

INHERITANCE AND/OR
GIFT TAXATION: THE
ELIMINATION OF DOUBLE
TAXATION IN DOMESTIC
LAW THROUGH A
HIERARCHY OF THE
STATES POWER TO TAX -
AN OVERVIEW IN
GERMANY, FRANCE, AND
ITALY

SUCCESSION

DONATION





INTRODUCTION

- *How to settle an inheritance / donation with cross-border issues?*
- *How to avoid double taxation?*

INTRODUCTION

OECD tax treaties

Allocation of tax rights according to the following criteria :

- The domicile of the deceased
- The location of the assets
- The heir's tax residence
- For real estate matters it is usually where the asset is located and movable property (ships, boats, aircrafts) owned by a permanent establishment are taxable at it's location or the place of effective management.

Principle of primacy and subsidiarity of tax treaties

THE CROSS-BORDER SUCCESSIONS
NORMS, EU INFLUENCE AND
PRACTICAL OVERVIEW

**EUROPEAN
REGULATION
NO. 650/2012
OF JULY 4,
2012, WHICH
CAME INTO
FORCE IN 2015**

- Applies to estates opened after August 17, 2015
- Applies to European and international situations as long as there is a link with the EU.
- Ratified by 25 members, including France, Italy and Germany.
 - However, some countries such as the UK, Ireland and Denmark use their national rules to choose the law applicable to a cross-border succession.
- Created a European certificate of inheritance

PRINCIPLE

- In principle, the applicable law is that of the deceased's habitual place of residence at the time of death.
- Need to establish the circumstances of the deceased's life in the years preceding his death and at the time of his death.
 - The duration and regularity of the deceased's presence in the State concerned, the conditions and reasons for his or her presence, and the existence of a close and stable link with that State are taken into account.
- **Thus, for a deceased German national who had been living in France for several years at the time of his death, all his assets (valuables, bank accounts, apartment, house, etc.) will in principle be subject to French law.**

Example 1



Italy

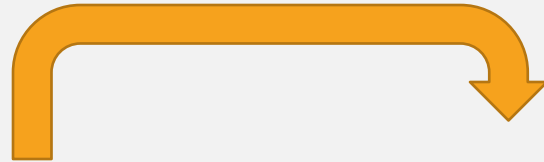


Germany



France

Assets of the deceased in different countries



The deceased was German but lives in France

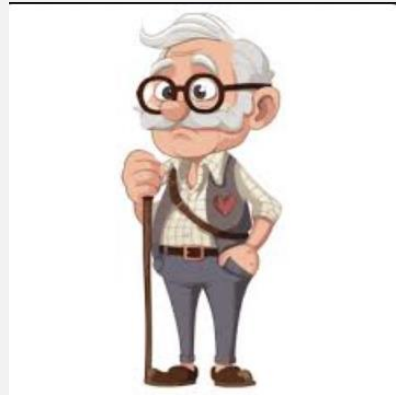


The heirs of the deceased do not reside in the same country.



European regulation no. 650/2012 of July 4, 2012, which came into force in 2015

EXAMPLE 2



German national,
recently resident in
France, died in Lyon



His assets are all located
in Germany



His heirs live in Germany

EXAMPLE 2

- The deceased clearly had closer ties with Germany than France, where he had his habitual residence at the time of his death.
 - He was of German nationality, his heirs are German and reside in Germany, all his real estate is located in Germany
- ***We should then apply German law***

- In complex situations where the deceased lived in several States before and at the time of his death, several elements can be used to determine his habitual residence:
 - nationality
 - geographical location of assets.

EXCEPTION

- Choose the law applicable to your estate during your lifetime
 - The deceased chooses in advance to apply the law of his country of nationality to his cross-border succession, rather than the law of his last habitual residence.
 - However, this choice must be expressly formulated, as in a will.
- **Thus, the law of the deceased's nationality applies as the sole law to the entire estate.**

**ADAMA WILL PRESENT THE
DIFFERENCES BETWEEN LEGAL
DOUBLE TAXATION AND
ECONOMIC DOUBLE TAXATION.**

HOW DO STATES AVOID DOUBLE TAXATION ?

- Allocation of the right to tax :
- Inheritance tax treaties allocate the right to tax according to the following criteria :
 - Place of domicile of the deceased
 - Location of assets.

ELIMINATION OF DOUBLE TAXATION.

Exemption method

Imputation method

The exemption method is generally supplemented by the effective rate rule.

