Munich IAP 2025

### **Inheritance and Gift tax:**

A journey through country specifics and optimization techniques

01

Warm up: Some basics and country specifics

02

Tax exemptions for (family-owned) businesses

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Cross-border inheritances: Preventing double taxation

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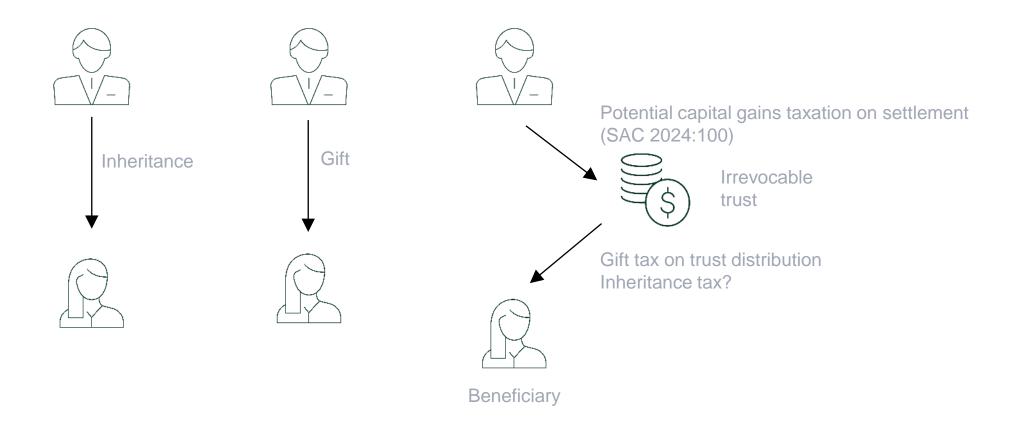
**Cool down: Questions?** 



01 Finland



#### What is taxed?



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#### Tax classes and tax rates

Taxable inheritance (EUR)*	Tax class I tax rate within the bracket	Tax class II tax rate within the bracket
20,000-40,000	7%	19%
40,000-60,000	10%	25%
60,000-200,000	13%	29%
200,000-1,000,000	16%	31%
1,000,000-	19%	33%

Taxable gift (EUR)*	Tax class I tax rate within the bracket	Tax class II tax rate within the bracket
5,000-25,000	8%	19%
25,000-55,000	10%	25%
55,000-200,000	12%	29%
200,000-1,000,000	15%	31%
1,000,000-	17%	33%

<sup>\*</sup>All gifts that the recipient has received within the last three years preceding the death or donation are added to the taxable amount.





Most significant allowances and exemptions

- Spouse allowance: EUR 90,000 deduction from the taxable inheritance
- Minority allowance: Heirs in the direct descending line who have the primary right to inheritance and who are under 18 years old at the time of the person's death are entitled to a EUR 60,000 deduction from the taxable inheritance
- Consecutive deaths: When inheritance tax would be payable on the same property due to the deaths of two or more individuals within two years, the tax is only payable once, based on the most distant relationship

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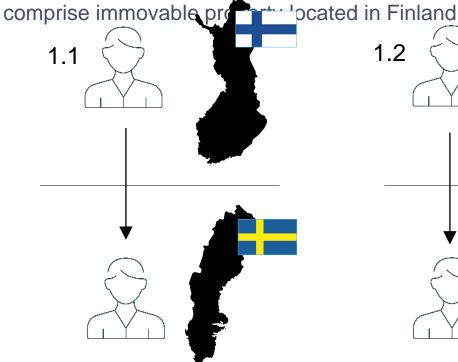


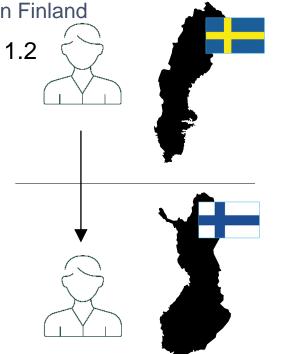


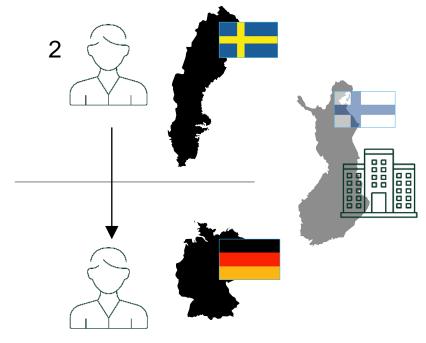
#### Scope of Finnish taxation

- 1. Liability to tax on worldwide assets based on residency if at the time of death or donation
  - 1.1. the decedent or donor is a Finnish resident, or
  - 1.2. the recipient is a Finnish resident

2. Liability to tax on immovable property located in Finland and shares/rights in an entity if more than 50% of its assets







O1 Poland

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What is taxed?





**GIFT** 



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What is taxed?





