UNIT 2

INHERITANCE AND GIFT TAX

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INHERITANCE AND GIFT TAX

1. Background and general aspects
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1. BACKGROUND AND GENERAL ASPECTS

- **Background:** This tax has existed since the late 18th century and originally taxed certain types of inheritance. Initially broad in scope, it later included progressive tax rates.

- **Current legal system:**
  - Act 29/1987 of 18 November on inheritance and gift tax
  - RD 1629/1991 of 8 November approving the IGT regulations
  - GV Act 13/1997 of 23 December which regulates the regional section of PIT and other assigned taxes

- **EC Recommendation** of 15 December 2011, regarding measures aimed at avoiding double taxation in matters of inheritance 2011/856/EU:
  - The Recommendation establishes how Member States can apply measures, or improve existing measures, to avoid double or multiple taxation derived from the application of inheritance taxes by two or more Member States.
  - This Recommendation is related by analogy to taxes on gifts, when these are taxed according to identical or similar rules to those applicable to successions.

1. BACKGROUND AND GENERAL ASPECTS

- **Territorial scope:** it is required throughout Spain, notwithstanding to the provisions of the regional tax regimes (Basque Country and Navarre) and international DI treaties and conventions: Greece (1920), France (1964), and Sweden (1964).

- **The 'foral' rule applies** when the deceased had habitual residence in a 'foral' territory at the time of death and had also resided there for the previous five years. If the deceased did not meet the requirement of having lived in the province for the previous five years, the provincial council will be competent, but the regulations of the region from which the deceased came will apply. The five-year rule will not be applicable to those who have retained the political status of Basque in accordance with article 7.° 2 of the Statute of Autonomy or who retain the political status of Navarrese in accordance with article 5 of Reintegration and Improvement of the Foral Regime of Navarre.

1. BACKGROUND AND GENERAL ASPECTS

- **Object:** This tax is levied on capital increases obtained free of charge by natural persons. It is coordinated with PIT through a rule of non-subjection (article 6, section 4 of the Personal Income Tax Act).

- **Characteristics:** It is a direct, personal, subjective, progressive, instantaneous tax assigned to the regions.

- **Regional cession:**

1. The collection produced in the territory of the corresponding region is ceded
2. The management of the tax is transferred
3. Regulatory powers are ceded on:
    a. reductions in the tax base
    b. tax rate
    c. amounts and coefficients of pre-existing assets
    d. deductions and bonuses

1. BACKGROUND AND GENERAL ASPECTS

- **Applicable regional legal regime:**
  - Article 32 of Act 22/2009 of 18 December, regulating the financing system of the regions, establishes the points of connection between facts and regulations:
    - Acquisitions *mortis causa* and life insurance: regional regulations where the deceased had his habitual residence
    - Free *inter vivos* acquisitions:
      - real estate: regional regulations apply based on the property's location
      - movable property: regional regulations apply on where the donee had habitual residence

1. BACKGROUND AND GENERAL ASPECTS

- **Applicable regional legal regime:**
  - **Concept of habitual residence:**
    - For the purposes of inheritance and gift tax (article 28, Act 22/2009), natural persons are considered to be residents in the region in which they remain the greatest number of days during a period of five years.
      - Presumptions *iuris tantum* (successively):
        1. Where the habitual residence is located (according to PIT regulations)
        2. In the absence of habitual residence, where the main center of economic interests is located
        3. In the absence of these criteria, where the last residence is declared for personal income tax purposes

1. BACKGROUND AND GENERAL ASPECTS

- **Applicable regional legal regime and the problem with non-residents:**
  - CJUE Judgment of 09/03/14 (appeal C-127/2012): the previous configuration of the inheritance and gift tax was contrary to EU legislation and the freedom of movement of capital and people, because non-residents could not benefit from regional benefits.
  - Act 26/2014 incorporates A.P. 2nd in the IGT Act, that establishes new connection points for non-residents so that they can benefit from regional advantages, but initially applicable only to non-residents who were also residents in an EU Member State.
  - Subsequent judgments of the Supreme Court and binding Consultations V3151-18 of 12/11/2018, recognize the application of AD 2 of Act 19/1987 to all non-residents.

