

# TECHNICAL SALES BRIEFING

## EUROPEAN INHERITANCE RULES

### KEY POINTS

This Technical Sales Briefing looks at:

- › the rules of inheritance for France, Italy, Portugal, Spain and the UK for testate and intestate estates
- › the tax payable in these jurisdictions and the person responsible for paying the tax
- › whether there is a Double Tax Treaty for instances where the deceased resides in a different country from the beneficiary.

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## INTRODUCTION

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Inheritance laws vary throughout Europe and have developed unique features that reflect the history of the country. For example, prior to the French revolution, succession law in France was complex and determined by the status of the deceased i.e. aristocrat or commoner, serf or a member of the middle class. In addition, the law did not treat women, children and especially illegitimate children equally. This all changed with the French revolution where the concept of equality was central and forced heirship rules were introduced for the first time. The forced heirship rules became enshrined when Napoleon created the Code Civil, also known as the Code Napoleon, and still exists today.

Many civil law countries have introduced the concept of forced heirship, whereas common law countries have kept the concept of free testamentary disposition. This richness in history means that the laws have evolved differently and an advisor needs to be aware of the laws and their implication when helping their clients with financial planning.



This briefing and the information contained within it is provided by Utmost PanEurope dac and is intended to provide general information on a particular subject and is not an exhaustive treatment of inheritance tax rules in France, Italy, Portugal, Spain and the UK. The information is correct as at 1 January 2023 and is subject to change.

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## TESTATE ESTATES

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In many civil law jurisdictions, testamentary disposition is limited by forced heirship rules. Forced heirship rules are designed to prohibit a person from disinheriting certain kin, most commonly spouses, children and grandchildren. Below we discuss the forced heirship rules in France, Italy, Portugal and Spain.

It is important to remember that in the UK people have full testamentary disposition and can leave their estate to whoever they desire. However, where an individual dies domiciled in England and Wales, certain categories of people may bring a claim under the Inheritance (Provision for Family and Dependents) Act 1975 for financial provision.

### FRANCE

The French forced heirship rules are complex and it is important to understand the Marital Regime first before looking at other relationships.

There are three types of marital regime and the type of regime dictates how the property of the parties is held within the marriage and how it is treated when one of the spouses dies.

The couple decides how their property is to be owned and what regime applies when they sign their marital contract:

#### 1. Régime légal de la communauté

The couple can choose not to sign any marital contract. Therefore, without a marital contract they will be automatically subject to the legal matrimonial regime called "régime légal de la communauté réduite aux acquets" (legal regime of the community).

In the event of a marriage without a marital contract, the couple's movable or immovable property owned before the marriage remains their personal property. Property acquired during the marriage and income earned during the marriage are the property of the community, except, for example, in the case of inheritance or gift. When the marriage ends (divorce or death), the common property is divided into two equal shares between the spouses.

The inheritance assets in the regime of community consists of:

- › 50% of the community assets corresponding to the share of the deceased
- › The deceased's personal property, such as assets from succession, from before the marriage or assets acquired through a "clause de remploi" during the wedding
- › Personal belongings such as clothes.

#### 2. Régime de la séparation de biens

The regime of separation of property consists of keeping the assets independent.

This regime is generally chosen when the spouses have different financial situations and do not wish to pool their assets. This can also be the case when one of the spouses has a business or commercial activity. In this case, the separation of property makes it possible to protect the spouse's assets in the event of professional debts. This system is also interesting if the spouses have children from a previous union.

Therefore, at the time of succession, it will be easier to identify the inheritance assets:

- › The deceased's personal property;
- › His or her share of undivided property (purchased jointly during the marriage).

### 3. Régime de la communauté Universelle

In contrast to the legal regime of community, the regime of universal community involves the pooling of all assets. Consequently, whether acquired before or during the marriage, the assets are unique for both spouses.

Therefore, at the time of succession, all property is divided into equal shares. The first half of the property goes to the surviving spouse. The second half constitutes the inheritance. This means that it is divided between the surviving spouse and the other heirs of the deceased.

