



Luxembourg Inheritance Rules and Taxes

KPMG Luxembourg S.C.

Association of British and Irish
Accountants in Luxembourg

February, 14th 2017



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Introduction



Inheritance tax VS Death duty

Inheritance tax

- **Who ?** Deceased who had his last domicile (or place of estate) located *in* Luxembourg (regardless of place of death)
- **What ?** On all *movable and immovable* properties *located in* Luxembourg and *movable* properties *located outside* Luxembourg

Death duty

- **Who ?** Deceased who had his last domicile (or place of estate) located *outside* Luxembourg (regardless of place of death)
- **What ?** On *immovable* properties *located in* Luxembourg



Luxembourg inheritance tax



Luxembourg inheritance tax

Inheritance tax

Basis

- **Net asset value of :**
 - movable properties (cars, shares, cash, paintings, etc.) located in or outside Luxembourg, except for movable properties subject to inheritance tax outside Luxembourg due to the nationality of deceased (under conditions)
 - immovable properties located in Luxembourg
- **Deduction of :**
 - debts (taxes, private and professional debts) due on the day of death and funeral costs
- **Some donations and transfers can be reinstated to the succession**

Evaluation

- **Market value on the day of death**
- **Specific valuation rules for annuities**

Luxembourg inheritance tax

Inheritance tax rates

	Compulsory share	Other than compulsory share
Direct descendants (children or descendants)	0 %	2,5 % or 5 % *
Between spouses with common children or descendants Between partners linked by a partnership declaration registered since at least 3 years before the opening of the succession, with common children or descendants	0 %	0 %
Between spouses without common children or descendants Between partners linked by a partnership declaration registered since at least 3 years before the opening of the succession, without common children or descendants	5 % **	5 %
Between brothers and sisters	6 %	15 %
Between uncles / aunts and nephews and nieces	9 %	15 %
Between adoptive parent and adopted child (simple (not full) adoption)	9 %	15 %
Between grand-uncles / grand-aunts and grand-nephews and grand-nieces	10 %	15 %
Between adoptive parent and the descendants of the adopted child (simple adoption)	10 %	15 %
Between any other persons	15 %	15 %

* If a direct heir receives shares to which he would not normally have been entitled, he shall pay a duty of 2,5% on the available portion that is bequeathed to him by precipitate and out of share, and 5% on the surplus.

** 5% between spouses without common children or descendants. This rate applies after an **allowance of 38.000 EUR**.



Luxembourg inheritance tax


Surcharge

Between 10.000 and 20.000 EUR	1/10
Between 20.000 and 30.000 EUR	2/10
Between 30.000 and 40.000 EUR	3/10
Between 40.000 and 50.000 EUR	4/10
Between 50.000 and 75.000 EUR	5/10
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Between 620.000 and 750.000 EUR	15/10
Between 750.000 and 870.000 EUR	16/10
Between 870.000 and 1.000.000 EUR	17/10
Between 1.000.000 and 1.250.000 EUR	18/10
Between 1.250.000 and 1.500.000 EUR	19/10
Between 1.500.000 and 1.750.000 EUR	20/10
More than 1.750.000 EUR	22/10

For net shares received in the succession > 10.000 EUR, the basic rate is increased by a progressive surcharge

Luxembourg inheritance tax

Exemptions



No
inheritance
tax on...

- The **entire share in direct line**, except for what is exceeding the compulsory share

- 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**.

- The **entire share inherited either in usufruct as a pension or 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 retribution;

- Successions where the aggregate value of the estate, net of the debts, **does not exceed 1.250 EUR**.



