheritances that arises due to the parallel exercise of tax competence by 2 MS.

∅ Yet it remains an **obstacle to cross-border activity and investment**.

∅ Double taxation may originate from **3 types of conflict** :

Type of conflict	Description of conflict
Residence-Source	The same income is taxed twice, first by the Member State where it is derived under its 'source rule', and then in the Member State where the taxpayer has his or her residence and personal nexus.
Residence-Residence	Differences in the residence rules imply that the same deceased or heir is regarded as a resident of two Member states.
Source-Source	Diverging rules for determining the location of an asset imply that the same asset is covered by the source rule of more than one Member State. Problem most likely for intangible assets such as patents, copyrights, trademarks, computer software and for shares.

1] Residence-source conflict



1. The individual has a **personal nexus to one State.**

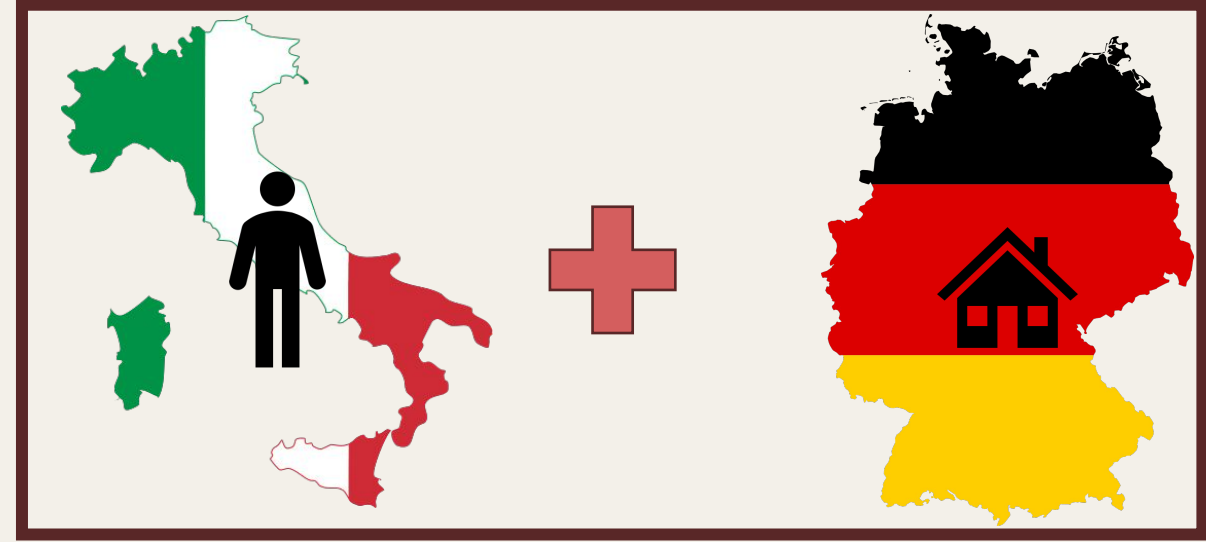
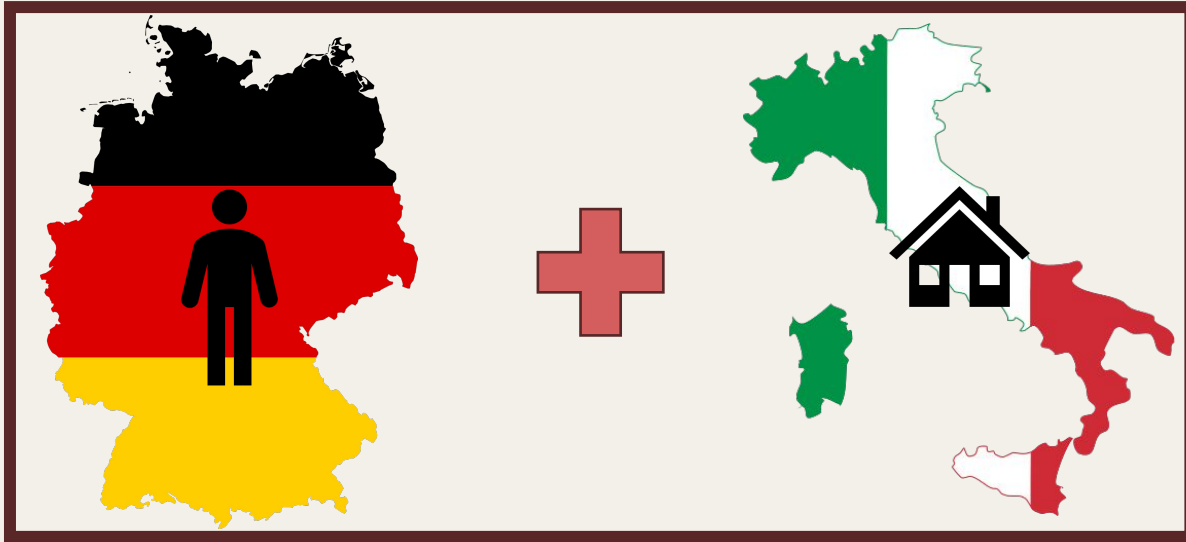
Therefore, it **will levy its inheritance tax on all worldwide assets.**



2. The individual owns assets that are covered by a **source rule in another State**, which leads to the taxation of **all assets located in its territory**

❖ **The Residence-source conflict affects the foreign located inheritance.**
The property located in Italy will suffer from the double taxation.