It should be noted, however, that under the regime of universal community, the spouses may choose to add a clause of full attribution to the survivor ("donation au dernier vivant"). As a result, the entire estate goes to the surviving spouse. The other heirs are therefore not entitled to their share of the inheritance. This is a well-known exception to the hereditary reserve.

Where the deceased has children from a common or uncommon marriage, all of them are considered as reserved heirs. Since December 2001, the law no longer distinguishes between natural, legitimate, adopted and children born as a result of infidelity.

The table below outlines how the forced heirship rules apply and the percentage of the estate that is reserved for the beneficiaries:

RELATIONSHIP	PERCENTAGE SUBJECT TO FORCED HEIRSHIP
One child	50% of the estate is reserved for the child
Two children	66.6% of the estate is reserved to the children in equal shares
Three or more children	75% of the estate is reserved to the children in equal shares
If surviving spouse	25% of the estate in full ownership or 100 % in usufruct for the spouse who has common children 25% of the estate in full ownership if non common children 50% if no children but 2 parents 75% if no children but 1 parent 100% if no children and no parents

### ITALY

The Italian forced heirship rules are set out in the table below which outlines the percentage of the estate that is reserved for the beneficiaries:

RELATIONSHIP	PERCENTAGE SUBJECT TO FORCED HEIRSHIP
Only one child and no spouse	50% of the estate is reserved to the child
Two or more children no spouse	66.6% of the estate is reserved to the children in equal shares
Parents but no spouse and no children	33% of the estate is reserved to the parents
Only a surviving spouse	50% of the estate is reserved to the spouse
A surviving spouse and a child	33% of the estate is reserved to the spouse and 33% to the child
A surviving spouse and two or more children	25% of the estate is reserved to the spouse and 50% to the children
Surviving spouse and parents but no child	50% is reserved to the spouse and 25% to the parents

## PORTUGAL

The Portuguese inheritance regime is defined by strong rigidity. Portuguese inheritance law does not allow you to distribute all your goods by Will. The Portuguese Civil Code establish a reserved share, varying between 1/2 and 1/3 of the total value of the estate, which the testator cannot freely dispose of ("legítima") and which is destined to the forced heirs ("herdeiros legitimários"): the spouse, the descendants and ascendants.

Interestingly, in Portugal it is possible for the deceased to exclude a legitimate heir from the application of the forced heirship rules where they claim the beneficiary is unworthy due to their behaviour. However, this can be challenged.

RELATIONSHIP	PERCENTAGE SUBJECT TO FORCED HEIRSHIP
Only one child and no spouse	1/2 of the estate is reserved to the child
Two or more children no spouse	2/3 of the estate is reserved to the children in equal shares
Only a surviving spouse	1/2 of the estate is reserved to the spouse
A surviving spouse and children	2/3 of the estate is reserved to the spouse and children
Surviving spouse and parents but no child	2/3 of the estate is reserved to the spouse and the parents

## SPAIN

In general terms, the following people are considered forced heirs in Spain, but regional variations may apply:

1. Children in respect of their parents and ascendants;
2. In the absence of the foregoing, parents and ascendants in respect of their children;
3. The widower or widow.

Children are entitled to inherit 2/3 of the assets from their parents and ascendants:

- › 1/3 of the estate must be distributed in equal parts among the testator's children (legítima estricta);
- › 1/3 of the estate can be distributed unevenly among all, some or only one of the testator's issue (tercio de mejora).

The testator can distribute the remaining 1/3 of the estate freely (tercio de libre disposición).

In the absence of children, parents and ascendants are

entitled to inherit 1/2 of the assets from their children and descendants. However, if they concur with the deceased's surviving spouse, they are only entitled to inherit 1/3 of the assets. The testator can dispose of the rest of the estate freely.