Luxembourg death duty



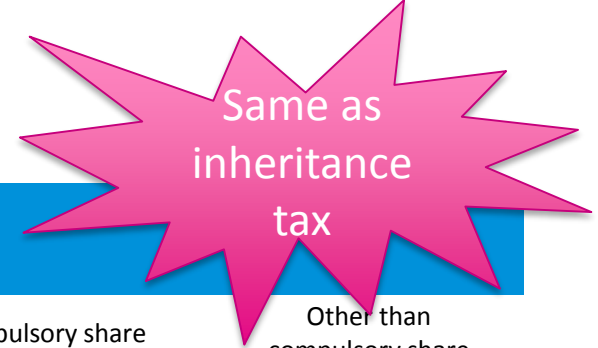
Death duty

Basis

- **Net asset value of :**
 - immovable properties **located in Luxembourg**
- **Deduction of :**
 - debts secured by immovable property situated in Luxembourg
 - debts contracted for the acquisition, improvement or conservation of immovable property situated in Luxembourg

Valuation

- **Market value of the immovable property one the day of death**



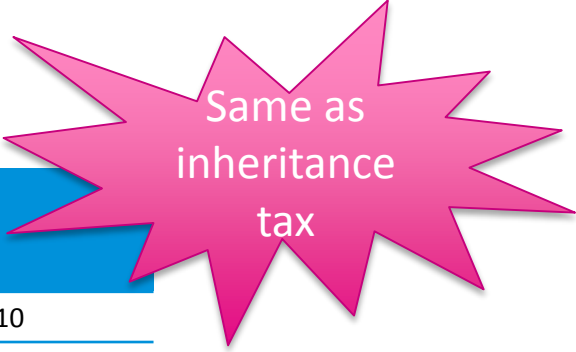
Death duty rates

	Compulsory share	Other than compulsory share
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Luxembourg death duty



Same as
inheritance
tax

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Same as
inheritance
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Exemptions

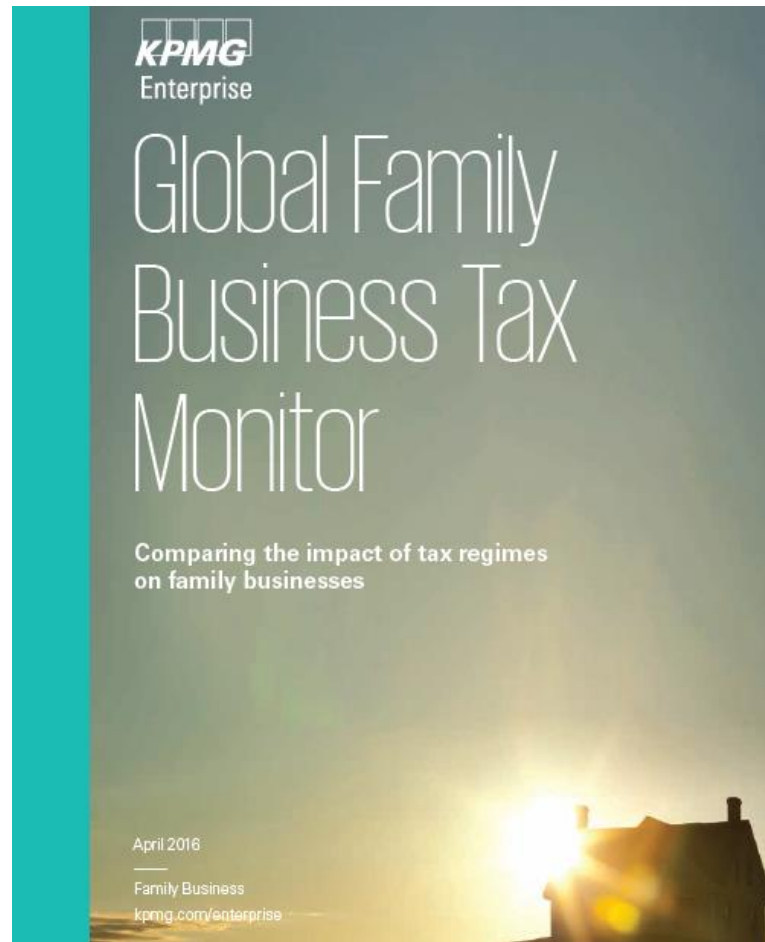
No death
duty on...

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- 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**.
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- Successions where the aggregate value of the estate, net of the debts, **does not exceed 1.250 EUR**.