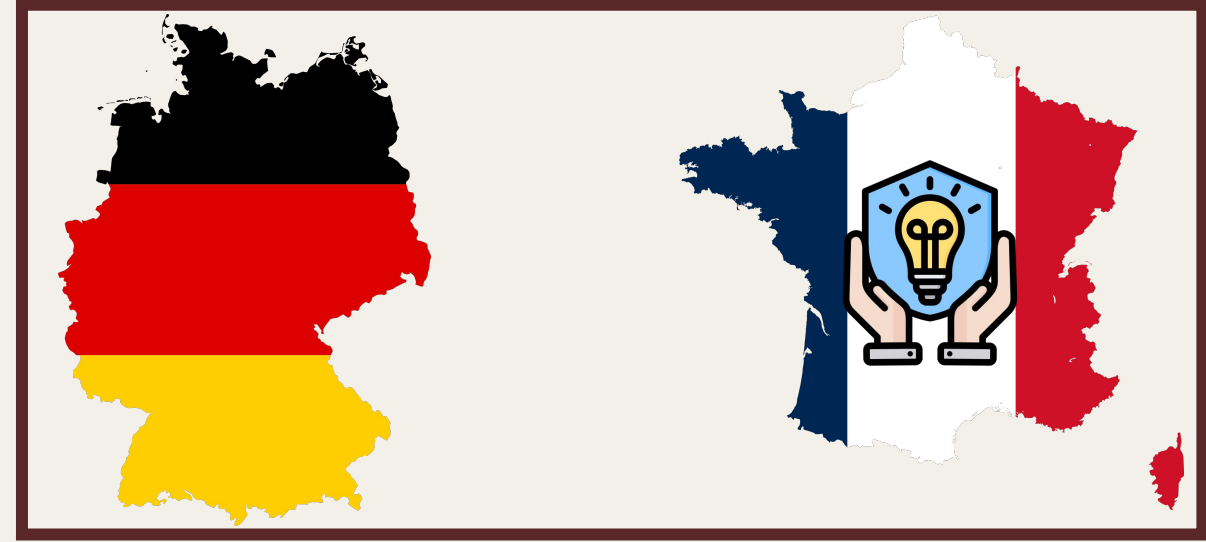
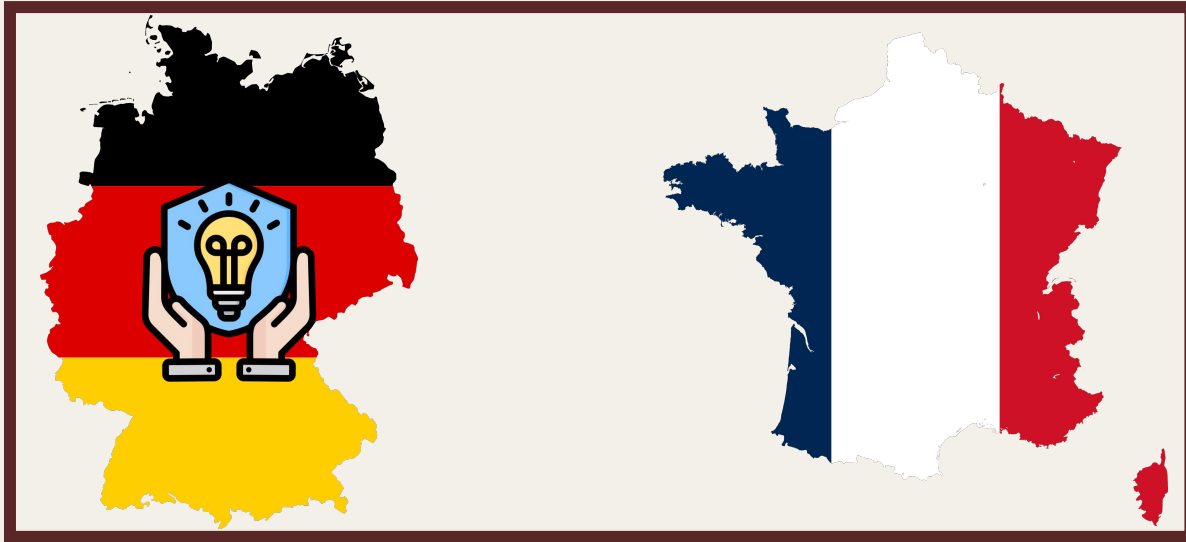
2) Residence-residence conflict



1. Two States have **different personal nexus rules** and both believe the individual to be their resident.
2. More than one State establishes a **personal nexus to the individual**, due to his residence, domicile or nationality.
3. Consequently, **both States** apply a **worldwide taxation** of his inheritance.

◆ **The Residence-residence conflict affects the worldwide inheritance.**
The property located in Italy and Germany will suffer from the double taxation.

3) Source-source conflict [rare]



1. Two States have **different Source nexus rules** and the **location of an asset is ambiguous**.
EX : **intangible assets** such as patents, copyrights, trademarks, computer software, shares ...
2. The inheritance is **covered by the source rule in more than one State**.
3. Possible double taxation of the **inheritance whose location is in question**.

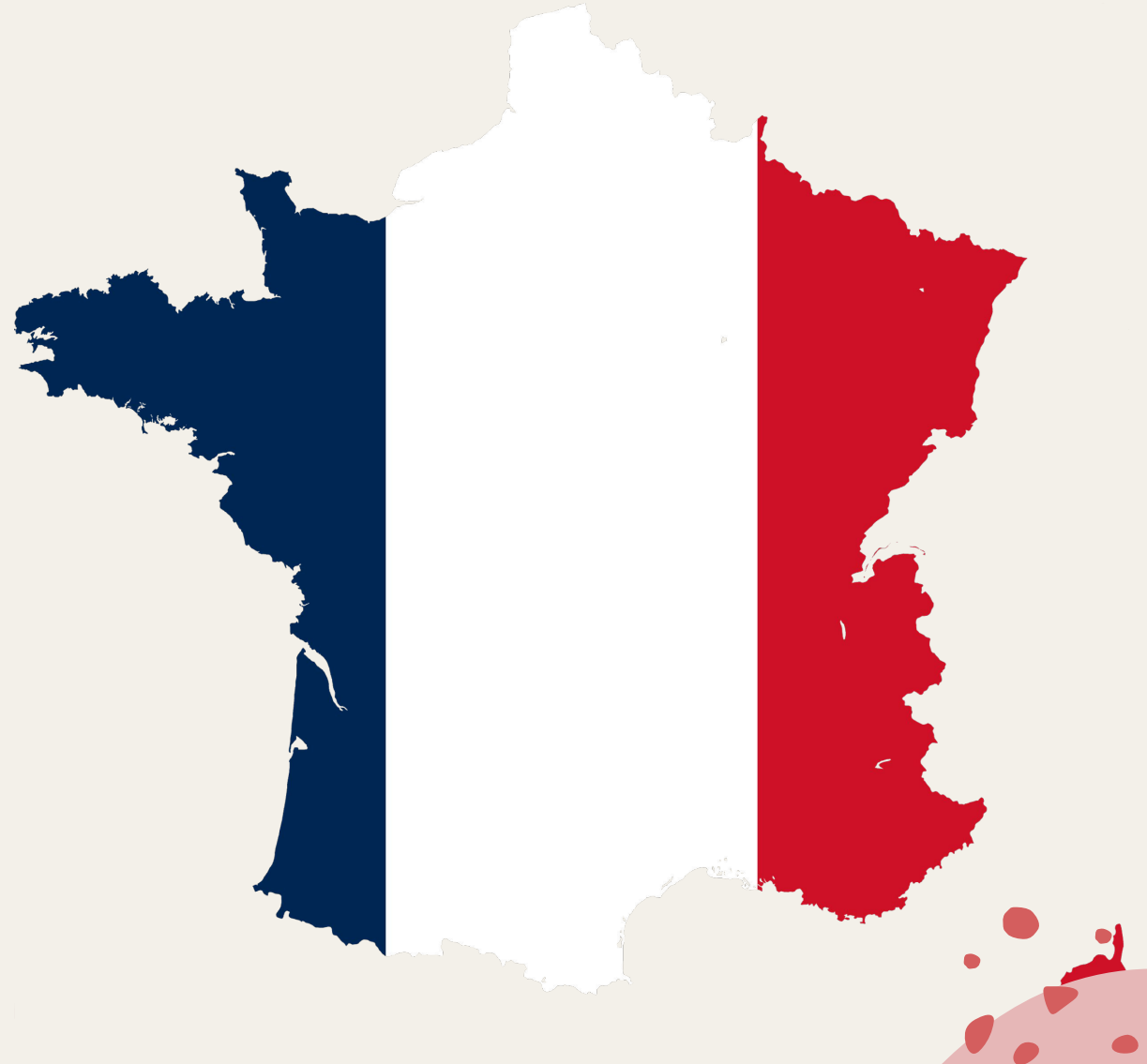
❖ **The Source-source conflict affects the inheritance as there are diverging rules for determining its location.**

The intellectual property located in either France or Germany will be taxed twice.