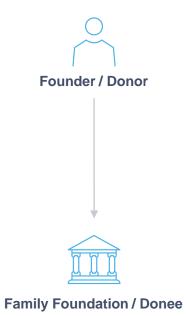
#### **GIFT**



What is taxed?

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#### **ENDOWMENT**



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What is taxed?

#### **INHERITANCE**

#### **GIFT**

Tax Group	Tax Rate	<b>Tax Group</b>	Who is included in this group?
1 <sup>st</sup> Group	3-7%	1 <sup>st</sup> Group	Spouse, descendants, ascendants, stepchild, son-in-law, daughter-in-law, siblings, stepfather, stepmother, and parents-in-law
2 <sup>nd</sup> Group	7-12%	2 <sup>nd</sup> Group	Descendants of siblings, siblings of parents, descendants and spouses of stepchildren, spouses of siblings and siblings of spouses, spouses of other descendants
3 <sup>rd</sup> Group	12-20%	3 <sup>rd</sup> Group	Other acquirers.

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What is exempt from tax?

#### **INHERITANCE**









O1 France

# Overview of French inheritance and gift tax Taxable base

- ➤ Under French tax law, Article 750 ter of the French Tax Code (FTC) provides:
- 1 If the donor / deceased is a French tax resident, all assets in the estate are taxable in France, on a **worldwide basis**, regardless of their nature or location;
  - If the donor / deceased is not a French tax resident, the following distinction should be made:
    - the beneficiary is a French tax resident at the date of transfer and has resided there for at least six of the last ten years: all real or personal property (received by the beneficiary) situated in or outside of France is taxable in France. Otherwise (i.e., if the beneficiary has been a French tax resident for less than six out of the last ten years), only assets located in France are subject to taxation in France.
    - the beneficiary is not a French tax resident: only the French assets received by the beneficiary (tangible personal property and real property situated in France, French receivables, and securities) are taxable in France.

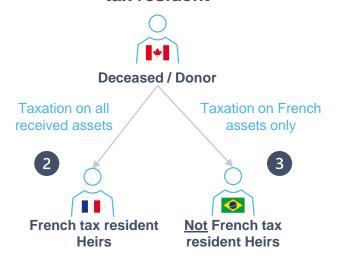
➤ However, France has signed Double Tax Treaties on inheritance and gift tax with several countries, which amend the French inheritance tax and gift tax rules set out in article 750 ter of the FTC.



# Donor/deceased is a French tax resident



# Donor/deceased is <u>not</u> a French tax resident



# Overview of French inheritance and gift tax Taxable rates



- > The tax rate is based on a progressive scale depending on the relationship between the deceased or donor and the beneficiary.
- ➤ The portion received by each child benefits from a € 100.000 allowance (applicable for a period of 15 years). This allowance is applicable for each parent to each of their children.
- For 2025, the progressive rate gift and inheritance taxes apply as follows:

Between lineal relatives		
Taxable basis	Rate	
Up to € 8.072	5%	
From € 8.073 to € 12.109	10%	
From € 12.110 to € 15.932	15%	
From € 15.933 to € 552.324	20%	
From € 552.325 to € 902.838	30%	
From € 902.839 to € 1.805.677	40%	
More than € 1.805.677	45%	

Between collateral lines and non-relatives			
Taxable basis	Rate		
Between brothers and sisters:			
Up to € 24.430	35%		
More than € 24.430	45%		
Between relatives up to the 4th degree	55%		
Between relatives beyond the 4th degree and non-relatives	60%		

In principle, gift tax should be paid by the donee. However, French gift tax could be paid by the donor without being treated as a supplementary gift for tax purposes.

Mechanism of dismemberment



- Under French civil law, the right of ownership is defined as the right to use and dispose of things in the most absolute manner, if they are not used in a manner prohibited by laws or regulations. Ownership is thus characterized by the right to enjoy the property (right to use it and to receive its income) and to dispose of it (right to sell, give or modify it).
- Ownership can be dismembered by dissociation between "usufruct" and "bare ownership".
- If there is a dismemberment, the gift and inheritance tax are only due on the value of the bare ownership. The value of bare ownership increases with the age of the donor and is calculated based on the age of the usufructuary at the time of transfer, which could considerably reduce the taxable basis. Moreover, at the death of the usufructor, the usufruct is going to the usufruct will join the bare ownership without any additional inheritance tax
- > The following rates are used to determine the taxable base for gift or inheritance tax in the case of a dismemberment of ownership (Article 669 of the FTC):

Scale of article 669 of French Tax Code			
Age of usufructuary	Value of usufruct	Value of bare ownership	
Under:			
21 years old	90%	10%	
31 years old	80%	20%	
41 years old	70%	30%	
51 years old	60%	40%	
61 years old	50%	50%	
71 years old	40%	60%	
81 years old	30%	70%	
91 years old	20%	80%	
over 91 years old	10%	90%	

<u>Example</u>: Gift of an asset valued € 5M by a donor aged of 65 to his two children.

