

# **« Death as a taxable event and its international ramifications »**

**IFA 2010 Rome Congress  
Luxembourg Report / Subject 2**

**Alain Goebel - Jean Schaffner**

# 1. Introduction

## 1.1. The private law rules of succession

- Napoleonic code
- Amendments (1920's/1970's/1980's)

## 1.2. Pluralism of succession law

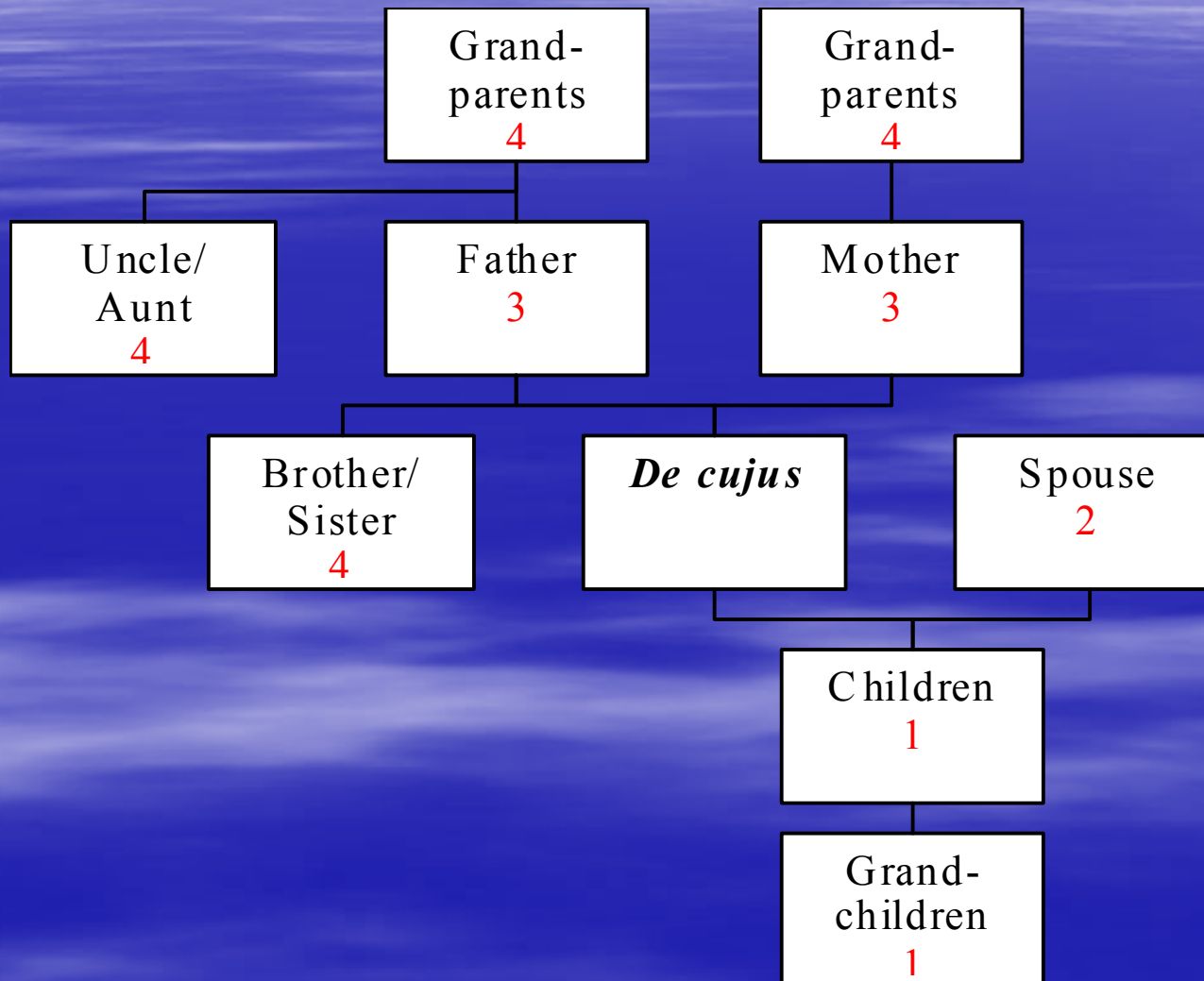
- Luxembourg = unitary State

# 1. Introduction

## 1.3. The private law rules of succession

- *Intestate* successions
- *Testate* successions

# Intestate successions



# *Intestate successions*

## Conditions

- **Surviving the deceased**
- **Not being unworthy**

# *Testate successions*

## Validity of wills

- **Holograph wills**
- **Notarial wills**
- **Mystic wills**

# *Testate successions*

## Validity of wills

- Age and capacity of the testator
- Clear content
- Prohibition of substitutions
- Forced heirship



