



Newsletter

Estate Planning and tax law

Cabinet d'avocats Dekeyser & Associés (www.dekeyser-associes.com)

EU officials: the "protocol" tax domicile now also applies to gifts!

According to the Court of Justice of the European Union (hereinafter, the "**CJEU**"), the tax domicile fiction in Article 13 of Protocol No. 7 also applies to gifts. This ruling is bound to have a significant impact on the estate planning of many EU officials. *Focus.*

Protocol domicile fiction?

Article 13 of Protocol No. 7 on the Privileges and Immunities of the European Union (hereinafter, the "**PPI**") provides:

« For the purposes of applying income tax, wealth tax and death duties [...], officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than the country where they had their tax domicile at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of their tax domicile, as having retained their domicile in the latter country, provided that it is a member of the Union [...] »

It must be noted that this provision does not mention gift duties. An EU official residing in Belgium was therefore, subject to certain conditions, treated as a Belgian tax resident for gifts, but as a tax resident of their home State for inheritances. Force est de constater que cette disposition ne mentionne pas les droits de donation.

As a reminder, this fiction applies only as long as the official is in the service of the Union and meets the conditions of Article 13. It ends upon retirement.

Impact of the *Kolwager*¹ judgment of 15 October 2026

In this judgment, the Court holds, among other things, that gift duties, although not mentioned, share essential characteristics with death duties, since they tax the gratuitous transfer of assets. **According to the CJEU, gift duties fall within Article 13 of the PPI.**

From now on, a single protocol domicile applies to both inheritances and gifts.

For future gifts, the tax rules of the State of the protocol domicile should be analysed to determine whether the gifts will be taxed there².

For gifts already made and/or received, and for planning based on different connecting factors for gifts and inheritances, it is prudent to review them.

¹ C.J.U.E., 15 octobre 2026, Kolwager, C-275/25, EU:C:2026:854

² This analysis is not sufficient, however: other States may also tax the gift (for example, because of the location of the asset given, the tax residence of the donee or the nationality of the parties).



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Practical illustrations

- **Bad news – example: official recruited from France, residing in Brussels and making a gift of real estate.**

Mrs X (recruited from France) is 65 years old and lives in Watermael-Boitsfort. She wishes to give the entire bare ownership of her home (valued at €1,000,000) to her adult son (a Belgian tax resident). She intends to make the gift in 3 times (gifts spaced 3 years and 1 day apart).

	Which State may levy gift duties?
Before the judgment	Only Belgium (registration duties of approximately €85,000)
After the judgment	Both Belgium (registration duties of approximately €85,000) and France (gift transfer duties of approximately €130,000) ³

- **Bad news – example: official recruited from France, residing in Brussels and receiving a gift of real estate.**

Mrs Y (recruited from France) is 40 years old and lives in Watermael-Boitsfort. Her father (a Brussels tax resident) wishes to give her the entire bare ownership of a property located in Belgium (valued at €1,000,000). He intends to make the gift in 3 times (gifts spaced 3 years and 1 day apart).

	Which State may levy gift duties?
Before the judgment	Only Belgium (registration duties of approximately €85,000)
After the judgment	Both Belgium (registration duties of approximately €85,000) and France (gift transfer duties of approximately €130,000) ⁴

³ France does, however, allow Belgian gift duties to be credited against its own duties (Art. 784A CGI)

⁴ France does, however, allow Belgian gift duties to be credited against its own duties (Art. 784A CGI)



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- **Good news – example: official recruited from Austria, residing in Brussels and making a gift of movable assets.**

Mr Z (recruited from Austria) lives in Watermael-Boitsfort and wishes to give full ownership of Belgian financial assets (up to €1,000,000) to his niece (a Belgian tax resident). He makes the gift before an Austrian notary.

	Which State may levy gift duties?
Before the judgment	Belgium (registration duties of approximately €70,000) ⁵
After the judgment	In principle, no tax

Opportunity or risk?

Depending on your situation, the *Kolwager* judgment may increase the tax cost of a gift or, on the contrary, reduce or even eliminate it. In either case, no decision should be taken without prior analysis.

1. **Check** whether Article 13 of the PPI applies in your situation and identify your protocol domicile precisely⁶.
2. **Analyse** the tax treatment in your State of protocol domicile, without overlooking the other taxation criteria (location of the asset, residence of the donee, etc.).
3. **Have** your gifts already made and your ongoing projects **audited** by an expert in the field.

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⁵ This gift must be registered in Belgium if the donor is a Belgian tax resident.

⁶ This is normally shown on your tax domicile certificate, which can be downloaded via the *Sysper* application.