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INHERITANCE AND GIFT TAXATION OF AGRICULTURAL PROPERTY: A EURO-AMERICAN COMPARISON

by D.L. UCHTMANN, C. KANEEN, and H.D. GUITHER*

INTRODUCTION

In recent years farmers in the United States have expressed concern about the impact of federal estate and gift taxes on transfers of agricultural property. The Tax Reform Act of 1976¹ has made significant changes in estate and gift taxation for farmers and landowners. Some of these changes, such as the establishment of carryover basis² and a unified estate and gift tax structure, pose new obstacles to the attempt to keep farm assets within the farm family. Others, such as the provisions for delayed tax payments and for actual use valuation of agricultural property, could help the farmer keep his estate intact. Many of the recent alterations are already established features of various western European tax structures. Unified death and inter vivos gift taxation, arrangements for delayed payments and relief for agricultural estates, often in the form of lower valuation, are all common features. An investigation of the European farmer's experience with taxation on transfers of agricultural property is, therefore, of particular interest at this time.

This article will compare and discuss death and gift taxation of agricultural landowners in France, the Federal Republic of Germany (West Germany), Ireland, the Netherlands, the United Kingdom, and the United States. First, the transfer tax systems currently in use in each of the five European countries will be briefly outlined. Second, the article will point out exemptions and other special relief available to the farm landowner and the testator or donor who wishes to transfer property within his immediate

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1. Pub. L. No. 94-455, 90 Stat. 1520; see generally Uchtmann, *Planning Agricultural Estates: The Impact of Estate and Gift Tax Sections of the 1976 Tax Reform Act*, 1977 S. Ill. U.L.J. 393.

2. Under the 1976 rule on heir's basis in inherited property generally became equal to the decedent's basis in the property plus an upward adjustment for a part of the estate and inheritance taxes paid on the property. I.R.C. § 1023 as amended by Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520. Recent legislation has extended the effective date of "carryover basis" to December 31, 1979. Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2763.

family. Next, the discussion will address the role of property transfer taxation in estate planning, noting both the legal constraints on giving and the practiced or customary considerations that shape the plans of European farm owners. Finally, the article will conclude with a short presentation of current critical reaction to and projects for reform of European taxation of transfers of agricultural property.

OVERVIEW OF DEATH AND GIFT TAXATION

Despite considerable variation in detail of method, the five European death and gift tax systems studied show several common features. For example, all share the common purpose of taxing all transfers of property that are not made for full consideration in which the transferee becomes beneficially entitled in possession.³ Thus, just as in the United States, the scope of the taxes exceeds the traditional definitions of inheritances or testamentary and inter vivos gifts.⁴ Other common features generally include progressive rate structures, similar maximum tax burdens, and unified taxation of death and lifetime gifts. Additionally, all five systems exhibit an awareness of the problems of the agricultural landowner who wishes to transfer property to members of his or her family. The scope and nature of relief provided for these problems vary considerably. The Netherlands provides relatively little specific relief for transfers of agricultural property, and offers only limited exemptions from taxation, but has remarkably low tax rates on transfers within the immediate family. The United Kingdom, on the other hand, imposes the highest tax rates in Western Europe, but specifically provides for reduced valuation of owner occupied agricultural property and grants unlimited exemption for transfers between spouses.⁵ France most closely resembles the Netherlands in its approach, while Ireland and West Germany are closer to the British pattern of broad reliefs.

A preliminary examination of methods of taxation creates the temptation to explain differences in approach in terms of common law or civil law traditions. For example, the United Kingdom has traditionally imposed an estate tax on transfers of property at death, taxing the total amount of property passing to new ownership on an individual's death, and without regard to the identity of the beneficiary.⁶ The new British Capital Transfer Tax⁷ that was

3. See, e.g., Capital Acquisitions Tax Act (Ireland) 1976, § 5 *Acts of the Oireachtas* (1976) [hereinafter cited as Irish Tax Act 1976]; Capital Transfer Tax, Finance Act, 1975, § 20 [hereinafter cited as British Tax Act 1975].

4. See, e.g., HARVARD LAW SCHOOL, WORLD TAX SERIES—GERMANY (CCH) (1978), ¶ 4/2.3a [hereinafter cited as W.T.S.—GER.].

5. British Tax Act 1975, *supra* note 3, sched. 6, pt. 1, § 35 and sched. 8, pt. 1.

6. Estate duty was imposed by the Finance Act, 1894, 57 & 58 Vict. c. 30, § 1. The earliest death duty, which also taxes the entire estate rather than each beneficiary's share, dates back to 1694. Probate Duty Act, 1694, 5 and 6 W. & M., c. 21.

7. British Tax Act 1975, *supra* note 3.

passed in 1975 retains this basic orientation, imposing a cumulative tax on the total amount of property transferred by an individual throughout his lifetime and at his death. In contrast, the continental countries of France, West Germany, and the Netherlands impose inheritance taxes calculated on the amount received by each beneficiary sharing in a decedent's estate, regardless of the total value of the estate.⁸ Ireland, however, shares common law tradition and yet imposes an inheritance tax.⁹ France, despite its strong civil law heritage, imposed both estate and inheritance taxes prior to reform in 1959.¹⁰ All other differences, with the possible exception of degrees of testamentary freedom, stubbornly refuse to fit the civil law—common law dichotomy. In general, however, the British system often seems the most similar to the United States federal system. Common origins, perhaps, have led to similar evolutions.

With these general observations in mind, attention can now be directed to specific provisions of the tax codes, such as a comparison of maximum tax rates. The United Kingdom has the highest maximum rate, taxing at a seventy-five percent rate on transfers of over £2,010,000 or \$4,020,000.¹¹ Although the West German maximum rate is at seventy percent it is not imposed until transfers reach the DM 100,000,000 or \$50,000,000 level.¹² The United States also has a maximum estate tax rate of seventy percent which applies to taxable estates exceeding five million dollars.¹³ Maximum tax rates are slightly lower in Ireland, at sixty percent on 93,000 Pounds or \$186,000¹⁴ and France, at sixty percent on all transfers of any value to persons not related to the testator.¹⁵ Rates are lowest of all in the Netherlands, where the maximum reaches fifty-four percent on 500,000 Dutch Guilders or \$250,000.¹⁶

The difference between the United Kingdom's maximum tax rate and the other countries' maximum tax rates is even greater than shown by this simple comparison. The British seventy-five percent rate applies to all transfers, with the exception of transfers to a spouse, regardless of the identity of the transferor or the recipient of his generosity. The United States has a similar system. In

8. CODE GENERAL DES IMPOTS, art. 777 (1977) [hereinafter C.G.I.]; Inheritance Tax Law (ErbStG), BGBl 1974 I. 933-47, as cited in W.T.S.—GER., *supra* note 4, ¶ 4/2.1; Doedens, *J.J. Schematisch Overzicht van de Nederlandse Belastingen* (Overview of Dutch Taxes) (1976).

9. Irish Tax Act 1976, *supra* note 3, § 10.

10. M. Norr & P. Kerlan, *Taxation in France, printed in HARVARD LAW SCHOOL, WORLD TAX SERIES—FRANCE*, ¶ 3/2.1, (1966) [hereinafter cited as W.T.S.—FRANCE].

11. British Tax Act 1975, *supra* note 3, § 37, First and Second Tables, as amended by the Finance Act, 1978. See Table 10 in appendix. Conversion rates have been approximated for improved readability.

12. Inheritance Tax Law (ErbStG), §§ 15 & 19, BGBl 1974 I. 939-40. See Table 6 in appendix.

13. I.R.C. § 2001(c).

14. Irish Tax Act 1976, *supra* note 3, Second Schedule, pt. II, Tables I-IV. See Table 7 in appendix.

15. C.G.I., *supra* note 8, art. 777, Tables I-III. See Table 5 in appendix.

16. Successiewet 1956, art. 24, *Fiscale Wetten*. See Table 9 in appendix.

the other countries, however, inheritance tax rules establish classes of beneficiaries which are taxed at differing rates. In general, tax rates rise as the relationship between the decedent or donor and the recipient of his property becomes more remote. Maximum rates on transfers to members of the first class, usually spouses or children, can be quite low: seventeen percent on non-exempt transfers of \$250,000 and up in the Netherlands, twenty percent on non-exempt transfers of \$40,000 and up in France, thirty-five percent on non-exempt transfers of \$50,000,000 and up in West Germany, and fifty percent on non-exempt transfers of \$500,000 and up in Ireland.¹⁷ The establishment of these classes favors transfers within the immediate family. See Table 1 for a comparison of tax rates and a description of the death tax system in the various countries.

Other features of the tax systems have less direct impact on the maximum tax burden. The degree of unification of death and gift taxation, for example, can affect the tax burden, relieving it when lower rates on inter vivos giving are in effect. In the United States, Germany, and the Netherlands death and inter vivos transfer taxes have identical tax rate structures.¹⁸ In France only two exceptions exist. Lower rates are assessed for inter vivos transfers to children or grandchildren made on occasion of the beneficiary's marriage or given as an advance on the beneficiary's statutory share in the donor's estate.¹⁹ Somewhat ironically, the greatest differences between inter vivos and death tax rates exist in the United Kingdom and Ireland, where the two taxes are the most formally integrated. Recent legislation in both countries has consolidated the two taxes under one name and one set of rules. The 1975 British Capital Transfer Tax, however, taxes inter vivos transfers at one-half the estate transfer rate on transfers up to the £110,000 or \$220,000 level.²⁰ Above this level the difference diminishes until the rates become identical at sixty percent on £310,000 or \$620,000. Gifts made within three years of the donor's death are considered transfers on death. If the donor or donee has paid tax at gift rates, the payment will be credited against the amount of tax now owing at death.²¹ The 1976 Irish Capital Acquisitions Tax reduces all taxation of inter vivos gifts to seventy-five percent of the inheritance tax level.²² Much like the British system, gifts

17. See Tables 5-11 in appendix.

18. I.R.C. § 2502(a); W.T.S.—GER., *supra* note 4, ¶ 4/2.1; *Doedens, supra* note 8, § 1-5a, 5b.

19. C.G.I., *supra* note 8, art. 777, Table II art. 790.

20. British Tax Act 1975, *supra* note 3, § 37, First and Second Tables. See Table 10 in appendix.

21. *Id.*, §§ 23(1), 37, sched. 4.

