

## New Inheritance Tax Law dated 18 December 2009

**Residents and non-residents to be put on an equal footing**

Luxembourg tax law provides for different inheritance duties depending on the domicile of the deceased person. Rules applying to the estate of Luxembourg residents (i.e. “droits de succession”) used to be more favourable than those applying to the estate of non-residents (i.e. “droits de mutation à cause de mort”). In compliance with EU principles, the law of 18 December 2009 ends this discrimination, by granting the same deductions and exemptions in both situations.

### Compliance with EU principles

Even though member States retained their sovereignty as regards of direct taxation, the ECJ has affirmed several times that “Member States must nonetheless exercise that competence consistently with Community law”. Therefore, domestic law should be compliant with EU law and in particular with the principles established by the Treaty and the fundamental freedoms. On several occasions, the ECJ applied this principle to inheritance tax rules, especially based on the free movement of capital.

In the past, the transfer of Luxembourg real estate properties was more heavily taxed when the deceased person was a non-resident, due to the non-deductibility of related debts and the unavailability of various exemptions (especially in the event of transfers to the decedent’s spouse or lineal heirs). The law of 18 December 2009 extends the favourable tax rules provided for the estate of Luxembourg residents to the estate of non-residents.

	Deceased = Resident	Deceased = Non-resident	
		Old regime	New regime
<b>Taxable Basis</b>	Worldwide assets (under exceptions)	Luxembourg real estate properties	
<b>Deduction of related debts</b>	Yes	No	Yes
<b>Exemptions</b>	<ul style="list-style-type: none"> <li>- Equal transfers to lineal heirs</li> <li>- Transfers between spouses who have children in common</li> <li>- Deduction of EUR 38,000 for transfers between spouses who have no children in common</li> </ul>	None	Same as those which apply to the estate of deceased residents
<b>Taxation Threshold</b>	Net estate ≥ EUR 1,250	None	Net estate ≥ EUR 1,250

The inheritance tax law of 18 December 2009 once again demonstrates the impact of EU rules on domestic tax legislation. Luxembourg has already taken several measures to comply with EU law, sometimes even proactively. Further amendments are, however, still expected from an income tax perspective, especially with respect to the taxation of non-residents and exit taxes for both corporate and individual taxpayers (i.e. migration, allocation of assets to a foreign permanent establishment). The European Commission's communication on exit taxes, as well as its recent initiatives vis-à-vis other countries, demonstrates the need to amend our rules.

## Contacts

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