Domestic inheritance tax rules

For France:

1. When you inherit, you have to file an estate declaration with the tax authority.
3. Exemption by declaration of succession
4. Exemption relating to the deceased/His situation
5. Exemption linked to the nature of the goods transferred





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DÉCLARATION DE SUCCESSION

Formulaire obligatoire en vertu de l'article 800 du code général des impôts

Domestic inheritance tax rules

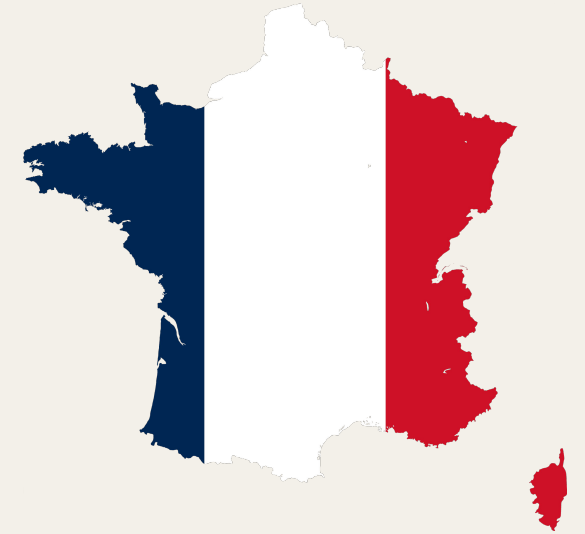
The declaration of succession : WHY ?

- The administration can identify the goods subject to inheritance tax.
- The administration check whether you can benefit from certain exemptions and to calculate the tax due.

Domestic inheritance tax rules

The declaration of succession : WHO ?

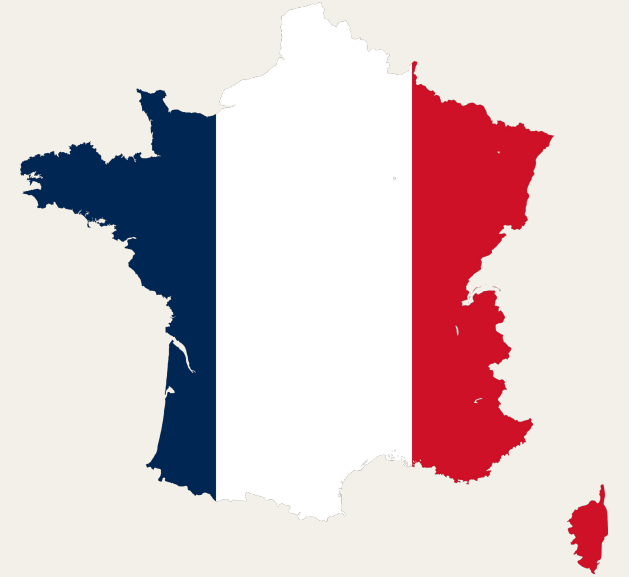
- One of the heirs must file an inheritance declaration.
- In case of several heirs, there is a solidarity for the payment of inheritance tax.
- However, this obligation differs according to the following:
 - o Amount of the estate
 - o Relation to the deceased



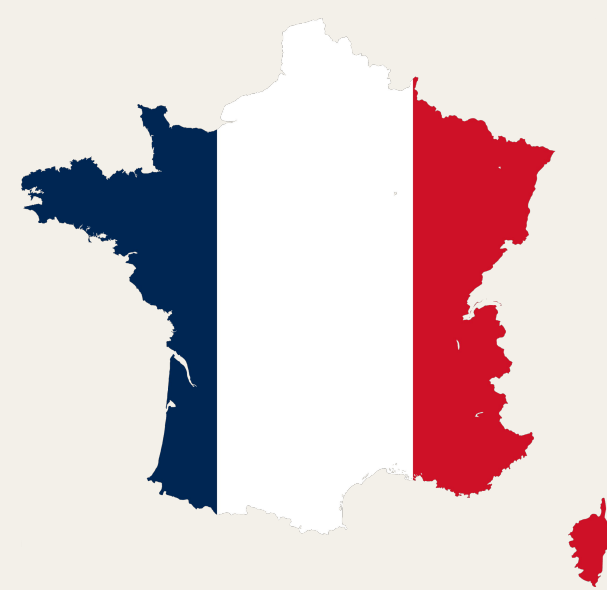
Domestic inheritance tax rules

Exemption by declaration of succession

- You don't have a return to file if you refuse the estate.
- You're the deceased's child.
 - Gross estate assets is less than €50,000
 - You only benefited from manual donations or donations which have been declared or registered
- You are the spouse or partner of Civil partnerships
 - Gross estate assets is less than €50,000
 - You only benefited from manual donations or donations which have been declared or registered
- You are another beneficiary
 - You are exempt from declaring an estate if inheritance gross assets is less than €3,000.



Domestic inheritance tax rules

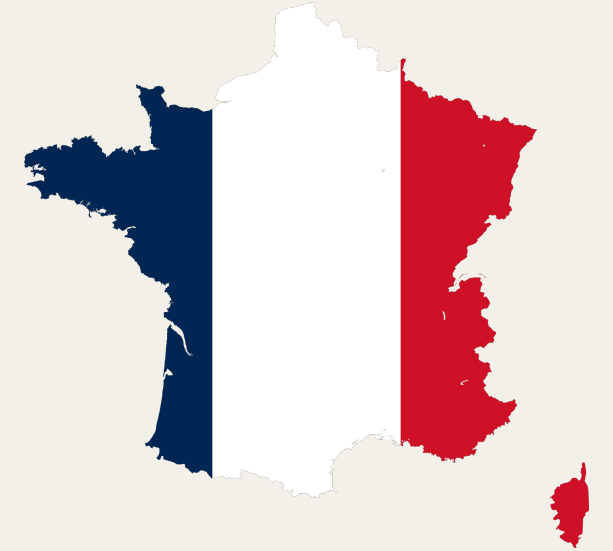


Exemption relating to the deceased/His situation

- You are exempt from inheritance tax if you inherit from:

- Victim of war or terrorist acts.
- Member who died on external or internal security operations
- Firefighter, policeman, gendarme, customs officer, summoned to their order of the Nation, in the event of death in the performance of their missions or of injuries received during these missions.

Domestic inheritance tax rules



Exemption linked to the nature of the goods transferred

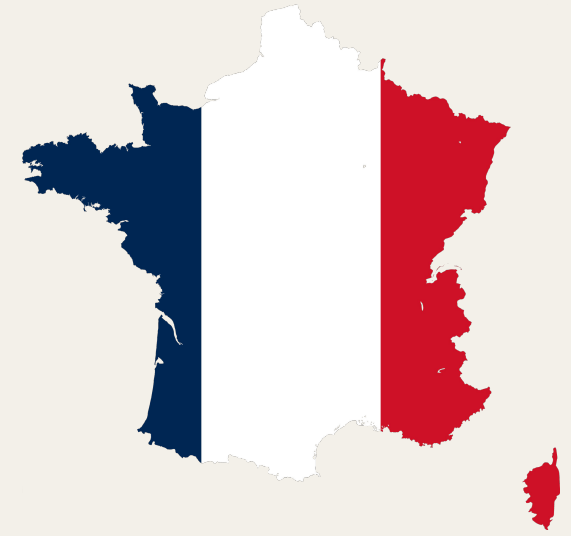
- Total exemption :

- Reversal of life annuity between spouses or between heirs in a direct line
- Historical monument
- Works of art, books and collectors' items, documents of high historical or artistic value donated to the State with its approval

- Partial exemption:

- Forestry or agricultural goods
- Individual business shares, interests and shares
- Residential building and garages (acquired between 1^{er} august 1995 and december 31, 1996)
- Dwelling (acquired new between 1^{er} June 1993 to 31 December 1994, and between 1^{er} august 1995 and december 31, 1995)

Domestic inheritance tax rules



Risk of double taxation due to French inheritance tax rules:

- Tax residence of the deceased in France
 - If the deceased was domiciled in France, you must pay inheritance tax on all property received
 - It does not matter whether these assets are located in France or abroad
- Tax residence of the deceased located abroad:
 - Beneficiary domiciled in France :
 - You must pay inheritance tax on all property received if:
 - You were domiciled in France on the day of death
 - You were domiciled in France for at least 6 years in the last 10 years
 - Beneficiary domiciled outside France
 - If you are on the day of death, only the property of the deceased located in France is taxable.