ELIMINATION OF DOUBLE TAXATION

The effective rate rule leads to a double assessment of the tax:

A first assessment on assets taxable under French law (CGI, art. 750 ter), to determine the average tax rate

Then a second assessment based solely on assets taxable in France under the treaty, using the average tax rate previously determined.



Double taxation is eliminated by means of a tax credit equal to the amount of tax paid abroad. It is capped at the amount of tax corresponding to the assets giving rise to the credit.

- **Non-discrimination**

- **Article 10 of the OECD model**

- It generally prohibits discrimination based on nationality.

- **Mutual agreement procedure**

DOUBLE TAXATION



In general, in the absence of a tax treaty each state has the right to tax in its entirety in the absence of a treaty, so cases of double taxation may result.

There are several possible cases :

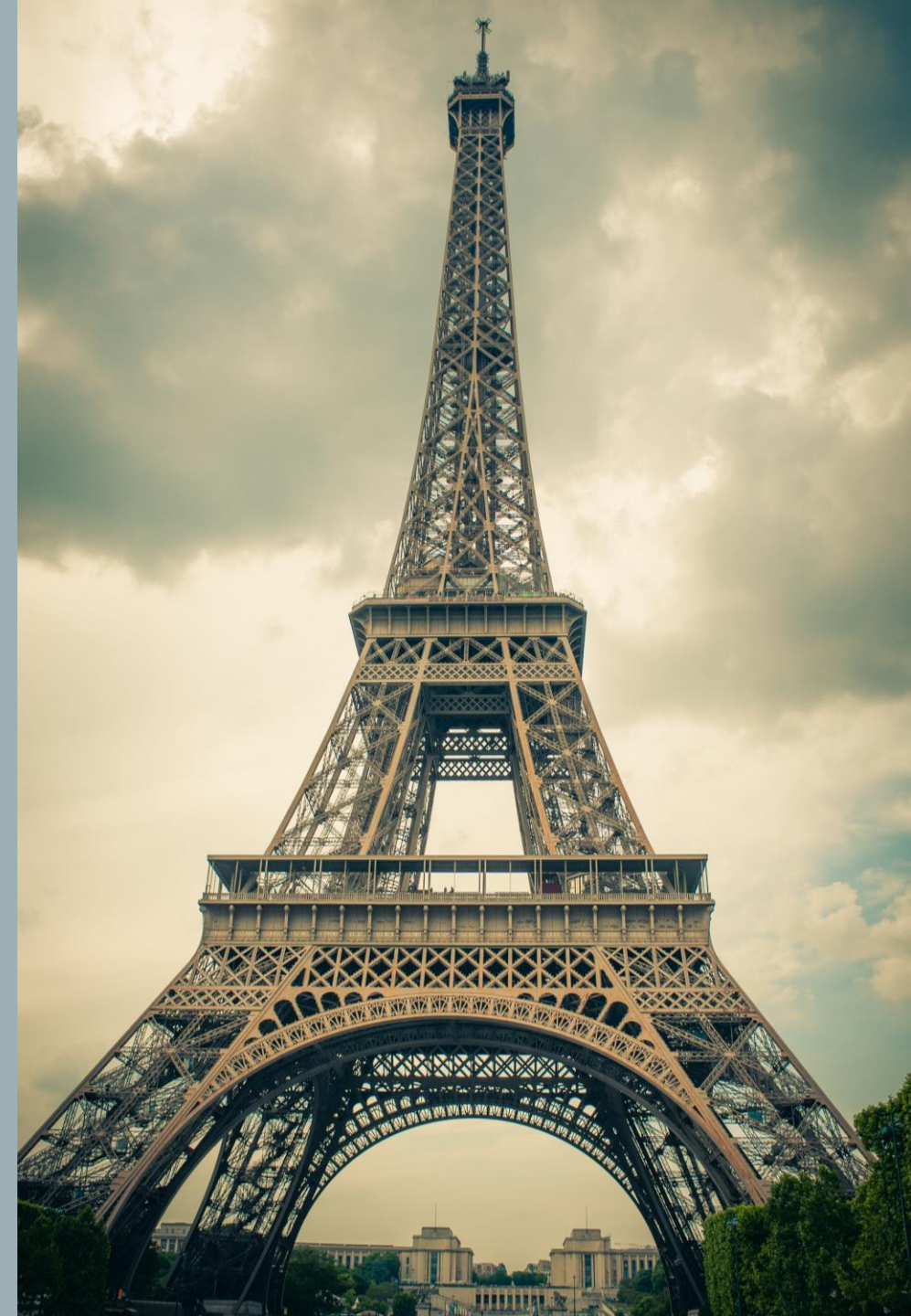
- each state may consider the deceased to be domiciled in its territory and tax on a worldwide basis.
 - There may be a discrepancy in the qualification of assets,
 - Discrepancy on connecting rules
 - Discrepancy over the debts to be charged.
- The domestic laws of each State sometimes have rules designed to eliminate double taxation.