22. Irish Tax Act 1976, *supra* note 3, Second Schedule, pt. I, ¶ 6.

TABLE 1.
Nature of Death Tax and Comparison of Maximum Rates

	France	W. Germany	Ireland	Netherlands	United Kingdom	United States
Nature of Death Tax	Inheritance	Inheritance	Inheritance	Inheritance	Estate	Estate
Maximum Possible Rate	60%	70%	60%	54%	75%	70%
Maximum Rate Applying to Transfers Within Immediate Family ^a	20%	35%	50%	17%	75% ^b	70% ^c

^a Surviving spouse and/or children of decedent unless otherwise noted.

^b Transfers to a spouse are completely exempt from the Capital Transfer Tax.

^c Transfers to a spouse are exempt to the extent such transfers do not exceed the greater of \$250,000 or one-half the adjusted gross estate.

within two years of death are taxed as gifts on death.²³ The United States now diverges from its fellow common law countries on this particular, and applies exactly the same rates to lifetime and death giving.²⁴ Nonetheless, all three countries still allow some savings on inter vivos giving, in the form of annual small gift exemptions.²⁵

Whether transfers are cumulated for purposes of determining the gift and death taxes is important in comparing the tax systems. For example, the United States had a dual system for taxing gifts and estates prior to the Tax Reform Act of 1976. Under that system a taxpayer could utilize the initially low rates of the gift tax rate schedule and also use the initially low rates of the estate tax rate schedule. In effect, the taxpayer could start at zero twice. Under the unified system currently in effect, the taxpayer can start at zero only once. Lifetime taxable transfers and taxable transfers at death are cumulated for purposes of determining death tax liability, a significant feature where the rate schedule is progressive.²⁶

All five European countries have different methods for cumulating property transfers. France has the least complicated system, adding all transfers from a particular decedent to each of his beneficiaries at the time of the decedent's death.²⁷ Any inter vivos transfers are considered part of the beneficiary's share in the estate. Tax is assessed on the total value of each share. The beneficiary may claim credit for any tax paid on inter vivos gifts received from the decedent.²⁸

The British and Irish tax laws also require cumulation of death and inter vivos transfers. In the United Kingdom each transferor must cumulate the value of all taxable transfers,²⁹ just like his counterpart in the United States. In Ireland each transferee must keep track of all gifts received from a particular donor or decedent,³⁰ as is required in France. Additionally, both the British and Irish systems interject an extra liability that complicates tax computation and increases tax burdens. If the transferor pays the tax due on the transfer, he is deemed to make a gift of that value to the beneficiary. The additional gift must be "grossed up" or included in the cumulative totals of gifts received or given.³¹

23. *Id.*, §§ 3 & 42.

24. I.R.C. § 2502(a).

25. The United States allows \$3,000 per donee per year. I.R.C. § 2503(b). Ireland allows £250 (\$500) per donee per year. Irish Tax Act 1976, *supra* note 3, § 54. The United Kingdom allows £100 (\$200) per donee up to a total of £1,000 (\$2,000). British Tax Act 1975, *supra* note 3, sched. 6, §§ 2 & 4.

26. See Tables 5-11 in appendix.

27. C.G.I., *supra* note 8, art. 784.

28. *Id.*

29. British Tax Act 1975, *supra* note 3, § 37.

30. Revenue Commissioners, *Notes on Capital Acquisitions Tax*, booklet C.A.1, No. 1, (1976) [hereinafter cited as *Notes—C.A.1*].

31. Maudsley, *The British Capital Transfer Tax*, 13 SAN DIEGO L. REV. 779, 785-87 (1976); *Notes—C.A.1*, at 16. An example can best illustrate the computation. If an Irish donor makes a first inter vivos gift valued at £20,000 to his nephew, he will have made a taxable transfer of £19,750 after subtracting the £250 yearly small gift exemption. A tentative tax of £1,162.50 would be due, using the rates applicable to Class III beneficiaries. Only 75% of this amount

The West German system is fairly uncomplicated, but cumulates successive transfers to a particular beneficiary *only for ten-year periods*.³² The value of prior transfers is added to the value of the most recent transfer, and a tentative tax is computed on the total. This tentative tax may be reduced by the amount of tax paid on all prior transfers. In addition, in order to prevent the taxpayer from owing tax exceeding the value of the latest property he received, the total tax payable is limited to seventy-five percent of the value of the most recent transfer.³³ At the end of each ten-year period (calculated from the date of the first gift) the beneficiary starts over. He is entitled to an additional tax free amount (*e.g.*, \$125,000 for transfers to a spouse) and utilizes the lowest tax rates above the tax free amount.

In the Netherlands the gift and estate tax systems are less formally integrated. Generally, lifetime gifts to a particular transferee are not cumulated with death transfers to that transferee in determining inheritance tax rates.³⁴ In fact, inter vivos transfers to a particular transferee are not even cumulated over the lifetime of the donor. For gifts from parents to children the cumulation occurs on a calendar year basis, *i.e.*, the gifts from parents to children start at zero each calendar year.³⁵ For gifts other than from parent to child, inter vivos transfers are cumulated during two successive calendar years, *i.e.*, the gifts between such persons start at zero every second calendar year.³⁶ Table 2 summarizes the relationship between gift and death tax rates, and the method of cumulation to determine the tax rate.

need be paid because the transfer was an inter vivos gift. The reduction results in a tax payable of £871.88. If the donor pays this sum, he would be taxed again in the following manner:

Cumulative gifts from same donor to same donee 19,750 + 871.88	=	£20,621.88
Tax rate on transfers up to 2800	=	15%
Tax on latest gift 871.88 × 15%	=	£130.78
Gift Tax Reduction 130.78 × 75%	=	98.08

If the transferor paid this sum also, a further tax of £11 would be due and payable. The £98.08 and the £11 would also both become part of the lifetime total of gifts to the nephew. The donor could avoid these two additional liabilities by having the donee pay the original £871.88 of tax due. This option is also available in the United Kingdom.

32. W.T.S.—GER., *supra* note 4, ¶ 4/2.5e.

33. *Id.*

34. Interviews with C.P.A. Geppaart, Professor of Law, and C. Langereis, Asst. Professor, Fiscal Institute, School of Law and Economics, Tilburg; and Mr. A. Jolink, Directeur, and Mr. A. Nolles, Assistant Federatie-belastingconsulent, Accountant-administratieconsulent in Leeuwarden, Netherlands (July 3, 1978) [hereinafter cited as Dutch interviews]. Gifts within 180 days of the donor's death are included in the donor's estate. Letter from Dr. G. J. M. Vlak, Centrale Rabobank, Utrecht, Netherlands to D. L. Uchtmann on June 6, 1978.

35. *Id.*

36. *Id.*

TABLE 2.
 Gift Tax Rates Compared to Death Tax Rates and Method of
 Cumulating Transfers Under Progressive Rate Schedule

Country	Gift Tax Rates Compared to Death Tax Rates	Method of Cumulation to Determine Tax Rate
France	Identical ^a	Taxable inter vivos and death transfers to particular transferee cumulated
W. Germany	Identical	Taxable inter vivos and death transfers to particular transferee cumulated for ten year periods only
Ireland	Gift tax rates 75% of inheritance tax rates	Taxable inter vivos and death transfers to particular transferee cumulated
Netherlands	Identical	Taxable inter vivos transfers to child cumulated for one calendar year only; gifts to others cumulated for two calendar years only; death transfer to particular transferee cumulated separately
United Kingdom	Gift tax rates 50% of death tax rates for first \$220,000 ^b	All taxable inter vivos and death transfers of transferor are cumulated
United States	Identical	All taxable inter vivos and death transfers of transferor are cumulated

^a Exceptions: Lower rates for wedding gifts to children or grandchildren and for a *donation partage*, i.e., advances on the beneficiary's statutory share of the donor's estate.

^b Thereafter the difference diminishes until the rates become identical at \$620,000 assuming an exchange rate of £1 = \$2.00.

In summary, all of the European countries surveyed promote transfers of property within the immediate family. Most of the systems also made inter vivos giving slightly more economical than transferring property at death. Even if an agricultural landowner used these built-in biases to achieve the lowest possible tax due, the rate schedules and cumulation provisions could create potentially severe tax burdens, with taxes mounting high enough to make transfers of agricultural property difficult without special financing. The next section will discuss measures incorporated into the various tax laws to relieve the burden on the agricultural family.

SPECIAL PROVISIONS FOR THE TRANSFER OF AGRICULTURAL PROPERTY WITHIN THE FAMILY

Each of the five countries in this study provide some relief from the tax burden on transfers of qualifying agricultural property for less than full consideration, although in the Netherlands

the relief is more *de facto* than *de jure*.³⁷ The tax codes of France, West Germany, Ireland and the United Kingdom contain provisions similar to measures incorporated into United States tax law by the Tax Reform Act of 1976. In addition, the European and United States tax codes typically grant generous exemptions for transfers to surviving spouses that can reduce tax burdens on intra family transfers. A few countries also provide various other exemptions that can benefit the farm-owning family. Again, the availability and scope of relief varies from country to country.

Special Valuation

Special methods for valuing agricultural property are reliefs specifically developed for agricultural landowners in four of the five countries. Each of these four countries has established its own set of qualifications for the exemption and its own method of computing value. Estimating the farm's yield or rental value, or reducing fair market value by a fixed percentage produces property values substantially below the fair market value level.

France provides the least relief, not because the reduction in value is slight, but because the scope of the relief is so narrow. An exemption from taxes of seventy-five percent of fair market value is allowed in two instances: on first inter vivos or death transfers of agricultural property held by qualifying "agricultural land groups"³⁸ or on land that has been leased for a term of at least eighteen years.³⁹ The "agricultural land groups" loosely resemble American partnerships that are established to create or conserve farms by assuring or facilitating management of the farms to which they hold title.⁴⁰ Statutes limit the maximum surface area each partnership can hold, establishing a separate limit for each agricultural region.⁴¹ Groups whose capital contributions consist

37. Rents for agricultural land are controlled in the Netherlands and a tenant has a very long, secure tenure on the land. The combination of low controlled rents and long tenure of a tenant results in a differential between the values of free land and land subject to a lease. The value of the leased land is approximately 50% to 70% of the value of free land. A parent can effectively reduce the value of his land by leasing the property to a farming heir. As a practical matter, the lower leased value has been accepted by revenue authorities even where a lease was not present, provided the inheriting descendant was active in the enterprise during the decedent's lifetime. Dutch interviews, *supra* note 34; interview with Dr. M. van der Heijde, Counsellor to the Ministers of Agriculture and Finance, the Netherlands, conducted during the "Workshop on Agricultural Finance and Taxation in the EEC," (June 13-16, 1978) at Wye College, University of London [hereinafter cited as Dr. van der Heijde interview]; letter from Dr. G. J. M. Vlæk, *supra* note 34.