Domestic inheritance tax rules

For Germany :

- ❖ The tax authorities must be notified of the enrichment within three months of knowing of the inheritance.
 - also applies enrichment that are below the tax-free amounts (but no sanction)
- ❖ The probate courts, banks and notaries are obliged to transmit the data to the tax office.



Domestic inheritance tax rules

- ❖ After receiving the notification, the tax authorities check whether inheritance tax is due or whether personal allowances or a tax exemption applies.
 - Personal allowance: deceased's child €400.000
 - Spouse €500.000
- ❖ The tax authorities decide whether to ask the heirs to submit a declaration. A declaration only has to be submitted if requested by the tax authorities.

Possible solutions to the double taxation problem :

Bilateral tax treaties to avoid double taxation in matters of inheritance and gift taxes

Figure 3.1: Overview of bilateral tax treaties on inheritance in the European Union

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
BE										√																√	
BG																											
CZ																				√*							
DK					√						√														√	√	
DE				√				√		√*																√	
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ES								√		√	√																
FR	√				√*			√		√	√								√		√				√	√	√
IT				√				√		√																√	√
CY																											
LV																											
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LU																											
HU																			√							√	
MT																											
NL																				√*					√	√	√
AT			√*							√					√			√*								√	
PL																											
PT											√																
RO																											
SI																											
SK																											
FI				√				√		√									√							√	
SE	√			√	√					√	√				√				√	√					√		√
UK							√			√	√								√							√	

- To resolve problems of double taxation, the Member States have concluded bilateral tax treaties on inheritance and gift taxes.
- However, not all Member States have tax treaties with all Member States, and some have almost none at all.

Possible solutions to the double taxation problem :

Bilateral tax treaties to avoid double taxation in matters of inheritance and gift taxes

OECD, Model double taxation convention on estates and inheritances and on gifts, 1982

Chapter 4 of the Model double taxation convention on estates and inheritances and on gifts deals with methods for eliminating double taxation.

The methods for eliminating double taxation on inheritance and gift tax are, as for other taxes, **the imputation method and the exemption method.**

Chapter IV

Methods for Eliminating Double Taxation

Art. 9A. Exemption Method

Art. 9B. Credit Method

Possible solutions to the double taxation problem :

Imputation method

The Contracting State in which the deceased was domiciled at his death (=resident State) (or the donor was domiciled at the time of the gift), shall allow as a deduction from the tax calculated according to its law an amount equal to the tax paid in the other Contracting State (=source State) on any property which may be taxed in that other State.

The deductions shall not exceed that part of the tax of the former Contracting State, as computed before any deduction is made, which is attributable to the property in respect of which the deduction is to be allowed.

The power to tax is therefore finally granted to the source State.

Possible solutions to the double taxation problem :

Imputation method - Example

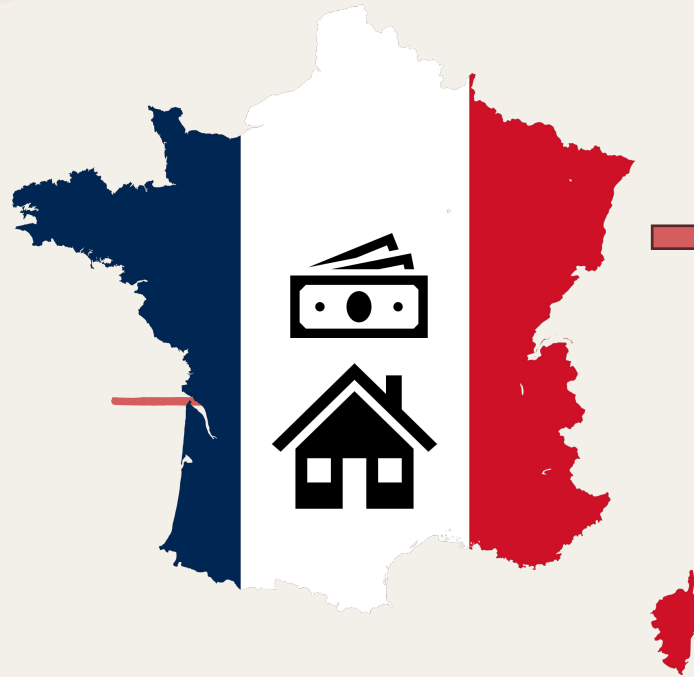


The source state is the state in which the assets that are the subject of the succession are located: in this case, France.

The state of residence is the state in which the deceased is located: in this case, Germany. The deceased and the heir are both resident in Germany

Possible solutions to the double taxation problem :

Imputation method - Example



transmission of assets worth 800,000 euros



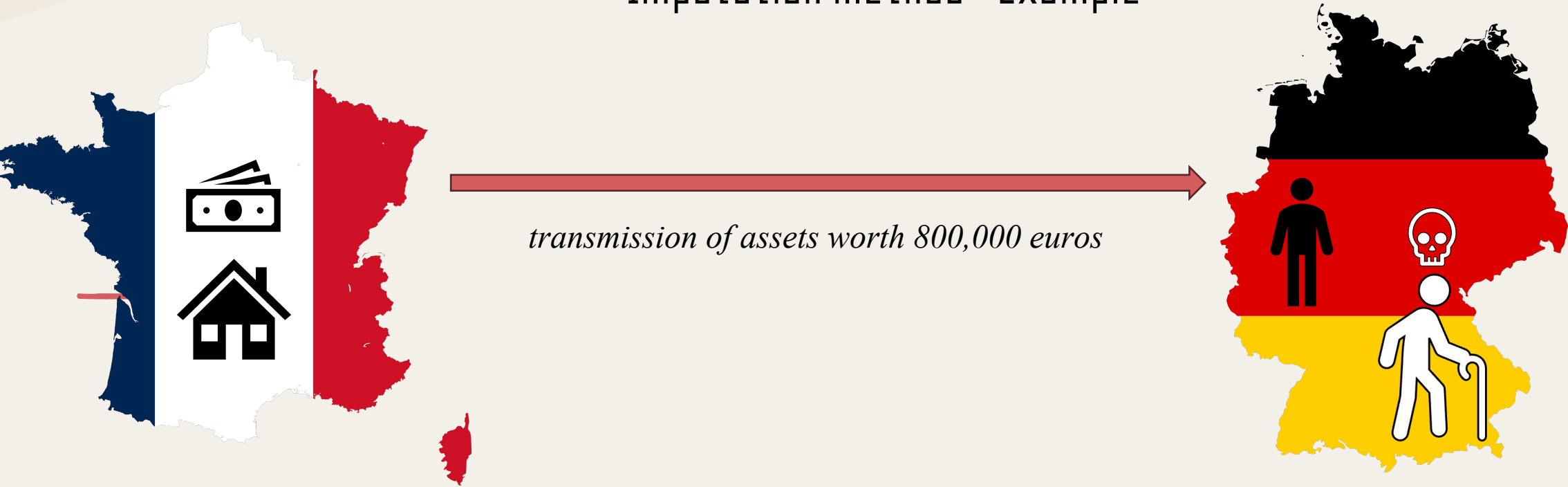
The source state has the right to tax inheritance involving property located in its territory.

The state of residence has the right to tax all the assets of the estate.

There is therefore double taxation of assets located in France.