KPMG Surveys – Global Family Business Tax Monitor

Global Family Business Tax Monitor



KPMG
Enterprise

Global Family Business Tax Monitor

Comparing the impact of tax regimes on family businesses

April 2016
Family Business
kpmg.com/enterprise

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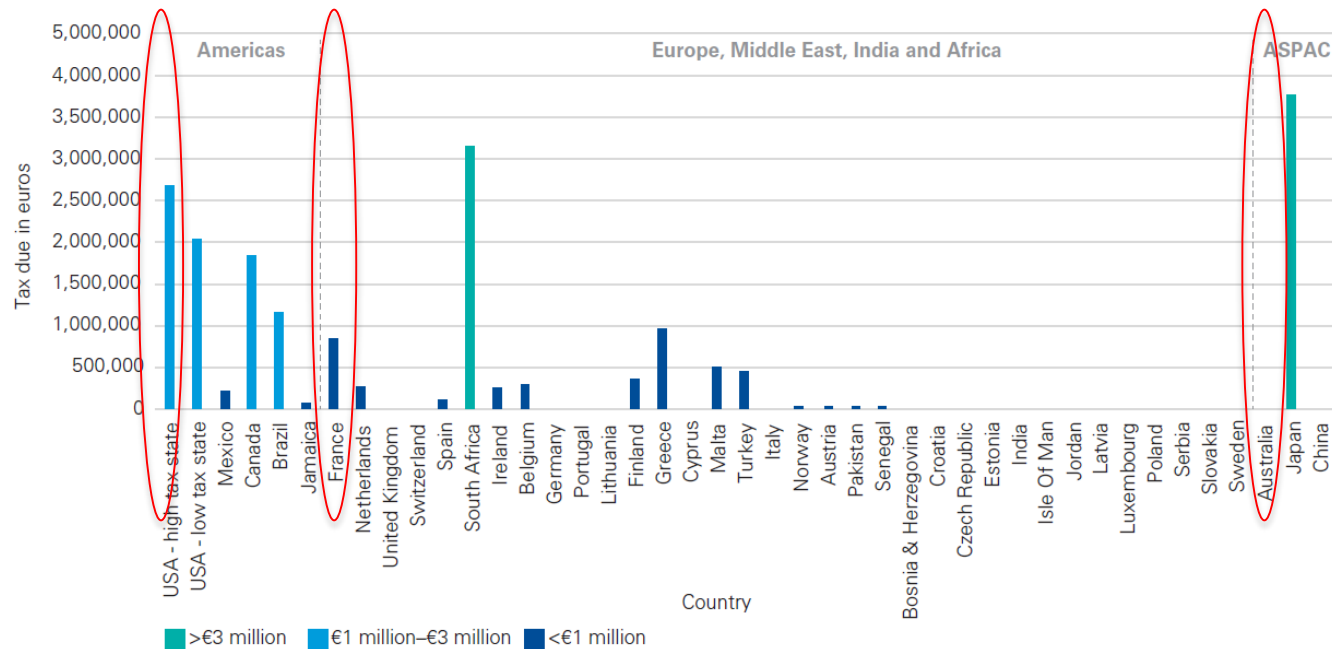
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Global Family Business Tax Monitor