The surviving spouse has the following forced heirship rights:

- › if he/she concurs with children, he/she will be entitled to the usufruct (i.e. life interest) over 1/3 of the estate (tercio de mejora);
- › if he/she concurs with parents or ascendants, he/she will be entitled to the usufruct over 1/2 of the estate;
- › if he/she does not concur with any of them, he/she will be entitled to the usufruct over 2/3 of the estate.

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## INTESTATE ESTATES

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If a person fails to make a valid Will during their lifetime or the Will only applies to part of their estate, then the rules of intestacy determine how this portion of their estate will be distributed. The rules of intestacy follow the deceased's family lines and those with the closest relationship will be entitled to the estate. Below we discuss the rules of intestacy in France, Italy, Portugal, Spain and the UK.

### FRANCE

If the deceased is survived by **children** only, the estate passes to them in equal shares.

**If the deceased is survived by children born of the union with the surviving spouse** the latter gets either the usufruct of all the deceased's entire property (which means the right to use the assets or receive the income), namely ownership of the quarter, depending on his/her choice.

**If the deceased is survived by other children except the one of the couple** the surviving spouse has no choice and takes ownership of a quarter of the deceased's property.

**If the deceased is survived only by their father or mother** the surviving spouse then receives three-quarters of the property, and his or her stepfather or stepmother the remaining quarter.

**If the deceased has no child, grandchild, father or mother** the surviving spouse inherits everything, however with the exception of the property that the deceased had received through donation or inheritance from his ascendants (parents or grandparents) and which is still part of the inheritance.

If the deceased is survived by a **spouse**, their **children are deceased** but survived by **grandchildren**, then the grandchildren have the same rights as their parent.

If the deceased is survived by a **spouse** only and there are no children or grandchildren, then the deceased's parents are entitled to 25% each of the estate.

In the event where the deceased is not survived by a spouse and has no children or grandchildren then their estate is distributed as follows:

- › Parents (25% each)
- › Siblings
- › Nieces and nephews
- › Grandparents
- › Uncles and aunts
- › Cousins.

### ITALY

If the deceased is survived by a **spouse**, then they are legally entitled to the estate. If the deceased and their spouse are divorced, then the spouse will not be entitled to the estate.

If the deceased is survived by a **spouse** and **one child**, the spouse is entitled to 50% of the estate and the child will be entitled to 50% of the estate.

If the deceased is survived by a **spouse** and **two/more children**, the spouse is entitled to a third of the estate and the children will be entitled to two thirds of the estate (in equal shares).

If the deceased is survived by **children only (one/more)**, the children are entitled to the entire estate (in equal shares, if more than one).

Only where the deceased is not survived by any children, then the following are entitled to inherit together with the spouse:

- › Parents (or their ascendants), together with spouse and siblings (if any);
- › Siblings (and their descendants), together with spouse and parents (or ascendants) if any;
- › Uncles, aunts and their descendants (nieces, nephews) - up until the 6th degree of legal kinship - where none of the above survived the deceased.

Where none of the above survived the deceased, finally the Italian State will inherit the estate.

## PORTUGAL

If the deceased is survived by a **spouse** and **children**, the estate is divided per capita, but the spouse cannot be given less than a quarter of the deceased's estate.

If the deceased is survived by **children** only, the estate is divided equally between them.

If the deceased is survived by a **spouse** only then the whole estate passes to the spouse.

If the deceased is survived by **grandchildren** only then the whole estate is distributed amongst them.

If the deceased was single, without children or living ancestors, then the following are entitled to inherit:

- › Brothers or sisters but if they didn't survive the deceased, then their descendants become heirs
- › Relatives up to fourth grade will inherit
- › Finally the Portuguese State will inherit the estate.

## SPAIN

In general terms, when the deceased dies intestate then the following are entitled to inherit, in this order:

- › Children and issue of the deceased
- › If there are no children or issue, the parents/ascendants
- › If there are no children or parents/ascendants, the **surviving spouse**
- › If none of the above survived the deceased, the **collateral relatives**. Siblings and nieces/nephews take priority and then other collateral relatives up to fourth-grade.
- › Finally, in the absence of all the above, the **Spanish state** will inherit the estate.