38. C.G.I., *supra* note 8, art. 793, § 4.

39. CODE RURAL, art. 870-25 (1978); interviews with Maitre Dominique Fortier, Notaire, in Creully, France, Maitre Louis de Lauriston, Federation Nationale de la Propriete Agricole, in Paris, Maitre Dominique Ader, Notaire, in Paris, and Maitre Michel Pouthas, Administrateur, Conseil Superieur De Notariat, in Paris (June 21-23, 1978) [hereinafter cited as French interviews].

40. Agricultural Land groups are described in two virtually identical statutes. Law No. 62-933 of 8 Aug. 1962, *Journal Officiel de la Republique Francaise* [hereinafter cited as *J.O.*], 1962, and Law No. 70-1299 of 31 Dec. 1970, *J.O.* 1971.

41. *Id.*

of more than thirty percent cash are further required to put all agricultural property on long-term lease rather than actually exploit the property themselves. Groups composed entirely of relatives up to the fourth degree of kinship are exempt from the lease requirements even though cash contributions exceed the thirty percent level. The reduction in valuation for inheritance and gift tax, however, applies only to groups (including family groups) whose by-laws prohibit direct exploitation of the property and whose land has actually been leased⁴² under long term leases of at least eighteen years.⁴³ The statute authorizing agricultural land groups exhibits a highly protective attitude toward family owned groups, exempting them from several other burdensome requirements.⁴⁴ The inheritance and gift tax code reveals the same bias in its low tax rates on transfers to family members.⁴⁵ It is interesting to note, however, that the seventy-five percent reduction in value authorized under French law seems more designed to benefit the farm tenant by encouraging long term leases than to benefit the landowner. This approach is in sharp contrast to the special valuation provisions of other European countries.

German tax law provides more widely available relief. Special valuation is not a feature of inheritance and gift tax law specifically but is included in the general law of valuation used in the computation of all taxes.⁴⁶ For valuation purposes property is divided into four major classifications—agricultural property, real property, business property, and other property.⁴⁷ The assessed value of an agricultural establishment consists of two components, operating properties and residential properties. Generally, the operating properties (*e.g.*, land, farm buildings, equipment, livestock, and normal current inventory) are appraised on the basis of the net profit of a farm utilizing similar assets under normal conditions.⁴⁸ The net profit is discounted at five and one-half percent to give an assessed value equal to eighteen times the amount of normal net profit.⁴⁹ The residential component is computed according to the rules applicable to rental properties, with some modifications.⁵⁰ The sum of the combined components is the uniform value for the unit, terms *Einheitswert*.

42. C.G.I., *supra* note 8, art. 793, § 4.

43. CODE RURAL, art. 870-25 (1978).

44. For example, simplified dissolution procedures are available for groups composed entirely of family members at the time of dissolution. Law No. 70-1299 of 31 Dec. 1970, art. 7, *J.O.*, *supra* note 40, 1971. Contributions to family groups are also exempted from the Treasury Department's right of preemption (exercisable when the sale price of property is too far below market value). *Id.* art. 4.

45. Rates on transfers to spouses and relatives in the decedent's direct line range from 5% only to 20%. Transfers to unrelated persons are taxed at a flat rate of 60%. C.G.I., *supra* note 8, art. 777. *See also*, Table 5 in appendix.

46. Bew G, 1974, § 19 *et seq.*, cited in W.T.S.—GER., *supra* note 4, ¶ 14/1.1c.

47. *Id.*

48. *Id.* at ¶ 14/4.3.

49. *Id.*

50. *Id.*

In general, the *Einheitswert* of agricultural and forest land is considerably below actual transaction prices, approximating fifty percent of the market value.⁵¹ In actual practice, most farms are valued by means of a complicated comparison with both hypothetical model farms with optimum yield and actual representative regional farms. The model farm yield is assigned an index figure of 100. The farm to be valued is compared to the model and assigned a lower index figure reflecting actual conditions. To insure accuracy, the farm's index figure is compared to figures for chosen representative farms of the same region, and may be adjusted upward or downward. The index figure is then used as a percentage to multiply the statutorily assigned value per hectare.⁵² Values are assigned for each type of crop or agricultural use.⁵³

The agricultural relief provisions of the British Capital Transfer Tax reduce market value by fifty percent up to a limit of £250,000 (\$500,000) or 1,000 acres, whichever is greater.⁵⁴ The relief is also more widely available with working farmers, directors of companies engaged in farming, and full time students (*e.g.*, farmer's child) all potentially eligible. To qualify, the transferor must fulfill activity and occupation requirements. To satisfy the activity requirement, the transferor must demonstrate that in at least five of the seven years preceding the transfer, he was wholly or mainly engaged in any combination of the following activities: carrying on farming as a trade either as a sole proprietor or in partnership, working on another's farm, directing a company carrying on farming as its main activity, or studying full time.⁵⁵ "Wholly or mainly engaged" requirements will be deemed satisfied if seventy-five percent of the transferor's income for the same time period is derived from agricultural activities,⁵⁶ or if, in fact, he is wholly or mainly engaged in agriculture. To satisfy the occupation requirement, the transferor must show that he occupied the transferred property for agricultural purposes for two years immediately preceding the transfer.⁵⁷ Occupation by a family member is valid if the transferor can show that he himself occupied the property at some time prior to the transfer and that the family member then

51. Interviews with Dr. Horst Winkler, Institut für Landwirtschaftsrecht der Universität Göttingen, in Göttingen, Dr. Dr. H.C. Tassilo Troescher, Staatsminister A.D., Dr. E. Pabsch, Professor of Agricultural Law, University of Bonn, Dr. H. Breuers, Professor of Agricultural Law, University of Giessen, in Wiesbaden (June 26-28, 1978) [hereinafter cited as German interviews]; interview with Rudiger Parsche, IFO—Institut für Wirtschaftsforschung, Munich, at Wye College, University of London (June 13-16, 1978) [hereinafter cited as Parsche interview].

52. One hectare equals approximately 2.47 acres.

53. For example, the value of 1 hectare of land used for growing hops is DM25,400 (\$12,700). Land used for growing asparagus is valued at DM7,650 (\$3,825) per hectare. Most other crops are assigned a value of DM3,726 (\$1,863) per hectare. W.T.S.—GER., *supra* note 4, ¶ 4.3a, n.28.

54. British Tax Act 1975, *supra* note 3, sched. 8, Finance Act 1976, pt. IV, § 74(4).

55. British Tax Act 1975, *supra* note 3, sched. 8, § 3(2).

56. *Id.*, § 3(3).

57. *Id.*, § 3(1)(6).

occupied it continuously until the time of transfer.⁵⁸ Both of these requirements may be modified to provide tax relief on the second of two transfers in rapid succession.⁵⁹ The first transfer must satisfy the requirements and the second transfer must come within two years. Relief is also available on transfers to spouses. The activity requirement is waived on transfers by a spouse who received the property on the death of his or her spouse, provided the decedent met the activity and occupation tests.⁶⁰ No time of occupation limit conditions this provision. Thus, the surviving spouse may hold the property as long as he or she wishes without having to engage in agriculture. The Capital Transfer Tax provisions also grant a valuation reduction for transfers of shares or debentures in a company holding agricultural property among its assets and mainly engaged in farming.⁶¹ The same two-year occupation requirement applies.⁶² In addition, the Act requires that the shares or debentures must have given the transferor control of the company immediately prior to the transfer.⁶³

Ireland provides even more substantial relief through reduced valuation of agricultural property. As in the United Kingdom, market value is reduced by fifty percent, but only up to a maximum of £100,000 (\$200,000).⁶⁴ There is no limitation on the total acreage transferable. Ireland is unique in focusing the qualification criteria upon donees, devisees, or heirs,⁶⁵ rather than focusing upon transferors, as in Britain, France and Germany. The recipient of the property may qualify as a "farmer" by showing that seventy-five percent of his gross property, after taking possession of the gift, devise, or inheritance, is agricultural property.⁶⁶ Presumably, the recipient need not be engaged in agriculture himself, but may be only a landowner. In addition, if the value of transferred property is large enough, he need not even have had any involvement with agriculture prior to the transfer.

The United States reduction in valuation for transfers of agricultural property is similar in many respects to its European counterparts. Somewhat like Ireland, the United States requires that a definite percentage of the transferor's estate consist of agricultural property, although the United States requirement of fifty percent for the transferor is somewhat less than the Irish requirement of seventy-five percent for the transferee.⁶⁷ In slight contrast to Britain, the United States imposes both activity and ownership rules, requiring a transferor to have materially participated in the man-

58. *Id.*, § 3(4).

59. *Id.*, § 1(2).

60. *Id.*, § 3(6)(b).

61. *Id.*, § 4.

62. *Id.*, § 4(d).

63. *Id.*, § 4(6).

64. Irish Tax Act 1976, *supra* note 3, § 19(4).

65. *Id.*, § 19(2).

66. *Id.*, § 19(1).

67. I.R.C. § 2032A(b)(1).

agement of the farming operation for at least five of the preceding eight years, and further requiring him to have owned (rather than occupied) the property for the same amount of time.⁶⁸ As in Britain, ownership and material participation by a member of the transferor's family also counts toward the five year minimums.⁶⁹ The valuation system, on the other hand, resembles the German model because it attempts to determine an actual use value by capitalizing net income from similar properties rather than reducing market value by a fixed percentage. The United States method divides the average net cash rent over the past five years for comparable property by the average interest rate for new Federal Land Bank loans over the past five years to determine the actual use value of agricultural property.⁷⁰ Finally, the United States limits maximum reduction in value to \$500,000.⁷¹ Both Britain and Ireland impose similar maximums.

Special valuation in the United States has two unique limitations. First, this relief is available only for estate taxes. Ireland, France, Germany, and the United Kingdom permit reductions of value for both estate or inheritance and gift taxes. Reduced valuation for gift taxes increases flexibility in estate planning, and would be particularly important in countries like Ireland and Britain which have substantially lower tax rates on gifts than on transfers of property at death. Second, the United States alone requires that the decedent transfer the agricultural property to a member of his or her family.⁷² Apparently only the United States has chosen specifically to combine protection of the family with protection of agriculture. Table 3 summarizes and compares reduced agricultural valuation in France, West Germany, Ireland, the Netherlands, the United Kingdom, and the United States.

Preferential Tax Deferral

Deferred payment of taxes can provide another form of relief for taxable transfers of agricultural property when the interest rate charged on the deferred tax is below market interest rates. France, Ireland and the Netherlands provide little relief in this area, either because of limited opportunity for deferral⁷³ or because the applicable interest rate is not preferential.⁷⁴ In contrast, West Germany, the United Kingdom, and the United States do offer preferential deferral opportunities.

