

# An Introduction into challenges of Cross-Border Estate Planning in a Dutch-German Context

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## 1. Introduction

In the field of (international) estate planning, a thorough understanding of the domestic succession tax regimes is essential. However, it is also important to be aware of the differences across jurisdictions. These differences may significantly affect cross-border estate planning, potentially resulting in mismatches or unintended tax consequences.

In this article, we focus on cross-border estate planning involving the Netherlands and Germany. We start by providing a high-level overview of how both countries address estates and examine the circumstances under which individuals become subject to inheritance tax. Thereafter, we delve into the complexities that may arise in practice by discussing the case of Pieter and Anna, a married couple that resides in the Netherlands. Pieter and Anna have two children, Jan and Lotte. Lotte lives in Berlin, Germany, in a property owned by Pieter and Anna. Jan lives in the Netherlands. We address a scenario in which the inheritance only includes a claim on the surviving spouse and one where the will of the spouses concludes a fideicommissum. The article concludes with some key considerations.

## 2. High-level overview Dutch and German succession tax regimes

### 2.1 The Netherlands

#### 2.1.1 Criteria for taxation

In the Netherlands, Dutch inheritance tax is levied if the deceased person was (deemed) a Dutch tax resident at the time of death. For assessing Dutch inheritance tax liability, the first step would be to examine whether the person was considered a resident for Dutch tax purposes. This is the case if the deceased had a 'durable bond of a personal nature' with the Netherlands. To assess this, all relevant facts and circumstances must be taken into account, such as:

- (a) the availability of a primary residence in the Netherlands (through ownership, rental, friends and family or any actual right of use – even on demand);
- (b) whether the person had a place of habitual abode in the Netherlands, (for which is relevant, for example, whether they visited a doctor, maintained subscriptions, had a bank account and local phone number in the Netherlands);
- (c) where the partner and children are located.

Intentions or the number of days spent in or outside the Netherlands are of lesser relevance. It may well be that a person has a durable bond with different countries. However, the strongest durable bond is not necessarily decisive for Dutch tax residency. Moreover, even though the centre of vital interests may lie in one state this does not rule out the possibility to have a 'durable bond of a personal nature' with the Netherlands. This could for example occur if a person has a primary residence abroad, but also has a property available to him or her in the Netherlands and continues to frequently spend time in the Netherlands with family or friends, undergoes medical treatments in the Netherlands or keeps a hold on other connecting factors that may indicate an ongoing personal attachment with the Netherlands.

An individual may still be subject to Dutch inheritance tax if the individual is caught under the so-called ten-year tail provision. Essentially, an individual is deemed to be a Dutch tax resident for a period of ten years after departure, regardless of the actual residence at the time of death. Importantly, if a Dutch national returns to the Netherlands, becomes a tax resident again, and subsequently leaves, a new ten-year period starts. This ten-year tail does not apply to foreign nationals who temporarily become Dutch tax residents. Once they cease to be Dutch tax resident, they fall out of scope of Dutch inheritance tax.

If a foreign resident owning Dutch source assets (for example real estate), passes away, no Dutch inheritance tax is levied over the value of that property as the Netherlands solely levy inheritance tax if an individual was a (deemed) Dutch tax resident upon the time of death.

#### 2.1.2 Applicable tax rates

Although the inheritance tax liability is caused by the state of residency of the deceased, it is the beneficiaries that effectively must pay the tax. The applicable tax rate depends on the relation between the deceased and the beneficiary.

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The (progressive) rates for inheritance tax in 2026 are listed in table 1.<sup>2</sup>

**Table 1: (Progressive) rates for inheritance tax in 2026**

Range	Partner and children	Further descendants	Other
€ 0 to € 158,669	10%	18%	30%
> € 158,669	20%	36%	40%

There are individual tax exemptions for inheritance tax, which depend on the relationship between the deceased or donor and the beneficiary. Under strict conditions, exemptions may also apply to the transfer of active business assets, provided that a substantial interest is held in the entity concerned.

### 2.1.3 Cross-border challenges

In cross-border situations, Dutch inheritance tax law may give rise to double taxation. This could for example occur if a Dutch national leaves the Netherlands and passes away within the ten-year period. The new residency state may also impose inheritance tax on the estate on the basis of their national provisions. In some cases, a succession tax treaty may provide relief, as the country that has secondary taxation rights typically provides relief. However, the number of succession tax treaties is limited.<sup>3</sup>

Other circumstances in which double taxation could occur is when a beneficiary resides in another state that levies inheritance tax if the beneficiary is a resident of that state.