# 1. Introduction

## 1.4. Administration of the estate

- **Transfer of the estate to the heir(s) by death**
- **Joint administration by the heir(s)**



# 1. Introduction

## 1.5. Conflict of Law Rules

- **Origin: case law**
- ***Intestate* successions vs *testate* successions**
- **Movables vs real estate**

# *Intestate successions*

- Law of the succession
- **Movables: last domicile of the deceased**
- **Real estate: location of the real estate**

# ***Testate successions***

- **Law of the succession**
- **Law governing the capacity**
- **Law governing the form of the will**

# 1. Introduction

## 1.5. International Conventions

- 1961 Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions (1979)
- 1969 Benelux Convention on the conflict of laws in private international law (1969)
- 1972 Basel Convention on the Establishment of a Scheme of Registration of Wills (1982)
- 1972 Benelux Convention on jointly dying persons (1972)
- 1985 Hague Convention on the Law Applicable to Trusts and on Their Recognition (2004)
- 1989 Hague Convention on the Law applicable to Succession to the Estates of Deceased Persons (*signed*)

## **2. Taxes upon the death of a person**

- **Inheritance and estate taxes**
- **Income and capital gain taxes**
- **Other taxes**

## 2. Taxes upon the death of a person

### 2.1. Inheritance and estate taxes

- **Legal sources and history**
  - History
  - Justification
  - Succession tax vs death transfer tax



## 2. Taxes upon the death of a person

### 2.1. Inheritance and estate taxes

- **Taxable event**

- Death (civil code)
- Presumed death vs declared death
- Inheritance taxes vs gift taxes



## 2. Taxes upon the death of a person

### 2.1. Inheritance and estate taxes

- **Rates**

- Progressive rates according to degree of kinship (2% - 15%)
- Progressive surcharge (1/10 – 22/10)

## 2. Taxes upon the death of a person

### 2.1. Inheritance and estate taxes

#### ▪ Exemptions

- Foreign real estate
- Diplomatic agents in Luxembourg
- EU officials in Luxembourg
- Consular agents

## **2. Taxes upon the death of a person**

### **2.1. Inheritance and estate taxes**

- **Transfer of family owned business**
  - no specific rules

## 2. Taxes upon the death of a person

### 2.1. Inheritance and estate taxes

- **Transfer of family owned business**
  - no specific rules
  - no succession tax in direct line (*ab intestat*)
  - need for incentive ?

## 2. Taxes upon the death of a person

### 2.1. Inheritance and estate taxes

#### ▪ Deductions

- succession tax: net estate
- death transfer tax: gross estate
- specific valuation rules

## 2. Taxes upon the death of a person

### 2.1. Inheritance and estate taxes

- **Anti-abuse provisions**

- fidei-commission
- trust
- fiduciary



## 2. Taxes upon the death of a person

### 2.1. Inheritance and estate taxes

- **Revenue (2008)**

- € 52.87 million

- 1.57% of indirect taxes



## **2. Taxes upon the death of a person**

### **2.2. Income and capital gains taxes**

- **Succession ≠ taxable event for income tax**
- **Exception: transfer of a substantial participation for free (article 101 (4) LIR)**

## 2. Taxes upon the death of a person

### 2.3. Other taxes

- **VAT**

- generally no impact absent any remuneration
- exc. Circular N° 583 dated 31 May 1985

- **Transcription duties**

# 3. Tax jurisdiction

## 3.1. Residents: taxable worldwide estate, except for foreign real estate

- Non-residents: Luxembourg real estate
- Difference with gift tax => a deed passed in front of a Luxembourg notary or registered in Luxembourg

# 3. Tax jurisdiction

## 3.2 Definition of domicile

- permanent place of life of family
- centre of operations
  - effective, real and continuous dwelling
  - ≠ from civil law, stronger link than for income tax law
- exception for diplomats and EU civil servants
- different nexus in other jurisdictions !
  - place of residence of heirs
- no rules on emigration
  - article 156 8.b) ITL: exit tax, subject to DTTs
  - article 101 (4) ITL: transmission without consideration of a participation to a non-resident

# 3. Tax jurisdiction

## 3.3. Situs of property

- includes share ownership, usufruct, mortgage rights
- excludes furniture and art

## 4. Avoidance of double taxation

- no taxation for residents on foreign real estate
- no taxation if foreign jurisdiction taxes assets on the basis of nationality (and not residence)
- why do we have no such rules and no DTT ?
- do income DTT apply to inheritance ? (capital duty and non-discrimination clauses)
- deduction of expenses for non-residents
- tax schedule and abatements for non-residents: bill currently pending



# Questions?