Family business transfer through inheritance Tax due after exemptions

Family business transfer through inheritance
Figure 1b: tax due after exemptions

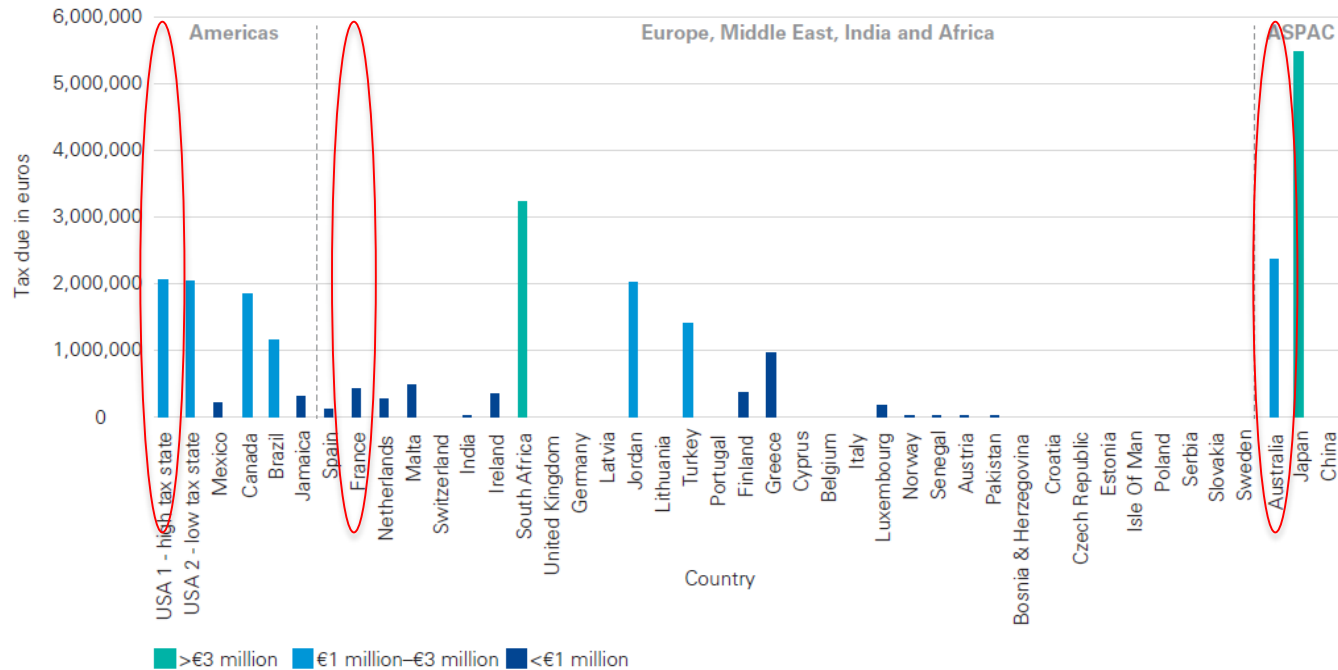


Source: Global Family Business Tax Monitor, KPMG, March 2016

Global Family Business Tax Monitor

Family business transfer on retirement Tax due after exemptions

Family business transfer on retirement
Figure 2b: tax due after exemptions



Source: Global Family Business Tax Monitor, KPMG, March 2016

Global Family Business Tax Monitor

Comparison of family business transfer through **inheritance** and on **retirement** Tax due after exemptions

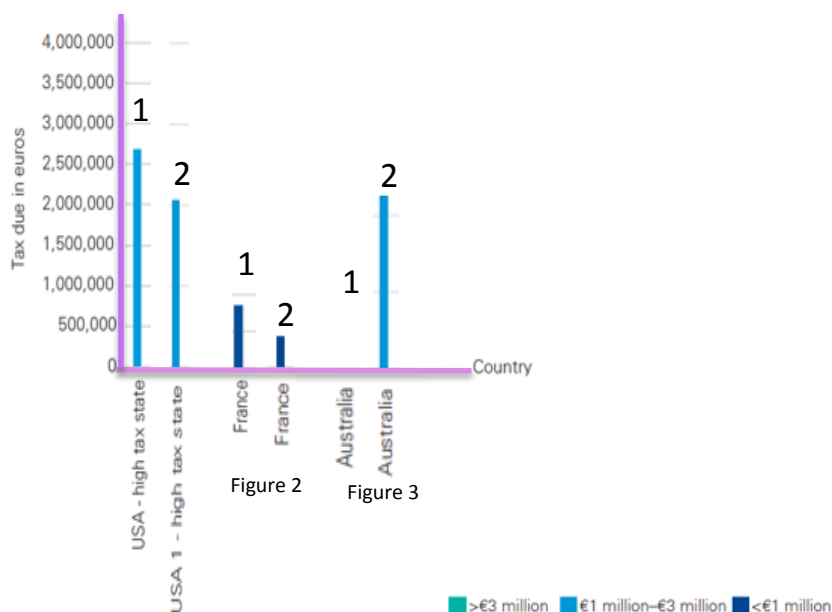


Figure 1

Figure 2

Figure 3

Source: Global Family Business Tax Monitor, KPMG, March 2016

Key observations on 2 scenarios:

1. Inheritance, 2. Retirement

Comparisons:

- USA (Figure 1): tax due after exemptions upon retirement is approx. 23% less than as per inheritance
- France (Figure 2): tax due after exemptions upon retirement is reduced by half compared to the inheritance scenario
- Australia (Figure 3): tax due as per retirement «boomed» compared to a EUR 0 tax due as per the inheritance scenario

Key messages:

Business owner's attitude to stay on board or transfer the business to the next generation may have financial consequences in terms of tax !

