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Questions and Answers

Belgian Senate

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Questions asked by Senators and answers given by the Ministers (Fr.): Questions asked in French - (N.): Questions asked in Dutch  
Minister of Finance

**Question n° 1231 asked by Mr De Grauwe on 29 March 2001 (N.):  
Non-residents. Death duties (droits de succession).**

Article 3 of the Income Tax Code 1993 provides that inhabitants of Belgium are liable for personal income tax and gives a list of persons who fall under this definition.

Furthermore, by virtue of Article 227 of the same code, non-residents are subject to taxation of non-residents.

Certain foreign managers, specialists and administrators vested with effective and stable duties as well as researchers are subject to a particular system of taxation (ndlr: the so-called special tax status). To be able to benefit from this taxation system, it must be established that the personnel member concerned is a non-resident and that his or her secondment or employment in Belgium is temporary. Both the personal situation of the foreign agent and the nature of the function carried out will be decisive in this respect. The special taxation system is applicable for an unspecified period, for as long as the occupational activity carried out remains temporary.

I should like to learn from the honourable minister himself whether, in the event that a foreign manager subject to the special taxation system and therefore considered as a non-resident were to die in Belgium, he or she would be considered as a non-resident for the calculation of succession duties (droits de succession).

In such a case, his or her estate would actually be liable not for succession duties (droits de succession), but for legacy taxes (inheritance taxes = droits de mutation par décès).

**Answer** : To answer the question as to whether the deceased must be considered as an inhabitant of the Kingdom for the collection of succession duties (droits de succession) a number of elements on the day the death occurred must be taken into account.

This assessment entails having to check **where the deceased had established his real, effective and continuous domicile, where his family was, his centre of activity, the seat of his business and his occupations.**

Although the situation as regards personal income tax (which does only take into account of the professional situation of the party concerned) can play a role, the criteria for succession duties (droits de succession) are more extensive, as the effective domicile of the deceased is deduced from a certain number of elements (which pertain also to the professional, administrative, financial, fiscal and family situation of the party concerned).

The fact that the deceased, as a foreign manager, was subject to a special taxation system as regards personal income tax, does not mean that he or she can be considered as a non-resident in Belgium as regards the succession duties (droits de succession) on the basis of this criterion alone.

(emphasis added)