In the cases where there is no succession tax treaty, the Netherlands may provide unilateral relief under domestic law (the Decree on the Avoidance of Double Taxation 2001). This relief generally takes place in the form of a deduction for foreign inheritance tax paid over the same assets, calculated per beneficiary and limited to the lower of (i) the foreign tax paid or (ii) the proportionate part of Dutch tax attributable to those assets.<sup>4</sup>

## 2.2 Germany

### 2.2.1 Criteria for taxation

For inheritance tax purposes, German law taxes the gratuitous acquisition upon death by the beneficiary. The taxable event is the acquisition in the hands of every individual beneficiary (like heirs, legatees etc.) rather than the estate as such. As in the Netherlands, inheritance tax is as-

essed at the level of each beneficiary, based on their respective share.

German inheritance tax applies where at least one of the following statutory requirements is fulfilled:

- the deceased was a German tax resident at the time of death (unlimited tax liability);<sup>5</sup>
- the beneficiary is a German tax resident at the time of the death (unlimited tax liability);<sup>6</sup> or
- the acquisition relates to certain domestic assets (such as real estate, business assets or corporate shares of German companies of at least 10%), in which case limited tax liability applies, even if neither the deceased nor the heir is a German tax resident.<sup>7</sup>

This illustrates that, compared to the Netherlands, German inheritance tax may be levied on the basis of a broader set of statutory connecting factors, especially including as sufficient connecting factors the sole residency of the beneficiary and the location of certain transferred assets being in Germany.

A person (whether the beneficiary or the deceased) is considered a German tax resident for inheritance tax purposes in particular if they maintain a residence (accessible place to sleep in Germany like an apartment or house)<sup>8</sup> or have their habitual abode in Germany.<sup>9</sup>

Importantly, German law further provides for a statutory continuation of tax residence for German nationals upon emigration (inheritance tax tail), similar to the Netherlands, under which they remain subject to German inheritance tax for a period of five years after leaving Germany (ten years if relocating to the United States).<sup>10</sup>

### 2.2.2 Applicable tax rates and personal allowances

Where German inheritance tax applies, the applicable progressive tax rates and personal allowances (i.e. tax-free amounts deducted from the taxable acquisition) depend on the relationship between the deceased and the beneficiary.

The applicable tax rates and the corresponding personal allowances are listed in table 2 (on page 7).<sup>11</sup>

Among spouses the personal allowance is € 500,000; for children, stepchildren and children of deceased children the allowance is € 400,000; for grandchildren the allowance is € 200,000; for parents it is € 100,000 provided it is

<sup>2</sup> The same tax rates apply for Dutch gift tax.

<sup>3</sup> The Netherlands have entered into a succession tax treaty with Sweden, Finland, the United States, Israel, the United Kingdom, Switzerland and Austria.

<sup>4</sup> Articles 47 to 51 of the Decree on the Avoidance of Double Taxation 2001.

<sup>5</sup> Sec. 2 para. 1 no. 1 of the German Inheritance and Gift Tax Act (ErbStG).

<sup>6</sup> Sec. 2 para. 1 no. 1 ErbStG.

<sup>7</sup> Sec. 2 para. 1 no. 3 ErbStG.

<sup>8</sup> Either the owner or the tenant, or even just a person living at the apartment, house, etc., can establish a taxable residence.

<sup>9</sup> Sec. 2 para. 1 no. 1 letter a ErbStG.

<sup>10</sup> Sec. 2 para. 1 no. 1 letter b ErbStG.

<sup>11</sup> Sec. 19 ErbStG.

**Table 2: Applicable tax rates and corresponding personal allowances**

Value up to	Spouses, Children, Step-Children, Adoptive Children, Grandchildren, Parents and Grandparents in case of inheritance	Parents and Grandparents in case of gifts, Siblings, Nieces/Nephews, Step-Parents, Children-in-law, Parents-in-law, Divorced Spouses	All other individuals and entities
€ 75,000	7%	15%	30%
€ 300,000	11%	20%	30%
€ 600,000	15%	25%	30%
€ 6,000,000	19%	30%	30%
€ 13,000,000	23%	35%	50%
€ 26,000,000	27%	40%	50%
More than € 26,000,000	30%	43%	50%

by inheritance; for all others and in all other cases the allowance is € 20,000.<sup>12</sup> The allowance is not granted for every acquisition but for a period of ten years. This means that if a beneficiary receives multiple gifts or inheritances from the same person within ten years, the personal allowance applies cumulatively to the total value of all acquisitions during that period.