Strategic succession planning may be a relevant answer to address such issues at an earlier stage!



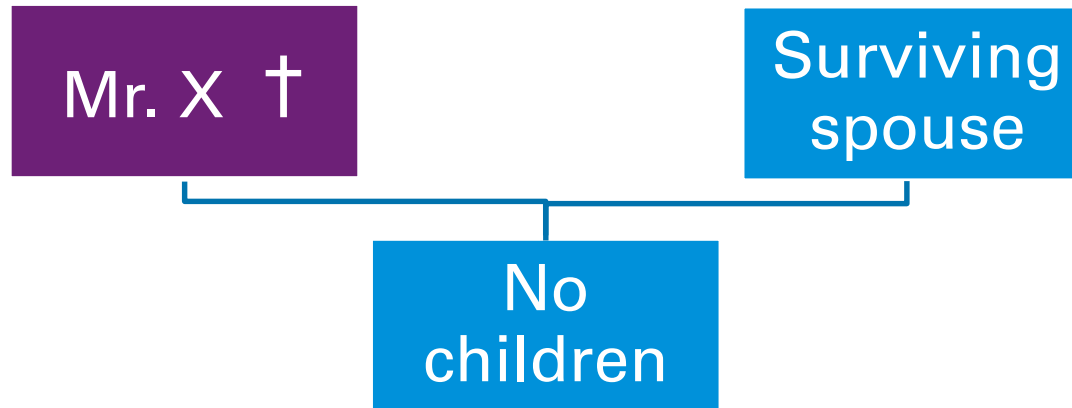
Practical cases



Practical cases

Case 1

- Mr. X (deceased) bequeaths the entire succession to the surviving spouse
- They have no children or common descendants
- Estate amounts to total net amount of 630.000 EUR



- Inheritance tax rate applicable between spouses without common children : 5%
- Surcharge for net share between 620.000 and 750.000 EUR : $15/10 = 1,5x$
- Exemption available for couple without common children : 38.000 EUR

→ **Inheritance tax = $(630.000 \text{ EUR} - 38.000 \text{ EUR}) \times [5\% + (5\% * 1,5)] = 74.000 \text{ EUR}$**

Practical cases

Case 2

- Mr. X dies and leaves a nephew
- Estate amounts to total net amount of 230.000 EUR



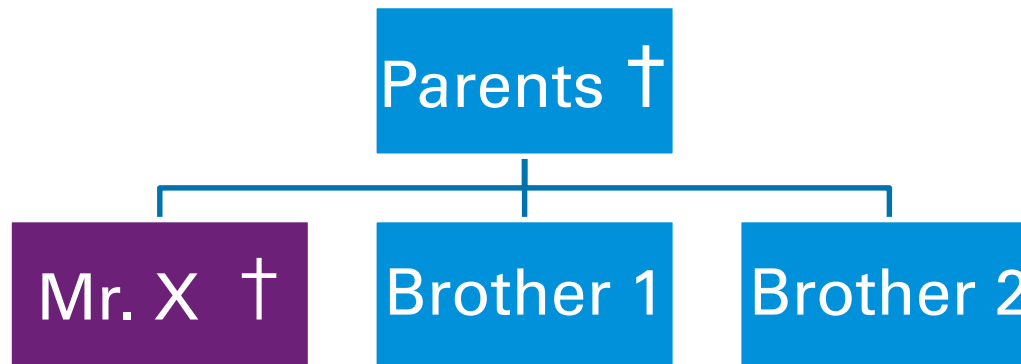
- Inheritance tax rate applicable for nephews : 9%
- Surcharge for net share between 200.000 and 250.000 EUR : $9/10 = 0.9x$