1. BACKGROUND AND GENERAL ASPECTS: CONNECTION POINTS

INHERITANCES	RESIDENT HEIR: taxpayer by personal obligation	NON-RESIDENT HEIR: taxpayer by real obligation
RESIDENT DECEASED	The regional regulations apply where the deceased had their habitual residence.	OPTION between applying the regional regulations where the deceased had stayed the greatest number of days during the last five years, or applying state regulations.
NON-RESIDENT DECEASED	If there are assets in Spain: OPTION to apply the regulations of the region where the greatest value of assets is found (*). If there are no assets in Spain: OPTION to apply the regulations of the region of residence. State regulations apply if no selection is made. If there are several heirs, each has the corresponding option. (*) Greatest value of assets: bank accounts, cars, etc.	OPTION between applying the regional regulations where the greatest value of the assets and rights of the relict estate in Spain are located, or applying state regulations.

1. BACKGROUND AND GENERAL ASPECTS

⓾ CONNECTION POINTS

DONATIONS	RESIDENT DONEE: taxpayer by personal obligation	NON-RESIDENT DONEE: taxpayer by real obligation
Real estate located in Spain	The donee will apply the regional regulations where the property is located.	OPTION between applying the regulations of the region where the property is located, or the state regulations.
Movable property located in Spain	The donee will apply the regulations of the region in which he/she resides.	OPTION between applying the regulations of the region where these goods would have been the greatest number of days during the last five years, or state regulations. Special rule: when the assets are in different regions, the average rate is applied. (See V0149-20, donation to a resident of Luxembourg)
Real estate and movable property located outside Spain	OPTION between applying the regulations of the region where the donee has his/her habitual residence, or the state regulations.	NO TAXATION

1. BACKGROUND AND GENERAL ASPECTS

- Regulatory trends:
  - Group I successors (descendants and adoptees under the age of 21): two groups of regions:
    - Regions where only symbolic amounts are paid (Andalusia, Asturias, Balearic Islands, Cantabria, Castilla La Mancha, Galicia, Extremadura, Madrid, Murcia, and provincial territories).
    - Communities where payment is due if certain limits are exceeded (including Castilla-León and La Rioja < 400K, Aragón with a reduction of 100% up to €3m)
  - Group II successors (spouse, ascendants, descendants over 21 and adopted):
    - Free of taxation (or almost): Andalusia, Cantabria, Extremadura, Madrid and Murcia and BC (1.5%)
    - Rest

2. TAXABLE EVENTS

1. Acquisition of assets and rights by inheritance, legacy, or any other succession title
2. Acquisition of assets and rights by donation or any other legal business for free that is carried out *inter vivos*
3. The receipt of amounts by beneficiaries of life insurance contracts, if the contracting party is a person other than the beneficiary. Two assumptions:
   a. If the life insurance is made on the life of the contracting party and they die, the amount will pass to the beneficiary *mortis causa*. If the beneficiary is an heir, this amount is added to the estate for tax purposes.
   b. If the life insurance is made on the life of a third party, it will be a donation.

2. TAXABLE EVENTS

❿**Incompatibilities with other taxes:**

1. With <u>corporate income tax</u>: free *mortis causa* or *inter vivos* acquisitions made by legal entities are not subject to inheritance and gift tax and are subject to corporate income tax.

2. With <u>PIT</u>: if an income is subject to inheritance and gift tax it cannot be subject to personal income tax – articles: 3 inheritance and gift tax regulation; 6.4 personal income tax law; and 4 of the personal income tax regulations.

   ❿A different assumption is a donation: the donee will be taxed under inheritance and gift tax on the value of what is received and the donor will be taxed under personal income tax on the difference between the asset's acquisition value and its transfer value.

2. TAXABLE EVENTS

❿Incompatibilities with other taxes:

Article 6.4. PERSONAL INCOME TAX ACT: income subject to inheritance and gift tax will not be subject to this tax.

Article 3. INHERITANCE AND GIFT TAX REGULATION: no taxation assumptions

The following are not subject to inheritance and gift tax:

a) Prizes obtained in authorized games

b) Other prizes and compensation exempt from personal income tax

c) Subsidies, scholarships, prizes, premiums, bonuses, and aid granted by public or private entities for charitable, educational, cultural, sports, or social action purposes.

d) The amounts or profits delivered by corporations, associations, foundations, companies, and other entities to their workers, employees, and salaried employees when they derive directly or indirectly from an employment contract, even if they are paid through insurance arranged by those.

e) The amounts received as benefits for the benefits of pension plans and funds or their alternative systems, provided that it is arranged that these benefits be integrated into the tax base of the income tax of the recipient.

f) The amounts received by a creditor, as the beneficiary of a life insurance contract made to guarantee the payment of a previous debt, provided that these circumstances are duly proven.