Gross value	5 000 000,00 €	3 000 000,00 €
Gross taxable basis per child	2 500 000,00 €	1 500 000,00 €
Special allowance	100 000,00 €	100 000,00 €
Net taxable Basis per child	2 400 000,00 €	1 400 000,00 €
Total French gift tax due	842 394,30 €	412 678,15 €

O1 Canada

#### Death in Canada – A Taxable Event



- Death Tax: Canada does not have an inheritance tax nor a gift tax, but we do have a "death tax".
- **Deemed Disposition:** When a taxpayer dies, he or she is deemed to have, immediately before the taxpayer's death, disposed of each capital property (including depreciable property) of the taxpayer and received proceeds of disposition equal to the fair market value of the property immediately before death and any person who as a consequence of the taxpayer's death acquires any property that is deemed to have been disposed of by the taxpayer is deemed to have acquired the property at a cost equal to its fair market value immediately before the death.
- Accrued gains that are triggered by the death tax are included in income at 50% and subject to tax at marginal rates in the deceased's terminal return.
- **Spousal Rollover:** The death tax can be deferred by leaving property to a spouse or common-law partner (or a trust for the benefit of a spouse or common-law partner).

- **Post-Mortem Pipeline:** When private corporation shares are subject to the death tax, a "post-mortem pipeline" may be implemented by the estate to avoid a second layer of tax when surplus cash is extracted from the corporation. The strict requirements of the Canada Revenue Agency must be followed when implementing a post-mortem pipeline.
- 164(6) Loss Carryback: An estate can carry back capital losses suffered within the first taxation year of the estate to the terminal return of the deceased taxpayer to reduce the death tax. The prior federal government proposed extending the timeline to three years this would have been a favourable change.
- **Graduated Rate Estate:** In general, income earned by a trust is subject to tax at the top marginal rate (in Ontario, 53.53%). Income earned in the first three years of an estate is subject to tax at marginal rates (like it would have been in the hands of the deceased taxpayer).
- **Probate Tax:** Canadian provinces impose probate fees or estate administration tax. In Ontario, the estate administration tax of 1.5% applies to estates valued over \$50,000. Probate planning may be implemented to reduce the tax payable (e.g., dual Wills and bare trusts).

O1 Germany

# Overview of German inheritance and gift tax What is taxed?



#### **Setting up foundations** Inheritance **Gift Trusts Decendent Founder Trust Donor** inheritance dissolution distribution\* endowment legacy Beneficaries **Beneficary** Heirs Legatee Family Foundations / Trusts Donee ("for profit") \*if **not** covered by the trust deed claim

# Overview of German inheritance and gift tax



#### Tax classes and tax rates

Value of the taxable	Tax class		
acquisition up to and including	1	II	III
EUR 75 Tsd.	7%	15%	30%
EUR 300 Tsd.	11%	20%	30%
EUR 600 Tsd.	15%	25%	30%
EUR 6 Mio.	19%	30%	30%
EUR 13 Mio.	23%	35%	50%
EUR 26 Mio.	27%	40%	50%
More than EUR 26 Mio.	30%	43%	50%

Tax class I	Tax class II	Tax class III
Spouses	Parents and grandparents in the event of gifts	All other acquirers
Children, stepchildren, adopted children	Siblings	Special-purpose grants
Grandchildren	Nephews and nieces	
Parents and grandparents in the event of inheritance	Stepparents	
	Parents-in-law and children-in-law	
	Divorced spouses	



The value of the taxable acquisition is not based solely on the value of the current gift. Rather, all acquisitions made by the beneficiary from the testator / donor within the **last 10 years** are added together. If gift tax has been incurred on an earlier acquisition, this is offset against the tax burden for the entire acquisition.

# Overview of German inheritance and gift tax Tax allowances

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#### Example:

Married couple with two children

#### Spouse 1

- EUR 400 Tsd, for child 1.
- EUR 400 Tsd. for child 2.

#### Spouse 2

- EUR 400 Tsd. for child 1.
- EUR 400 Tsd. for child 2.

In total **EUR 1,6 Mio**. tax allowance!

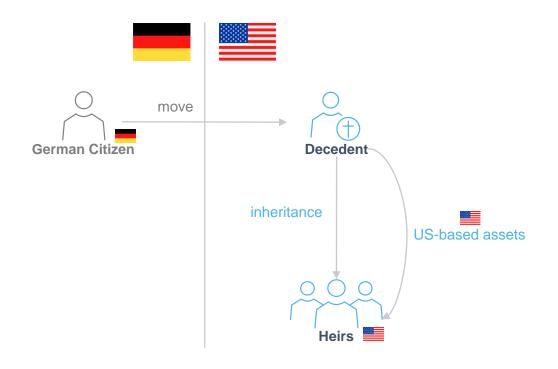
In principle, the tax allowances are available again **every ten years**. For this reason in particular, anticipated succession is usually advisable from a tax perspective.

