



Universiteit
Leiden
The Netherlands

Taxation of cross-border inheritances and donations: suggestions for improvement

Dafnomilis, V.

Citation

Dafnomilis, V. (2021, June 3). *Taxation of cross-border inheritances and donations: suggestions for improvement*. Retrieved from <https://hdl.handle.net/1887/3182533>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/3182533>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <https://hdl.handle.net/1887/3182533> holds various files of this Leiden University dissertation.

Author: Dafnomilis, V.

Title: Taxation of cross-border inheritances and donations: suggestions for improvement

Issue Date: 2021-06-03

Appendix I: A new version of the OECD IHTMTC

In this appendix, I present a new version of the OECD IHTMTC that includes the suggested amendments to the provisions of the model as presented in chapter 6 of this study. The amendments are marked in italics. The amendments to the Commentary of the OECD IHTMTC are not reflected below. Optional provisions are included in brackets. This version also includes amendments to the OECD IHTMTC that are inspired by the 2017 version of the OECD ICTMTC.

OECD

Death taxes and taxes on gifts Model Convention

CONVENTION BETWEEN

(STATE A) AND (STATE B)

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO *DEATH TAXES AND TAXES ON GIFTS*

PREAMBLE OF THE CONVENTION

Note: The Preamble of the Convention shall be drafted in accordance with the constitutional procedure of both Contracting States.

CHAPTER I

Scope of the Convention

Article 1

Estates, inheritances and gifts covered

This Convention shall apply:

- a) to estates and inheritances where the deceased was *fiscally* domiciled, at the time of his death, in one or both of the Contracting States; and
- b) to gifts where the donor was *fiscally* domiciled, at the time of the gift, in one or both of the Contracting States.

Article 2

Taxes covered

1. This Convention shall apply to *death taxes and taxes on gifts* imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as *death taxes any mortis causa tax levied on the received or transferred windfall*. There shall be regarded as *taxes on gifts taxes imposed on the inter vivos received or transferred windfall* because the transferor receipt of the property concerned is made for no, or less than full, consideration. A windfall is considered a sudden and an unexpected accretion of property without labour by the beneficiary which increases his ability to pay taxes.
3. The existing taxes to which the Convention shall apply are, *in particular*,:
 - a) (in State A)...
 - b) (in State B)...
4. The Convention shall apply also to any identical or substantially similar *death taxes and taxes on gifts* which are imposed after the date of signature of the Convention in addition to, or in place of, the existing *death taxes and taxes on gifts*. At the end of each year, the competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws.

CHAPTER II

Definitions

Article 3

General definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term “person” includes an individual, a company and any other body of persons, including the estate of a person;

- b) *the term “company” means any corporate or any entity that is treated as a body corporate for tax purposes;*
 - c) *the term “enterprise” applies to the carrying on of any business;*
 - d) the term “competent authority” means:
 - (i) (in State A):.....
 - (ii) (in State B):.....
 - e) *the term “business” includes the performance of professional services and of other activities of an independent character;*
 - f) the term “property which forms part of the estate of, or of a gift made by, a person *fiscally* domiciled in a Contracting State” includes any property the devolution or transfer of which, under the law of a Contracting State, is liable to a tax covered by the Convention.
2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the *tax* law of that State concerning the taxes to which the Convention applies.

Article 4A

Fiscal domicile

1. For the purposes of this Convention, the term “person *fiscally* domiciled in a Contracting State” means any person whose estate or whose gift, under the law of that State, is liable to tax therein by reason of the domicile, residence or place of management of that person or any other criterion of a similar nature. *The term also means any person whose estate or whose gift, under the law of that State, is liable to tax therein by reason of his nationality, if there is no treaty in place between the state of the deceased or donor’s fiscal domicile (as defined in the first section) and the other Contracting State.* However, this term does not include any person whose estate or whose gift is liable to tax in that State only in respect of property situated therein.
2. Where by reason of the provisions of paragraph 1 an individual is *fiscally* domiciled in both Contracting States, then *[subject to the provisions of paragraph 3 of this Article,]* his status shall be determined as follows:
 - a) he shall be deemed to be *fiscally* domiciled in the State in which he has a permanent home available to him *[for (x) years or more immediately preceding his death or the donation with the clear intention to retain it];* if he has a permanent home available to him in both States, he shall be deemed to be *fiscally* domiciled in the State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be *fiscally* domiciled in the State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or neither of them, he shall be deemed to be *fiscally* domiciled in the State of which he is a national;
 - d) if he is national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