Possible solutions to the double taxation problem :

Imputation method - Example



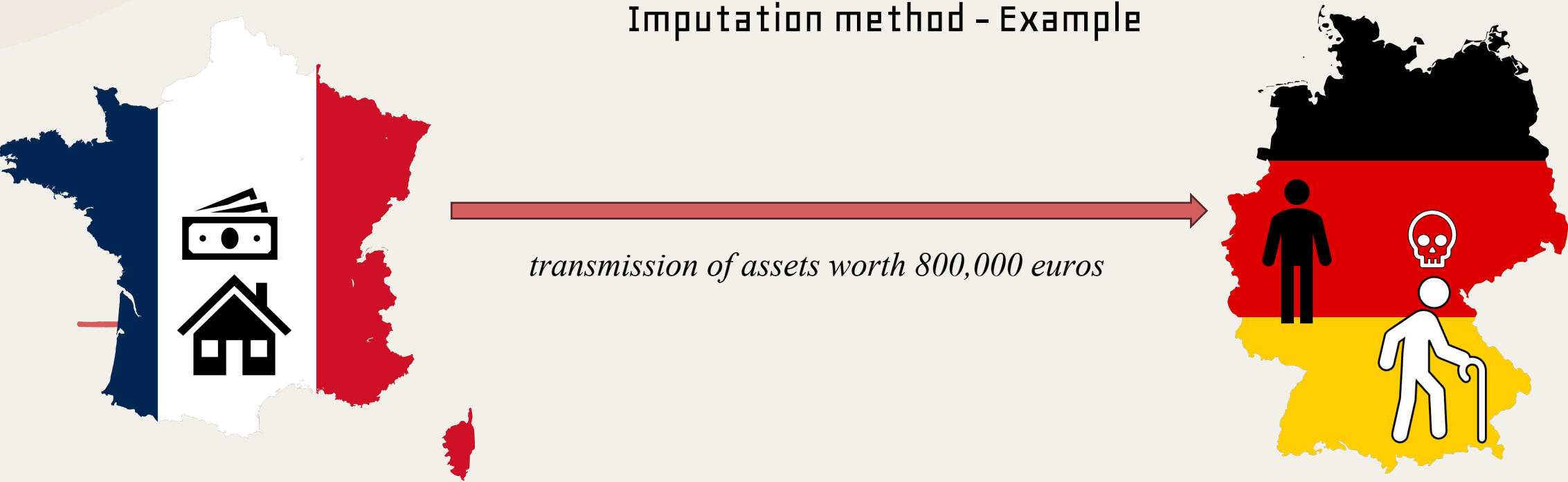
transmission of assets worth 800,000 euros

- **100,000 allowance per child per parent**
- The applicable rate is a **progressive rate**.
- Tax base = $800.000 - 100.000 = 700.000$ euros
- Tax = $700.000 \times$ progressive rates = 152.961,85 euros

- **400,000 allowance per child per parent**
- **Children are in tax class I**
- The applicable tax rate is 11%.
- Tax base = $800.000 - 400.000 = 400.000$ euros
- Tax = $400.000 \times 11\% = 44.000$

Possible solutions to the double taxation problem :

Imputation method - Example



Under the tax treaty, the right to tax is granted to the source state, in this case France.

As a result, the State of residence, Germany, by applying the imputation method, must offset the tax paid in France against the German tax payable by the heirs.

They will therefore have to pay French tax of €152,961.85 and will not have to pay anything in Germany.

Possible solutions to the double taxation problem :

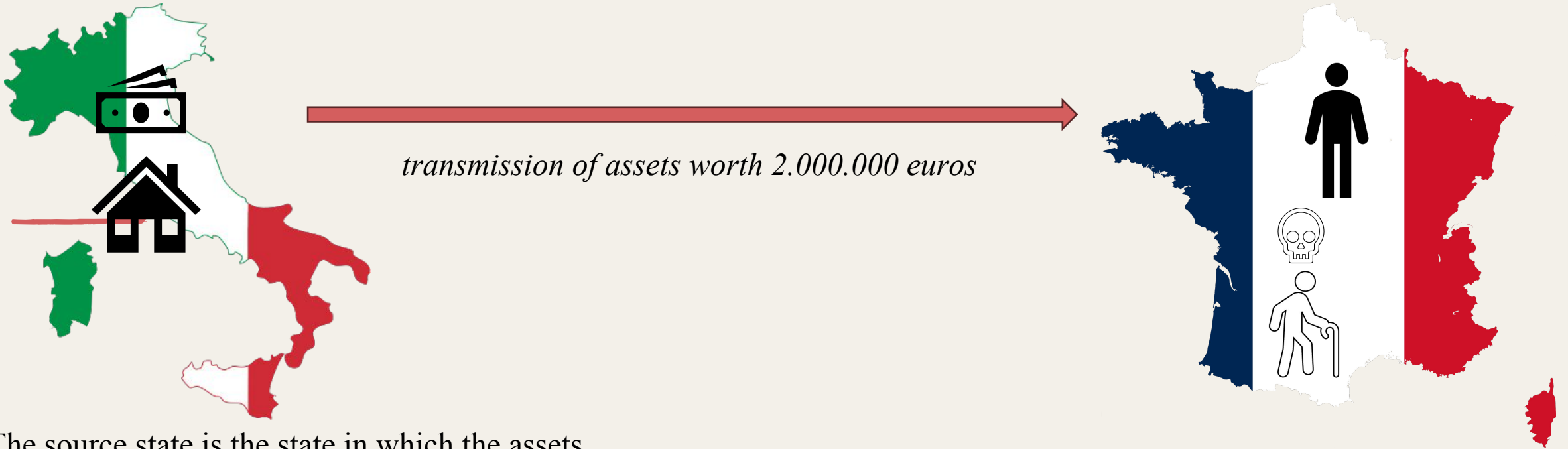
Exemption method

The Contracting State in which the deceased was domiciled at his death (=resident State) (or the donor was domiciled at the time of the gift), shall exempt from tax any property which may be taxed in the other Contracting State (=source State).

The source state may therefore tax assets that have been exempted in the state of residence.

Possible solutions to the double taxation problem :

Exemption method - Example



The source state is the state in which the assets that are the subject of the succession are located : in this case, Italy.

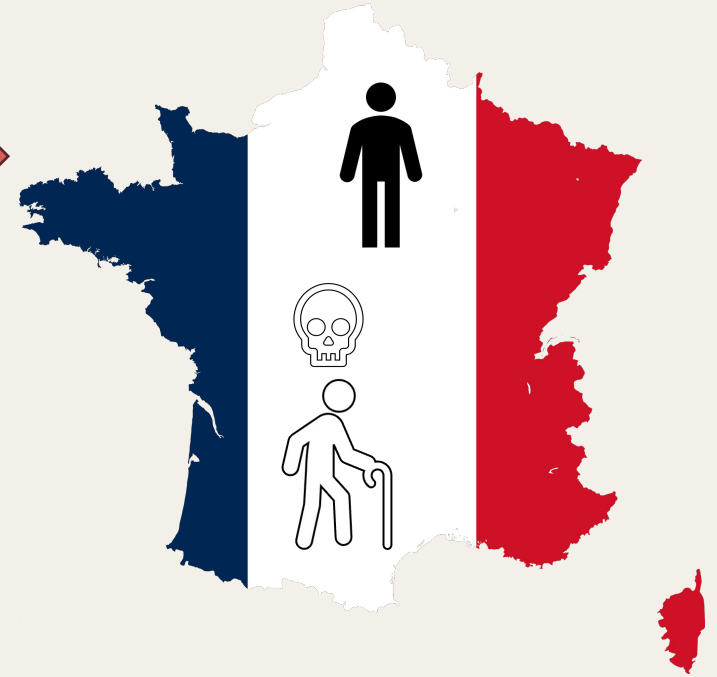
The state of residence is the state in which the deceased is located: in this case, France.