Relationship degree	Tax allowance
Spouses	EUR 500 Tsd.
Children, stepchildren, adopted children	EUR 400 Tsd.
Grandchildren	EUR 200 Tsd.
(Grand)parents in the event of inheritance	EUR 100 Tsd.
Parents in the event of a gift	EUR 20 Tsd.
Siblings, nieces / nephews	EUR 20 Tsd.
Other (especially cohabiting partners)	EUR 20 Tsd.

## Overview of German inheritance and gift tax

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Caution: Extended unlimited tax liability in Germany



#### **Extended unlimited tax liability**

- Donor / Decedent or Donee / Heir is a German citizen
  - without residence in Germany and
  - Donor / Decedent or Donee / Heir has not resided abroad for more than five (or 10 years) years,

he/she is deemed to be a resident

Consequence: <u>unlimited</u> tax liability of world wide assets





# 02 Finland



# For partial inheritance and gift tax relief to be applicable:

- 1) The recipient must receive at least 10% of the company's shares
- 2) The company must actively engage in business activities (the relief is not applicable for passive investment activities)
- 3) The business activity must continue, and the recipient must be personally involved, for example, as a member of the board of directors

#### Relief

- If the relief is applicable, the generational transfer value of company shares is used instead of their fair value in inheritance and gift taxation
  - In highly simplified terms, the generational transfer value is equivalent to 40% of the company's tax net assets (for non-listed companies)
- In addition, ten-year interest-free payment period for tax

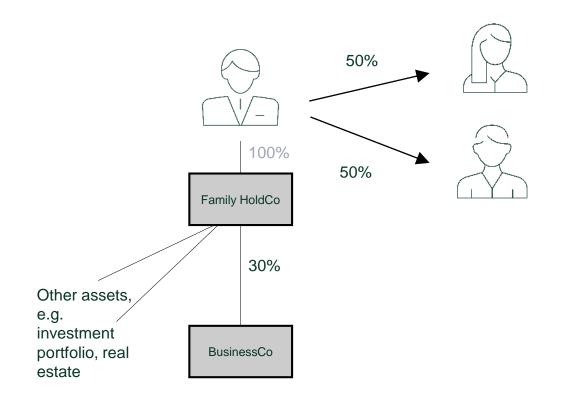
#### 5-year lock-up period

- The relief is forfeited, if the recipient transfers (e.g. sells, donates) more than 50% of the shares within 5 years of inheritance or gift taxation
  - In addition, a sanction of 20% of the tax is imposed

<sup>\*</sup> A separate tax relief applies to the transferor's potential capital gain.

# Applicability of the relief to a holding structure





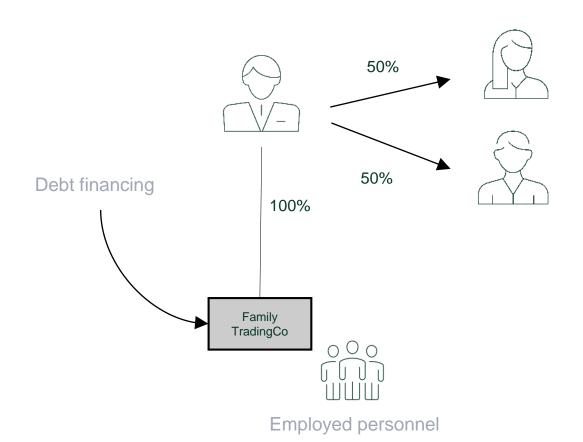
Both recipients indirectly receive 15% of BusinessCo (≥10%)

The recipients must be personally involved at the BusinessCo level, for example, as members of the board of directors

Usually, the relief is not granted to other assets of Family Holdco

### Applicability of the relief to trading in securities





Trading in securities can be considered a business activity covered by the relief; however, the distinction between active trading and passive investment activity not eligible for the relief may be thin

In case law, the active nature of trading has been supported by the following factors:

- Number of transactions
- Amount of revenue
- Investment strategy
- High risk level
- Leverage (debt financing)
- Employed personnel
- Etc.

# 02 Poland

# **Family-Owned Business**

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Regimes for Tax Exemption for Business Assets









### **Family-Owned Business**

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Regimes for Tax Exemption for Business Assets

#### **INHERITANCE**









**Business** 







A business is a structured set of assets, both tangible and intangible, used to conduct business. It includes, among other things, the business name, property and equipment, contracts, receivables, intellectual property, licenses, trade secrets, and business records.

# 02 France

## French tax exemptions for family businesses



#### "Pacte Dutreil"

The "Pacte Dutreil" constitutes the principal preferential regime for the transfer of a family business. It provides for a 75% reduction in the taxable base for transfer duties, whether the transfer occurs by gift or inheritance.(Article 787 B of FTC).

