Inheritance and Gift Tax

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Structure

I. Overview.

II. Tax event.

III. Taxable persons.

IV. Tax base.

V. Net base.

VI. Tax debt.

VII. Administration.
I. Overview (1/3)

• **Regulation:**
  • Law 29/1987 + RD 1629/1991
  • The ISD has been assigned to regions belonging to the common system (Basque Country and Navarre: “fueros”)
    • They are in charge of collecting the ISD
    • They may also modify rates and allowances
      • Valencia Region: Law 13/1997
  • Treaties and conventions signed by Spain (Greece, France and Sweden)
  • **The ISD is levied on**…
    • *Inter vivos* or *mortis causa* acquisitions of property and rights by individuals
    • *(incompatibility between the IRPF and the ISD)*
I. Overview (2/3)

• Nature:
  • Direct v. Indirect
  • Subjective v. Objective

• Scope of application:
  • The whole territory of Spain
    • Basque Country and Navarre: “fueros”
  • Tax assigned to regions
    • Tax base reductions; tax (progressive) rates; coefficients; and allowances.
  • If this right is not exercised, the rates and allowances established by State legislation apply
I. Overview (3/3)

- The so-called “puntos de conexión” refer to the nexus for applying state or regional legislation:
  - The regional legislation applies to taxpayers resident in Spain or in a Member State of the EU or the EEA (Judgment of the ECJ 3 Sept. 2014).
  - *Mortis causa* acquisition: habitual abode of the deceased (*causante*) on the accrual date.
  - *Inter vivos* acquisition: habitual abode of the donee (*donatario*). In the case of immovable property, the legislation of the place where the property is based applies.
II. Tax event (1/3)

• **Taxable event:**
  1. The acquisition of property and rights through inheritance or bequest;
  2. The acquisition of property and rights through *inter vivos* gifts;
  3. The acquisition of proceeds of a life insurance contract/policy where the beneficiary and the policyholder are not the same person.

• That is, *inter vivos* or *mortis causa* acquisitions of property and rights by individuals.
II. Tax event (2/3)

*Iuris tantum* presumptions (art. 4 of the LISD): two circumstances are legally presumed to be gratuitous transfers:

1. Where it appears to the tax authorities that a person’s net wealth has decreased by the same amount as that by which the net wealth of that person’s spouse, descendants, heirs or legatees has increased either simultaneously or within a 4-year period of such decrease.

2. Where any property is acquired for consideration by an ascendant in his/her capacity as legal representative of a minor, such property will be treated as a gift to that minor unless it can be conclusively proved that the minor owned sufficient capital to pay for such property and such capital was used to pay for that acquisition.
II. Tax event (3/3)

• *Time of taxation of the ISD ➔ instantaneous tax, accrual?*

  • *Mortis causa* acquisitions or insurance life policies: day of the death.

  • *Inter vivos* gifts: the day on which the contract is entered into.
III. Taxable persons (1/3)

- ISD applies not only to residents but also to non-residents
  - Obligación personal: residents in Spain (tax liability based on residency)
  - Obligación real: non-residents in Spain (tax liability based on Spanish-source capital/income)

- Criterion: residence of the heir v. residence of the deceased.
  1. Other jurisdictions and the OECD: residence of the deceased.
  2. Regions: residence of the deceased as the “punto de conexión” for determining the applicable legislation.

- Obligación personal: a person who is resident in Spain is liable to tax on property and rights located in Spain or abroad which are acquired through gratuitous transfers (worldwide).

- Obligación real: non-residents are subject to the ISD on any assets which are located in Spain or rights which may be exercised in Spain.
III. Taxable persons (2/3)

<table>
<thead>
<tr>
<th>Tax modality</th>
<th>Application of legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Habitual abode of the heir/donee</td>
<td>Habitual abode of the deceased or the donee*</td>
</tr>
<tr>
<td>Personal</td>
<td>Real</td>
</tr>
<tr>
<td>State legislation</td>
<td>Regional legislation</td>
</tr>
</tbody>
</table>

- **Mortis causa acquisition:**
  - The deceased with residence in Spain and the taxpayer with residence in Spain or the EU/EEA: regional regulations applicable in the **habitual abode of the deceased**
  - The deceased resident not in Spain but within the EU/EEA: regional legislation regarding the place where the highest value of goods and rights is based.
    - If there is no asset in Spain, taxpayers apply the regional legislation where their habitual abode is located.
  - The deceased with no residence in Spain or the EU/EEA: State legislation

- **Inter vivos gift:**
  - Immovable property:
    - Immovable property located in Spain: regional legislation where property is based provided that the acquirer’s habitual abode in Spain/EU/EEA
    - Immovable property located abroad and resident-taxpayer: regional legislation regarding the taxpayer’s residence provided that the property is located within the EU/EEA.
  - Movable property: habitual abode of the donee
    - If the donee is non-resident in Spain but resides within the EU/EEA: regional legislation regarding the place where assets remained
III. Taxable persons (3/3)

• **Who is the taxpayer for ISD purposes?**
  1. *Mortis causa* acquisitions: the heir, legatee or person receiving a bequest (*causahabientes*)
  2. *Inter vivos* gifts: the donee (*donatario*) of a gift.