Please note that this order for intestacy rules may vary in certain Spanish regions.

## UNITED KINGDOM

If the deceased is survived by a **spouse, children** and **other descendants**, the spouse inherits the personal effects or chattels of the deceased, the first £250,000\* of the estate and half of the remaining estate. This means that in cases where the estate is less than £250,000\* the spouse or civil partner will inherit the whole of the estate. If the estate is above £250,000\* then the children inherit the other half of the remaining estate in equal shares on statutory trusts. In cases where a son or daughter has died, their share of the inheritance will be divided equally among their children.

If the deceased is survived by **children** the whole estate passes to the children in equal shares. Where a child has predeceased their parent, their share of the inheritance will be divided equally among their children.

If the deceased is survived by their **spouse** and has no issue, then the whole estate is inherited by the surviving spouse.

If the deceased is survived by their **parents** only, their whole estate is divided equally between their parents.

If the deceased is survived by their **siblings** only, then their estate will be divided amongst their full blood siblings. In the event that their siblings pre-decease them then their sibling's children will inherit their parents' share.

If the deceased is survived by half-blood **siblings** only, then their estate will be divided amongst their half-blood siblings. In the event that their half-blood siblings pre-decease them then their half-blood sibling's children will inherit their parents share equally.

If the deceased is survived by their **grandparents** only, then the estate is divided equally between the living grandparents.

If the deceased is survived by **aunts and uncles** of full blood only, then they will inherit the estate. If the full blood aunt or uncle has predeceased them then their descendants will inherit.

If the deceased is survived by **aunts and uncles** of half-blood only, then they will inherit the estate. If the half-blood aunt or uncle has predeceased them then their descendants will inherit.

Finally the Crown will inherit the estate.

\* From the 6th February 2020 the Administration of Estates Act 1925 (Fixed Net Sum) Order 2020 changes this amount to £270,000.

## INHERITANCE TAXES

Below we discuss the taxes applicable for succession in France, Italy, Portugal, Spain and the UK.

### FRANCE

If French inheritance law applies to an estate, then French inheritance tax will be levied on all worldwide assets of the deceased when they were French resident, or on assets only located in France when the deceased was non-resident.

In some cases, this can lead to situations of double taxation but France has tax treaties with several countries, including the UK.

Inheritance tax is based on the relationship the beneficiary had with the deceased, the table below outlines the rates of inheritance tax and the tax free thresholds applicable:

RELATIONSHIP	TAX FREE THRESHOLD	INHERITANCE TAX RATE
Spouse	N/A	Exempt
Children (step children not included)	€100,000	5% - 45%
Brothers and sisters	€15,932	35% - 45%
Nephews and nieces	€7,967	55%
Grandchildren	€1,594	between 5% and 45%
All others	€1,594	60%

### ITALY

Italian inheritance law is founded on the principle of 'unity of inheritance', which means that any non-property assets are dealt with under the law of the country of last domicile, and property assets must be handled according to the law of the country where the property is located.

In some cases, this can lead to situations of double taxation but Italy has tax treaties with several countries including the UK.

There are three taxes paid in respect to inheritance:

**1. Imposta Catastale (Land registry tax)** - this tax applies to Italian property registered in the land register upon transfer of the same, also by inheritance/succession, and is normally charged at 1% of property value at record, subject to a minimum charge of Euro 200;

**2. Imposta Ipotecaria (Mortgage tax)** - which can be charged between 0.5% and 2% of the property value on record or €200 if the property remains a primary residence

**3. Imposta di Successione (Inheritance tax)** - which applies to the full value of the estate.

Imposta di Successione is based on the relationship the beneficiary had with the deceased. The table below outlines the rates of tax and the tax free thresholds applicable:

RELATIONSHIP	TAX FREE THRESHOLD	INHERITANCE TAX RATE
Children and spouse	€1 million	4%
Siblings	€100,000	6%
Family members up to the fourth degree of kinship and other blood, marriage or adopted relatives up to the third degree of kinship	N/A	6%
All others	N/A	8%

## PORTUGAL

Inheritance tax has not been payable in Portugal since 1 January 2004. Instead, stamp duty (Imposto de Selo) of 10% is payable on the value of the estate. However, spouses, direct descendants and ascendants are exempt of Stamp Duty payment.