#### Conditions for application:

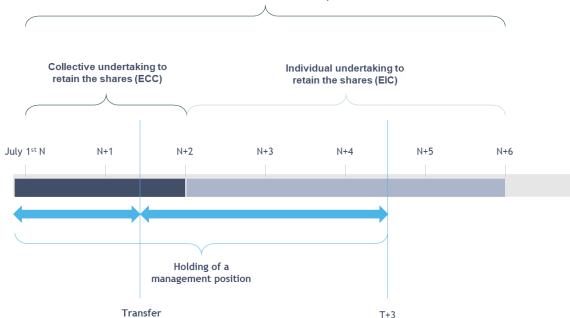
- ✓ The company must carry on an industrial, commercial, artisanal, agricultural or liberal activity or is a managing holding company (not solely holds subsidiaries' shares but participate actively to their management).
- ✓ The shareholders must enter into a collective undertaking to retain the shares ("engagement collectif de conservation" or ECC) for a minimum period of two years.
- ✓ This collective undertaking must cover at least 17% of financial rights and 34% of voting rights for unlisted companies, or 10% of financial rights and 20% of voting rights for listed companies. This collective undertaking must still be in effect at the time of the transfer.
- ✓ From the date of the transfer, the heirs or donees must enter into an individual undertaking to retain the shares ("engagement individuel de conservation" or EIC) for a **four-year period following the transfer**.
- ✓ Additionally, one of the parties to the collective undertaking, or one of the heirs or donees, must hold a management position in the company during the collective retention period and for three years following the transfer.
- > There are no restrictions specific to the Dutreil regime concerning non-French tax residents or foreign companies as long as they carry on an eligible activity.

# French tax exemptions for family businesses Pacte Dutreil -Timetable

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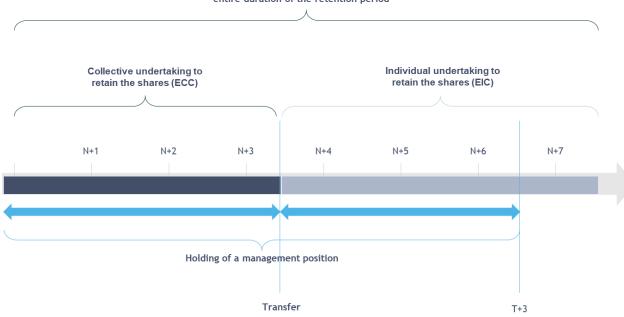
# 1. Example of transfer during the 2 years of the EEC

Carrying on an eligible business activity for the entire duration of the retention period



# 2. Example of a transfer after the 2 first years of the EEC

Carrying on an eligible business activity for the entire duration of the retention period



# French tax exemptions for family businesses Focus on collective undertaking (ECC)

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#### Deemed collective undertaking ("réputé acquis"):

- ✓ The shares must have been held for at least two years, either directly or indirectly, by the deceased (or donor) alone or together with his spouse, civil partner (PACS partner), or common-law partner.
- ✓ The thresholds for financial and voting rights must have been met throughout this holding period.
- ✓ The deceased or donor (or his spouse, PACS partner, or common-law partner) must have, for more than two years:
  - Exercised his or her principal professional activity within the company (for partnerships), or
  - Held a management position (for companies subject to corporate income tax).
- ✓ A minimum two-year holding period is required for all relevant shares. This condition applies to shares held:
  - Directly by the deceased or donor; or
  - Indirectly, through a chain of ownership, up to two levels of interposition.

#### **Post-mortem collective undertaking:**

- ✓ The post-mortem ECC is a solution for unplanned successions.
- ✓ In the absence of a prior collective undertaking, the heirs may enter into a post-mortem ECC within six months following the date of death.
- ✓ This undertaking may be collective (entered into between heirs or with other shareholders) or unilateral (subscribed individually by an heir or legatee).
- ✓ The undertaking must be filed together with the inheritance tax return.
- ✓ The individual undertaking (EIC) begins only upon the expiry of the post-mortem ECC.

## French tax exemptions for family businesses



"Dutreil" Pact – Comparison of schemes

	Gift in full property without Dutreil	Gift of full ownership with Dutreil *	Gift of bare ownership with Dutreil
Taxable base reduction	None The taxable base corresponds to the total value of the assets transferred.	<b>75</b> % Benefit from the Dutreil tax exemption	75 % (Dutreil) + Dismemberment of ownership (according to the scale in article 669 of FTC).
Taxable base	100 % The taxable base corresponds to the total value of the assets transferred.	<b>25</b> % After reduction, the tax base is reduced to 25% of the initial value.	15% Varies according to the age of the usufructuary (donor). For example, if the donor is aged 65, the taxable base is 15% (60% of the full ownership value, reduced by 75%)
Effective tax rate	<b>45</b> % Assumption of a marginal rate of 45%.	11,25% * Assumption of a marginal rate of 45%.	<b>6,75</b> % Assumption of a marginal rate of 45%.

<sup>\*</sup> If the donor is under the age of 70 at the time of the gift and the transfer is made in full ownership, an additional 50% reduction in transfer duties applies to the taxable portion of the gift. Thus, the effective tax rate would amount to 5,6%.

