



Inheritance and/or gift taxation: the connection with the ability to pay

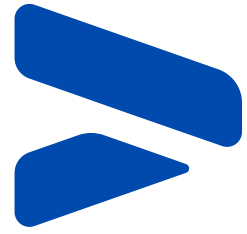
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Introduction

- European Regulations on inheritance: Beginning of an EU harmonization -> Only on civil matters which could be the subject of tax measures in the years to come.
- The bilateral Agreement between France and Italy of 1990.
- France: Declaration of Human and Civic Rights of 1789 which enshrines two principles of equality applicable in tax law.
- The ability to pay principle of taxation suggests that the amount of tax an individual or organization pays should be relative to the amount they earn.
- **Problem: To what extent does the ability to pay principle influence the implementation of inheritance and gift tax regime?**

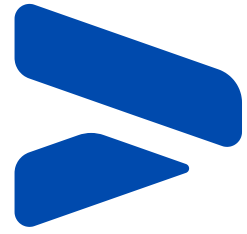


The relationship between the ability to pay and taxation

The relationship with inheritance taxation

France

- No real relationship between inheritance taxation and the ability to pay principle, based more on family relationships.
- Provisions of domestic law making the application of heirs' ability to pay implicit.
- Possibility to refuse inheritance.
- In inheritance law : Favored treatment for family ties.
- Numerous debates actually about taking greater account of people's ability to pay.

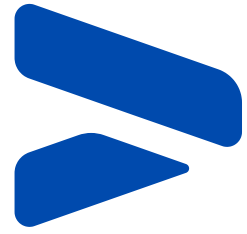


The relationship between the ability to pay and taxation

The relationship with taxation of gifts

France

- No real relationship between gifts' taxation and the ability to pay principle, based more on the relations between the donor and the beneficiary.
- Provisions of domestic law making the application of heirs' ability to pay implicit.
- Possible allowances for gifts between family members.
- Possibility for the donor to pay the taxation linked to the gift made.

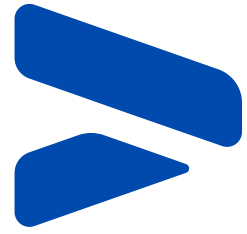


The taxpayers' ability to pay valued by institutional bodies

The consecration of the ability to pay in inheritance law

France

- Numerous questions sent to the French Constitutional Council to verify that French inheritance tax systems comply with the Constitution and therefore with taxpayers' ability to pay.
- Decision of 2019: The deductibility of debts compliant with the law.
- Decision on the reserved for heirs.
- Report of the Court of Auditors on the importance of taking the family into account.
- Note of the Economic Analysis Council on the reasons for the growing wealth inequalities generated by inheritance tax.

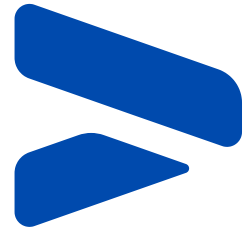


The taxpayers' ability to pay valued by institutional bodies

The consecration of the ability to pay in the taxation of donation

France

- Some questions asked to the French Constitutional Council to verify that the taxation system according to donation is complying with the Constitution and therefore with taxpayers' ability to pay.
- The evolution of the Pacte Dutreil and a proposition of the Presidential candidates.
- Decision of the French Constitutional Council on manual gifts.



Conclusion

- In France taxpayers' ability to pay has little impact, the most important factor being family ties. But all the applicable provisions have been confirmed by the various courts.
- OECD report proposing reforms to ensure that inheritance and gift taxes play a greater role in raising public revenues and reducing inequality.