- [3. *Notwithstanding the provisions of paragraph 2, where an individual by reason of the provisions of paragraph 1, first section:*
- a) *is fiscally domiciled in both these States on grounds other than extended domicile rules based on nationality and*
 - b) *has been fiscally domiciled for business, professional, educational, training, tourism, or a similar purpose (or in his capacity as the spouse or a dependent member of the family of a person who was in that other State for such a purpose) in the State of which he is not a national, for less than (x) years in the aggregate (including periods of temporary absence) during the preceding (q)-year period and he did not intend to remain indefinitely in that other State, then he shall be deemed to be fiscally domiciled in the Contracting State of his nationality.]*
4. *Where by reason of the provisions of paragraph 1 a person other than an individual is fiscally domiciled in both Contracting States, then it shall be deemed to be fiscally domiciled in the State in which its place of effective management is situated.*

[Article 4B¹

Situs rules

The situs at the time of the transfer of any of the following property or property rights shall, for the purpose of this Convention, be determined exclusively in accordance with the following rules:

- a) *Tangible movable property shall be deemed to be situated at ...*
- b) *Shares or stock in a corporation shall be deemed to be situated at ...*
- c) *Ships and aircraft shall be deemed to be situated at ...*
- d) *Goodwill as a trade, business or professional asset shall be deemed to be situated at ...*
- e) *Patents, trade-marks, utility models and designs shall be deemed to be situated at ...*
- f) *Copyrights, franchises, rights to artistic and scientific works and rights or licenses to use any copyrighted material, artistic and scientific works, patents, trade-marks, utility models or designs shall be deemed to be situated at ...*
- g) *Mining or quarrying rights or mining leases shall be deemed to be situated at ...*
- h) *Fishing rights shall be deemed to be situated at ...]*

CHAPTER III

Taxing rules

Article 5

Immovable property

- 1. *Immovable property or rights thereon shall be deemed to be situated at ...*
- 2. *Immovable property which forms part of the estate of, or of a gift made by, a person fiscally domiciled in a Contracting State and which is situated in the other Contracting State may be taxed in that other State.*

¹ In case the Contracting States decide not to follow the allocation of taxing rights based on the OECD IHTMTC.

3. The term “immovable property” shall have the meaning that it has under the *tax law* of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
4. The provisions of paragraph 2 shall also apply to immovable property of an enterprise and to immovable property used for the performance of professional services or other activities of an independent character.
5. *The term “immovable property” shall also include shares, participations and other rights in a company or legal person the assets of which consist, directly or through one or more other companies or legal entities, mainly of immovable property situated in one of the Contracting States or of rights encumbering such property. These shares, participations and other rights shall be deemed to be situated in the Contracting State in which the immovable property is situated.*

Article 6

Movable property of a permanent establishment or a fixed base

1. Movable property of an enterprise which forms part of the estate of, or of a gift made by, a person *fiscally* domiciled in a Contracting State, which is the business property of a permanent establishment situated in the other Contracting State, may be taxed in that other State.
2. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
3. The term “permanent establishment” includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop; and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
4. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
5. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
 - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on for the enterprise any other activity of a preparatory or auxiliary character; or
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
6. Movable property which forms part of the estate of, or of a gift made by, a person *fiscally* domiciled in a Contracting State, used for the performance of professional services or other activities of an independent character and pertaining to a fixed base situated in the other Contracting State, may be taxed in that other State.

Article 7

Other property

Property, wherever situated, which forms part of the estate of, or of a gift made by, a person *fiscally* domiciled in a Contracting State, and not dealt with in Articles 5 and 6, shall be taxable only in that State.

Article 8

Deduction of debts

1. *Debts shall be deemed to be situated at ...*
2. Debts especially secured on any property referred to in Article 5 shall be deducted from the value of that property. Debts, not being especially secured on any property referred to in Article 5, which are represented by the acquisition, conversion, repair or upkeep of any such property, shall be deducted from the value of that property.
3. Subject to the provisions of paragraph 2, debts pertaining to a permanent establishment referred to in paragraph 1 of Article 6, or to a fixed base referred to in paragraph 6 of Article 6, shall be deducted from the value of the permanent establishment or the fixed base as the case may be.
4. Other debts shall be deducted from the value of property to which the provisions of Article 7 apply.
5. If a debt exceeds the value of the property from which it is deductible in a Contracting State, according to the provisions of paragraphs 2 or 3, the excess shall be deducted from the value of any other property taxable in that State.
6. Any excess still remaining in one Contracting State after the deductions referred to in paragraphs 3 or 4 shall be deducted from the value of the property liable to tax in the other Contracting State.
7. Where the provisions of paragraphs 2 to 6 would oblige one Contracting State to deduct debts to an extent greater than that provided for under its law, those provisions shall apply only to the extent that the other Contracting State is not obliged to deduct the same debts under its own law.