# 02 Canada

## Intergenerational Business Transfers – A Sore Point



- Canada does not have a tax exemption for intergenerational business transfers.
- **Gift to a Child:** If a parent disposes of shares in a corporation to a child for consideration that is less than fair market value, the parent is deemed to dispose of the shares at fair market value and will be subject to tax on the accrued gain. However, there is no corresponding adjustment to the adjusted cost base to the child, which results in double taxation.
- Instead, the parent should gift the shares to the child. The parent will still be deemed to have disposed of the shares at fair market value and will be subject to tax on the accrued gain, but in this scenario, the adjusted cost base to the child in the shares will be equal to fair market value, which avoids double taxation.

## Intergenerational Business Transfers – A Sore Point



- Sale to a Child's Corporation: If a parent disposes of shares to a child's corporation, the parent will not realize a capital gain, but instead, the corporation will be deemed to have paid a dividend to the parent. This is punitive.
- New Intergenerational Business Transfer Rules: The prior federal government introduced rules to facilitate "genuine" intergenerational business transfers, but the rules are cumbersome.
- Estate "freezes" for the benefit of the next generation seem to remain the preferred option.

# 02 Germany

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Regimes for tax exemption for business assets

#### **Favoured business assets**

Enterprise **value** subject to exemption...

...up to EUR 26m

# Standard exemption: Discount 85%

- 85% of the assets eligible for relief ("Favoured business assets") are tax free
- Shorter retention period of 5 years
- <u>Easier</u> Payroll Test: 400% of the initial wage sum must be preserved

# Alternative exemption: Discount 100%

- Assets eligible for relief do not consist of more than 20 per cent administrative assets
- Longer retention period of 7 years
- <u>Harder Payroll Test: 700%</u> of the initial wage sum must be preserved

...from EUR 26m to EUR 90m

"Decrease scheme"

("Abschmelzmodell")

<u>or</u>

"Test of need"

("Verschonungsbedarfsprüfung")

...above EUR 90m

# Only "Test of need"

- Idea: Can the recipient pay the IGT on the favoured business assets with the transferred and his existing disfavored/taxable assets (so-called "available assets")?
- Legal assumption: <u>50%</u> of available assets must be used to pay IGT



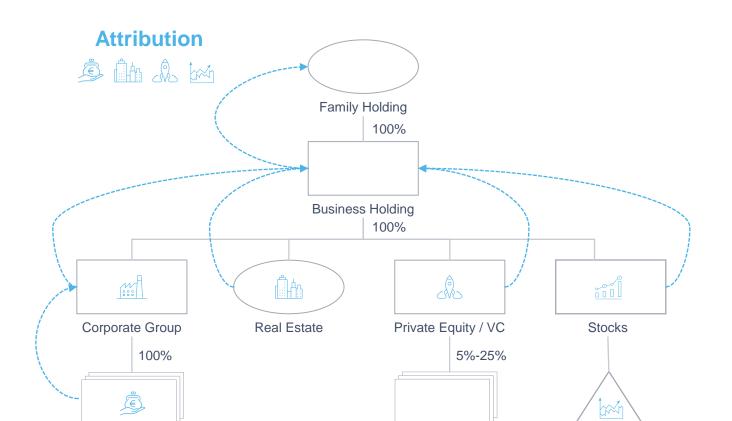
#### **Common ground**

- Every regime differentiates between "good assets" (=business assets) and "bad assets" (Administrative assets, Liquidity etc.)
- Bad assets are always fully taxed!



Subsidaries

#### Determination of possible tax benefits



"Minority Stakes"

Portfolio



#### "Statement of combined assets"

#### Only 6 variables are needed

- 1. Total enterprise value
- **2. Administrative assets** (certain RE, minority stakes, stocks, yachts, oldtimers, gold)
- **3. Young Administrative assets** (part of the group for less then 2 years)
- Liquidity (Cash, bank accounts, all kinds of receivables, Crypto)
- **5. Young Liquidity** (contributions of liquidity exceed the distributions in the last 2 years)
- 6. Debt (liabilites, accruals)

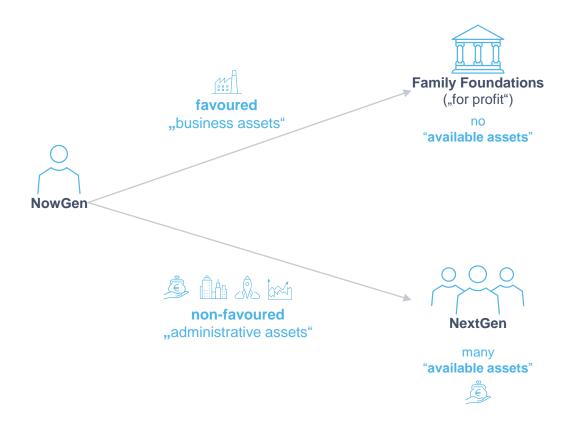
#### "Group transparency" and "Bottomup" approach