68. I.R.C. § 2032A(b)(1)(C).

69. *Id.*

70. I.R.C. § 2032A(e)(7).

71. I.R.C. § 2032A(a)(2).

72. I.R.C. § 2032A(e)(1).

73. For example, in the Netherlands there is no provision for deferral of tax except in cases of extreme hardship. Dutch interviews, *supra* note 34.

74. For example, in France the opportunity to defer tax is widespread, but the legal rate of interest applies to any deferred tax. French interview, *supra* note 39.

TABLE 3.
Reduced Valuation for Agricultural Property

Country	Eligibility Requirement	Kinds of Transfers Applicable	Valuation Method	Apply to	Reduced Value as % of Market Value
France	Formation of Agricultural Land Group and 18 year lease to tenant	Inter vivos and death	Statutory percentage of market value	Real estate only	25%
W. Germany	Special valuation applies to all property; particular method applies to agricultural property	Inter vivos and death	Statutory discounting of expected net returns from similar farms (5.5% discount rate)	Realty and personalty	30% to 50%
Ireland	Recipient must be farmer; can qualify if 75% of his gross property (after receiving subject property) is agricultural	Inter vivos and death	Statutory percentage of market value up to \$200,000 reduction	Real estate only	50%
Netherlands	Property must be leased	Inter vivos and death	Fair market value; but leased land sells for less because tenant has virtual lifetime tenure and rents are controlled	Real estate only	50% to 70% ^a
United Kingdom	Property must be owned by a working farmer	Inter vivos and death	Statutory percentage of market value, up to \$500,000 reduction	Real estate only	50%
United States	Material participation by decedent or family member; ratio of agricultural holdings of decedent to total net assets must meet specified minimums; proper election and agreement by interested parties; transfer to family member; continued ownership and material participation by a family member	Death only	Capitalized net rents for comparable property; consideration of alternative factors authorized; \$500,000 maximum reduction	Real estate only	30% to 60% ^b

^a Estimates based upon interviews conducted in Europe.

^b Estimates based upon Iowa, Illinois and Ohio data.

German tax law allows a deferral of tax for up to seven years on transfers of agricultural and business property.⁷⁵ To qualify for the seven year deferral, the taxpayer must show that the relief is necessary to preserve the business or farm.⁷⁶ Taxpayers who meet this stringent prerequisite are not required to pay any interest on the deferred tax.⁷⁷ The United Kingdom is even more generous. Tax arising from transfers of all real estate and other qualifying business assets can be deferred for up to eight years.⁷⁸ No interest is charged on the deferred tax unless the installments become delinquent.⁷⁹ In the United States the estate tax attributable to the first million dollars of qualifying agricultural or business property can be paid in ten annual installments at a preferential interest rate of four percent with the first installment deferred for five years.⁸⁰ This preferential deferral is a relatively new feature of the Code, having been enacted as a part of the Tax Reform Act of 1976.

TABLE 4.
Preferential Deferral of Transfer Tax

Country	Eligibility Requirement	Deferral Period	Interest Rate
W. Germany	Deferral necessary to preserve business	7 years	0%
United Kingdom	All realty; other qualifying business property	8 years	0%
United States	65% of adjusted gross estate must be composed of closely held business property	15 years	4%

Family Exemptions

The third form of relief generally available facilitates transfers within the family by delaying taxation until the death of the second spouse. A variety of exemptions and marital property regimes have been developed to postpone taxation. France provides the smallest of the exemptions specifically directed to the surviving spouse, allowing the first F175,000 (\$35,000) passing to the spouse by will or intestacy to remain tax free.⁸¹ The Netherlands allows 250,000 Dutch Guilders (\$125,000) to pass tax free to the surviving

75. W.T.S.—GER., *supra* note 4, ¶ 4/2.8.

76. *Id.*

77. Parsche interview, *supra* note 51. Tax offices may charge up to 6% interest on deferred payments, but may forego interest charges entirely in particular cases. W.T.S.—GER., *supra* note 4, *New Developments*, § 1007.

78. Interviews with Mr. K.G. Brown, Director of Taxation Department, National Farmer's Union, Mr. Harry Newnan and Mr. Guy Stapleton, Ministry of Agriculture, Fisheries and Food, Mr. H.G. Thomas, Country Landowners Association at Wye College, University of London (June 13-16, 1978) [hereinafter cited as British interviews].

79. *Id.*

80. I.R.C. § 6166.

81. C.G.I., *supra* note 8, art. 779.

spouse.⁸² The surviving spouse also receives 2,250 Dutch Guilders (\$1,125) tax free for each year the youngest child is under age twenty-one. Germany provides two methods to permit tax free transfers between spouses. First, the inheritance and gift taxes contain two exemptions for transfers to spouses. The first DM250,000 (\$125,000) passes tax free.⁸³ An additional DM250,000 may also go untaxed, but is reduced by the capitalized value of state pensions such as survivor's benefits under the social security laws.⁸⁴ Second, the statutory marital property regime⁸⁵ provides an additional opportunity for tax free transfers. Under the regime each spouse can retain ownership and management of his or her own property during marriage. Any increase in combined net worth is deemed to belong to both spouses in equal shares. Increases are allocated to the respective partners at the time a marriage is dissolved by death or divorce, or when the spouses replace the statutory scheme with one of the available contractual regimes. The property "transferred" from one spouse to another on one of these occasions is not subject to gift or inheritance tax.⁸⁶ Furthermore, such property is not included as part of the two inheritance and gift tax exemptions. Tax savings could be quite substantial. It should be noted, however, that several different marital property regimes are available to spouses in Germany.⁸⁷ The United Kingdom provides even greater relief for transfers to spouses. All transfers to a spouse for less than full consideration, whether at death or inter vivos, are completely exempt from capital transfer tax.⁸⁸ This provision represents the most substantial relief from the rigors of the new British tax law. Ireland effectively exempts the first £150,000 or \$300,000 passing to a spouse since the applicable tax rate for this amount is zero.⁸⁹

At first glance, the United States Tax Code also appears to exempt from estate and gift taxation all transfers to a surviving spouse.⁹⁰ The Code, however, imposes maximum value limits on these exemptions. The gift tax marital deduction begins at a floor of \$100,000, then for gifts totaling between \$100,000 and \$200,000 the deduction increases by fifty percent of the excess over the floor amount, and for gifts over \$200,000 the deduction is a straight fifty

82. ERNST & ERNST, A DIGEST OF PRINCIPAL TAXES IN THE NETHERLANDS 65 (1970).

83. ErbStG, § 16(1), No. 1, cited in W.T.S.—GER., *supra* note 4, ¶ 4/2.5b.

84. *Id.*, § 17(1).

85. *Gleichberechtigungsgesetz*, BGBl, 1957 I. 609, cited in W.T.S.—GER., *supra* note 4, ¶ 4/2.5(b).

86. ErbStG, § 5, cited in W.T.S.—GER., *supra* note 4, ¶ 4/2.5b.

87. German interviews, *supra* note 51.

88. British Tax Act 1975, *supra* note 3, sched. 6, § 1.

89. See Table 7 in appendix.

90. I.R.C. § 2056(a) provides, "the value of the taxable estate shall . . . be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse. . . ." Section 2523, pertaining to inter vivos gifts, is similar.

percent.⁹¹ The estate tax marital deduction cannot exceed the greater of \$250,000 or one-half the decedent's adjusted gross estate.⁹² Some deductions allowed on inter vivos gifts reduce the amount of the deduction available from estate taxation.⁹³ Thus, the United States exemption is not quite as generous as the British one, although it certainly offers greater potential relief than any of the other European exemptions.

France, Germany, Ireland, and the Netherlands also provide substantial exemptions from tax on transfers to children. In France the exemption is F175,000 (\$35,000), the same amount that is given the surviving spouse.⁹⁴ The exemption is available for each living and predeceased represented child. The representatives of a predeceased child take according to the rules of inheritance. In addition, if a predeceased child has three or more children living at the time of the transfer, they receive an additional modest reduction in inheritance taxes.⁹⁵ In Germany children and children of predeceased children benefit from an exemption of DM90,000 (\$45,000).⁹⁶ Grandchildren, with the exception of those representing predeceased children, are entitled to DM50,000 (\$25,000) tax free.⁹⁷ If the children take by reason of death of a parent they are entitled to an additional exemption reduced in inverse ratio to the age of the beneficiary.⁹⁸ The exemption ranges from DM50,000 (\$25,000) for children under five years of age, to DM10,000 (\$5,000) for children between the ages of twenty and twenty-seven. In Ireland the first £150,000 (\$300,000) is effectively exempted from tax, as was the case for a surviving spouse.⁹⁹ In the Netherlands a child of legal age has an exemption of 6,000 Dutch Guilders (\$3,000), while minor children generally have an exemption of 9,000 Dutch Guilders (\$4,500) plus 2,250 Dutch Guilders (\$1,125) for each year the minor is under twenty-one years of age.¹⁰⁰ The United States also offers relief to children, but the relief only applies to reduce estate taxes and potential hardship cases in which the decedent leaves a minor child with no known parent. The value of the relief is also limited to the formula: \$5,000 × (21—age of child at death of decedent).¹⁰¹ This relief is not nearly as significant as the surviving spouse exemption. In Germany and, particularly, in France, the child's exemption is nearly as valuable as the spouse's.

The French tax code also offers one additional and unique relief from inheritance tax due from children of farmers. To qualify,

91. I.R.C. § 2523(a)(2).

92. I.R.C. § 2056(c).

93. *Id.*

94. C.G.I., *supra* note 8, art. 779.

95. *Id.*, art. 780.

96. ErbStG, § 16(1), cited in W.T.S.—GER., *supra* note 4, ¶ 4/2.5(b)(2).

97. *Id.*

98. *Id.*, § 17(2).

99. See Table 7 in appendix.

100. Dr. G.J.M. Vlak correspondence, *supra* note 37.

101. I.R.C. § 2057.

a child must be eighteen or older and live and work on the family farm.¹⁰² The farmer must provide no compensation other than room and board. A "contract for deferred farm pay" will be implied by law, and the child will be compensated at a rate fixed by decree at the time of the farmer's death.¹⁰³ The payment will be entirely exempted from inheritance tax. This provision provides a method of transferring additional assets tax free within the farm family.