CHAPTER IV

Methods for eliminating double taxation

Article 9A

Exemption method

1. The Contracting State in which the deceased was *fiscally* domiciled at his death, or the donor was *fiscally* domiciled at the time of the gift, shall exempt from tax any property which, in relation to the same event (*death or donation*) and in accordance with the provisions of this Convention, may be taxed in the other Contracting State.
2. The former Contracting State shall also exempt from tax any property which, in relation to a previous gift and in accordance with the provisions of the Convention, may have been taxed in the other Contracting State. That former State, however, shall not exempt from tax any property which was taxable in that State in accordance with the provisions of Articles 5 or 6 of the Convention.
3. In each case the former Contracting State may take the exempted property into account in calculating the amount of tax on any remaining property.

Article 9B

Credit method

1. The Contracting State in which the deceased was *fiscally* domiciled at his death, or the donor was *fiscally* domiciled at the time of the gift, shall allow as a deduction from the tax calculated according to its law an amount equal to the *death tax or tax on gifts* paid in the other Contracting State on any property which, in relation to the same event (*death or donation*) and in accordance with the provisions of this Convention, may be taxed in that other State.
2. The former Contracting State shall also allow as a deduction from such tax an amount equal to the tax which has been paid in the other Contracting State on a previous gift in accordance with the provisions of the Convention to the extent that such a deduction has not been allowed under the provisions of paragraph 1 at the time of that gift. That former State, however, shall not allow a deduction in respect of tax paid on property which was taxable in that State in accordance with the provisions of Articles 5 or 6 of the Convention.
3. The deductions referred to in paragraphs 1 and 2 shall not, however, exceed that part of the tax of the former Contracting State, as computed before any deduction is made, which is attributable to the property in respect of which the deduction is to be allowed.

CHAPTER V

Special provisions

Article 10

Non-discrimination

1. *Estates of* nationals of a Contracting State, wherever they are *fiscally* domiciled, shall not be subjected in the other Contracting State to any taxation, or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which *estates of* nationals of that other State in the same circumstances, *in particular with respect to their fiscal domicile*, are or may be subjected.
2. The term “nationals” means:
 - a) all individuals possessing the nationality of a Contracting State;
 - b) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.
3. Stateless persons who are *fiscally* domiciled in a Contracting State shall not be subjected in either Contracting State to any taxation, or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.
4. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 11

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, shall endeavour to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention *concerning death taxes and taxes on gifts*.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.
5. *Where,*
 - a) *under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and*
 - b) *the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities, any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing.*

These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

Article 12

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is *foreseeably relevant necessary* for carrying out the provisions of this Convention or to the *administration or enforcement* of the domestic laws of the Contracting States concerning *death taxes and taxes on gifts* imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 and may also refer to the civil laws of each Contracting State.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. *In no case shall the provisions of paragraphs 1 and 2 be construed such as to impose on a Contracting State the obligation:*
 - a) *to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;*
 - b) *to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;*
 - c) *to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).*
4. *If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.*
5. *In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.*

Article 13

Assistance in the collection of taxes

1. *The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.*
2. *The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.*
3. *When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.*
4. *When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that*

revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be
 - a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article be construed such as to impose on a Contracting State the obligation:
 - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to carry out measures which would be contrary to public policy (*ordre public*);
 - c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 14

Diplomatic agents and consular officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 15

Territorial extension

1. This Convention may be extended, either in its entirety or with any necessary modifications, [to any part of the territory of (State A) or of (State B) which is specifically excluded from the application of the Convention or] to any State or territory for whose international relations (State A) or (State B) is responsible, which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.
2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 17 shall also terminate, in the manner provided for in that Article, the application of the Convention [to any part of the territory of (State A) or of (State B) or] to any State or territory to which it has been extended under this Article.

CHAPTER VI

Final provisions

Article 16

Entry into force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at... as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
 - a) (in State A)...
 - b) (in State B)...

Article 17

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year... In such event, the Convention shall cease to have effect:
 - a) (in State A)...
 - b) (in State B)...
2. *Notwithstanding the provisions of paragraph 1, if the effects of this Convention are substantially altered as a result of changes made in the tax law of either Contracting State, either Contracting State may, through diplomatic channels, give a written notice of termination*

with effect not earlier than a period of six (6) months after such notice is given. In such an event, its provisions shall not apply to estates of persons who die or to gifts made on or after the effective date of the termination of this Convention.

