(NET) WEALTH TAX
Introduction: regulation & object

- **Regulation:** Law 19/1991, of 6 June, on the Wealth Tax (LIP).
  - Law 4/2008 “abolished” the wealth tax with the introduction of a 100% allowance on the tax debt and with the elimination of formal obligations.
  - Royal Decree-Law 13/2011 temporarily reintroduced the wealth tax for the tax years 2011 and 2012. The 100% allowance was temporarily abolished for 2011 and subsequent tax years.
  - Royal Decree-Law 3/2016 keeps the application of the wealth tax = wealth tax extended until 1 January 2018.

- **Object:** net wealth of the person
  “ Conjunto de bienes y derechos de contenido económico de que sea titular, con deducción de las cargas y gravámenes que disminuyan su valor, así como de las deudas y obligaciones personales de las que deba responder” (art. 1 of the LIP)

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Nature: direct tax of an individual nature that is levied on the individual’s net wealth.
  - Direct tax from a legal perspective
  - Direct tax from an economic perspective = direct parameter of the ability to pay.

- **Objective** tax: no personal or family circumstances are considered for determining the tax debt.
- **Periodic** tax: accrual date on 31 December
- **Progressive** tax: there is an exempt amount and a progressive rate.
Introduction: scope of application

- **Scope of application:** State legislation + application in the whole territory of Spain.
  - Treaties and conventions signed by Spain.
  - Basque Country and Navarre.
    - Their own legislation on the (net) wealth tax
    - Similar to the LIP with some particularities.
  - The IP has been **assigned** to regions belonging to the common system
    - The regions are in charge of the (total) collection and administration of the tax
    - Authorisation to set their own tax rates and exemptions (with certain limits)
Tax event and accrual

- **Tax event:** this tax is imposed on the net wealth of the person (art. 3 of the LIP).

- **Accrual date:** 31 Dec.
  - Assets and rights included in the individual’s wealth on that date.
  - Tax period = calendar year

  - The death of a person on 25 November means the non-realisation of the tax event and that there is no (net) wealth subject to tax under this scheme.
Tax event: attribution and imputation (1/2)

- **Matrimonial property**
  - Wealth tax: individual tax ➔ spouses are separately taxed
    - If they are married under the [community property system](#), the assets are generally attributed to the spouses on a 50/50 basis
    - If they are married under the [separate property system](#), each asset is attributed to the appropriate owner

- **Cases of delayed purchase** (particularities based on the reservation (or non-reservation) of the title)
  - Non-reservation of title
    - **Purchasers** are the [owners](#) of the good acquired from the very beginning = the value will be included as part of their assets and they should include the postponed prices as part of their debts.
    - **Sellers** have a [credit claim](#) on the pending amount (to be collected).
Tax event: attribution and imputation (2/2)

- **Reservation of title**
  - Purchasers are in **possession** of the asset (as the seller still maintains the ownership of the asset); **credit claim** on the amounts already paid.
  - Sellers maintain the **ownership** of the (sold) good until the last payment = the value will be included as part of their assets and they should include the amounts paid (by the purchaser) as part of their debts.

- **Iuris tantum presumption** (taxpayer can prove the opposite):
  - **General:** goods and rights are part of the individual’s wealth when those assets were owned by the person in the prior accrual (e.g. 31 Dec. 2016), unless the individual proves a transfer or capital loss.
  - **Special:** the Tax Administration can consider the ownership of a certain asset from data included in public registers when it is not duly documented.
Goods and rights exempted from IP: Art. 4 of the LIP.

1. Goods or assets registered as part of the National Heritage.
2. Pieces of art and antiques (legal requirements).
3. The household contents, that is, furnishings, belongings and other utensils for the private use of the taxpayer (except jewels, fur coats, vehicles, boats, art, antiques).
4. Pension plans and mutual insurance societies
5. Intellectual property rights in the author’s ownership.
6. **Securities** that are exempted according to art. 14 of the TRLIRNR.