HERITAGE IN ITALY

HERITAGE IN FRANCE

How to calculate inheritance
tax?



HERITAGE IN FRANCE

- For all transfers
of property after
a death

article 750 of the
CGI

TERRITORIALITY

- **in the absence of an international convention => article 750 CGI**
 - the deceased was domiciled in France within the meaning of article 4 B of the CGI: all movable and immovable assets are taxable in France, on a worldwide basis
 - double taxation avoided : article 784 A of the General Tax Code

TERRITORIALITY

- Hypothesis of the deceased domiciled outside France :
 - look at the situation of the beneficiary of the estate
 - domiciled in France at the date of transfer, and has been so for at least 6 of the last few years
 - movable and immovable property in France and abroad is taxed in France
 - beneficiary is domiciled outside France at the date of transmission
 - Only French property is taxable in France

EXEMPTIONS

Between spouses
or PACS partners

Between brothers
and sisters (if meets
the conditions of
article 796-0 ter of
the CGI)

Dutrel
transmission

Woods and
forests

Historic
monuments

Forestry
groups

...

BASIS OF ASSESSMENT: ASSETS AND LIABILITIES

- **Base :**
 - Value of property transmitted and calculated on the share due to each taxable heir or legatee
 - Actif brut – passif successoral
- Principle : assets valued at market value
- Derogation : 20% allowance for principal residence

ESTATE LIABILITIES

debts owed by the deceased are deducted from the estate assets (CGI art. 768)



Exception: debts contracted after the death of the deceased (funeral expenses, costs of opening a will, sums paid to recover social assistance, etc.).

CALCULATION

Inheritance tax is calculated on the net share due to each heir or legatee, and is generally calculated in two stages :

- Application of deductions to the net share of each taxpayer;
- Calculation of the tax according to a rate that varies according to the relationship between the deceased and the beneficiary.

100,000 allowance (CGI art. 779) => the allowance for children or ascendants in the direct line is €100,000.

TARIFF OF DUTIES APPLICABLE TO DIRECT DESCENDANTS

FRACTION DE PART NETTE TAXABLE	TARIF applicable (%)
N'excédant pas 8 072 €	5
Comprise entre 8 072 € et 12 109 €	10
Comprise entre 12 109 € et 15 932 €	15
Comprise entre 15 932 € et 552 324 €	20
Comprise entre 552 324 € et 902 838 €	30
Comprise entre 902 838 € et 1 805 677 €	40
Au-delà de 1 805 677 €	45

**TARIFF OF DUTIES APPLICABLE BETWEEN
SPOUSES AND BETWEEN PARTNERS BOUND
BY A CIVIL SOLIDARITY PACT :**

FRACTION DE PART NETTE TAXABLE	TARIF applicable (%)
N'excédant pas 8 072 €	5
Comprise entre 8 072 € et 15 932 €	10
Comprise entre 15 932 € et 31 865 €	15
Comprise entre 31 865 € et 552 324 €	20
Comprise entre 552 324 € et 902 838 €	30
Comprise entre 902 838 € et 1 805 677 €	40
Au-delà de 1 805 677 €	45

TARIFF OF DUTIES APPLICABLE IN COLLATERAL LINES AND BETWEEN NON- PARENTS

FRACTION DE PART NETTE TAXABLE	TARIF applicable (%)
Entre frères et sœurs vivants ou représentés :	
N'excédant pas 24 430 €	35
Supérieure à 24 430 €	45
Entre parents jusqu'au 4e degré inclusivement	55
Entre parents au-delà du 4e degré et entre personnes non-parentes	60



GIFT IN ITALY

GIFT IN FRANCE

- **GIFT TAX**

- Gifts are subject to the same tax regime as inheritances, but with certain special features.

