

THE OECD MODEL
CONVENTION ON
INHERITANCE AND GIFT
AND FRENCH-ITALIAN
AND/OR
FRENCH/GERMAN
AND/OR
GERMAN/ITALIAN
EXPERIENCES: THE
CASE LAW



Summary

Introduction

The OECD model convention on double taxation

General reflections on the OECD model tax convention on

Inheritances and Gifts

The relevant case law

Introduction

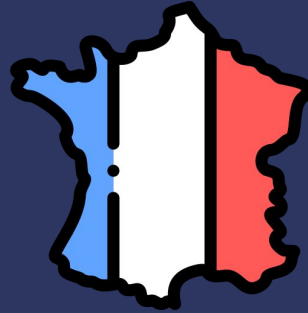


Introduction



Inheritance tax
conventions: 5

Gift tax conventions: 2



Inheritance tax
conventions: 40

Gift tax conventions: 8



Inheritance tax
conventions: 7

Gift tax conventions: 1

These agreements are based on the 1982 OECD Committee on Tax Affairs model and this model hasn't evolved since.

The OECD model convention on double taxation

a. How was this model born and for what purpose?

Created
on June
28,
1966

Avoid
double
taxation
with
respect to
taxes on
estates
and on
gifts.

The OECD double taxation convention model

The role of international tax treaties

Scope of tax treaties

Elimination of property qualification conflicts

Allocation of debts in inheritance tax

Elimination of double taxation



The role of international tax treaties :

Prevent conflict between tax domiciles

Prevent conflict in the classification of assets

Prevent conflict over the connection of assets



Tax treaties delimit their scope of application by mentioning the taxes they cover and by giving a definition of these taxes.

The principle of primacy must be combined with the principle of subsidiarity of conventions (French law)

The tax treaty defines real estate by reference to the law of the State where the property is located.





→ Liabilities relating to real estate, a permanent establishment or a fixed base must be deducted from the value of the property in the State where the property is located.

→ The deduction can only be made if the other state is not required to deduct the same liability under its law.

→ The conventions do not define what constitutes a "debt"

In matters of inheritance and gift, apportionment is based on the domicile of the deceased/donor and the location of the assets.



In general, treaties grant the right to tax real estate to the state in which the property is located.

France does not have the right to tax assets situated outside its territory, passed on by a non-resident deceased to a beneficiary resident in France. The only exception is the Franco-German convention.

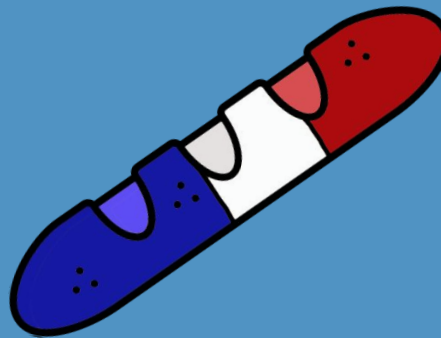
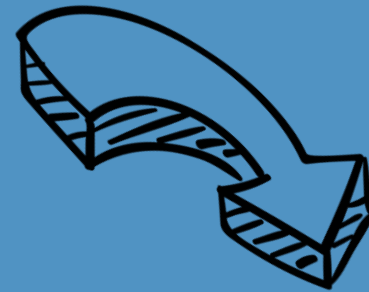
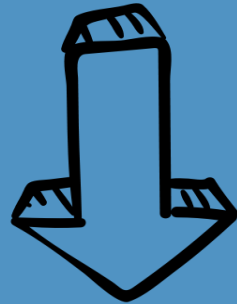


General reflections on the OECD

model tax convention OECD
convention on the taxation of
inheritance and gift Gifts



b. Limited contribution of inheritance tax : difference between





The relevant case law

TGI de Nice 26 septembre 2002, n° 01-4930, 3e ch.

The non-discrimination clause in article 12 of the Franco-Italian convention of December 20, 1990, on succession and gifts concerns the tax situation of individuals. In the case of an heiress of Italian nationality residing in France who inherits from her father, of Italian nationality, who died in Monaco, the said clause cannot be invoked. This is justified by the fact that she is treated in the same way as a French citizen in a similar situation.

C-256/06 Theodor Jäger v Finanzamt Kusel-Landstuhl

Mr. Theodor Jäger, a resident in France, is the sole heir of his mother, who died in 1998 in Landau/Pfalz, Germany. The estate included real estate in France used for agricultural and forestry purposes.

This property was part of the assets of two agricultural and forestry businesses

Cross Border Inheritance tax case between Italy and Germany



Thank for your listening