In summary, opportunities to reduce taxes on consideration-free transfers of agricultural property to family members are about the same in Europe as in the United States. In most cases, the dollar amounts of the United States relief are greater than their European counterparts, but the United States Tax Code imposes more stringent qualifications and limits on obtaining the relief. A discussion of opportunities to reduce taxation on death and on gifts, however, does not necessarily present an accurate picture of actual practice. The next section of this article will report on legal and practical constraints on giving that may diminish the potential value of these reliefs.

CONSTRAINTS ON GIVING

Both legal rules and practical considerations exist that may prevent or discourage a transferor from making optimally tax-efficient transfers of property. Thus, the structure of the tax system itself is not the only element a farm owner needs to consider when he contemplates giving his property to his spouse or children.

Most important of the legal constraints in the three civil law countries are the statutory limits on the testator's freedom of testamentary disposition. The French law of wills, for instance, is "based on a strong feeling that property should not go out of the family, or at least not all of it."¹⁰⁴ Accordingly, the law of wills establishes "reserve rights" for descendants and occasionally, ascendants of the transferor. The testator is free to dispose of only one-half the value of his estate if he leaves one child, only one-third if he has two children, and only one-fourth if he leaves three or more children.¹⁰⁵ Children need not survive the decedent to have a right to a share; grandchildren and great-grandchildren take shares of deceased children per stirpes.¹⁰⁶ If no descendants survive the testator, ascendants enjoy reserve rights. The testator is then free to dispose of one-half his estate if he leaves ascendants in both the maternal and paternal lines, or three-fourths if he leaves ascendants in only one line. Ascendants take reserve

102. The "deferred salary contract" is established by the decree of 29 July 1939, art. 64, *J.O.*

103. C.G.I., *supra* note 8, art. 793, § 6.

104. M. AMOS AND F. WALTON, INTRODUCTION TO FRENCH LAW 340 (1935).

105. C. Crv., art. 913 (1978).

106. *Id.*

shares in the order prescribed by intestate succession.¹⁰⁷ Brothers and sisters of the testator are considered ascendants and compete with the father and mother. If even one individual falling in this first category survives, all other ascendants are excluded. If none survives, all more remote ascendants compete for portions of the reserve. Neither ascendants nor descendants need share with the surviving spouse, who has no reserve rights. Matrimonial rights afford some protection, giving a right to a pension to a surviving spouse who can establish "need."¹⁰⁸ The probate court determines the amount of the pension according to the spouse's need and the estate's ability to pay.

In the Netherlands, just as in France, the decedent does not have complete freedom in the testamentary disposition of his property. A decedent can dispose of only one-fourth of his estate freely. Children have reserve rights in the remaining value of the estate from which they cannot be disinherited. The size of the reserve right for each child is three-fourths of a child's intestate share, assuming there is no surviving spouse. Therefore, the reserve right of each child would be as follows: one child—three-fourths of estate value; two children—three-eighths of estate value; three children—one-fourth of estate value; etc.¹⁰⁹ As in France, ascendants have some reserve rights if there are no descendants.¹¹⁰

German laws establish a very similar system, although protection for the surviving spouse is also present. The spouse receives a statutory share along with living descendants, or with living ascendants if no descendants survive.¹¹¹ Each individual entitled to an intestate share must receive one-half his or her intestate share, even if there is a will.¹¹² Under intestate succession, successive classes are entitled to the whole of the decedent's estate.¹¹³ Members of the taking class share the estate equally. The surviving spouse inherits one-fourth the estate along with heirs of the first class, the decedent's children and their issue.¹¹⁴ The spouse is entitled to one-half the estate taken by heirs of the second class, comprised of parents and their descendants, or heirs of the third class, consisting of grandparents and their descendants. If, for example, an intestate decedent left a wife and two children, his estate would pass one-fourth to the wife, and three-fourths to the children, who would share equally. If the decedent had made a will, however, the survivors would be entitled to only one-half their intestate shares.

107. *Id.*, art. 914.

108. *Id.*, art. 767.

109. Dr. G.J.M. Vlaskopff correspondence, *supra* note 37; Dr. van der Heijde interview, *supra* note 37.

110. *Id.*

111. C. BEECHER, WILLS AND ESTATES UNDER GERMAN LAW 29 (1958).

112. *Id.*

113. *Id.* at 18-19. The first class consists of the decedent's descendants; the second, of the decedent's parents and their descendants (including the decedent's brothers and sisters); the third class begins with the grandparents; and the fourth with the great-grandparents.

114. *Id.*

The wife would take one-eighth the estate; the children would take three-eighths to be divided equally.¹¹⁵ The net result of this system is to leave the testator always free to dispose of one-half his total estate. As a practical matter, testators in all of the civil law countries can dispose of their property in any way they see fit, but the recipient of the property has a duty to compensate the surviving spouse, descendants, or ascendants for reserve rights.¹¹⁶

The testator's freedom is less restricted in the common law countries of Ireland, Great Britain, and the United States. Ireland's restraints most closely resemble those in force in most states of the United States. A surviving spouse has the right to elect between a testamentary gift or a statutory share of one-half the estate.¹¹⁷ The share is reduced to one-third if children also survive.¹¹⁸ Children, on the other hand, are protected only at the discretion of the probate court. If the court decides that the testator has failed in his moral duty to provide for a child according to his means, it may order such provision from the estate as it sees fit.¹¹⁹ In the United Kingdom both surviving spouses and children may make similar petitions to probate courts. The applicant must show that the testator failed to make "reasonable financial provision" for his or her welfare.¹²⁰ This proceeding is their only protection, however, because no statutory shares exist.¹²¹ The British testator generally has unlimited freedom of disposition which even surpasses the freedom available in the United States.

Also of interest is the extent to which estate, inheritance, or gift taxes themselves affect tax planning. Do European farmers perceive taxes on giving as a problem, and do they attempt to minimize the tax burden on their estate? A 1975 Irish survey of patterns of farm inheritance and succession reported, for example, that 28.6% of farmers with sons aged twenty-one or over who made inter vivos transfers of their farms considered avoidance of death duties as a reason for the transfers.¹²² Only 2.6% of all others who made lifetime gifts reported considering inheritance taxes as a motivation.¹²³ Most Irish farmers thus did not appear to regard inheritance taxation as a barrier to keeping the farm within the family. This survey was made before the 1976 revision of the inheritance and gift taxes. The old laws had lower rates and included exemptions for transfers to spouses and children.¹²⁴ Taxation of giving

115. *Id.* at 29, 30.

116. French interviews, *supra* note 39; German interviews, *supra* note 51; Dutch interviews, *supra* note 34.

117. Succession Act 1965, §§ 111 & 115 *Acts of the Oireachtas* (1965).

118. *Id.*, § 111.

119. *Id.*, § 117.

120. Inheritance Act 1975 (Provision to Family and Dependants) § 1.

121. Wills Act 1837, § 3; H. BRESLAUER, PRIVATE INTERNATIONAL LAW OF SUCCESSION 121 (1937).

122. Macra na Feirme (Sons of the Land), Farm Inheritance and Succession 54 (1973).

123. *Id.* at 37 (Table 6.4).

124. *Id.* at 68.

has probably become a matter of greater concern.¹²⁵ Interestingly, forty-five percent of participants in the survey who actually paid inheritance tax claimed they had to make special financing arrangements to pay the tax.¹²⁶ More farmers will probably be similarly affected under the new tax laws.

In the countries of France, West Germany, and the Netherlands, planning to minimize the inheritance tax generally does not influence the manner of disposition. This attitude is probably due in part to the greater restriction on free disposition found in these countries. Generally, farm families in France, West Germany, and the Netherlands seem more concerned with the hardship of paying out reserve shares to nonfarming brothers and sisters than with the burden of inheritance tax.¹²⁷

In the United Kingdom planning is deemed to be of great importance. As in the United States, British death taxes can be substantially reduced by planning which divides property between a husband and a wife for death tax purposes. Such opportunities for tax savings, coupled with great freedom of disposition in the United Kingdom, result in a disposition heavily influenced by tax considerations.¹²⁸ It is interesting to note, however, that British tax law even includes life income interests within the scope of the Capital Transfer Tax. Thus, if the first spouse to die is to effectively divide his estate in two, half must go outright to persons other than the surviving spouse.¹²⁹

CRITICAL EVALUATION

The 1976 reforms of United States estate and gift tax law are relatively new. Most of the European provisions which resemble these United States reforms have been in force for somewhat longer periods of time. To the extent that the European provisions are similar to the United States reforms, a review of the European farmer's reaction can offer useful insights into future American reaction.

125. Even in 1973 farmers were beginning to worry about rising land prices, which were making many more farms eligible for estate duty. In addition, the new inheritance tax does not provide any of the reliefs available under the former estate tax: abatements for surviving spouses and dependent children, and gifts in consideration of marriage. *Id.*

126. *Id.* at 69.

127. For example, the financial burden on Dutch agriculture of the Napoleonic inheritance laws is much greater than the Dutch inheritance and gift taxation system. A young farmer inheriting a farm is, in theory, required to pay equal shares to his brothers and sisters. This imposes a heavy financial burden which must be met by capital formation during each generation. Succession would be impossible in most cases if the other heirs really claimed their legal share on the basis of actual selling prices for unleased land. In practice the parents, with tacit consent or cooperation of other children, arrange for the successor to lease the land and to be able to pay the other children on the basis of the lower leased value. Letter from Professor Jan de Veer, Landbouw-Economisch Instituut, Conradskade, Netherlands to D.L. Uchtmann on May 31, 1978. See also note 37 *supra*.

128. British interviews, *supra* note 78.

129. British Tax Act 1975, *supra* note 3; British interviews, *supra* note 78.

Level of Gift and Death Taxation

Nobody enjoys paying taxes and this is certainly true of farmers, whether they be American or European. Nevertheless, the authors noted an absence of scholarly criticism regarding the general level of death taxation upon agriculture in most of the European countries of study. Reduced agricultural valuation coupled with generous exemptions for immediate family members result in death tax levels that are at least manageable in most cases.¹³⁰ Criticism in France prior to the latest reform focused in part on the "unfairly" high rates on transfers to members of the immediate family.¹³¹ Under current French law, rates on transfers to family members have been lowered, while rates on transfers to distantly related or unrelated persons have been raised sharply.¹³²

The United Kingdom provides an exception to the general lack of criticism regarding the level of gift and death taxation. Tax rates applying to gift and death transfers in the United Kingdom are the highest in Europe.¹³³ These high rates, coupled with the largest average size of agricultural holdings in the EEC,¹³⁴ result in levels of taxation that can be quite burdensome.¹³⁵ Thus, some critics condemn the Capital Transfer Tax as arbitrary and confiscatory, and prefer to see relief enlarged,¹³⁶ while others indicate that it can be managed with proper planning.¹³⁷

Critics in the Netherlands were also concerned about the level of taxation, although the criticism was not directed at the Dutch inheritance and gift tax system per se but rather at the disparity between levels of death taxation in the various European countries.¹³⁸ For example, a Dutch farm with a fair market value of \$480,000 would generate about \$32,000 in death taxes when transferred to two children by the father and mother.¹³⁹ A similar farm would generate death taxes of about \$2,000 in West Germany and about \$61,000 in the United Kingdom.¹⁴⁰ The disparity among all six countries can be seen in Table 12.