→ **Inheritance tax = 230.000 EUR × [9% + (9% * 0,9)] = 39.330 EUR**

Practical cases

Case 3

- Family consists of 3 single brothers without children. Mr X (deceased) bequeaths the entire succession in his will to one of his brothers (brother 1), the other brother (brother 2) inheriting nothing.
- Estate amounts to total net amount of 520.000 EUR



- Inheritance tax rate applicable on the compulsory share (1/2) : 6% and on the share exceeding the compulsory share (1/2) : 15%
- Surcharge for net share between 500.000 and 620.000 EUR : $14/10 = 1.4x$

$$\begin{aligned} \rightarrow \text{Inheritance tax} &= 260.000 \text{ EUR} \times [6\% + (6\% \times 1,4)] = 37.440 \text{ EUR} \\ &= 260.000 \text{ EUR} \times [15\% + (15\% \times 1,4)] = 93.600 \text{ EUR} \\ \text{Total} &= 131.040 \text{ EUR} \end{aligned}$$



Other tax considerations



Other tax considerations - Capital gains on sale of real estate

Capital gain on the sale of...

Tax treatment

Real estate held \leq 2 years

Fully taxable

Real estate held $>$ 2 years

$\frac{1}{4}$ global tax rate for a limited period of time starting on 1 July 2016 and ending on 31 December 2017 (inclusive)

Under the previous tax rules, capital gains arising from the sale of real estate which serves as a secondary home or investment land / property (i.e., not the taxpayer's main residence) and held by the taxpayer for more than two years were taxed at one-half ($\frac{1}{2}$) of the taxpayer's global tax rate as "extraordinary income. For a limited time from 1 July 2016 to 31 December 2017 (inclusive), the taxation of such gains realized during this period will be reduced to one-quarter ($\frac{1}{4}$) of the taxpayer's global tax rate

There will continue to be a tax-free allowance of EUR 50,000 (increased to EUR 100,000 for couples filing jointly), available over an 11-year period, to reduce the taxable gain (this may result in a loss) In addition, the allowance will be EUR 75,000 for properties owned through direct inheritance (this may not result in a loss)



Thank you

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LUXEMBOURG INHERITANCE RULES AND TAXES

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PART I : THE DIFFERENT TYPES OF MATRIMONIAL PROPERTY REGIMES

- 1) The **basic regime** (« *régime primaire* »): the respective rights and duties of both spouses (applicable to any matrimonial agreement)
(articles 212 and following of the Civil Code)
- 2) The **statutory matrimonial property regime** (« *communauté légale réduite aux acquêts* »)
(articles 1400 and following of the Civil Code)
- 3): The **separation of property** (« *séparation de biens* »)
(articles 1536 to 1541 of the Civil Code)
- 4): The **universal community of property** (« *communauté universelle de biens* »)
(article 1526 of the Civil Code)



PART II : THE INHERITANCES

1: The **statutory inheritance** (« ab intestat » or without a last will)

A) The five orders / degrees of heirs / successors

B) The three options in case of an opened succession




2: The **testamentary inheritance** (« testat » or in presence of a last will)