Example: Anton and Berta are married and tax residents in Germany. In 2024, Anton gifts Berta € 100,000 and in 2025 € 200,000. In January 2026, Anton passes away and leaves Berta a further € 500,000. As his wife, Berta has a personal tax allowance of € 500,000 over a ten-year period, meaning that the gifts in 2024 and 2025 are tax-free. At the time of Anton’s death, Berta still has € 200,000 remaining from her personal allowance.

Within the German inheritance tax framework, a far-reaching exemption regime applies to qualifying business assets.<sup>13</sup> Subject to strict statutory conditions, the exemption regime may substantially reduce the inheritance tax burden and, in certain cases, even allow business assets to be transferred entirely tax-free.

It should be noted, however, that the statutory provisions governing the preferential tax treatment of business assets are highly complex and that this exemption regime is currently under constitutional review by the German Federal Constitutional Court. A change of these rules within the next few years is expected.

**2.2.3 Cross-border challenges**

In cross-border succession cases, the German inheritance tax regime may give rise to an increased risk of double

taxation compared to the Netherlands due to its broader set of statutory connecting factors, as outlined above.

Relief from double taxation may be available under an applicable inheritance tax treaty; however, Germany has concluded only six bilateral tax treaties specifically covering inheritance tax.<sup>14</sup> In the absence of an applicable treaty, German law provides for a unilateral relief mechanism, primarily in the form of a tax credit for foreign inheritance tax paid on the same assets. That said, unilateral relief is not always available, as the credit mechanism is limited to assets that qualify as foreign assets under German tax law, which may differ from the scope of assets taxed in the other jurisdiction.

**3. Estate planning challenges**

To explore the challenges of cross-border estate planning, we move back to the case of Pieter and Anna. The value of their combined estate is 2,000, including the property in Germany valued at 100. They are married under Dutch law in community of property.

**3.1 Step 1 – matrimonial property division on first death**

In practice, upon the death of the first spouse, a frequently used method is to allocate all assets to the surviving spouse at the matrimonial division stage.<sup>15</sup> Under this approach, if Pieter passes away, Anna temporarily receives the entirety of the assets (2,000), even though she would be entitled to only half of the assets (1,000) if the commu-

<sup>12</sup> Sec. 16 ErbStG.

<sup>13</sup> Sec. 13a, 13b, 13c and 28a ErbStG.

<sup>14</sup> Germany has succession tax treaties with Denmark, France, Greece, Sweden, Switzerland and the United States.

<sup>15</sup> Please note that for each asset class, it should be assessed whether it is preferable for the asset to be allocated to the surviving spouse upon the division of the matrimonial community, or instead to pass to the heirs under the law of succession.

nity of property regime was strictly applied. The excess allocation therefore creates an equalization debt (in Dutch: *overbedelingsschuld*) of 1,000 owed by the surviving spouse (Anna) to the estate.

Correspondingly, the heirs (here: the children) acquire a claim against the surviving spouse equal to 1,000 by way of inheritance. For Dutch personal income tax purposes, the debt and claim between the surviving spouse and the children is tax neutral.

From a German perspective, the proprietary allocation of the entirety of the assets (2,000) to Anna upon the death of Pieter would fall under the inheritance tax regime and not be privileged as a matrimonial property division. Because of this, there is likely no difference in transferring the assets by way of matrimonial property division rather than via inheritance.

While German inheritance tax law may allow the surviving spouse to deduct assets from the inheritance tax base that are being transferred in the context of the termination of the statutory matrimonial regime, this is only the case insofar as the transfer offsets an actual gain achieved by the deceased spouse in relation to the surviving spouse over the time of the marriage (equalization of accrued gains, in German: *Zugewinnausgleich*).<sup>16</sup> In international cases, the deduction further requires that the foreign matrimonial arrangement is functionally comparable to the matrimonial property adjustment mechanism in Germany. The arbitrary allocation of all assets to the surviving spouse is likely not going to meet this requirement.

Since neither of the spouses is a German tax resident, the taxation right of Germany with respect to Anna would, however, be limited to one half of the property in Berlin that Anna inherits from Pieter. The apartment in Berlin qualifies as a residence for Lotte, but not for Pieter and Anna, who do not use the apartment for their own residential purposes. With Anna being subject to only limited tax liability in Germany, only a proportionally reduced personal allowance applies. Positively, non-domestic assets are not taken into account for determining the applicable tax rate.