- 3. The Convention shall continue to apply in respect of the estate of any individual who has died before the end of that period and in respect of any event (other than death) occurring before the end of that period and giving rise to liability to tax under the laws of either Contracting State.*
- 4. The termination of the present Convention shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded by the Contracting States.*

Appendix II: Proposal for Council Directive on a multilateral Convention for the avoidance of double or multiple taxation of cross-border inheritances and gifts

In this appendix, I present a Proposal for Council Directive on a multilateral Convention for the avoidance of double or multiple taxation of cross-border inheritances and gifts as suggested in section 7.1.4.1 of this study. Optional provisions are included in brackets.

The suggested version of the OECD IHTMTC, as presented in appendix I, was used as the basis of the proposed Directive (where appropriate). The amendments that are inspired by the EC's Recommendation are underlined. The amendments that are inspired by EU primary and secondary law are marked in italics. The text of the preamble to the proposal is not included.

The term "Contracting States" was replaced by the term "Member States". The term "beneficiary" also incorporates the term "donee".

Proposal for Council Directive on a multilateral Convention for the avoidance of double or multiple taxation of cross-border inheritances and gifts

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

[Preamble]

CHAPTER I

Scope of the Convention

Article 1

Estates, inheritances and gifts covered

This Convention shall apply:

- a) to estates and inheritances where the deceased and/or the beneficiary has personal links, at the time of the deceased's death, in one or more Member States, and
- b) to gifts where the donor and/or the donee has personal links, at the time of the gift, in one or more Member States.

Article 2

Taxes covered

1. This Convention shall apply to inheritance taxes imposed on behalf of a Member State or of its political subdivisions or local authorities. This Convention shall also apply to taxes on gifts, where gifts are taxed under the same or similar rules as inheritances.
2. There shall be regarded as inheritance taxes any tax levied at national, federal, regional, or local level upon death on the received or transferred windfall, irrespective of the name of the tax, of the manner in which the tax is levied and of the person to whom the tax is applied. The term “inheritance tax” includes in particular estate tax, inheritance tax, transfer tax, transfer duty, stamp duty, income and capital gains tax levied upon death. There shall be regarded as taxes on gifts any tax levied at national, federal, regional, or local level on the *inter vivos* transferred or received windfall only because the transfer or receipt of the property concerned is made for no, or less than full, consideration and irrespective of the name of the tax, of the manner in which the tax is levied and of the person to whom the tax is applied. The term “tax on gifts” includes, in particular, gift tax, income tax on gifts and capital gains tax levied in the event of a gift. A windfall is considered a sudden and an unexpected accretion of property without labour by the beneficiary which increases his ability to pay taxes.
3. The existing taxes to which the Convention shall apply are, in particular:
 - a) (in Member State A)...
 - b) (in Member State B)...
 - c) (in Member State C) ...
 -
4. The Convention shall apply also to any identical or substantially similar inheritance and taxes on gifts which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Member States shall notify each other of changes which have been made in their respective taxation laws.

CHAPTER II

Definitions

Article 3

General definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term “person” includes an individual, a company and any other body of persons, including the estate of a person;
 - b) the term “company” means any corporate or any entity that is treated as a body corporate for tax purposes;
 - c) the term “enterprise” applies to the carrying on of any business;
 - d) the term “competent authority” means:
 - (i) (in Member State A):.....
 - (ii) (in Member State B):.....
 - (iii) (in Member State C):.....
 - e) the term “national”, in relation to a Member State, means:
 - (i) any individual possessing the nationality or citizenship of that Member State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Member State *in line with article 54 TFEU*;
 - f) the term “business” includes the performance of professional services and of other activities of an independent character;
 - g) the term “property which forms part of the estate of, or of a gift made by or received by a person with personal links with a Member State” includes any property the devolution or transfer of which, under the law of a Member State, is liable to a tax covered by the Convention;
 - h) the term “personal links” refers to the link of a deceased/donor or a beneficiary with a Member State that gives rise to a comprehensive tax liability in that Member State. Such a link may be based on domicile, residence, permanent home, centre of vital interests, habitual abode, nationality or centre of effective management or any other criterion of a similar nature,
 - i) “tax relief” means a provision contained in legislation and/or general administrative instructions or guidance whereby a Member State grants relief for inheritance tax or tax on gifts paid in another Member State, by crediting the foreign tax against tax due in that Member State, by exempting the inheritance or the donation or parts of it from taxation in that Member State in recognition of the foreign tax paid or by otherwise refraining from the imposition of inheritance tax;
2. As regards the application of the Convention by a Member State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the tax law of that Member State concerning the taxes to which the Convention applies.