• **Cases of responsibility** (*subsidiaria*)
  1. Financial intermediaries
  2. Insurers
  3. Civil servants in cases of “*cambio sujeto pasivo*”
IV. Tax base

Net value of each recipient’s portion

Real value of goods and rights minus debts and deductible expenditures

3 tax events

- Mortis causa acquisitions
- Inter vivos gifts
- Life insurance proceeds
IV. Tax base: *mortis causa acquisitions* (1/2)

A. **Determination of the real value/gross amount of the inheritance:**

1. Real value of goods and rights. In the case of marriage under the community property system: 50% of the value.
   - Once the gross amount of the inheritance is determined, it should be added the value of the household contents as well as the so-called “*bienes adicionables*”

2. Household furnishings and personal belongings (*ajuar doméstico*): **3% of the real value** (unless proven otherwise)
   - Marriage: the value of the household contents should be reduced to the 3% of the cadastral value of the primary residence/permanent home
   - e.g. the gross amount of Mrs. Garden’s inheritance is €235,000, so the value of the household contents will be €7,050. As Mrs. Garden was married: €7,050 – (3% of the cadastral value of the house: €142,000) = €7,050 – €4,260 = €2,790

3. “*Bienes adicionables*”: certain presumptions attribute some assets to the deceased and include them in the deceased’s estate and apportion them to the beneficiaries for ISD purposes (*iuris tantum presumptions*), e.g. any property alienated by the deceased in the year preceding the deceased’s death.

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IV. Tax base: *mortis causa acquisitions* (2/2)

B. Determination of burdens, debts and deductible expenditures:
   1. *Burdens and encumbrances* imposed directly on the asset which effectively reduce its value
   2. *Duly documented debts* of the deceased
   3. *Expenditures*, mainly medical costs and burial, cremation and inheritance-related litigation expenses

C. Determination of the net value of the inheritance: the gross amount of the inheritance minus burdens, debts and deductible expenditures.
   
   e.g. regarding Mrs. Garden’s death, only burial expenses can be deducted (€4,300):
   
   \[(€235,000 + €2,790) – €4,300 = €233,490\]

D. Determination of the heir’s portion: based on the testamentary clauses or legal rules (inheritance in the absence of a will)

   e.g. as Mrs. Garden was married, it should be calculated the usufruct of her spouse (who is 70 years old): \(70\% - 1\% \times (70 \text{ years} - 19) = 19\%
   
   \[€233,490/3 = €77,830 \Rightarrow 19\% \text{ of } €77,830 = €14,787.70\]. Therefore, the remaining amount \((€233,490 – €14,787.70 = €218,702.3)\) will be her son’s portion.
IV. Tax base: *inter vivos gifts*

- **General rule:** net value of goods and rights, that is, the real value of goods/rights minus debts (and deductible expenditures)

- **Special rule:** there is an obligation to accumulate gifts made during the last three years between the same donor and donee.

- **Debts and expenditures:**
  - **Debts:** only those which are guaranteed by rights in rem provided that the acquirer has assumed the obligation to satisfy such debts.
  - **Non-deductible expenditures.**
IV. Tax base: life insurance proceeds

- Tax base = the amount received by the beneficiary (in the case of collective insurance policy: proportion)

- This amount is added to the beneficiary’s inheritance where the deceased is the holder of an individual insurance policy.

  - e.g. Mr. Smith has received an amount of €8,000 because of his father’s death (heir’s portion). In addition, his father held an individual insurance policy, of which Mr. Smith was the beneficiary: €23,000 ➔ €31,000
V. Net base

- *Mortis causa* acquisitions: reductions according to the degree of relatedness (*grado de parentesco*) and the type of assets apply to determine the net base of the heir.
- *Inter vivos* gifts: two reductions according to the type of assets apply to determine the net base of the donee.
- **Important!** Regions may increase the amount (or percentage) of the reduction, extend its application to other relatives and waive the requirements to apply the reduction.
  - First: application of state reductions. Second: application of regional reductions – unless the region increases the state reduction.
V. Net base: *mortis causa acquisitions*