Possible solutions to the double taxation problem :

Exemption method - Example



transmission of assets worth 2.000.000 euros



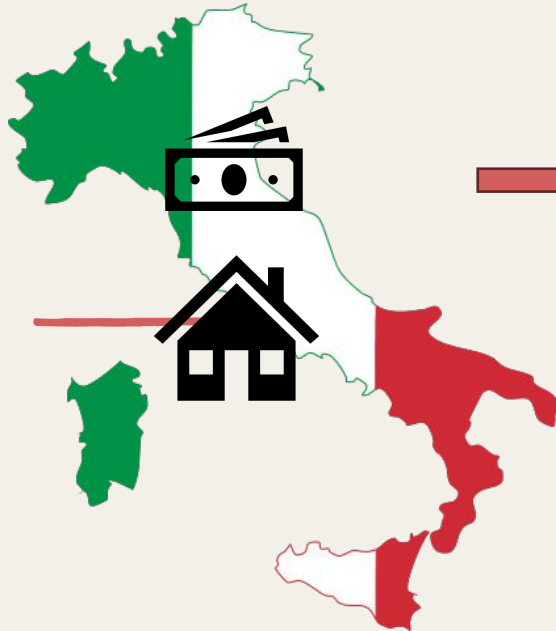
The source state has the right to tax inheritance involving property located in its territory.

The state of residence has the right to tax all the assets of the estate.

There is therefore double taxation of assets located in Italy.

Possible solutions to the double taxation problem :

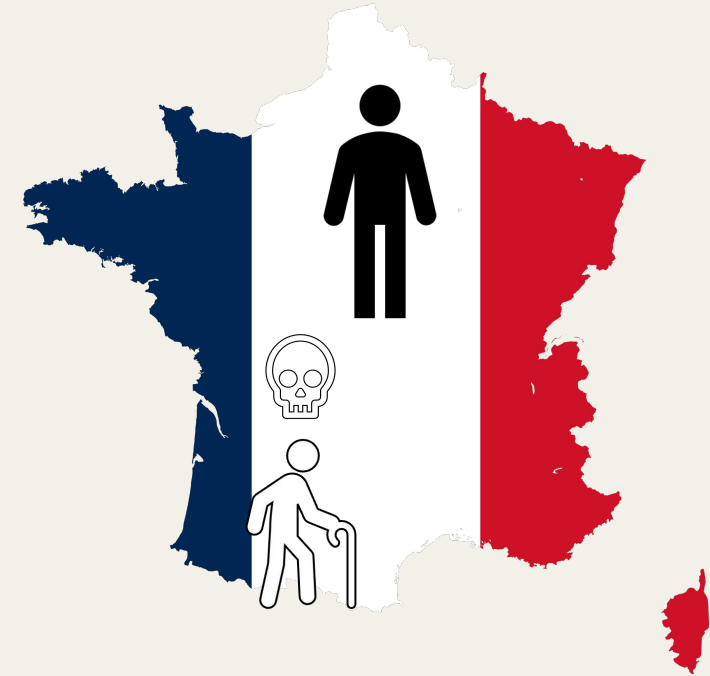
Exemption method - Example



Taxation in Italy



transmission of assets worth 2.000.000 euros



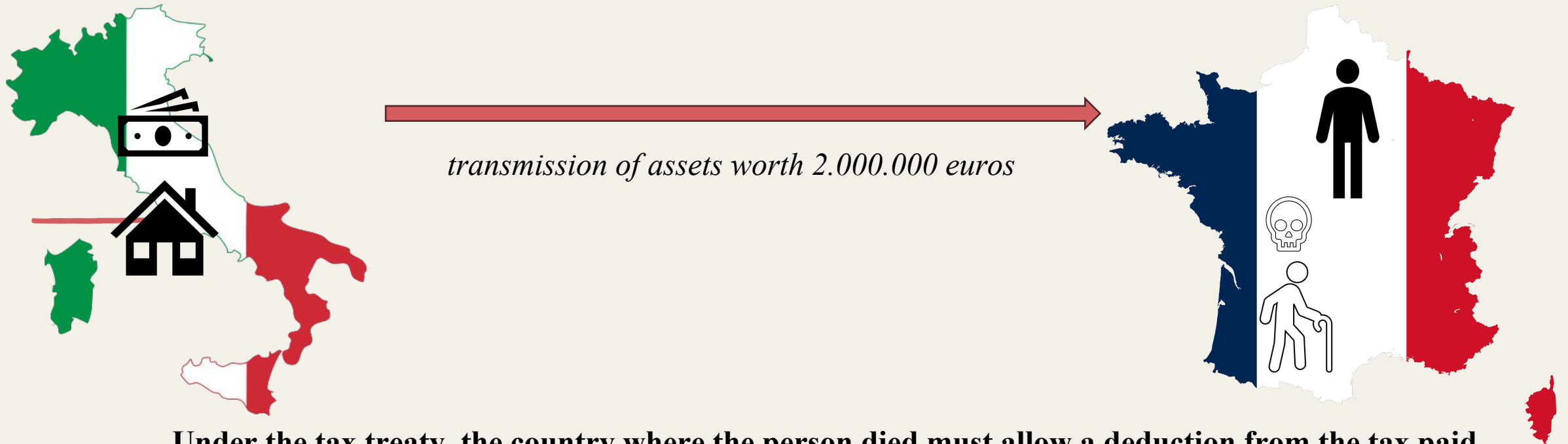
Taxation in France

- **Million euro allowance**
- When the heirs are the children of the deceased, **the applicable rate is 4%**.
- Tax base = 2.000.0000 - 1.000.000 = 1.000.000 euros
- Tax = 1.000.000 x 4% = 40.000 euros

- **100,000 allowance per child per parent**
- The applicable rate is a **progressive rate**.
- Tax base = 2.000.0000 - 100.000 = 1.900.000 euros
- Tax = 1.900.000 x progressive rates = 617.394,2 euros

Possible solutions to the double taxation problem :

Exemption method - Example



Under the tax treaty, the country where the person died must allow a deduction from the tax paid to the country where the assets are located.

Consequently, the country of residence, France, in applying the treaty, will have to deduct the 40,000 euros paid to the Italian tax administration from the 617 400 euros of French tax, giving a total of 577 400 euros.

Possible solutions to the double taxation problem :

Bilateral tax treaties to avoid double taxation in matters of inheritance and gift taxes



Possible solutions to the double taxation problem :

Application of the Franco-German tax treaty



Franco-German bilateral tax treaty

- Where **the deceased or the donor was domiciled in France**, it taxes all the assets forming part of the estate or gift, **including assets that are taxable in the Federal Republic of Germany**, and grants a **deduction from this tax equal to the tax paid** in the Federal Republic of Germany.
- **Exactly the same thing happens** in the event of death or donation in the Federal Republic of Germany.
- **In all cases**, the amount of tax to be deducted in the state where the death or gift **did not occur may not exceed** the fraction of tax in the country where the event occurred.