2. TAXABLE EVENTS

⑩ **Legal presumptions: (*iuris tantum*) allow evidence to the contrary**

1. When the tax records or data held by the tax authority indicate a decrease in a person's assets and, simultaneously or subsequently (but within the limitation period), a corresponding increase in the assets of their spouse, descendants, heirs, or legatees.

2. In acquisitions made for consideration by ascendants, acting as representatives of minors, a gratuitous transfer in favour of the ascendants will be presumed for the value of the assets and rights transferred, unless there is prior evidence of existing assets or funds used for this purpose.

3. TAXPAYERS

- **Natural persons are obliged to pay the inheritance and gift tax:**

  1. In *mortis causa* acquisitions: successors in title: heirs or legatees who succeed the deceased in ownership of rights and obligations
  2. In donations: donees
  3. In life insurance: the beneficiaries

4. TYPES OF SUBJECTION TO THE TAX

- **By personal obligation:**
  - Taxpayers who have their habitual residence in Spain according to personal income tax regulations are taxed by personal obligation on all the assets and rights that they acquire, regardless of the place where they are and the residence of the deceased or donor. Thus, these taxpayers will be taxed on their worldwide increases of capital and, consequently, not only on inheritances received from Spanish decedents, but also on inheritances received from foreign relatives.
- **By real obligation:**
  - Taxpayers who do not have their habitual residence in Spain will be taxed by real obligation for the acquisition of goods and rights located or exercisable in Spain (real estate located in Spain or movable property that is usually in this country) and for the amounts received from life insurance contracted with Spanish insurance entities or with insurers contracted in Spain with foreign entities that operate in Spain.
- Correction of a possible double taxation: double taxation treaties and Article 23, IGT Act (relative imputation method: 'similar tax')

5. TAXABLE BASE

- **For *mortis causa* transmissions:**
  - TB = net value of the individual acquisition of each beneficiary, understood as the real value of the assets and rights reduced by the charges and debts that are deductible.
- **For donations and other comparable *inter vivos* gratuitous transmissions:**
  - TB = net value of the assets and rights acquired, understood as the real value of the assets and rights reduced by charges and debts that are deductible.
- **For life insurance:**
  - TB: is settled by accumulating the amounts with that of the other assets and rights that make up the hereditary portion of the beneficiary, when the deceased is both the contracting party of the individual insurance or insured in the group insurance.

Article 9 of the INHERITANCE AND GIFT TAX ACT (wording given by Act 11/2021):

✓ Value of goods and rights = market value

✓ Real estate: reference value. If there is no reference value, the greater of two: the market value or the declared value

✓ Appeal of the reference value

5. TAXABLE BASE

⑩**Acquisitions *mortis causa*: the following operations must be carried out**

- Fixing hereditary wealth through the inclusion of all assets (except for legacies, if any) computed according to real values.

- Addition of household furnishings, which will be valued at 3% of the hereditary wealth, unless a higher value has been declared or a lower value is proven. If the deceased was married, the value of the household furnishings will be reduced by the value of the assets to be delivered to the surviving spouse, valuing this amount at 3% of the cadastral value of the marriage's habitual residence.

- Addition of other assets to prevent tax avoidance. These are presumptions underlying the hereditary wealth assets and resulting rights. The most important, the addition of assets of all kinds that would have belonged to the deceased up to one year before their death, except when reliable proof exists that they transmitted such assets and that they are in the possession of a person other than the heir, legatee, relative up to the third degree, or spouse of any of them or of the deceased.