- **(Group I)** Descendants and adoptees below 21 years: €15,956.87
- **(Group II)** Descendants and adoptees over 21 years + spouses, ascendants and adoptive parents: €15,956.87
- **(Group III)** Collateral relatives (2nd and 3rd degree) + ascendants and descendants by marriage (*por afinidad*): €7,993.46
- **(Group IV)** Collateral relatives (4th degree) and other distant relatives

**Additional reduction: disability**
- 33% - 65% : €47,858.59
- / = 65% : €150,253.03

- **Business assets and participation in entities** which are exempt under art. 4 of the LIP: **95% reduction** of the value when the heirs are the spouse, descendants or adoptees provided that some requirements are met.
- The **permanent home** of the deceased: **95%** (up to €122,606.47)
- Assets registered as part of the **National Heritage** which are exempt for wealth tax purposes: **95% reduction** of the value when the heirs are the spouse, descendants or adoptees provided that some requirements are met.

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V. Net base: *inter vivos gifts*

1. In the case of a **family business and shares** in entities a **95% reduction** is granted when the donees are the spouse, descendants and adoptees provided that the following requirements are met:
   - The donor is 65 or older or disabled.
     - If the donor has been acting as director of the company, the donor leaves the company and no longer gets paid.
   - The donee must hold the business or shares during a 10-year period.

2. Assets registered as part of the **National Heritage** which are exempted for wealth tax purposes: a **95% reduction** is granted when the donees are the spouse, descendants and adoptees provided that the following requirements are met:
   - The donor is 65 or older or disabled.
   - The donee must hold the asset during a 10-year period (the asset can be given away to the State or to Public Administrations).

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V. Net base: life insurance proceeds

- A 100% reduction (up to €9,195.49) when the beneficiary is the deceased’s spouse, ascendant, and (direct/adopted) descendant
  - Each taxpayer is entitled to a single reduction.

- There is a 100% reduction (with no limit) in cases of terrorism or international peace missions regardless of the beneficiary
VI. Tax debt (1/5)

1) Value of goods and rights = Debts and deductible expenditures = Tax base

2) Tax base = Reductions = Net base

3) Net base = Tax debt
VI. Tax debt (2/5)

<table>
<thead>
<tr>
<th>Base liquidable - Hasta Euros</th>
<th>Cuota integra - Euros</th>
<th>Resto base liquidable - Hasta Euros</th>
<th>Tipo aplicable - Porcentaje</th>
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</thead>
<tbody>
<tr>
<td>0,00</td>
<td>-</td>
<td>7.993,46</td>
<td>7,65</td>
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<tr>
<td>7.993,46</td>
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<td>en adelante</td>
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</tr>
</tbody>
</table>

Tax rate: progressive rate

Net base

Tax base

Reductions

Coefficient

Tax debt (cuota íntegra)

Tax debt (cuota tributaria)

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## VI. Tax debt (3/5)

Coefficients: the degree of relatedness + pre-existing estate

<table>
<thead>
<tr>
<th>Pre-existing estate</th>
<th>Groups I and II</th>
<th>Group III</th>
<th>Group IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>From €0 to €402,678.11</td>
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<td>2.000</td>
</tr>
<tr>
<td>More than €402,678.11</td>
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<tr>
<td>to €2,007,380.43</td>
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<td></td>
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<tr>
<td>More than €2,007,380.43</td>
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<td>to €4,020,770.98</td>
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<tr>
<td>More than €4,020,770.98</td>
<td>1.2000</td>
<td>1.9059</td>
<td>2.400</td>
</tr>
</tbody>
</table>

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VI. Tax debt (4/5)

**A. Double taxation relief:** the resident-taxpayer who has included in his/her 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.
- The result of applying the average and effective tax rate to such part of the inheritance or gift

**B. Allowance regarding Ceuta and Melilla:**
- When the deceased’s habitual abode was in Ceuta or Melilla during the last 5 years, a 50% allowance applies
  - 99% allowance when the heir is the spouse, descendant or adopted.
- This allowance also applies to *inter vivos* gifts when the acquirer’s habitual abode is in Ceuta or Melilla or when immovable property is located there.

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VI. Tax debt (5/5)

Allowances related to mortis causa acquisitions:

- 75% \( \Rightarrow \) relatives within Group I
- 50% \( \Rightarrow \) relatives within Group II
- 75% \( \Rightarrow \) physical disability \( =/\) 65% or mental disability \( =/\) 33%
VII. Administration

- **Deadline to submit the tax return:**
  - *Mortis causa acquisition:* 6 months after the date of the death
    - It is possible to extend the deadline for an extra period of 6 months (request)
  - *Inter vivos gift:* 30 working days (contract)

- **Tax return or self-assessment?**
  - Option: 1) self-assessment; 2) tax return including all relevant tax data (Tax Administration: assessment)
  - Certain regions have established self-assessment as mandatory, e.g. Valencia Region