



# EULawInEN

EU LAW TRAINING IN ENGLISH LANGUAGE:  
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING  
FOR EUROPEAN NOTARIES AND JUDGES



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# Tackling double taxation in cross-border successions

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# The rule of freedom of taxation by Member State within the EU

When the EU was born it was decided that, except from some kind of taxes so called «harmonised» (like VAT) each State had to remain free to apply the rules of taxation, in direct and indirect taxation, that were considered useful and correct.

Considering that in January 2014 at least 14 million people were leaving within the EU in a State different from their state of origin. In case of death which fiscal law was and is applicable?

This is a gamble in which professionals of various States should engage themselves in order to give a correct advice to their clients.



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# The civil point of view

As it has been very well clarified after the EU Regulation 650/2012 which is effective since 17 august 2015 there is a single law applicable to successions and is (except from the sub-principles and the «choice of law») the law of «habitual residence» of the deceased.

But this is not the rule from a fiscal point of view.

This means that if an Italian citizen has its habitual residence in France his succession will be ruled by French law but with reference to the fiscal consequences of his death troubles will emerge.

First of all France has a worldwide taxation principle but if the deceased had assets or estates in another country we will have to see if also the other country intends to keep an autonomous taxation.



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# The international agreements against double taxation in successions or donations

There are not many agreement against double taxation in succession between Italy and other European or foreign States.

We can mention for example France, United Kingdom and United States (based on the OCSE model which means that the tax due in a country is deducted from the tax due in the other country) and Denmark, Israel, Greece and Sweden (based on an old template which provides that the taxation is due only in one country according to the nature of goods inherited).



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# The double imposition

- Except from the above mentioned countries, only Italy, which is a world-wide taxation State, in succession taxes has a general rule, (art 26 of law of successions) which foresees the proportional deduction of taxes payed in another country on assets in that country from taxes due in Italy on the same assets.
- Apart from this case, it is highly probable in a cross border succession to see double taxation applied.
- This is the reason why the European Union in an expert group report of November 2015 has suggested a solution which should be **one succession-one tax** but this still remains wishful thinking ...



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# How to make a succession plan

It is highly recommended to plan a succession with a notary expert in transnational fiscal rules because even in presence of a bilateral agreement against double succession the different ways to determine the tax base and the tax rates in the different countries make the mechanism of deduction of the tax payed in a country from the tax due in another country highly inefficient.

In France for example real estates are taxed on their fair value (better on the commercial value) therefore in Italy they are taxed on the cadastral value (which is today far from the real value) and the tax rates are very different (in Italy the maximum rate is 8% and in France it reaches 50%).

Thus even if we made a multilateral agreement between all the countries of EU the result will be highly inefficient.

This is the reason why the group of experts has suggested «one succession one tax».

But considering that this result is unlikely to be reached, it is necessary to make a correct plan of our successions especially if we live and work in different countries.



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