The claim Lotte and Jan acquire against Anna is likely going to be considered a legacy arising with Pieter's death but only becoming due once Anna passes away. Under German inheritance tax law, such legacy – only becoming enforceable upon the survivor's death – is treated equally to a subsequent legacy (in German: *Vor- und Nachvermächtnis*, see below). This means that the acquisition of the claim itself does not constitute a taxable event for Lotte and Jan (and is, in turn, not deductible from Anna's

taxable acquisition from Pieter). Instead, the acquisition only becomes taxable for Lotte and Jan once Anna passes away. By default, the claim would then be treated as if it had been inherited from Anna and not from Pieter. Given her residency in Berlin, only Lotte would then be subject to German inheritance tax.

From a tax planning point of view, structuring the succession in such way, misses out on the opportunity to make use of the personal tax allowance between Pieter and Lotte. German case law gives reason to believe that a better use of the personal allowances can be achieved if payment is linked to a fixed due date (e.g., 5-year period) or even left at the discretion of Anna (so called *Supervermächtnis*) rather than the death of the survivor. Similar to the Netherlands, the acquisition of the claim could in this case be taxed as a legacy from Pieter at the time of his death. Inheritance tax payable in the Netherlands under the ten-year tail provision should in this case fall into the scope of the unilateral relief mechanism and be credited against German inheritance tax.

### 3.2 *Step 2 – let the mechanics do its work: estate planning lever*

One common estate planning tool is to make the equalization debt interest-bearing, at a rate that could vary from 0% up to 6% per year.<sup>17</sup> The unpaid interest causes the debt to grow over time, so that on the survivor's eventual death, their taxable estate is further reduced. The interest is not subject to personal income tax at the level of the Dutch resident beneficiary (if the beneficiary is a child of the surviving spouse).<sup>18</sup>

From a German tax perspective, all assets (including the claim) will at first be allocated to Anna. Thus, the interest on the claim should not have an inheritance tax saving effect in Germany for Anna. At the same time, it should with good arguments also not be subject to capital investment tax for her in Germany if it only accrues. Should it be paid out, it could rather be subject to gift tax in Germany between Anna and Lotte.

### 3.3 *Next event – passing away of the surviving spouse*

After ten years, the surviving spouse, Anna, passes away. If she did not repay the debt and the interest (6%) during this ten-year period, the debt would have accrued. The debt of the surviving spouse would have increased to approximately 1,800 (1,000 of the principal amount and an accrued interest of 800<sup>19</sup>). Assuming that the value of the

<sup>16</sup> Sec. 5 ErbStG.

<sup>17</sup> The 6% rate is derived from article 10 Implementing Decree under the Dutch Inheritance Tax Act 1956 (hereinafter: ID DITA). Please note that on 12 January 2026, the Dutch State Secretary for Finance announced an intention to update the applicable percentages rates, including article 10 ID DITA, with effect from 1 January 2028. This update may result in a reduction of the percentage rate.

<sup>18</sup> Article 5.4 Dutch Personal Income Tax Act 2001.

<sup>19</sup>  $(1,000 \times 1,06^{10} (\text{given the ten-year period})) - 1,000$ .

assets remained the same, the inheritance of the surviving spouse would only conduct a value of 200 (2,000 minus the debt of 1,800). As a result, of the total estate of 2,000 of Pieter and Anna combined, only 1,200 was subject to Dutch inheritance tax (1,000 upon the passing away of Pieter and 200 upon the passing away of Anna). During the ten-year period, the interest that compounded at the level of the children (800) was not subject to Dutch inheritance or personal income tax. Now all assets are passed on to the children, including the property in Germany.

From a German tax perspective, as explained earlier, the equalization claim is likely considered a subsequent succession. Accordingly, the full amount of Anna's assets (including the children's claim and accrued interest) would pass from Anna to Lotte and Jan only upon Anna's passing.

For Jan, who is not resident in Germany, the monetary claim as such does not give rise to German inheritance tax, as there is no relevant statutory connecting factor under German inheritance tax law insofar. He is subject to German inheritance tax only to the extent that he acquires an interest in the German property, e.g. half of it as part of a community of heirs between him and Lotte. Lotte, on the other hand, as a German tax resident, is generally subject to German inheritance tax on the acquisition of her entire share in Anna's estate.

### 3.4 Additional complexity: fideicommissum (*tweetrapsbepaling*)

Pieter and Anna have included a fideicommissum (*tweetrapsbepaling*) in their wills. In essence, this clause creates a two-step transfer mechanism: the first heir (called the burdened heir) receives the assets subject to a resolutive condition. This resolutive condition has the effect that if this heir dies without descendants, the assets (or what remains of them) will pass to a second heir (the expectant heir). The second transfer occurs under a suspensive condition, meaning it only takes effect if the specified event (death without descendants) occurs.<sup>20</sup> Legally, the second heir is deemed to acquire the assets as if from the original testator, not from the first heir.