130. French interviews, *supra* note 39; W. German interviews, *supra* note 51; Dutch interviews, *supra* note 34. See also Table 12 in appendix. The impact of the gift and death tax systems upon the European farmer is also mitigated by the relatively small size of most agricultural holdings in Western Europe. See Statistical Office of the European Communities, *Agronstatistik* 40, 43, 46, 51, 52 (1974) [hereinafter cited as *Agronstatistik*], which describes the average size of agricultural holdings in the EEC. The smaller sized holdings would more than offset the generally higher value per acre of European farmland compared with U.S. farmland.

131. W.T.S.—FRANCE, *supra* note 10, ¶ 3/2.1.

132. See Table 5 in appendix.

133. See Tables 5 through 10 in appendix.

134. See *Agronstatistik*, *supra* note 130.

135. See Table 12 in appendix.

136. Chown, *Capital Transfer Tax in the United Kingdom*, 23 CAN. TAX J. 494 (1975); Note, 119 SOLICITOR'S J. 122 (1975).

137. British interviews, *supra* note 78.

138. Dutch interviews, *supra* note 34.

139. See Table 12 in appendix.

140. *Id.*

Unification of Gift and Death Tax Systems

Except for the Netherlands, which cumulates inter vivos transfers for one or two year periods only, and West Germany, which cumulates all transfers for ten year periods only, all of the countries of study have unified gift and death tax systems.¹⁴¹ The United Kingdom only recently adopted a unified system¹⁴² and, not surprisingly, has witnessed some criticism of the unification principle. Critics have claimed that the record keeping requirements represent a threat to individual liberties, ushering in a "big brother" society,¹⁴³ and that the vagueness and arbitrary nature of many of the operating provisions make the tax scheme so incomprehensible that the average citizen could not be deemed to have given his consent to this confiscation of property.¹⁴⁴ Critics who emphasize practical difficulties, such as record keeping, claim that the average taxpayer cannot be expected to keep track of all gifts he makes throughout his entire lifetime.¹⁴⁵ Finally, nearly all critics mention that the tax rates are the highest in Europe and that lifetime cumulation of all giving by one individual helps push the tax up to disturbing levels for even persons of relatively modest means.¹⁴⁶ The other European countries that require lifetime cumulation aggregate gifts received by each beneficiary. This system at least offers the opportunity to minimize tax by diversifying giving.

Agricultural Valuation

West German and the United Kingdom offer the greatest insights into special agricultural valuation provisions. In Germany recent complaints are directed at the farmer's special privileges generally. The valuation law keeps farm tax values artificially low. Income tax rules allow most farmers to elect not to keep accounts and compute taxes on a simplified lump-sum method.¹⁴⁷ Reported income is thus also artificially low. Roughly 800,000 of 900,000 farmers take advantage of this tax privilege. Some 600,000 pay no income tax at all.¹⁴⁸ Other tax benefits for farmers include higher exemptions for income and trade tax computations, and lower rates for licensing of vehicles used in farm work. In addition, farmers receive billions of dollars annually in direct subsidies or under various government programs.¹⁴⁹ The legislature has been dis-

141. See Table 2, and text immediately preceding Table 2.

142. See text accompanying note 20 *supra*.

143. Note, 125 New L. J. 48 (1975).

144. Note, 119 Solicitor's J. 122 (1975).

145. British interviews, *supra* note 78.

146. Chown, *supra* note 136.

147. Parsche interviews, *supra* note 51.

148. W.T.S.—GER., *supra* note 4, *New Developments*, ¶ 1669 (Feb. 1977). (Note: the Feb. 1977 loose-leaf material has been replaced by more recent materials.)

149. *Id.*

cussing reform proposals.¹⁵⁰ The law makers apparently want to increase tax revenue and reduce the complex system of direct and indirect subsidies for various occupations that have existed for decades.¹⁵¹

In the United Kingdom the reduced valuation for agricultural real estate provided by current law receives much less criticism than the agricultural reliefs of the old estate duty. The latter was severely criticized because it allowed "non-farmers," including landowners who acquired large agricultural holdings shortly before death, to realize substantial tax savings.¹⁵² In contrast to the provisions of the old estate duty, the agricultural reliefs of the Capital Transfer Tax are more narrowly focused, both in theory and in actual practice, upon the "working farmer."¹⁵³

CONCLUSION

A review of the gift and death tax provisions of the six countries provides some interesting and useful comparisons. In making these comparisons, it is apparent that many of the new concepts introduced by the United States Tax Reform Act of 1976 are not really new and that many of these concepts are likely to remain an established part of the federal estate and gift tax system. It is also apparent that American farmers do not appear to face a transfer tax system that is excessively harsh. A summary of the tax regimes according to the nature and rate structure of the transfer tax system, the degree to which the gift and death tax systems have been integrated, the relief available to farmers in the form of general exemptions and special provisions for farms or other businesses, the constraints upon free testamentary disposition and the related need for estate planning actions, and the relative burden of transfer taxes falling upon American farmers will support these conclusions.

France, West Germany, Ireland and the Netherlands impose a transfer tax which focuses upon the amount of property received by a particular transferee. Only the United Kingdom imposes a death tax similar to the United States estate tax, focusing upon the total amount of property transferred by a particular transferor. Because an inheritance tax scheme can differentiate between various classes of transferees, the four countries with an inheritance tax have considerably lower maximum rates applying to transferees within the immediate family than do the estate tax countries. The maximum rates applying to transfers within the immediate family range from seventeen percent in the Netherlands to fifty percent in Ireland as compared with maximum transferor rates of seventy percent and seventy-five percent in the United States and

150. W.T.S.-GER., *supra* note 4, *New Developments*, ¶ 1669 (Feb. 1977).

151. *Id.*

152. British interviews, *supra* note 78.

153. *Id.*

the United Kingdom. The differences in maximum tax rates practically disappear, however, when the maximum rates applying to unrelated transferees are compared to the maximum transferor rates.¹⁵⁴

Although the unification of gift and estate tax structure is a relatively new phenomenon in the United States, this principle is well established in Europe. With the exception of the Netherlands, all of the remaining European countries in this study cumulate successive inter vivos and death transfers by a particular transferor or to a particular transferee. In most cases the cumulations occur over the course of the transferor's lifetime, although West Germany cumulates transfers for ten year periods only. Also, the United States was following Europe's lead in applying an identical rate structure for inter vivos and death transfers. Only Ireland and the United Kingdom apply differential gift rates for all or part of the rate schedules. Interestingly, little criticism has been voiced against the "unification principle" by European farmers and scholars. The criticism that has been voiced centers primarily around the resulting loss of tax saving opportunities and the practical difficulties of maintaining lifetime records of transfers. These same criticisms, of course, have been voiced against the new American system.

Reliefs from gift and death taxes that are available to European and American farmers include generous exemptions for transfers to family members, preferential deferred payment provisions, and special valuation for agricultural property. The size of exemptions and potential preferential deferral vary from country to country. A comparison of amounts that can be transferred tax free at death from one parent to two children, taking advantage of exemptions and assuming no prior gifts, suggests that the tax regimes fall into three categories. The Netherlands has minimal exemptions with only \$6,000 in tax free transfers available. France, West Germany and the United Kingdom have moderate exemptions with tax free transfers ranging from \$50,000 to \$90,000. The United States and Ireland have large exemptions with tax free transfers of \$175,625 and \$600,000. Considerable variability is also present with regard to preferential deferral of transfer tax with only West Germany, the United Kingdom, and the United States offering significant relief.

Surprisingly, the most revolutionary agricultural relief of the Tax Reform Act of 1976, preferential valuation for agricultural property, was a feature that all five of the other European countries had previously recognized. The American provision for use valuation resembles the typical European provision in providing an approximate fifty percent reduction from fair market value. In addition, the European provisions generally apply to real estate only, as is the case in the United States. The American provisions

154. See Tables 5 through 11 in appendix.

do, however, contain one strikingly different feature. Only the United States restricts reduced agricultural valuation to death transfers. In each of the five European countries, agricultural valuation can be utilized either at death or for inter vivos transfers.

The agricultural valuation reliefs of the European transfer tax systems do not appear to have created "tax shelters" that have distorted the structure of agriculture by encouraging ownership by non-farmers.¹⁵⁵ The United Kingdom faced this problem under the old estate duty but found an apparent solution in new provisions that limit agricultural relief to a "working farmer." The United States has an analogous qualification requirement. If the European farmer's experience is a prelude to the American farmer's experience, special agricultural valuations may be a part of the American estate and gift tax system for some time.

The degree of testamentary freedom varies significantly among the six countries. The civil law countries of France, West Germany, and the Netherlands generally provide legal shares to descendants, leaving the decedent free to dispose of only a small fraction of his entire estate. In contrast, the common law countries grant a much higher degree of testamentary freedom. This disparity in testamentary freedom also affects the level and nature of estate planning activities. The legal shares in the civil law countries approximate a tax minimization distribution. Thus, little thought is given to death tax planning, farm families being more concerned about how the farming heir will buy out the legal shares of other siblings. In contrast, the greater testamentary freedom available in the United Kingdom and the United States and the nature of the death tax in these countries require that the plan of disposition reflect acceptable tax consequences.

Generally, the available exemptions, reduced agricultural valuation, preferential deferral of tax payments, and proper planning, where possible, combine to make the transfer tax manageable for most European farm families.¹⁵⁶ Nevertheless, significant disparity does exist in the level of death taxation experienced in one country compared to another. The German farmers invariably pay the lowest death taxes while the British farmers usually pay the highest. Interestingly, the death tax burdens of most American farmers are neither excessively high nor low when compared to their European counterparts. Similar preferences and opportunities for transfer tax savings have evolved on both sides of the Atlantic.

155. French interviews, *supra* note 39; German interviews, *supra* note 51; Dutch interviews, *supra* note 34; British interviews, *supra* note 78; interview with Michael Igoe, Agricultural Institute, Economics and Rural Welfare Research Centre, Dublin at the Centre for European Agricultural Studies, Wye College, United Kingdom (June 15, 1978).