Article 4

Personal links

1. For the purposes of this Convention, the term “person with personal links with a Member State” means any person whose estate or whose gift, under the law of that State, is liable to tax therein due to the presence of a personal link. However, this term does not include any person whose estate or whose gift is liable to tax in that State only in respect of property situated therein.
2. If, by reason of the provisions of the below paragraphs the deceased/donor is considered to have or to have had closer personal links with one Member State and the beneficiary is considered to have had closer personal links with another Member State, then the personal links with the deceased/donor shall be deemed to be the closest.
3. Where by reason of the provisions of paragraph 1 the deceased or the donor has personal links in two or more Member States, then his status shall be determined as follows:
 - a) he shall be deemed to have the closer links with the Member State in which he has a permanent home [available to him for (x) years or more immediately preceding his death or the donation with the clear intention to retain it]; if he has a permanent home available to him in two or more Member States, he shall be deemed to have the closer links with the Member State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the Member State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in a Member State, he shall be deemed to have the closer links with the Member State in which he has an habitual abode;
 - c) if he has an habitual abode in two or more Member States or neither of them, he shall be deemed to have the closer links with the Member State of which he is a national;
 - d) if he is national of two or more Member States or of neither of them, the competent authorities of the Member States shall settle the question by mutual agreement *based on the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union*.
4. Notwithstanding the provisions of paragraph 3, the deceased/donor shall be deemed to have closer personal links with the Member State of his nationality, if, by reason of the provisions of paragraph 1, he:
 - a) had at the time of death/gift personal links with two or more Member States and at least one of them taxes based on the deceased's or donor's nationality, and
 - b) has been resident or domiciled for business, professional, educational, training, tourism, or a similar purpose in a Member State or Member States of which he is not a national (or in his capacity as the spouse or a dependent member of the family of a person who was in this Member State or Member States for such a purpose), for less than (x) years in the aggregate (including periods of temporary absence) during the preceding (q)-year period and he did not intend to remain indefinitely in the Member State of his residence/domicile].

5. Where by reason of the provisions of paragraph 1 the beneficiary has personal links with two or more Member States, then his status shall be determined as follows:
 - a) he shall be deemed to have the closer links with the Member State in which he has a permanent home available to him; if he has a permanent home available to him in two or more Member States, he shall be deemed to have the closer links with the Member State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the Member State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in a Member State, he shall be deemed to have the closer links with the Member State in which he has an habitual abode;
 - c) if he has an habitual abode in two or more Member States or neither of them, he shall be deemed to have closer links with the Member State of which he is a national;
 - d) if he is national of two or more Member States or of neither of them, the competent authorities of the Member States shall settle the question by mutual agreement based on the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.
- [6. Notwithstanding the provisions of paragraph 5, the beneficiary shall be deemed to have closer personal links with the Member State of his nationality if, by reason of the provisions of paragraph 1, he:
 - a) had at the time of death/gift personal links with two or more Member States and at least one of them taxes based on the beneficiary's nationality, and
 - b) has been resident or domiciled for business, professional, educational, training, tourism, or a similar purpose in a Member State or Member States of which he is not a national (or in his capacity as the spouse or a dependent member of the family of a person who was in this Member State or Member States for such a purpose), for less than (x) years in the aggregate (including periods of temporary absence) during the preceding (q)-year period and he did not intend to remain indefinitely in the Member State of his residence/domicile.]
7. In the case of multiple beneficiaries with closest personal links with different Member States, the latter states are the Member States of the closer personal links only in relation to the beneficiary with the closer personal links with their territory as determined in paragraph[-s] 5 [or 6] of this Article.
8. In the case of a person other than an individual, such as a charity, its closer personal link could be deemed to be with the Member State in which its place of effective management is situated.

CHAPTER III

Taxing rules

Article 5

Immovable property

1. Immovable property or rights thereon (not including any property for which specific provision is otherwise made in this Article) shall be deemed to be situated at ...
2. Immovable property which forms part of the estate of, or of a gift made by, and/or received by a person with personal links with a Member State and which is situated in a state other than the Member State of the closest personal links, may be taxed in that other Member State.
3. The term “immovable property” shall have the meaning that it has under the tax law of the Member State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
4. The provisions of paragraph 2 shall also apply to immovable property of an enterprise and to immovable property used for the performance of professional services or other activities of an independent character.
5. The term “immovable property” shall also include shares, participations and other rights in a company or legal person the assets of which consist, directly or through one or more other companies or legal entities, mainly of immovable property situated in a Member State or of rights encumbering such property. These shares, participations and other rights shall be deemed to be situated in the Member State in which the immovable property is situated.