5. TAXABLE BASE

⑩**Acquisitions *mortis causa*…**

- <u>Deduction of charges and encumbrances</u>: only those charges that fall directly on the assets and reduce their value are deductible (censuses, pensions, etc.).
- <u>Deduction of debts</u>: the legacies (succession under a private title) are not responsible for the debts of the deceased, while in the succession under universal title, the debts of the deceased are transmitted to the heirs, so that they are deductible. In particular, those that the deceased leaves contracted unless they were in favour of heirs, legatees of a proportional value of an estate, spouses, ascendants, descendants or siblings of those and tax and social security debts are also deductible.
- <u>Deductible expenses</u>: only of two types: a) last illness, burial, and funeral; and b) those that are occasioned by the litigious nature of the testamentary or intestate, except those of administering the relict estate.
- <u>Determination of the natural person's hereditary portion</u>: once the net hereditary estate has been obtained, the portion of it that corresponds to each heir must be calculated according to what is established in the will or, if there is none, the intestate succession. If there is life insurance in which the heir is a beneficiary, the amounts received for that concept will be added at that time.

5. TAXABLE BASE

- ***Inter vivos*** **acquisitions: the following operations must be carried out:**
  1. <u>Determination of the real value</u> of the donated assets and rights.
  2. <u>Deduction of charges and encumbrances</u>, although only those that fall directly on the assets and reduce their value will be deductible.
  3. <u>Deduction of debts</u>, although only those that are guaranteed with real rights that fall on the same transferred assets will be deductible, in the event that the donee has assumed the obligation to pay the guaranteed debt (having to pay the transfer tax for assumption of debt).
- **Life insurance:**

  The taxable base will consist of the amounts received by the beneficiary, which will be settled by accumulating the amount to the rest of the assets and rights that make up the hereditary portion of the beneficiary when the deceased is, at the same time, the contracting party of the life insurance.

5. TAXABLE BASE

- Verification of values (articles 18, IGTL, and 40 of the regulation):
  - Verification procedure and means: general tax law
  - Contradictory expert appraisal (Article 98 of the regulation)

6. PAYABLE BASE

- Obtained by applying the state and regional reductions to the taxable base.

- Notes:
    - Each taxable event (transfers *mortis causa* and *inter vivos*) has its own reductions, which may vary.
    - The powers of the regions to regulate reductions is not absolute: they cannot repeal the state reductions and those that are established must fall into any of the following categories:
        - Analogous: when the conditions of a state reduction already created improve, in which case they can replace the state reductions
        - Own: completely new reductions; created by the region and so added to the state reductions.
        - Mixed: if there is already a state reduction and a similar regional reduction, this does not necessarily imply an improvement (due to requirements). In such cases, the taxpayer may choose either the state or the regional reduction.
    - The taxpayer may not apply two reductions classified as analogous or mixed, and must choose one of the two.

6. PAYABLE BASE

The reductions in the taxable base of the inheritance and gift tax can be classified as SUBJECTIVE or OBJECTIVE.

- **SUBJECTIVE reductions:** these are based on specific circumstances of the taxpayer, such as kinship and disability. The reduction consists of a specific amount that is applied to the taxable base.

- **OBJECTIVE reductions:** these depend on whether a certain asset is included in the lucrative transfer and whether the taxpayer meets specific requirements: individual company, professional business, participation in entities, historical heritage, insurance, priority agricultural holdings, and for previous *mortis* transfers.

6. PAYABLE BASE

a) STATE *MORTIS CAUSA* REDUCTIONS

1. SUBJECTIVE reductions

a) Kinship

Group	Reduction amount
I. Descendants and adoptees under 21	Reduction of €15,956 plus €3,990 for each year less than 21, without exceeding €47,858
II. Descendants and adoptees aged 21 or older, spouse, ascendants, and adopters	Fixed reduction of €15,956
III. Second and third-degree collaterals, ascendants, and descendants by affinity	Fixed reduction of €7,993
IV. Fourth-degree collaterals, more distant people	Not entitled to reduce TB

6. PAYABLE BASE

Determination of kinship for tax purposes

Straight line	Ascendants	First degree: parents Second degree: grandparents Third degree: great-grandparents
	Descendants	First degree: sons Second degree: grandchildren Third degree: great-grandchildren
Collateral line	Second degree: brothers Third degree: nephews and uncles	

6.- PAYABLE BASE

a) MORTIS CAUSA REDUCTIONS

1. SUBJECTIVE reductions

b) Handicap

Degree of disability	Applicable reduction
Equal to or greater than 65%	€150,253
Between 33% and 65%	€47,858
Less than 33%	No reduction

6. PAYABLE BASE

a) STATE *MORTIS CAUSA* REDUCTIONS

2. OBJECTIVE reductions

a) Reduction due to transmission *mortis causa* of an individual company or professional business

Reduction 95% of the net value: affected assets minus debts of the activity	Company or business	Generate income subject to economic activities in personal income tax
	Deceased	Carry out the activity on a regular, personal, and direct basis Main source of income in personal income tax
	Heir	Kinship: spouse, descendants, or adopted. If there are no descendants or adoptees, ascendants, adopters, and collaterals up to the third degree. Maintain the acquisition for 10 years.