- Determination of the 6 variables at each group level
- Aggregation of all values from the "bottom" to the top holding

#### Actual tax benefits are then calculated with complex formulas

## Typical structure for large transfers





#### "Poor" Family Foundations

- NextGen have to many available assets to make (full) use of the "Test of need"regime
- Family foundation can be set up with almost no available assets
- "Good" and "bad" assets are then split up between the new foundation and the NextGen

#### Retention Period

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2021 (Transfer)

5 / 7 years

Restriction for disposal

Withdrawal restrictions

- No sales
- Gifts are harmless
- Transactions within a group can theoretically also be harmful
  - Problem: Law does not make any provisions for multi-storey corporate structures
  - In case of doubt, it is recommended to apply for a private letter ruling beforehand
- Possible violations of the retention period must be reported to the German tax office within one month

 Withdrawals exceeding the tax profit are only permitted up to an amount of EUR 150,000 within the entire retention period (5 / 7 years)

#### Payroll regulation

The total wages paid may not be less than 400% (standard exemption) or 700% (option exemption) of the average wages of the last 5 years.



03 Finland

## Cross-border inheritances and gifts



Finland's inheritance and gift tax treaties: four dual tax treaties and one multi-state tax treaty (between Nordic countries):



The Netherlands (1955)

Only inheritance tax



France (1959)

Only inheritance tax



The United States of America (1952)

Only inheritance tax



Sweden(1992) - not in force after 24.8.2007

• Inheritance and gift tax



Iceland (1992)

Inheritance and gift tax



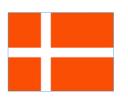
Switzerland (1957)

Inheritance tax



Norway (1992) - not in force after 22.8.2014

• Inheritance and gift tax



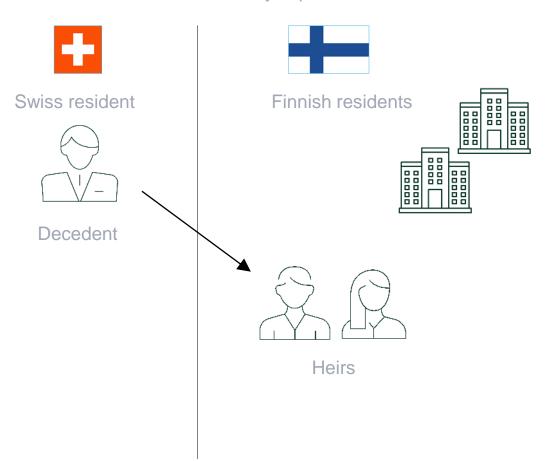
**Denmark** (1992)

Inheritance and gift tax

## Cross-border inheritances and gifts



#### Inheritance tax treaty in place



Under the tax treaty, if the decedent lived in Switzerland at the time of death, the inheritance received by an heir residing in Finland is not subject to tax in Finland

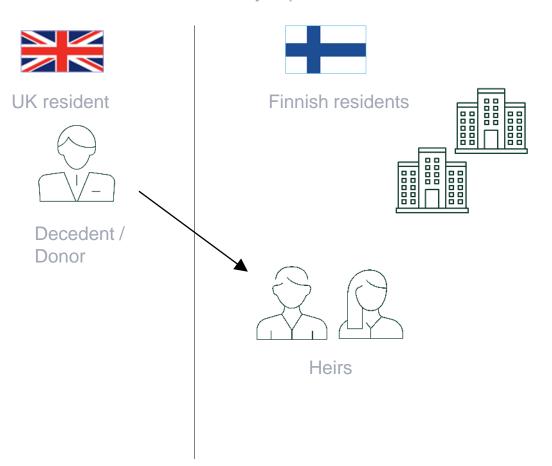
Exception is immovable property located in Finland which Finland has the right to tax under the tax treaty art. 2

If, for example, 20% of the decedent's assets consist of Finnish immovable property, then 20% of the decedent's debts are deducted from the value of the property taxable in Finland

## Cross-border inheritances and gifts



No inheritance tax treaty in place



If no tax treaty is applicable, Finland credits foreign tax provided that:

- The recipient of the inheritance resided in Finland at the start of the tax liability, and
- The recipient has paid tax to a foreign country due to the inheritance or gift, and
- Tax is payable in Finland on the same assets

Finland does not credit foreign tax on property that Finland would tax even if neither the decedent nor the recipient were Finnish residents - potential double taxation