7. **Business assets** are exempted if the following conditions are met on 31 December (that is, on the accrual date):

   - The goods and rights should be *attached to the business* or professional activity according to the LIRPF.
   - The business should be run directly, personally and as a regular activity by the taxpayer (who is the owner of the assets).
   - The activity must be the *taxpayer’s main source of income*.
     - The net business income (NBI) is at least 50% of the taxpayer’s taxable income (IRPF).
8. Unquoted shares and comparable interests in companies (other than portfolio or real estate management companies) in which the taxpayer holds:

- More than 5% of the capital.
- A managerial function which is the source of more than 50% of the taxpayer’s total income.

9. The taxpayer’s permanent dwelling up to €300,000. The excess amount is subject to the IP.
Who is the taxpayer? Art. 5 LIP.

- Taxpayer = individuals (entities or companies). Single tax return (joint tax returns)
  - e.g. Mr. and Mrs. Smith need to file separate tax returns reflecting their participation in any joint assets and liabilities in addition to any personal items.

IP applies not only to residents but also to non-residents (if they own any assets in Spain). Of course, different rules apply:

1. **Residents**: the tax is levied on their *worldwide wealth*, regardless of the place where their assets are located.

Who are subject to this modality?

- Individuals who are residents in Spain (circumstances set forth in the LIRPF).
- Spanish public employees abroad (e.g. Spanish ambassador in Paris).
- Persons who move abroad when they opt to apply this modality.
2. **Non-residents**: the tax is only levied on goods or rights located in Spain.
   
   - According to art. 6 of the LIP, non-residents taxpayers are obliged to appoint a representative (in Spain).

Who are subject to this modality?

- Persons who do not have their habitual abode in Spain, but who own goods located in Spain or rights that should be exercised in Spain.
- Foreign public employees in Spain (e.g. French ambassador in Madrid).
- Persons who move to Spain and elect to be taxed under IRNR rules:
  
  - **Art. 93 of the LIRPF**: “expatriate employees” regime: individuals who have acquired residency in Spain may elect to be taxed under IRPF rules or IRNR rules for the tax year in which they move to Spain and for the following 5 tax years. Requirements?
    - The change of residence is due to labour reasons.
    - They are not obtaining any income through a PE in Spain.
    - They have not been residents in Spain in the prior 10 years.
**Tax base: determination**

The tax base is the value of the net assets on 31 Dec. of each year. When computing the tax base...

<table>
<thead>
<tr>
<th>“Obligación personal”</th>
<th>“Obligación real”</th>
</tr>
</thead>
<tbody>
<tr>
<td>(tax liability based on residency)</td>
<td>(tax liability based on Spanish-source capital)</td>
</tr>
<tr>
<td>The value of goods and rights owned by the taxpayer on 31 Dec.</td>
<td>The value of goods located in Spain and the rights that should be exercised in Spain.</td>
</tr>
<tr>
<td>The value of debts and obligations</td>
<td>The value of debts and obligations related to goods and rights subject to tax.</td>
</tr>
</tbody>
</table>

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How to value immovable properties? (art. 10 of the LIP)

- The highest value: (i) cadastral value; (ii) value verified by the Tax Administration, e.g. according to ISD or ITPAJD; (iii) price or cost of acquisition.

How to value business assets? (art. 11 of the LIP)

- If the exemption set out in art. 4 does not apply, business assets are valued according to the balance sheet, that is, the balance between the assets and liabilities of the business, provided that the balance sheet is in line with the Commercial Code.
  - Lack of balance sheet = general rules for each type of good or right.
- In the case of **immovable properties**, even if they are attached to the business, they will be valued according to the rules of art. 10 of the LIP = as any other immovable property.
  - Exception: the activity is building or selling immovable properties
How to value bank deposits or bank accounts?

- The highest value: (i) the balance on 31 Dec.; (ii) the average balance of the last quarter of the year.

How to value jewels, fur coats, art, antiques, vehicles or boats?

