

Tax Newsletter

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Donating a “family business” anno 2026

- In Flanders (the shares of) a ‘family business’ (“FamCo”) can be donated by notary deed at 0% gift tax (art. 2.8.6.0.3 VCF). If so, no inheritance tax is due anymore afterwards. If FamCo is being inherited, reduced inheritance tax of 3% (direct line, married couple or cohabiting partners) or of 7% (other persons) is due (art. 2.7.4.2.2. VCF).
- The person making the gift or having passed way must have personally exploited FamCo. He must have been holding at least 50% of the FamCo shares (incl. voting rights) in full legal ownership, or the shares of a pure holding company possessing at least 30% of an active FamCo. In case of joint-ventures, special shareholding conditions apply.
- FamCo must be an ‘active’ business residing in the EEA. However, the conditions that it cannot possess real estate exceeding 50% of its B/S total and that its salary costs must exceed 1,5% of its B/S total have been withdrawn.
- Amongst others due to the so-called butchers court case (Ghent Court of Appeal dated 01.06.2021 and Constitutional Court dated 23.03.2023) this attractive tax regime no longer applies to the extent that FamCo has ‘residential real estate’ (i.e. real estate destined for private dwelling), incl. pieces of land, on B/S. This exclusion also applies if FamCo holds at least 10% of a residential real estate company. Based on the report of an accountant or an auditor (other than the company’s statutory auditor), it will be determined what part of the donation or heritage is subject to standard gift tax or inheritance tax.
- However, if at least 75% of FamCo’s turnover consists of income derived from the commercialization (e.g. rent) of residential real estate and if, during the last 3 years, FamCo has been employing at least 1 full-time equivalent (and will also do so the coming 3 years), the favorable tax regime applies after all. Indeed, FamCo will thus create sufficient social added-value. Companies that are currently earning both residential rental income and other income may therefore consider a spin-off?
- At Vlabel, a tax certificate confirming that all conditions are satisfied can be requested.
- During 3 years after the donation, FamCo must continue to qualify as active family business in the EEA and must continue to duly file its annual accounts. FamCo may neither proceed to a capital reduction. Hence, be careful if you consider a partial spin-off (ruling decision 16048 dated 17.10.2016).