Article 6

Movable property of a permanent establishment or a fixed base

1. Movable property of an enterprise which forms part of the estate of, or of a gift made by and/or received by a person with personal links with a Member State, which is the business property of a permanent establishment situated in a state other than the Member State of the closest personal links, may be taxed in that other Member State.
2. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
3. The term “permanent establishment” includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;

- d) a factory;
 - e) a workshop; and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
4. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
5. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on for the enterprise any other activity of a preparatory or auxiliary character; or
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
6. Movable property which forms part of the estate of, or of a gift made by, a person with personal links with a Member State, used for the performance of professional services or other activities of an independent character and pertaining to a fixed base situated in a state other than the Member State of the closest personal links, may be taxed in that other State.

Article 7

Other property

Property, wherever situated, which forms part of the estate of, or of a gift made by and/or received by a person with personal links with a Member State, and not dealt with in Articles 5 and 6, shall be taxable only in the Member State of the closest personal links. However, if no tax is applied by this latter State for reasons other than a specific exemption deduction, credit or allowance, the other Member State (or States) is (are) not precluded from applying inheritance tax or tax on gifts on the property concerned on the basis of this Convention, provided that the other States' national tax laws so allow.

Article 8

Deduction of debts

1. Debts shall be deemed to be situated at ...
2. Debts especially secured on any property referred to in Article 5 shall be deducted from the value of that property. Debts, not being especially secured on any property referred to in Article 5, which are represented by the acquisition, conversion, repair or upkeep of any such property, shall be deducted from the value of that property.

3. Subject to the provisions of paragraph 2, debts pertaining to a permanent establishment referred to in paragraph 1 of Article 6, or to a fixed base referred to in paragraph 6 of Article 6, shall be deducted from the value of the permanent establishment or the fixed base as the case may be.
4. Other debts shall be deducted from the value of property to which the provisions of Article 7 apply.
5. If a debt exceeds the value of the property from which it is deductible in a Member State, according to the provisions of paragraphs 2 or 3, the excess shall be deducted from the value of any other property taxable in that State.
6. Any excess still remaining in one Member State after the deductions referred to in paragraphs 3 or 4 shall be deducted from the value of the property liable to tax in the other Member State or Member States.
7. Where the provisions of paragraphs 2 to 6 would oblige one Member State to deduct debts to an extent greater than that provided for under its law, those provisions shall apply only to the extent that the other Member State is not obliged to deduct the same debts under its own law.

CHAPTER IV

Methods for eliminating double taxation

Article 9A

Exemption method

1. The Member State in which the deceased or the beneficiaries had/have closest personal links at the death, or in which the donor or the beneficiary have closest personal links at the time of the gift, shall exempt from tax any property which, in relation to the same event (death or donation) and in accordance with the provisions of this Convention, may be taxed in another Member State (Articles 5 and 6).

It shall also exempt from tax any property which, in relation to a previous gift and in accordance with the provisions of the Convention, may have been taxed in another Member State. It may take the exempted property into account in calculating the amount of tax on any remaining property.

Article 9B

Credit method

1. The Member State in which the deceased or the beneficiaries had/have closest personal links at the death, or in which the donor or the beneficiary has closest personal links at the time of the gift, shall allow as a deduction from the tax calculated according to its law an amount equal to the tax paid in another Member State on any property which, in relation to the same event (death or donation) and in accordance with the provisions of this Convention, may be taxed in another Member State under Articles 5 and 6 of this Convention.

It shall also allow as a deduction from such tax an amount equal to the tax which has been paid in the other Member State on a previous gift in accordance with the provisions of the Convention to the extent that such a deduction has not been allowed under the first section at the time of that gift.

2. The deduction referred to in paragraph 1 shall not, however, exceed that part of the tax of the Member State that shall grant the deduction, as computed before any deduction is made, which is attributable to the property in respect of which the deduction is to be allowed.

CHAPTER V

Special provisions

Article 10

Mutual agreement procedure

Member States shall apply the provisions of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union to resolve disputes arising from the present Convention.

Article 11

Exchange of information

Member States shall apply the provisions of the Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC to exchange information with regard to taxes covered by the present Convention.

Article 12

Assistance in the collection of taxes

Member States shall apply the provisions of the Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures to facilitate the collection of taxes covered by the present Convention.