6. PAYABLE BASE

Reduction due to transmission *mortis causa* of an individual company or professional business

- **Considerations:**
  - Supreme Court Judgment 01/18/2016, appeal 2139/2015: the reduction is a consequence of concern about the continuity of family businesses (Supreme Court Judgment 03/18/2009 Rec. 6739/2004; Supreme Court Judgment 09/23/2010 Rec. 6794/2005)
  - Recommendation of the European Commission of 7 December, 2004: highlights the need for Member States to adopt measures aimed at considering the decrease in value that occurs for the company due to the fact of the transfer, and to provide an adequate tax treatment in successions and donations when the company continues trading.
  - Continuation with the activity is not required; and only the maintenance of the value is necessary (DGT V-0360/04).
  - It is even accepted, once the activity has been transmitted, the reinvestment of the amount obtained in financial products that guarantee its immobilization during the term established in law (DGT V-1843/07).

6. PAYABLE BASE

a) STATE *MORTIS CAUSA* REDUCTIONS

2. OBJECTIVE reductions

b) Reduction due to *mortis causa* transmission of holdings in companies and other entities

REDUCTION FOR SHAREHOLDINGS IN ENTITIES	
Companies and other entities	Taxpayer in the CIT who carries out an economic activity (holding companies under article 75 of the CIT Act 2014 are included)
Deceased	Participation of 5% as individual or 20% with 'family group'
	Effective exercise of management functions alone or with the 'family group'
	Remuneration of the management functions of the deceased or of the member of the 'family group' who exercises them when greater than 50% of all their income from work and economic activities
Successor	Relationship: spouse, descendant, or adopted. If there are no descendants or adoptees, ascendants, adopters, and collaterals up to third degree
	Maintenance the acquisition for 10 years

6. PAYABLE BASE

Reduction due to *mortis causa* transmission of holdings in companies and other entities

- **Considerations:**

  - The primary activity of the entity must not involve the management of movable or real estate assets.
  - Unlike the reductions due to the transfer of an individual company or professional business, where the main source of income requirement refers to more than 50% of the taxable base of PIT, *mortis causa* transmission means the remuneration received for management functions must exceed 50% of business, professional or work income.
  - The maintenance requirement is met if the shares received are sold and the amount is immediately reinvested in shares of another entity, regardless of WT exemption (DGT V-016/05).
  - If there is a reduction in value that is not attributable to the taxpayer — such as in the case of an unforeseen bankruptcy — this reduction in the acquisition value will not result in the loss of the right to apply the reduction (DGT V-0011/11).

6. PAYABLE BASE

a) STATE *MORTIS CAUSA* REDUCTIONS

2. OBJECTIVE reductions

c) Reduction due to *mortis causa* transmission of habitual residence:

- **Object:** in the case of a *mortis causa* transfer of the deceased person's habitual residence to a spouse, ascendants, descendants, or a collateral relative over 65 years of age who lived with the deceased for at least two years prior to his passing, a 95% reduction in the value of the habitual residence, up to a limit of €122,606 will be applied to the tax base. This reduction is conditional upon the recipient retaining ownership of the residence for a minimum of 10 years.
- **Considerations:**
  - The right to apply the reduction is preserved, provided that, within a period of 10 years following the death, the acquisition value is maintained either in the original home or in a replacement property, regardless of whether it retains habitual residence status (DGT V0603-05).