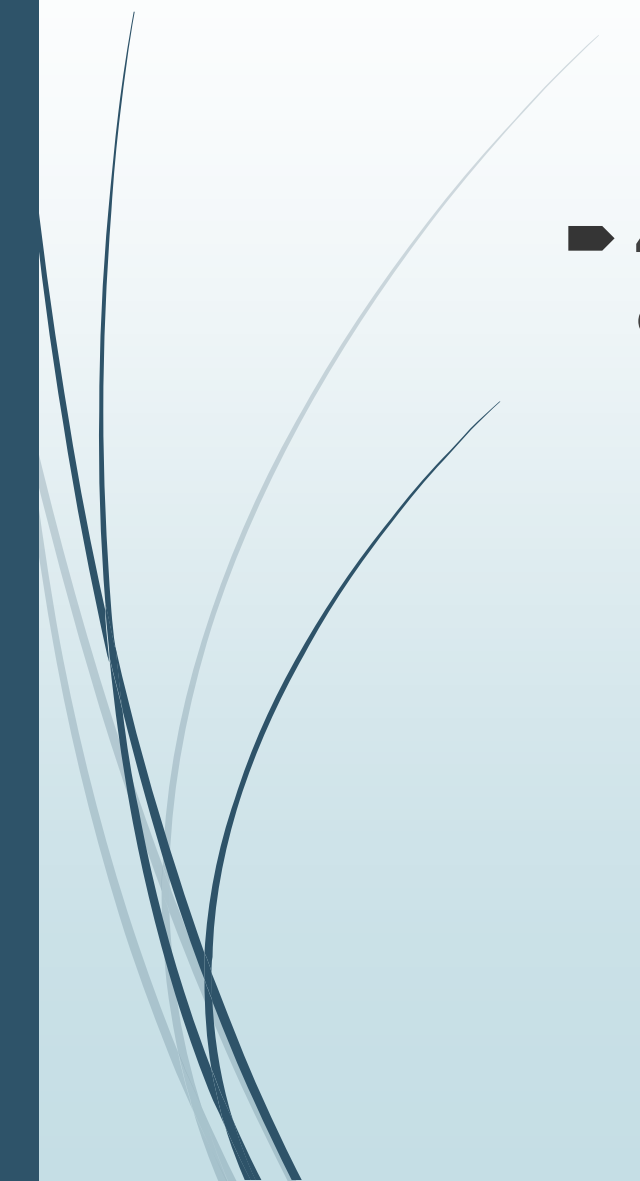
A) The two main types of wills

- a) The authentic will (in notarial form) (« testament authentique »)
- b) The holographical will (under private deed) « testament olographe »

B) The three types of legacies

C) The revocation of last wills

- 
- **3:** The compliance with the **statutory share / reserved share** (« *réserve légale* »)
 - A) The legal reserved share and the free disposable part « *quotité disponible* »
 - B) The bringing back or restoration (« *rapport* ») of donations (inter vivos) and legacies (in case of death)
 - C) The reduction (or decrease) of donations and legacies

- 
- 
- **4:** The community of heirs and the subsequent distribution of inheritances

► 5: The indirect taxes

A) The indirect taxes in relation to donations (flat rates)

Donations:			
1) Direct descendants (children or descendants):			
* Without exemption of a restoration	1,5	2/10	1,8 %
* With exemption of a restoration	2	2/10	2,4 %
2) Between spouses	4	2/10	4,8 %
3) Between partners linked by a partnership declaration registered since at least 3 years	4	2/10	4,8 %
4) Between brothers and sisters	5	2/10	6 %
5) To foundations and a.s.b.l.	6	2/10	7,2 %
6) Between uncles and nephews	7	2/10	8,4 %
7) Between grand-uncles and grandnephews	8	2/10	9,6 %
8) Between strangers (not related people)	12	2/10	14,4 %

Note that if the donation concerns real estate properties, an additional registration fee, called the transcription fee, of normally 1% must be added

B) The taxes in relation to inheritances

- 1) The indirect inheritance tax (« droits de successions »)
- 2) The direct transfer tax

Inheritance tax rates		
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Luxembourg inheritance tax

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For net shares received in the succession > 10.000 EUR, the basic rate is increased by a progressive surcharge



► 6) The private international inheritances law and the specific EU REGULATION no 650/2012 of 4 July 2012 (I)

(...on acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession): full entry into force as from 17 August 2015, not applicable for UK, Ireland and Denmark.

- A) Scope of the EU regulation: it shall not apply to revenue, customs or administrative matters (art.1), but might have an indirect impact on tax issues
- B) The lex successionis = the law of the State in which the deceased had his habitual residence at the time of death
- C) Exception: at the time of death, the deceased was manifestly more closely connected with another State on the basis of an overall assessment of the circumstances of the life of the deceased



6) The private international inheritances law and the specific EU REGULATION no 650/2012 of 4 July 2012 (II)

- D) The limited choice by the testator in a last will as applicable lex successionis of the law of the State whose nationality he possesses at the time of making the choice or at the time of death
- E) Frustrating the legitimate expectations of persons entitled to a reserved share : is the reserved share in Luxembourg of (EU) public policy (« ordre public »), also in the context of the universal application of the law specified by the Regulation (i.e. even the law of a non Member State may apply) ?