156. *Id.*

APPENDIX

The following tables have been prepared as a basis for comparing the exemptions, rate schedules, and impacts of the transfer tax system for France, West Germany, Ireland, the Netherlands, the United Kingdom and the United States. To aid in the comparisons, the unique schedules of each country have been modified to reflect a uniform format whenever possible. The uniform format incorporates exemptions directly into the rate schedule.

The following tables also utilize a common currency—the United States dollar. In the midst of rapidly fluctuating exchange rates, the authors have selected approximate exchange rates such as 1:2 or 5:1, rather than precise exchange rates. Spurious accuracy has been sacrificed for improved readability. Tables 5 through 11 reflect gift and death tax rates and the method of cumulating transfers in each of the six countries. Table 12 estimates the relative tax burdens for various sizes of agricultural estates based upon specified underlying assumptions. The estimates are calculated utilizing Tables 5 through 11.

TABLE 5.
Rate Schedule and Exemptions for Inheritance
and Gift Taxes in France^a

Transferees in Decedent's or Donor's Direct Line Except for Gifts Intended as Advances, <i>i.e.</i> , <i>Donations Partage</i> :		
\$ 0 to \$35,000	Exempt	
35,000 to 45,000	\$ 0	plus 5% of amount over \$35,000
45,000 to 50,000	500	plus 10% of amount over 45,000
50,000 to 55,000	1000	plus 15% of amount over 50,000
55,000 to . . .	1750	plus 20% of amount over 55,000
Spouses and Lineal Descendants Receiving <i>Donation Partage</i> :		
\$ 0 to \$35,000	Exempt	
35,000 to 45,000	\$ 0	plus 5% of amount over \$35,000
45,000 to 50,000	500	plus 10% of amount over 45,000
50,000 to 75,000	1000	plus 15% of amount over 50,000
75,000 to . . .	4750	plus 20% of amount over 75,000
Brothers and Sisters:		
\$ 0 to \$30,000	\$ 0	plus 35% of amount
30,000 to . . .	10,500	plus 45% of amount over \$30,000
Relatives up to and Including 4th Degree of Kinship: 55% of amount transferred		
All Other Transferees: 60% of amount transferred		

^a Table reflects exchange rate of F1.00 = \$.20; table does not reflect annual gift exclusions, modest additional tax benefits where transfer has three or more living children, etc.; taxable inter vivos and death transfers to a particular transferee are cumulated.

Source: CODE GENERAL DES IMPOTS, art. 777, Table I-III (1977).

TABLE 6.
Inheritance and Gift Tax Schedule and Exemptions
in West Germany^a

<i>Classes and Exemption</i>				
I	Spouses	Exemption:	\$125,000 ^b	
IA	Children (including adopted children or stepchildren)	Exemption:	45,000 ^c	
II	Direct descendants (other than children of deceased children)	Exemption:	25,000	
III	Parents or other ascendants, adopted parents, stepparents, brothers or sisters, children of brothers and sisters, sons- and daughters-in-law, parents-in-law	Exemption:	5,000	
IV	All others	Exemption:	1,500	

Taxable gift or inheritance cumulated over ten-year period for each recipient	Tax Rate Applied to Entire Cumulated Taxable Gift and/or Inheritance			
	I	II	III	IV
\$ 25,000	3 %	6%	11 %	20%
37,500	3.5	7	12.5	22
50,000	4	8	14	24
62,500	4.5	9	15.5	26
75,000	5	10	17	28
100,000	5.5	11	18.5	30
125,000	6	12	20	32
150,000	6.5	13	21.5	34
200,000	7	14	23	36
250,000	7.5	15	24.5	38
300,000	8	16	26	40
350,000	8.5	17	27.5	42
400,000	9	18	29	44
450,000	9.5	19	30.5	46
500,000	10	20	32	48
1,000,000	11	22	34	50
1,500,000	12	24	36	52
2,000,000	13	26	38	54
3,000,000	14	28	40	56
4,000,000	16	30	43	58
5,000,000	18	33	46	60
12,500,000	21	36	50	62
25,000,000	25	40	55	64
50,000,000	30	45	60	67
50,000,000+	35	50	65	70

^a Table reflects exchange rate of DM 1.00 = \$.50; table does not reflect annual gift exclusions or method of calculating tax within the discrete amounts appearing in table.

^b An additional \$125,000 exemption is available but it can be reduced by the capitalized value of state pensions such as survivors benefits under the social security laws.

^c Assumes children are over age 27. An additional exemption of up to \$25,000 is available for children under age 27. The exact amount of the additional exemption varies with the age of the child.

Source: Inheritance Tax Law (ErbStG), §§ 15, 19, BGB1 1974 I. 939, 940.

TABLE 7.
Rate Schedule and Exemptions for Inheritance and Gift Taxes in the Republic of Ireland^a

Spouse, Children, Minor Children of Deceased Child:

\$ 0 to \$300,000—Exempt	
300,000 to 400,000—\$ 0 plus 25% of amount over \$300,000	
400,000 to 500,000—25,000 plus 30% of amount over 400,000	
500,000 to 600,000—55,000 plus 35% of amount over 500,000	
600,000 to 700,000—90,000 plus 40% of amount over 600,000	
700,000 to 800,000—130,000 plus 45% of amount over 700,000	
800,000 to—175,000 plus 50% of amount over 800,000	

Lineal Ancestors or Lineal Descendants Other Than Noted Above:

\$ 0 to \$ 30,000—Exempt	
30,000 to 36,000—\$ 0 plus 5% of amount over \$ 30,000	
36,000 to 46,000—300 plus 7% of amount over 36,000	
46,000 to 66,000—1,000 plus 10% of amount over 46,000	
66,000 to 86,000—3,000 plus 13% of amount over 66,000	
86,000 to 106,000—5,600 plus 16% of amount over 86,000	
106,000 to 126,000—8,800 plus 19% of amount over 106,000	
126,000 to 146,000—12,600 plus 22% of amount over 126,000	
146,000 to 176,000—17,000 plus 25% of amount over 146,000	
176,000 to 206,000—24,500 plus 28% of amount over 176,000	
206,000 to 236,000—32,900 plus 31% of amount over 206,000	
236,000 to 266,000—42,200 plus 34% of amount over 236,000	
266,000 to 296,000—52,400 plus 37% of amount over 266,000	
296,000 to 326,000—63,500 plus 40% of amount over 296,000	
326,000 to 356,000—75,500 plus 43% of amount over 326,000	
356,000 to 386,000—88,400 plus 46% of amount over 356,000	
386,000 to 416,000—102,200 plus 49% of amount over 386,000	
416,000 to—116,900 plus 50% of amount over 416,000	

Brother, Sister, Children of Brother or Sister:

\$ 0 to \$ 20,000—Exempt	
20,000 to 26,000—\$ 0 plus 10% of amount over \$ 20,000	
26,000 to 36,000—600 plus 12% of amount over 26,000	
36,000 to 56,000—18,000 plus 15% of amount over 36,000	
56,000 to 76,000—21,000 plus 19% of amount over 56,000	
76,000 to 96,000—24,800 plus 23% of amount over 76,000	
96,000 to 116,000—29,400 plus 27% of amount over 96,000	
116,000 to 136,000—34,800 plus 31% of amount over 116,000	
136,000 to 166,000—41,000 plus 35% of amount over 136,000	
166,000 to 196,000—51,500 plus 40% of amount over 166,000	
196,000 to 226,000—63,500 plus 45% of amount over 196,000	
226,000 to—50,000 plus 50% of amount over 226,000	

Other Transferees:

\$ 0 to \$ 10,000—Exempt	
10,000 to 16,000—\$ 0 plus 20% of amount over \$ 10,000	
16,000 to 26,000—1,200 plus 22% of amount over 16,000	
26,000 to 46,000—3,400 plus 25% of amount over 26,000	
46,000 to 66,000—8,400 plus 30% of amount over 46,000	
66,000 to 86,000—14,400 plus 35% of amount over 66,000	
86,000 to 106,000—21,400 plus 40% of amount over 86,000	
106,000 to 126,000—29,400 plus 45% of amount over 106,000	
126,000 to 156,000—38,400 plus 50% of amount over 126,000	
156,000 to 186,000—53,400 plus 55% of amount over 156,000	
186,000 to—69,900 plus 60% of amount over 186,000	

^a Table reflects exchange rate of £1 = \$2.00; table does not reflect annual gift exclusions; taxable inter vivos and death transfers to a particular transferee are cumulated; for gifts more than two years before death the tax is 75% of the inheritance tax appearing in the above table.

Source: Capital Acquisitions Tax Act, Second Schedule, Part II, Tables I-IV.

TABLE 8.
Inheritance and Gift Tax Schedule and Exemptions for
Class I—Spouse and Children—in the Netherlands^a

Spouse:	\$	0 to \$125,000—Exempt ^b			
		125,000 to 125,500—	\$ 0 plus	3%	of amount over \$125,000
		125,500 to 126,000—	15 plus	4%	of amount over 125,500
		126,000 to 127,500—	35 plus	5%	of amount over 126,000
		127,500 to 130,000—	110 plus	6%	of amount over 127,500
		130,000 to 137,500—	260 plus	7%	of amount over 130,000
		137,500 to 150,000—	785 plus	9%	of amount over 137,500
		150,000 to 175,000—	1,910 plus	11%	of amount over 150,000
		175,000 to 225,000—	4,660 plus	13%	of amount over 175,000
		225,000 to 375,000—	11,160 plus	15%	of amount over 225,000
		375,000 to	33,660 plus	17%	of amount over 375,000
Children:	\$	0 to \$ 3,000—Exempt ^c			
		3,000 to 3,500—	\$ 0 plus	3%	of amount over \$ 3,000
		3,500 to 4,000—	15 plus	4%	of amount over 3,500
		4,000 to 5,500—	35 plus	5%	of amount over 4,000
		5,500 to 8,000—	110 plus	6%	of amount over 5,500
		8,000 to 15,500—	260 plus	7%	of amount over 8,000
		15,500 to 28,000—	785 plus	9%	of amount over 15,500
		28,000 to 53,000—	1,910 plus	11%	of amount over 28,000
		53,000 to 103,000—	4,660 plus	13%	of amount over 53,000
		103,000 to 253,000—	11,160 plus	15%	of amount over 103,000
		253,000 to	33,660 plus	17%	of amount over 253,000

^a Table reflects exchange rate of 1 Dutch Guilder = \$.50; taxable inter vivos transfers to a child cumulated for one calendar year only; gifts to others cumulated for two calendar years only; death transfer to particular transferee cumulated separately; table does not reflect annual gift exclusions.