03 Poland

### **Cross-Border Matters**

Polish Double Tax Treaties





Not covered by DTT provisions



Assets and rights located outside Poland



Assets and rights located in Poland

03 France

## Double taxation on French related inheritances or gift



### Treaty relief and internal provisions

- Subject to tax treaties, an inheritance/gift may be subject to taxation in France pursuant to Article 750 ter of the French Tax Code where:
  - ✓ The deceased/donor has his tax residence in France;
  - ✓ The heir/donee has had his tax residence in France for at least six of the ten years preceding the date of the death/gift;
  - Assets received are located in France.
- > Pursuant to Article 784 A of the French Tax Code, where the **deceased or donor has his tax residence in France**, any inheritance or gift tax paid abroad may be credited against the French tax due, where applicable.
- This credit is limited to the amount of tax paid on movable and immovable property located outside France.
- Where a tax treaty relating to inheritance or gifts is in force, the respective rights of the States to levy tax on the transfer are determined by the provisions of such treaty.
  - ✓ With respect to real estate, treaties generally provide that taxing rights are allocated to the <u>State in which the property is located</u>.
  - ✓ With respect to **movable assets** such as shares, treaties generally provide that taxing rights are allocated to the <u>State in</u> which the registered office of the issuing company is situated.
  - Certain tax treaties provide for similar mechanisms regarding the period of tax residence for impatriates, such as the France-USA tax treaty.

03 Canada

#### Death and Double Taxation



- Non-Residents: Does the Canadian death tax apply to non-residents? The Tax Court of Canada said "no" (*McKenzie v The Queen*, 2017 TCC 56), but the Canada Revenue Agency says "yes".
- **Treaty Relief:** Certain tax treaties that Canada is a party to provide relief from double taxation on death. Perhaps the most comprehensive relief is provided under the Canada-U.S. Tax Convention. Among other things:
  - The Convention deems a U.S. resident spouse to be resident in Canada immediately before the spouse's death, so that spousal rollover is available to the surviving Canadian-resident spouse.
  - The Convention limits or mitigates the effect of U.S. estate tax on a Canadian-resident deceased by, among other things, providing a credit for Canadian tax paid on death on property situated outside of the U.S.
  - The Convention provides a credit against the Canadian death tax for U.S. estate tax paid on U.S. situs property of the Canadian-resident deceased.

03 Germany

## **Cross-border inheritances**

# German DTAs for IGT



Very **limited number** of existing IHT/gift tax DTAs:

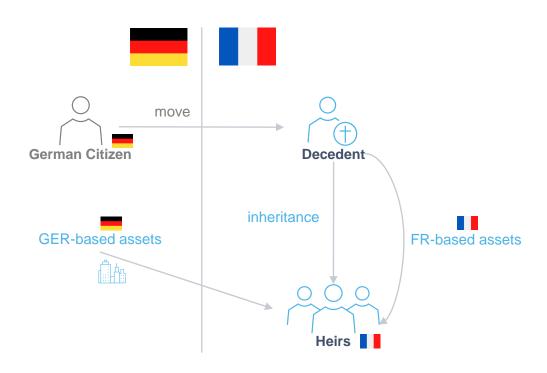
		+==	+	
Denmark	France	Greece	Switzerland	United States
1.1.1997	3.4.2009	1.12.1910	24.4.1980	14.12.2000
IHT and gift tax	IHT and gift tax	only IHT	IHT and gift tax on donation of businesses	IGT and gift tax



#### Cross-border inheritances

Example: With DTA



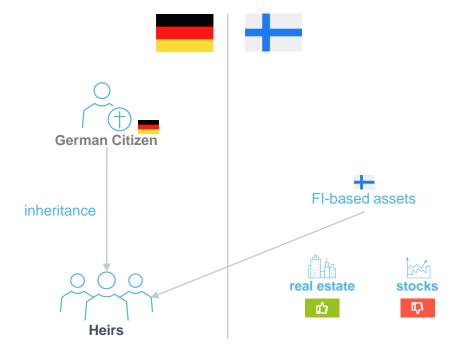


#### Inheritance with DTA

- Right of taxation (Art. 5, 6, 9 DTA):
  - Esp. immovable assets (real estate) and business assets with a permanent establishment → can <u>also</u> be taxed in the country where the assets are located
  - Other assets: Only country of residence
- Avoidance of double taxation (Art. 11 DTA):
  - Tax credits subject to certain maximum amounts (Germany: tax credit according to national provisions, § 21 ErbStG).
  - Overriding taxation: Even if the donor / deceased is resident in the other state under treaty law, both states may tax the transferee resident in their state on a subsidiary or superordinate basis.

#### Cross-border inheritances

#### Example: Without DTA





#### Without DTA

- Offsetting of foreign inheritance tax in cases of
  - Unlimited Tax liability in Germany
  - Taxation on "Foreign Assets"
  - Foreign Taxation is comparable to German rules
  - No DTA
  - Special application

#### Double Taxation is still possible:

- No credits when German-based assets are taxed abroad.
- Narrow definition of "Foreign Assets":
  - Investments in foreign corporations that do not account for at least 10% ("minority stakes"); and
  - Unsecured foreign saving accounts and stock portfolios are not considered "Foreign Assets".
- Foreign taxation is not comparable with German rules, e.g. Canadian capital gains tax.