If after the passing away of Pieter and Anna, Lotte, the child that resides in Germany, passes away without any descendants, the following occurs.

For Dutch inheritance tax purposes, Jan, who resides in the Netherlands, is presumed to have acquired the inheritance as if it came from the parent(s), who were Dutch

tax residents at the time of death. Consequently, Dutch inheritance tax is due on the value of the assets received under a fideicommissum. If Lotte would have lived in the Netherlands, the fideicommissum would have had the effect that Jan acquired the inheritance at more favourable tax rates (the parent and children rate) rather than the tax rate applicable to others.

Under German inheritance tax law, a fideicommissum of such kind would be qualified as a subsequent succession. Unlike in Dutch and German civil law, where the expectant heir is presumed to have acquired the inheritance from the original testator, German inheritance tax law will treat the expectant heir as if he had acquired the share from the burdened heir. Accordingly, if after the deaths of Pieter and Anna, Lotte passed away without descendants, Jan would be treated as if he had acquired the assets from Lotte rather than from the parents, irrespective of the civil law fiction under Dutch law.

As a consequence, because Lotte is a German resident at the time of her death, her worldwide estate passing upon her death would fall under the scope of German inheritance tax. Jan's acquisition would therefore be subject to German inheritance tax on the basis of unlimited tax liability, irrespective of his own place of residence.

Upon application, German inheritance tax law provides for the personal allowances and the tax rate to be determined by reference to the relationship between Jan and the original testators, rather than the relationship between Jan and Lotte. However, this affects only the applicable allowances and tax rate but does not change the attribution of the taxable acquisition to Lotte's death under German law. Subject to the individual circumstances of the case, the unilateral relief mechanism may allow for a credit of the inheritance tax paid in the Netherlands.

## 4. Key takeaways

Cross-border estate planning between the Netherlands and Germany presents significant challenges due to fundamental differences in the succession tax regimes of both jurisdictions. The following key considerations should be taken into account:

- **Different connecting factors for tax liability:** Whilst the Netherlands primarily taxes based on the residency of the deceased (supplemented by a ten-year tail provision for Dutch nationals), Germany applies a broader approach by also taxing based on the beneficiary's residency and the location of certain assets. This creates an increased risk of double taxation in cross-border scenarios, especially since there is no gift and/or inheritance tax treaty in place between the two countries.
- **Divergent treatment of matrimonial property divisions:** The allocation of assets to a surviving spouse

<sup>20</sup> This is a common way to structure a fideicommissum. However, it is not the only option. Whether a fideicommissum could reduce the applicable inheritance tax rate (because of the relationship between the creator and the expectant) should be assessed on a case-by-case basis, taking into account all relevant facts and circumstances, in particular the tax residence of the creator and the expectant. A comprehensive discussion of the fideicommissum is beyond the scope of this contribution.

through matrimonial property arrangements may be treated differently under Dutch and German law. What qualifies as a tax-neutral matrimonial property division in the Netherlands may be subject to inheritance tax in Germany, particularly where no actual equalization of matrimonial gains is involved.

- **Timing differences for taxation of claims:** Equalization claims arising from over-allocation to the surviving spouse are treated differently in both jurisdictions. Whilst the Netherlands taxes the claim upon its creation, Germany may defer taxation until the claim becomes due or the surviving spouse passes away, depending on the specifics of the case.
- **A fideicommissum creates attribution conflicts:** Under Dutch law, expectant heirs under a fideicommissum are deemed to acquire assets from the original testator. German inheritance tax law, however, treats the expectant heir as acquiring from the burdened heir. This divergence can lead to unexpected tax consequences and may affect the applicable tax rates, allowances and tax credits.
- **Limited treaty relief available:** With only six bilateral succession tax treaties concluded by Germany and six by the Netherlands (with limited overlap, especially none with each other), most cross-border cases must rely on unilateral relief mechanisms. These mechanisms are subject to various limitations and may not always provide full relief from double taxation.
- **Individual assessment is essential:** The differences between the Dutch and German succession tax regimes always require careful analysis and assessment in each individual case. The specific facts and circumstances, including residency status, asset location, family relationships, and the chosen estate planning structures, can significantly impact the overall tax outcome.
- **Coordination between advisers is crucial:** Cross-border structuring cases require close coordination between Dutch and German lawyers to ensure that estate planning arrangements are optimised under both jurisdictions and to avoid unintended tax consequences or mismatches resulting from the different legal treatments.