^b The exemption for inheritance is increased if the spouse has a minor child.

^c The inheritance exemption is increased if the child is a minor: generally \$4,500 plus \$1,125 for each year child under 21 years of age.

Source: Successiewet 1956, art. 24, *Fiscale Wetten* (as amended).

TABLE 9.
Inheritance and Gift Tax Schedule for Non-Exempt
Transfers to Transferees Other Than
Spouse and Child—Netherlands^a

Amount Transferred	Rate of Tax for Gift or Inheritance				
	Class II	Class III	Class IV	Class V	Class VI
\$ 0 to \$ 500	5%	10%	18%	27%	36%
500 to 1,000	6%	12%	20%	29%	38%
1,000 to 2,500	8%	14%	22%	31%	40%
2,500 to 5,000	10%	16%	24%	33%	42%
5,000 to 12,500	12%	18%	26%	35%	44%
12,500 to 25,000	14%	20%	28%	37%	46%
25,000 to 50,000	16%	22%	30%	39%	48%
50,000 to 100,000	18%	24%	32%	41%	50%
100,000 to 250,000	20%	26%	34%	43%	52%
250,000 to	22%	28%	36%	45%	54%

^a Table reflects exchange rate of 1 Dutch Guilder = \$.50; gifts to particular transferee cumulated for two calendar years only; death transfers to particular transferee cumulated separately; rates apply to non-exempt transfers; table does not reflect annual gift exclusions.

Source: Successiewet 1956, art. 24, *Fiscale Wetten* (as amended).

TABLE 10.
Capital Transfer Tax Schedule—United Kingdom^a

Death Transfers or Transfers Within Three Years:

\$	0 to \$	50,000—Exempt		
	50,000 to	60,000—\$	0 plus 10%	of amount over \$ 50,000
	60,000 to	70,000—	1,000 plus 15%	of amount over 60,000
	70,000 to	80,000—	2,500 plus 20%	of amount over 70,000
	80,000 to	100,000—	4,500 plus 25%	of amount over 80,000
	100,000 to	120,000—	9,500 plus 30%	of amount over 100,000
	120,000 to	140,000—	15,500 plus 35%	of amount over 120,000
	140,000 to	180,000—	22,500 plus 40%	of amount over 140,000
	180,000 to	220,000—	38,500 plus 45%	of amount over 180,000
	220,000 to	260,000—	56,500 plus 50%	of amount over 220,000
	260,000 to	320,000—	76,500 plus 55%	of amount over 260,000
	320,000 to	1,020,000—	109,500 plus 60%	of amount over 320,000
	1,020,000 to	2,020,000—	529,500 plus 65%	of amount over 1,020,000
	2,020,000 to	4,020,000—	1,179,500 plus 70%	of amount over 2,020,000
	4,020,000 to	2,579,500 plus 75%	of amount over 4,020,000
<hr/>				
\$	0 to	50,000—Exempt		
	50,000 to	60,000—	0 plus 5.0%	of amount over 50,000
	60,000 to	70,000—	500 plus 7.5%	of amount over 60,000
	70,000 to	80,000—	1,250 plus 10.0%	of amount over 70,000
	80,000 to	100,000—	2,250 plus 12.5%	of amount over 80,000
	100,000 to	120,000—	4,750 plus 15.0%	of amount over 100,000
	120,000 to	140,000—	7,750 plus 17.5%	of amount over 120,000
	140,000 to	180,000—	11,250 plus 20.0%	of amount over 140,000
	180,000 to	220,000—	19,250 plus 22.5%	of amount over 180,000
	220,000 to	260,000—	28,250 plus 27.5%	of amount over 220,000
	260,000 to	320,000—	39,250 plus 35.0%	of amount over 260,000
	320,000 to	420,000—	60,250 plus 42.5%	of amount over 320,000
	420,000 to	520,000—	102,750 plus 50.0%	of amount over 420,000
	520,000 to	620,000—	152,750 plus 55.0%	of amount over 520,000
	620,000 to	1,020,000—	207,750 plus 60.0%	of amount over 620,000
	1,020,000 to	2,020,000—	447,750 plus 65.0%	of amount over 1,020,000
	2,020,000 to	4,020,000—	1,097,750 plus 70.0%	of amount over 2,020,000
	4,020,000 to	2,497,750 plus 75.0%	of amount over 4,020,000

^a Table reflects exchange rate of £1 = \$2.00; table does not reflect 100% marital deduction for inter vivos and death transfers; table does not reflect annual exclusions for gifts; all taxable inter vivos and death transfers of transferor are cumulated.

Source: Finance Act, 1975, pt. III, § 37, First and Second Tables (as amended by Finance Act, 1978).

TABLE 11.
Estate and Gift Tax Rate Schedule—United States^a

\$	0 to \$	175,625—Exempt		
	175,625 to	250,000—\$	0 plus 32%	of amount over \$ 175,625
	250,000 to	500,000—	23,800 plus 34%	of amount over 250,000
	500,000 to	750,000—	108,800 plus 37%	of amount over 500,000
	750,000 to	1,000,000—	201,300 plus 39%	of amount over 750,000
	1,000,000 to	1,250,000—	298,800 plus 41%	of amount over 1,000,000
	1,250,000 to	1,500,000—	401,300 plus 43%	of amount over 1,250,000
	1,500,000 to	2,000,000—	508,800 plus 45%	of amount over 1,500,000
	2,000,000 to	2,500,000—	733,800 plus 49%	of amount over 2,000,000
	2,500,000 to	3,000,000—	978,800 plus 53%	of amount over 2,500,000
	3,000,000 to	3,500,000—	1,243,800 plus 57%	of amount over 3,000,000
	3,500,000 to	4,000,000—	1,528,800 plus 61%	of amount over 3,500,000
	4,000,000 to	4,500,000—	1,833,800 plus 65%	of amount over 4,000,000
	4,500,000 to	5,000,000—	2,158,800 plus 69%	of amount over 4,500,000
	5,000,000 to	2,503,800 plus 70%	of amount over 5,000,000

^a Table represents estate and gift tax system on and after 1981 when the full \$47,000 credit is implemented; table does not reflect gift tax and estate tax marital deduction nor does it reflect annual gift exclusions; all taxable inter vivos and death transfers of transferor are cumulated.

Source: I.R.C. § 2001(c) adjusted for unified credit appearing in I.R.C. § 2010(a).

TABLE 12.

**Estimated Comparative Tax Burdens for Various Sizes of Agricultural Estates Where Each Spouse
is Assumed to Own One-Half of the Farm Assets and Where Two Children Survive**

	France	W. Germany	Ireland	Netherlands	United Kingdom	United States
Fair market value of combined estates ^a	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000
Death tax value ^b	60,000	60,000	80,000	80,000	80,000	80,000
Total death tax ^c	0	0	0	4,760	0	0
Marginal tax rate ^d	0%	0%	0%	9%	0%	0%
Tax as % of f.m.v.	0%	0%	0%	4%	0%	0%
Fair market value of combined estates	240,000	240,000	240,000	240,000	240,000	240,000
Death tax value	120,000	120,000	160,000	160,000	160,000	160,000
Total death tax	0	0	0	12,920	9,000	0
Marginal tax rate	0%	0%	0%	11%	25%	0%
Tax as % of f.m.v.	0%	0%	0%	5%	4%	0%
Fair market value of combined estates	480,000	480,000	480,000	480,000	480,000	480,000
Death tax value	240,000	240,000	320,000	320,000	320,000	320,000
Total death tax	11,000	1,800	0	32,680	61,000	0
Marginal tax rate	20%	3%	0%	13%	40%	0%
Tax as % of f.m.v.	2%	below 1%	0%	7%	13%	0%
Fair market value of combined estates	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
Death tax value	600,000	600,000	800,000	800,000	800,000	800,000
Total death tax	83,000	24,340	0	102,840	315,000	149,600
Marginal tax rate	20%	6%	0%	15%	60%	34%
Tax as % of f.m.v.	7%	2%	0%	9%	26%	12%
Fair market value of combined estates	4,800,000	4,800,000	4,800,000	4,800,000	4,800,000	4,800,000
Death tax value	2,400,000	2,400,000	4,000,000 ^e	3,200,000	3,800,000 ^e	3,800,000 ^e
Total death tax	443,000	235,000	1,220,000	566,600	2,203,000	1,377,600
Marginal tax rate	20%	11%	50%	17%	65%	45%
Tax as % of f.m.v.	9%	5%	25%	11%	58%	36%
Fair market value of combined estates	12,000,000	12,000,000	12,000,000	12,000,000	12,000,000	12,000,000
Death tax value	6,000,000	6,000,000	11,200,000 ^e	8,000,000	11,000,000 ^e	11,000,000 ^e
Total death tax	1,163,000	863,750	5,375,000	1,322,600	7,379,000	5,707,600
Marginal tax rate	20%	13%	50%	17%	75%	70%
Tax as % of f.m.v.	10%	7%	45%	11%	61%	52%

^a Each spouse is assumed to own one-half of the indicated amount.

^b Assumes that real estate comprises two-thirds of each estate; for France, death tax value calculated as 100% of the fair market value of personalty plus 25% of the fair market value of realty; for W. Germany, death tax value calculated as 50% of the fair market value of all property; for Ireland, Netherlands, United Kingdom, and United States, death tax value calculated as 100% of personalty plus 50% of the fair market value of realty. See Table 3, Reduced Valuation for Agricultural Property.

^c For all countries except W. Germany and Ireland, the total death tax is calculated assuming each spouse transfers his or her property equally to each of two children; for W. Germany (Ireland) the total tax is calculated assuming the husband dies first transferring one-eighth (one-third) of his estate, i.e. the spouse's legal share, to his spouse and the remainder of his estate equally to each of two children, and that the widow subsequently dies transferring all her property, including that acquired from her husband, equally to each of two children.

^d Highest tax rate applying to any portion of a particular inheritance. For example, in the case of W. Germany and Ireland, the highest marginal rate occurs when each child inherits from the second spouse.

^e The applicable limit on reductions resulting from agricultural valuation has been reached. Because the spouses start with separate estates in these examples the applicable limit for the U.K. and U.S. is \$1,000,000, i.e., \$500,000 × 2. In Ireland, two children are assumed to inherit from each of two parents. Accordingly, the applicable limit for transfers to the children is \$800,000, i.e., \$200,000 × 4. See Table 3, Reduced Valuation for Agricultural Property.