Possible solutions to the double taxation problem : Application of the Franco-Italian tax treaty



Franco-Italian bilateral tax treaty

- Where **the deceased or the donor**, at the time of death or of the making of the gift, **was domiciled in a State**, that State **shall deduct from the tax computed** under its own law **an amount equal to the tax paid in the other State** on the property which may be taxed in that other State.
- *In order to calculate the tax on the assets which it is entitled to tax, the State other than that in which the deceased or the donor was domiciled may take into account all the assets which its domestic law would allow it to tax.*

Possible solutions to the double taxation problem :
Application of the German-Italian tax treaty



**German-Italian
bilateral tax tr
eaty**

Germany and Italy have not signed a tax treaty



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INHERITANCE AND GIFT TAXATION: THE ALLOCATION OF THE POWER TO TAX

Italian legal framework and problems concerning the territoriality principle

by

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15 March 2024



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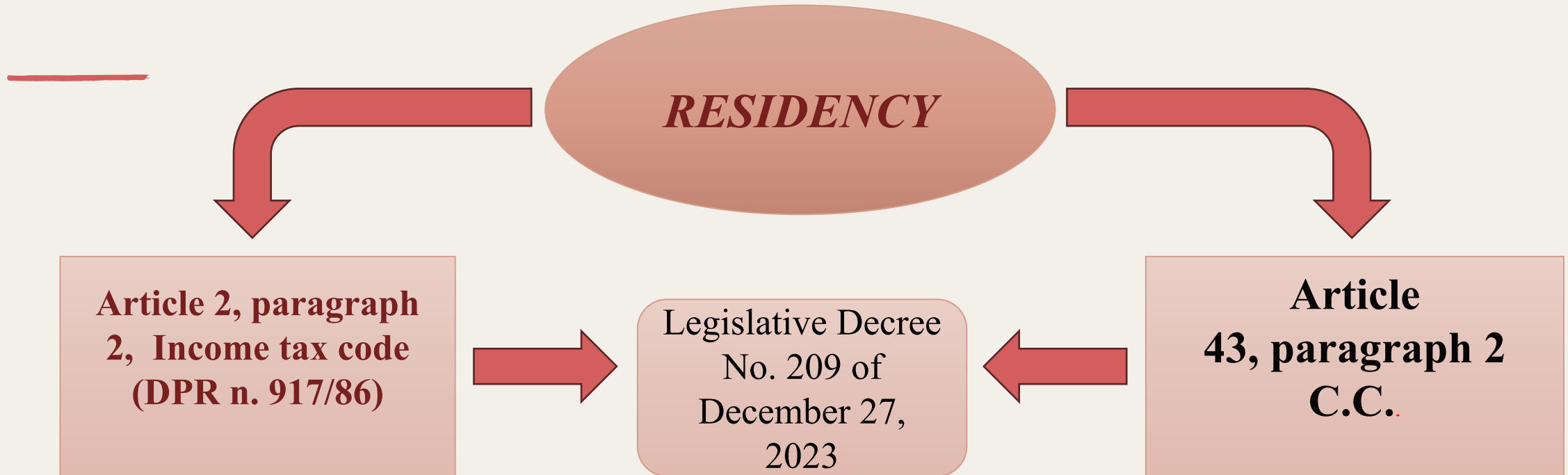
The criteria for allocation of the power to tax inheritance and donations

Art. 2 Legislative Decree no. 346/1990

Worldwide/Global criterion: If the testator/deceased, at the date of death, is tax resident in Italy, the inheritance tax is due with reference to all assets and rights, even if located abroad; if the donor is tax resident in Italy, the tax is due with reference to all assets transferred, even if located abroad

Territorial criterion: If the testator/deceased, on the date of death, or the donor, on the date of gift, is not a tax resident of Italy, the inheritance or gift tax is applied only on property and rights existing in the territory of the State (Italy).

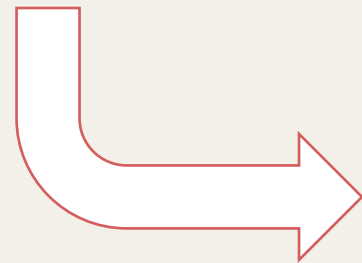
The troubled notion of Residency in the allocation of the power to tax



A brief view over the territorial principle in the Code général des impôts

Fundamental articles in order to understand the taxation dialogue between Italy and France:

- 1. Article 4A:** *“People whose tax domicile (defined by article 4B) is in France are liable for income tax on all their income. Those whose tax domicile is outside France are liable for income tax on their French-source income only.”*
- 2. Article 4B:** *definition of domicile in order to understand who can be a taxpayer in France*



THIS FRAMEWORK SHOWS GREAT AFFINITIES BETWEEN THE FRENCH AND ITALIAN MODELS, DESPITE CURIOUS DIFFERENCES; THIS WILL BE DISCUSSED IN REGARD TO ART. 750 C.G.I.

Italy-France International Convention, 20 December 1990, Rome

 Law No. 708 of December 14th, 1994 (ratifying the Convention in Italy)

“In the convention, as in the National Law, it is fundamental to consider the nature of the assets to determine the appropriate application of international tax rules”

Back to Italian Law: the presumption of assets localization in Italy

For a large list of assets, **Article 2, para. 3, Legislative Decree n. 346/1990** provides for a presumption “iuris et de iure” of location within the national territory, stipulating that these assets and rights are to be considered located within the Italy in the following cases:

- 1. ASSETS AND RIGHTS REGISTERED IN PUBLIC REGISTERS**
- 2. SHARES OF ITALIAN COMPANIES**
- 3. BONDS AND OTHER SECURITIES, ISSUED BY THE STATE**
- 4. SECURITIES RELATED TO ASSETS LOCATED IN ITALY**

ASSET	ITALIAN LAW	ITALY-FRANCE
REAL ESTATE ASSETS	TERRITORIALITY PRINCIPLE: TAXED IN ITALY IF LOCATED IN ITALY, NO MATTER THE RESIDENCE OF THE DECEASED/DONOR	TAXED IN THE STATE WHERE THE REAL ESTATE ASSET IS LOCATED
STATE SECURITIES	STATE THAT HAS ISSUED THE SECURITIES	STATE THAT HAS ISSUED THE SECURITIES
SHARES AND OTHER PARTICIPATIONS	STATE WHERE THE COMPANY IS MAINLY LOCATED	RESIDENCY OF THE COMPANY, IT DOESN'T MATTER THE REAL CENTRE OF ACTIVITY
RECEIVABLES	DEBTOR'S RESIDENCY STATE	DEBTOR DOMICILE
BANK ACCOUNTS	STATE OF RESIDENCY OF THE CREDIT INSTITUTE	STATE OF RESIDENCY OF THE CREDIT INSTITUTE

Article 5: the real estate assets

- **PARAGRAPH 1:** *Real estate, forming part of the inheritance or gift, which is located in the other state, as opposed to the state of domicile, is taxable in that other state.*
- **PARAGRAPH 3:** *as far as France is concerned, shares and units of companies engaged mainly in real estate business are also considered real estate.*

***A DIRECT LINK TO ARTICLE 750 C.G.I.
AND THE INTERESTING CASE OF S.C.I.***

The case of bank accounts, influence of the convention in the Revenue Agency's Ruling

CONVENTION:

— Money transfers through banks are taxed according to where the issuing bank is located (as for shares and receivables ex Article 8)

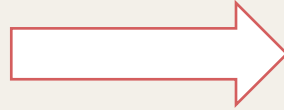


RULING NO. 7/2024 REVENUE AGENCY:

Strict reading of the territoriality criterion: the asset must exist in the territory of the state at the time of the succession/donation

The relevance of the asset's typology and the nature of the tax law

RULING NO. 310/2019
REVENUE AGENCY



The exclusion of Italian taxation also entails the exclusion of other taxes, including the registration tax.