## SPAIN

Spanish Inheritance and Gift Tax ('SIGT') is both applicable to inheritances and lifetime gifts.

Whilst Spain sets the state SIGT rates, reductions and allowances nationally, the Autonomous Communities have devolved powers to vary these in the taxpayer's favour.

The rules can be quite complex and will depend on:

- › where the beneficiary is resident, and
- › where the donor/deceased is resident, and
- › where the assets to be inherited/gifted are located.

SIGT will only be due if:

- › the recipient of a lifetime gift or the beneficiary of an inheritance is resident in Spain, or
- › the asset(s) being gifted or inherited is(are) considered a Spanish situs asset (e.g. those assets or rights that are located, could be exercised or have to be fulfilled in Spanish territory.)

Additionally, it is important to understand that the tax rates and some other elements such as tax-free allowances, reductions, deductions and reliefs may vary from one Spanish Autonomous Community to another, as they have competences devolved to modify these aspects.

SIGT rates are progressive and will be determined based on the personal circumstances of each beneficiary (e.g. amount gifted/inherited, beneficiary's pre-existing wealth and the relationship between the beneficiary and the donor/deceased).

The beneficiary of an inheritance or a lifetime gift will be the taxpayer for SIGT purposes and they will be solely responsible for submitting the corresponding Spanish tax return, where required.

The following 2 tables outline:

1. The Spanish inheritance tax rates based on the total amount inherited. Please note that these will defer depending on the Autonomous Community. Additionally, multipliers may apply on top of the tax rates depending on the beneficiary's personal circumstances.
2. The Spanish state inheritance tax personal reductions, only applicable to inheritances. Please note that these will defer depending on the Autonomous Community.

**Table 1**

BRACKETS	INHERITANCE TAX RATES
Inheritance up to €7,993	7.65%
€7,993-€31,956	7.65 to 10.2%
€31,956-€79,881	10.2 to 15.3%
€79,881-€239,389	15.3 to 21.25%
€239,389-€398,778	25.50%
€398,778-€797,555	29.75%
€797,555 +	34%

**Table 2**

RELATIONSHIP TO THE DECEASED	PERSONAL REDUCTION
Group I: Children (including adopted) under 21 years	Up to €47,858
Group II: Children (including adopted) older than 21 years, grandchildren, spouses, parents and grandparents	€15,956
Group III: Siblings, aunts, uncles, nieces and nephews, in laws	€7,993
All others, including unmarried partners	N/A



## UNITED KINGDOM

If the deceased was domiciled in the UK, then the law applicable to the estate is that of the UK. UK inheritance tax will be levied on all worldwide assets of the deceased.

In some cases, this can lead to situations of double taxation but the UK has tax treaties with several countries, including France and Italy.

In the UK there is a tax free threshold of £325,000 and the inheritance tax rate is between 36% and 40%.

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## CONCLUSION

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Succession planning is extremely specialised and, when a client has complex cross jurisdictional interests, it is vital to obtain specialist advice. The consequences of getting it wrong can be expensive. Instruments that work in one jurisdiction, such as trusts, may not be recognised in other jurisdictions and can have adverse consequences not only on death, but possibly during the life of the client. For

example, beneficiaries named in a trust could be taxed in France despite having not received any benefit. In a world where tax planning and cross jurisdictional reporting is becoming the norm, plans set up in one jurisdiction can have consequences for plans put in place in another jurisdiction.

This information is correct as at 1 January 2023.

## A WEALTH *of* DIFFERENCE

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