Article 13

Diplomatic agents and consular officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 14

Territorial scope

The territorial scope of this Convention shall be that defined in Article 52 of the Treaty on the European Union and Article 355 of the Treaty on the Functioning of the European Union.

CHAPTER VI

Final provisions

Article 15

Entry into force

1. This Convention will be ratified by the Member States. The instruments of ratification will be deposited at the office of the Secretary-General of the Council of the European Union.
2. This Convention shall enter into force on the first day of the third month following that in which the instrument of ratification is deposited by the last signatory State to take that step.
3. This Convention shall apply to inheritances of a deceased person or to gifts made on or after ...

Article 16

Termination

1. This Convention can be terminated by a Member State. In such a case, the Convention remains in force for the other Member States.
2. Notwithstanding the provisions of paragraph 1, if the effects of this Convention are substantially altered as a result of changes made in the tax law of a Member State, the Member State concerned may, through diplomatic channels, give a written notice of termination with effect not earlier than a period of six (6) months after such notice is given. In such an event, its provisions shall not apply to estates of persons who die or to gifts made on or after the effective date of the termination
3. The Convention shall continue to apply in respect of the estate of any individual who has died before the end of that period and in respect of any event (other than death) occurring before the end of that period and giving rise to liability to tax under the laws of the Member States.

Appendix III: Proposal for an amendment to the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union

In this appendix, I present the amendments to the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union as suggested in section 7.1.4.2 of this study. The amendments are marked in italics. The text of the preamble to the proposal is not included. The appendix includes only the articles of the Council Directive (EU) 2017/1852 that need to be adjusted.

Proposal for an amendment to the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

.

.

(7) The improved dispute resolution mechanism should build on existing systems in the Union, including the Union Arbitration Convention. However, the scope of this Directive should be wider than that of the Union Arbitration Convention, which is limited to disputes over transfer pricing and the attribution of profits to permanent establishments. This Directive should apply to all taxpayers that are subject to taxes

on income and capital *or estate, inheritance or gift* covered by bilateral tax treaties and the Union Arbitration Convention. At the same time, individuals, micro, small and medium-sized enterprises should have less of an administrative burden when using the dispute resolution procedure. In addition, the dispute resolution phase should be strengthened. In particular, it is necessary to provide for a time limit for the duration of the procedures to resolve double taxation disputes and to establish the terms and conditions of the dispute resolution procedure for the taxpayers.

Article 1

Subject matter and scope

This Directive lays down rules on a mechanism to resolve disputes between Member States when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital *as well as of estates, inheritances and gifts*. It also lays down the rights and obligations of the affected persons when such disputes arise. For the purposes of this Directive, the matter giving rise to such disputes is referred to as a ‘question in dispute’.

Article 2

Definitions

1. For the purposes of this Directive, the following definitions apply:

....

- c) “double taxation” means the imposition by two or more Member States of taxes covered by an agreement or convention referred to in Article 1 in respect of the same taxable income or capital *or estate, inheritance or gift* when it gives rise to either: (i) an additional tax charge; (ii) an increase in tax liabilities; or (iii) the cancellation or reduction of losses that could be used to offset taxable profits;

Article 3

Complaint

.
. .
.

3. The complaint shall only be accepted if, as a first step, the affected person making the complaint provides the competent authorities of each of the Member States concerned with the following information:

- .
- .
- c) details of the relevant facts and circumstances of the case (including details of structure of the transaction and of the relationship between the affected person and the other parties to the relevant transactions, as well as any facts determined in good faith in a mutual binding agreement between the affected person and the tax administration, where applicable) and more specifically, the nature and the date of the actions giving rise to the question in dispute (including, where applicable, details of same income received *or same estate, inheritance or gift* in the other Member State and of inclusion of such *income or estate, inheritance or gift* in the taxable base of the other Member State, and details of the tax charged or that will be charged in relation to such income, *estate, inheritance or gift* in the other Member State), as well as the related amounts in the currencies of the Member States concerned, with a copy of any supporting documents;
- .

Article 16

Interaction with national proceedings and derogations

- .
- .
- 6. By way of derogation from Article 6, a Member State concerned may deny access to the dispute resolution procedure under that Article in cases where penalties were imposed in that Member State in relation to the adjusted income or capital *or estate, inheritance or gift* for tax fraud, wilful default and gross negligence. Where judicial or administrative proceedings were commenced that could potentially lead to such penalties, and these proceedings are being conducted simultaneously with any of the proceedings referred to in this Directive, a competent authority may stay the proceedings under this Directive as from the date of acceptance of the complaint until the date of the final outcome of those proceedings.