TERRITORIALITY OF GIFT TAX

Use the same rules as for successions




But there is no distinction to be made depending on whether or not the deed of gift is made in France



Few international tax treaties designed to avoid double taxation.

TAX EXEMPTIONS

Are similar as long as the donor/donees respect the same conditions than the deceased/heir relationship



Gift deeds must include the same information and be accompanied by the same documents as inheritance declarations.

BASIS OF ASSESSMENT

Same rule as for inheritance

Some subtlety all the same

- No 20% allowance for principal residence
- Different rules apply to deductible liabilities

CALCULATION



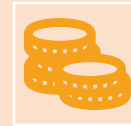
Each donee's share of donated assets + donations made over the past fifteen years



Application of an allowance




Application of a rate



Tax reduction where applicable

Donations in the direct line, collaterally and between non-parents are subject to the same tax rates as inheritances. However, there is a distinction between spouses and PACS partners.



ARTICLE 784 A OF THE CGI

- « Dans les cas définis aux 1° et 3° de [l'article 750 ter](#), le montant des droits de mutation à titre gratuit acquitté, le cas échéant, hors de France est imputable sur l'impôt exigible en France. Cette imputation est limitée à l'impôt acquitté sur les biens meubles et immeubles situés hors de France. »

SETTLEMENT

Tarif des droits applicables en ligne directe :

FRACTION DE PART NETTE TAXABLE	TARIF applicable (%)
N'excédant pas 8 072 €	5
Comprise entre 8 072 € et 12 109 €	10
Comprise entre 12 109 € et 15 932 €	15
Comprise entre 15 932 € et 552 324 €	20
Comprise entre 552 324 € et 902 838 €	30
Comprise entre 902 838 € et 1 805 677 €	40
Au-delà de 1 805 677 €	45

Tarif des droits applicables entre époux et entre partenaires liés par un pacte civil de solidarité :

FRACTION DE PART NETTE TAXABLE	TARIF applicable (%)
N'excédant pas 8 072 €	5
Comprise entre 8 072 € et 15 932 €	10
Comprise entre 15 932 € et 31 865 €	15
Comprise entre 31 865 € et 552 324 €	20
Comprise entre 552 324 € et 902 838 €	30
Comprise entre 902 838 € et 1 805 677 €	40
Au-delà de 1 805 677 €	45

Tarif des droits applicables en ligne collatérale et entre non-parents :

FRACTION DE PART NETTE TAXABLE	TARIF applicable (%)
Entre frères et sœurs vivants ou représentés :	
N'excédant pas 24 430 €	35
Supérieure à 24 430 €	45
Entre parents jusqu'au 4e degré inclusivement	55
Entre parents au-delà du 4e degré et entre personnes non-parentes	60

FOCUS ON FRENCH'S OECD TREATIES

- Most of French's treaties use the exemption method and in such cases, the method is supplemented by the effective rate rule
- France has signed thirty-six international agreements for the avoidance of double taxation on inheritance. Only seven have been signed for gifts

Situation of heirs and legatees:

- Unlike domestic law (CGI art. 750), most treaties do not take into account the situation of heirs or legatees
- France cannot tax assets situated outside France, passed on by a non-resident deceased to a beneficiary resident in France

Exception is made in the Franco-German convention.





HERITAGE IN GERMANY

WHICH TRANSFERS ARE TAXABLE

-By reason of death

-Gifts inter vivos

-Transfers for specific purposes

-Transfers of property to private fondation

WHO PAYS TAX UNIVERSAL TAXATION SYSTEM

For non resident

For resident



NON RESIDENT INVOLVED IN GRATUITOS TRANSFERT

Tax is payable only if the deceased or donor is resident in Germany

Any inheritance, bequest or gift received by an heir, legatee or donee resident in Germany is also taxable.

Article 121 of the Tax Assessment Act

-> **Non-residents can deduct debts with an economic link to one of the above-mentioned assets.**

RESIDENT

-> A person is considered a German resident from the moment he intends to maintain and use a dwelling in Germany

Independent of the time spend

-> A person is considered to be domiciled in Germany if he or she has resided there uninterruptedly for more than six months.

PROBLEMATICS



What happens to assets when a German resident gives up German residency?



The definition of foreign assets depends on the tax status of the deceased/donor:

ELIMINATION OF DOUBLE TAXATION

- The tax credit
- Tax levied abroad in respect of a share of an estate, a gift or an inheritance in its entirety may be deducted from the tax due in Germany.
- *If a German citizen were to settle abroad