- Market price on the accrual date (31 Dec.)
  - In the case of vehicles: table used by the Ministry of Finance concerning the ITPAJD.
How to value rights in rem? (rules included in the TRLITPAJD).

- **(Temporary) usufruct**: 2% per year, up to 70% (maximum limit).

- **(Life) usufruct**: it depends on the beneficial owner’s age
  - Less than 20 years: 70% of the value of the asset.
  - 20 years or more than 20 years: application of the following formula: \(70\% - 1\% \times (\text{age} - 19)\), up to 10% (minimum limit).

- **Owned property – excl. usufruct**: the difference between the value of the asset according to wealth tax rules and the usufruct’s value.

- **Other rights of use**: 75% of the value resulting from the application of valuation rules concerning the usufruct.
Tax base: valuation of goods and rights (4/4)

- **Intellectual property.**
  - Acquisition cost.
  - However, if the wealth tax is attached to a business ➔ rules related to the valuation of business assets can be applied.

- **Other economic rights and goods.**
  - Market price on 31 Dec. (accrual date)
<table>
<thead>
<tr>
<th>Goods or rights</th>
<th>Valuation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Immovable property</strong></td>
<td>The cadastral value, the value verified by the Tax Administration or the cost of acquisition</td>
</tr>
<tr>
<td><strong>Assets attached to business activities</strong></td>
<td>Accounting value (assets – liabilities)</td>
</tr>
<tr>
<td><strong>Bank deposits or bank accounts</strong></td>
<td>The balance on 31 Dec. or the average balance of the last quarter of the year</td>
</tr>
<tr>
<td><strong>Jewels, fur coats, art, antiques, vehicles or boats</strong></td>
<td>Market price on the accrual date (31 Dec.)</td>
</tr>
<tr>
<td><strong>Other economic rights and goods</strong></td>
<td></td>
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<tr>
<td><strong>Rights in rem</strong></td>
<td>Provisions concerning the ITPAJD</td>
</tr>
<tr>
<td><strong>Intellectual property</strong></td>
<td>Acquisition cost</td>
</tr>
</tbody>
</table>
How to value debts and obligations?

- Nominal value on the accrual date (31 Dec.). They should be properly justified.
- The following debts and obligations cannot be deducted:
  - Debts related to goods that benefit from an exemption. In case of partial exemption, a proportional deduction can be applied. Debts for acquiring goods cannot be deducted either.
  - The mortgage which guarantees a postponed price for acquiring a good. However, the postponed price can be deducted.
How is the assessable base determined?

The **assessable or net base** is determined by applying a general exemption/standard allowance of €700,000 to the tax base, unless the region where the taxpayer resides establishes a different amount.

- The allowance may vary per region ➔ Valencia Region (since January 2016):
  - The standard allowance is €600,000 ("obligación personal")
  - In the case of disabled taxpayers (at least 33% for mental disability, or at least 65% for physical disability): €1,000,000
How is the tax base determined?

- The tax debt is determined by applying the tax rates (table) to the assessable base:
  - Tax rates may vary per region

<table>
<thead>
<tr>
<th>Base liquidable</th>
<th>Cuota</th>
<th>Resto base liquidable</th>
<th>Tipo aplicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hasta euros</td>
<td>Euros</td>
<td>Hasta euros</td>
<td>Porcentaje</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td>167.129,45</td>
<td>0,2%</td>
</tr>
<tr>
<td>167.129,45</td>
<td>334,26</td>
<td>167.123,43</td>
<td>0,3%</td>
</tr>
<tr>
<td>334.252,88</td>
<td>835,63</td>
<td>334.246,87</td>
<td>0,5%</td>
</tr>
<tr>
<td>668.499,75</td>
<td>2.506,86</td>
<td>668.499,76</td>
<td>0,9%</td>
</tr>
<tr>
<td>1.337.999,51</td>
<td>8.523,36</td>
<td>1.336.999,50</td>
<td>1,3%</td>
</tr>
<tr>
<td>2.673.999,01</td>
<td>25.904,35</td>
<td>2.673.999,02</td>
<td>1,7%</td>
</tr>
<tr>
<td>5.347.998,03</td>
<td>71.362,33</td>
<td>5.347.998,03</td>
<td>2,1%</td>
</tr>
<tr>
<td>10.695.996,06</td>
<td>183.670,29</td>
<td>En adelante</td>
<td>2,5%</td>
</tr>
</tbody>
</table>
Limit to the tax debt:

- The aggregate burden of income tax and (net) wealth tax due by a resident taxpayer ("obligación personal") may not exceed 60% of their total taxable income for income tax purposes. 
  
  
- If it exceeds that amount, taxpayers may reduce their (net) wealth tax liability by the excess amount.

- However, a minimum tax of 20% of the (net) wealth tax liability, as originally calculated (that is, before the application of the 60% rule) has to be paid.
How is the final tax debt calculated?

- **Double taxation relief (art. 32 of the LIP):** resident-taxpayers who have included in their tax base goods or rights subject to tax abroad can diminish the tax debt by applying the lowest amount between:
  - The amount of the tax effectively paid abroad on such goods and rights; or,
  - The result of applying the average and effective tax rate of the wealth tax \([100 \times (\text{tax debt}/\text{net base})]\) to the part of the net base subject to tax abroad.
How is the final tax debt calculated?

- **Allowances applied to the tax debt:**
  - **Allowance on assets and rights in Ceuta and Melilla:** When among assets or rights for determining the tax base, there is any of them located in Ceuta or Melilla, the taxpayer who resides there can (proportionately) apply a **75% allowance** to the tax debt.

  Taxpayers are not required to reside in Ceuta or Melilla if they hold shares in a capital entity when the entity is based there or when there is a PE located there.
How is the final tax debt calculated?

- Allowances applied to the tax debt:
  - General allowance:
    - Law 4/2008 amended art. 33 of the LIP by introducing a 100% allowance effective from January 2008.
    - Royal Decree-Law 13/2011 abolished the 100% allowance for 2011 and 2012 (extended for subsequent tax years).
How is the final tax debt calculated?

Regional deductions and allowances:

- Regions can introduce their own deductions and allowances in respect of the wealth tax.
  - They should be compatible with the deductions established by the State.
  - They should be applied after the deductions and allowances established by the State.

- **Valencia Region**: no deductions or allowances (currently).
Wealth Tax Diagram

Value of goods/rights (excl. exemptions) - Debts

Standard allowance of €700,000

Assessable base

Tax rate

Tax debt

CI (IP) + CI (IRPF) < or = 60% BI (IRPF)

Individual’s net wealth

31/12

Final tax debt

Regional deductions and allowances

Allowances: (i) Ceuta and Melilla; (ii) general allowance

Double taxation relief

Application of the limit to the tax debt

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Tax return. Formal issues (1/2)

- **Powers regarding the assessment, collection, inspection and review of the IP:**
  - The State. However, it is possible to assign powers to the regions

- **Who is obliged to submit tax returns?**
  - All taxpayers in the following situations (one of them) should file the tax return:
    - **When the tax debt**, after applying deductions and allowances, **is positive** (= payment).
    - When the taxpayer is the owner of goods and rights over a **value** of €2,000,000 (although the condition above is not met).

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Tax return. Formal issues (2/2)

- **Formal requirements:**
  - The wealth tax (IP) is an individual tax. There is no possibility to submit a joint tax return.
  - There is a single form (either for residents or for non-residents): * Modelo D-714.*
  - **Self-assessment** ➔ the taxpayer should submit the tax return (with the valuation of the taxpayer’s assets/debts) + self-assessment, and pay the tax in due form (place and deadline).

- **Negative tax return?**
  - No. There are no payments on account.
  - The tax debt can be positive or equal to zero.

- **Is it possible to divide the payment?**
  - No. The full amount should be paid when submitting the tax return + self-assessment.

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