Article 23

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply to any complaint submitted from *[date]* onwards relating to questions of dispute *relating to estate, inheritance or gift commencing on or after [date]*. Competent authorities of Member States concerned may however agree to apply this Directive with regard to any complaint that was submitted prior to that day or to earlier tax years.

Appendix IV: Proposal for Council Directive implementing the “one inheritance – one inheritance tax” concept

In this appendix, I present a proposal for Council Directive introducing the “one inheritance – one inheritance tax” concept as suggested in chapter 8 of this study. The text of the preamble to the proposal is not included. Optional provisions are included in brackets.

Proposal for Council Directive introducing the “one inheritance – one inheritance tax” concept

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

[preamble]

Title I

GENERAL PROVISIONS

Article 1

General Objective

This Directive lays down rules on:

- the avoidance of double or multiple taxation of cross-border inheritances and donations,
- the avoidance of the discrimination problem of cross-border inheritances and donations,
- the addressing of the administrative difficulties of cross-border inheritances and donations.

Article 2

Cross-border inheritances and donations

1. This Directive applies to cross-border inheritances where the deceased has been habitually resident at the time of his death in a Member State and not all constituent elements of such an inheritance are confined within that EU Member State. This Directive applies to cross-border donations where the donor has been habitually resident at the time of the donation in a Member State and not all constituent elements of such a donation are confined within that Member State. The Directive does not apply if the deceased or the donor has been habitually resident outside the EU.
2. An inheritance is a transfer to one or more persons of assets (whether they are inheritance of money, immovable property or movable property) which transfer falls under heading XI of Annex I to Directive 88/361 of 24 June 1988 for the implementation of Article 67 of the Treaty establishing the European Economic Community. A donation is a transfer to one or more persons of assets (whether they are gifts of money, immovable property or movable property) left by a person which donation falls under heading XI of Annex I to Directive 88/361 of 24 June 1988 for the implementation of Article 67 of the Treaty establishing the European Economic Community.

Article 3

Taxes covered

1. This Directive applies to any type of death tax and tax on gifts levied by a Member State.
2. Death tax means any tax levied at national, federal, regional, or local level upon death, irrespective of the name of the tax, of the manner in which the tax is levied and of the person to whom the tax is applied, including in particular estate tax, inheritance tax, transfer tax, transfer duty, stamp duty, income and capital gains tax.
3. Tax on gifts means any *inter vivos* tax levied at national, federal, regional, or local level, irrespective of the name of the tax, of the manner in which the tax is levied and of the person to whom the tax is applied, including in particular gift tax and taxes on gifts.

Title II

DETERMINATION OF THE APPLICABLE TAX LEGISLATION

Article 4

Single taxation

1. Inheritances and gifts to which this Directive applies shall be subject to the legislation of a single Member State.
2. The Member State of the deceased's or donor's habitual residence is the only Member State that is entitled to tax the cross-border inheritance or donation. Any other Member State, even a situs state, is precluded from taxing (parts of) the cross-border inheritance or donation. The previous section does not apply if the Member State of the deceased's or donor's habitual residence does not exercise its taxing rights (because of a specific exemption, deduction, credit or allowance) or does not levy death taxes or taxes on gifts [*and an abusive element is present*].
3. The Member State of the deceased's or donor's habitual residence applies its domestic death and gift tax laws to the cross-border inheritance or donation.

Article 5

Non-discrimination clause

The Member State of the deceased's or donor's habitual residence applies its domestic legislation in a non-discriminatory fashion in line with the CJ case law.

Article 6

Role of the Commission

1. The Commission monitors the application of the present Directive in the Member States.
2. Member States shall communicate to the Commission their domestic death tax and taxes on gift legislation three months after the transposition of the present Directive into the Member States' national laws. The Commission undertakes the task to prepare a survey for the purpose of reviewing the possible discriminatory elements of Member States' domestic death tax and taxes on gift legislation.

Article 7

Review

By ..., the Commission shall evaluate the implementation of this Directive and the discriminatory elements of Member States' domestic death tax and taxes on gift legislation and shall present a report to the Council. That report shall, if appropriate, be accompanied by a legislative proposal.

Title III

FINAL PROVISIONS

Article 8

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... at the latest. They shall forthwith communicate to the Commission the text thereof.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 9

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union and shall apply to cases where the death/donation took place after [date].

Article 10

Addressees

This Directive is addressed to the Member States.

Done at...,