ITALIAN SUPREME COURT
JUDGEMENT NO. 13579 OF 2007



The important difference between direct and indirect interest results in an exclusion of Italian taxation.

CONCLUSIONS

The complexity of the types of assets in the modern world - just think of the immense increase in innovative financial securities over the past two decades - implies a massive consequence of adaptation in domestic and international tax law.

The importance of coordinating the principle of territoriality with a clear idea of the nature of assets is highly topical today, and treaties represent a starting point in this clarification process.

However, EU harmonization work is still needed in many areas, including the taxation of inheritance and gift facts.



INHERITANCE AND GIFT TAXATION: THE ALLOCATION OF THE POWER TO TAX

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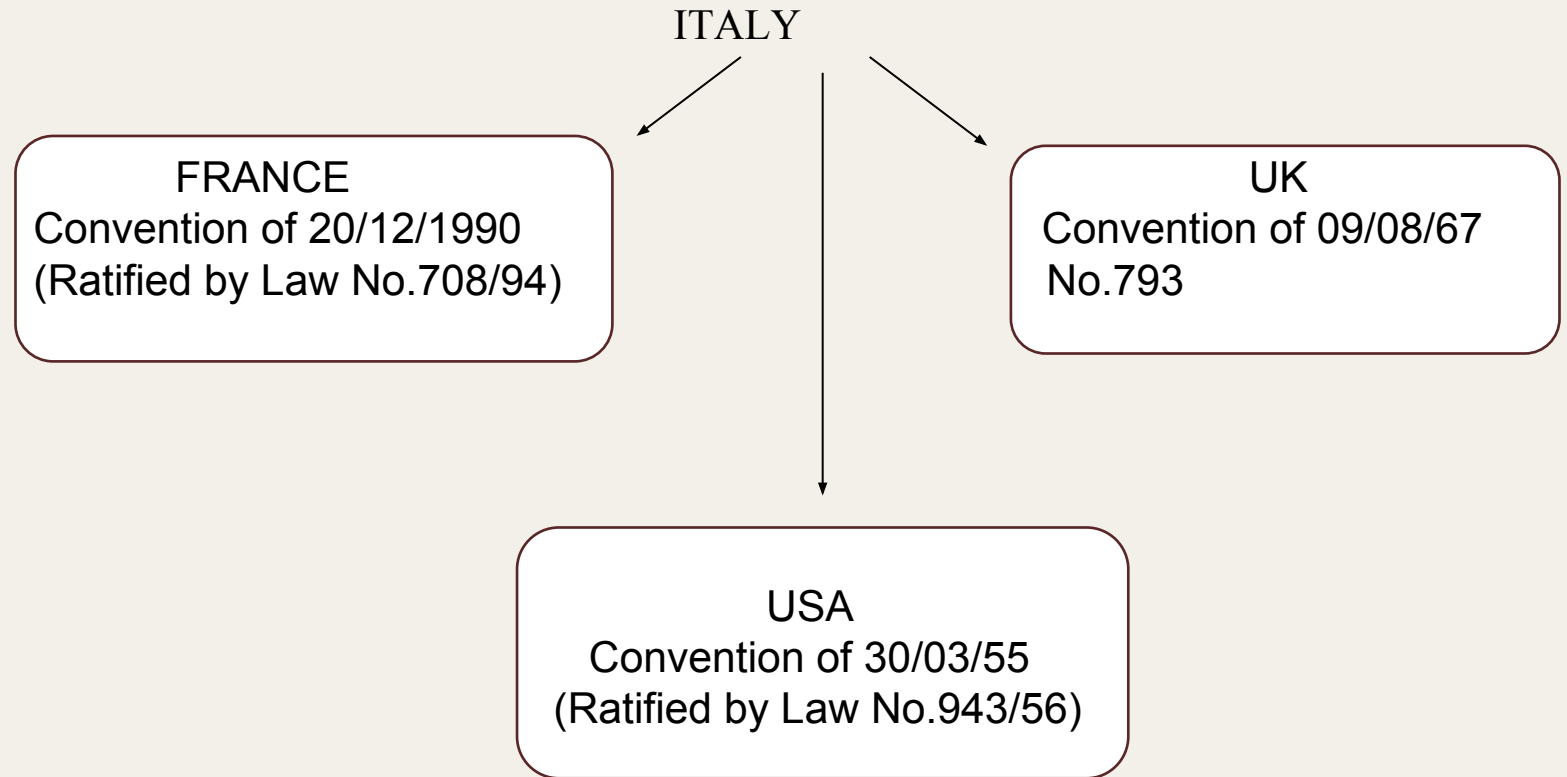
INHERITANCE AND GIFT TAXATION

These are taxes that affect the value of transfers of assets both upon death [successions/inheritance] and during lifetime [gifts].

International inheritance and gifts entail an analysis of the rules of the involved states, often conflicting, thus requiring determination of the applicable law for the case at stake.



Italy has entered several ~~bilateral~~ agreements on succession matters according to the OECD convention model in order to eliminate the double taxation.



TAXATION PRINCIPLES: THE CREDIT METHOD

- **With France:** The state deducts from its tax the tax paid in another state on taxable assets, but the deduction amount cannot exceed the proportionate part of the tax of the first state.

- **With UK:** In determining the amount of the taxable base, the deductions allowed by the laws in force in the state where the tax is applied are granted.
- **With USA:** When the deceased lived elsewhere, the tax exempts a portion of assets comparable to what would be taxed if they were local, ignoring assets outside the state. If the deceased lived in-state, the tax deducts the tax paid to the other state, limited to the portion attributable to in-state assets.

	ITALY	FRANCE	UNITED KINGDOM	UNITED STATES
REAL ESTATE	Absolute presumption of location	Taxable in the state where they are located	Taxable in the state where they are located	Taxable in the state where they are located
MOVABLE PROPERTY	Only if existing in the state	Taxable where they have a fixed establishment	The location where they are situated at the time of death or at the destination	The location where they are situated at the time of death or at the destination
SHARES AND OTHER PARTICIPATIONS	State where the company is mainly located	Residency of the company, it doesn't matter the real centre of activity	Existing where the company is established	Existing where the company is established

	ITALY	FRANCE	UNITED KINGDOM	UNITED STATES
RECEIVABLES	Taxable only if the debtor is a resident of the state	Taxable in the state they are in	Taxable in the state where the debtor was residing at the time of death	Taxable in the state where the debtor was residing at the time of death
BANK ACCOUNTS	Taxable only in the location where the account was held	Taxable only in the location where the account was held	Taxable only in the location where the account was held	Taxable only in the location where the account was held

EXAMPLE

CASE: a father is tax resident in Italy and leaves as inheritance to his newborn son, also resident in Italy, a property located in the United Kingdom.

How should the two states proceed?

ITALIAN SUPREME COURT JUDGEMENT NO. 2867/2021

Succession concerning a British citizen deceased in Italy, but with real estate properties both in Italy and in the United Kingdom

Question: Which law applies to the succession?

ITALIAN SUPREME COURT JUDGEMENTS

NO. 6955/1994 AND 8346/2006

On the presumption of existence of money, jewelry and furniture for the deceased person not resident in Italy.

The Italian Law provides for an increase in the taxable base of 10% of the "net" inheritance by way of the presumed existence in the estate of money, jewelry and furniture.

Question: does the 10% increase also apply to the taxable base of the non-resident person in Italy for single assets (e.g. real estate assets in Italy) existing in Italy and subject to inheritance tax in Italy?

Thank you!



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