6. PAYABLE BASE

a) STATE *MORTIS CAUSA* REDUCTIONS

2. OBJECTIVE reductions

d) **Reduction due to *mortis causa* transmission of goods and rights that are part of the historic-artistic heritage**

- Object: transfer *mortis causa* historical-artistic heritage assets in favour of the spouse, descendants, or adopted.
- Reduction of 95% of their value
- It must be property included in sections one, two, or three of article 4 of Act 19/1991 of 6 June on wealth tax; and its maintenance in the heir's estate must be for 10 years.

e) **Reduction due to successive transmissions**

- If the same assets, in a maximum period of 10 years, were subject to two or more transfers *mortis causa* in favour of the descendants, in the second and subsequent ones, the amount paid for IGT in relation with the previous transfers will be deducted from the tax base.

6. PAYABLE BASE

b) INTER VIVOS STATE REDUCTIONS

1. OBJECTIVE reductions

a) Reduction due to donation from an individual company or a professional business

Companies and other entities	
Donor	Carry out the activity on a regular, personal, and direct basis
	Main source of income in PIT.
	65 years or older or a situation of permanent disability, with degree of absolute or severe disability
Donee	Relationship: spouse, descendant, or adopted.
	Entitled to exemption from wealth tax for maintenance of the acquisition for 10 years.

6. PAYABLE BASE

Reduction due to donation from an individual company or a professional business

- **Considerations:**
  - If the donor has been performing managerial functions, they must cease these activities and any related remuneration at the time of the transfer.
  - The donee must meet the requirements established for exemption to WT (DGT CV 1936/10).
  - Article 33.3.c) of the Personal Income Tax Act establishes that the donation of individual companies, professional businesses, or shares in entities subsidized by Article 20.6 of the Inheritance and Gift Tax Act, never generates a capital gain or loss. However, the Valencia regional reduction for this concept will not allow the donee to benefit from Article 33.3.c of the Personal Income Tax Act.

6. PAYABLE BASE

b) *INTER VIVOS* STATE REDUCTIONS

1. OBJECTIVE reductions

b) Reduction due to donation of shares in companies and other entities

Reduction due to donation of shares in companies and other entities	
Company or other entity	Taxpayer in the CIT and carrying out an economic activity (holding companies of article 75 of the CIT 2014 are included)
Donor	Participation of 5% as individual or 20% with 'family group'
	Effective exercise of management functions alone or with the 'family group'. Remuneration from the management functions of the deceased, or of the 'family group' members who performs them, must exceed 50% of their total income from employment and economic activities.
	Must be over 65 years of age or have a permanent disability at the level of absolute or severe disability.
	Stop exercising management functions and receiving remuneration for those
Donee	Relationship: spouse, descendant, or adopted
	Maintenance the acquisition for 10 years
	Exemption from the wealth tax during this period

6. PAYABLE BASE

b) *INTER VIVOS* STATE REDUCTIONS

1. OBJECTIVE reductions

b) Reduction due to donation of shares in companies and other entities*

- **Considerations:**
  - The main activity of the entity cannot be the management of movable or real estate assets.
  - In case of *inter vivos* donations, the donee must maintain the right to be exempt for WT during the decade following the deed of donation.

c) Reduction due to donation of goods that are part of the historical-artistic heritage

- Object: *inter vivos* transmission of historical-artistic heritage assets in favour of the spouse, descendants, or adopted children.
- Reduction of 95% in value
- It must be property included in sections one, two, or three of article 4 of Act 19/1991 of 6 June on wealth tax; and be maintained in the heir's estate for 10 years.
- The donor must be 65 or older or be in a situation of permanent disability with a degree of absolute or severe disability.

6. PAYABLE BASE

c) STATE REDUCTIONS IN LIFE INSURANCE

- A 100% reduction is applied, with a limit of €9,195, to the amounts received by the beneficiaries of life insurance contracts, when the deceased contracting party was the spouse, ascendant, descendant, adopter, or adoptee of the beneficiary.

- The reduction is granted once per taxpayer, regardless of the number of life insurance contracts in which they are a beneficiary. It is also individual for each taxpayer, irrespective of the number of beneficiaries designated by the deceased.

6. PAYABLE BASE

d) REGIONAL REDUCTIONS

1. Valencia Region *mortis causa* reductions
   1. **Depending on the relationship, age, and handicap**

Group	Amount of the reduction
I. Descendants and adoptees under 21	Reduction of €100,000 plus €8,000 for each year younger than 21, without exceeding €156,000
II. Descendants and adoptees aged 21 or older, spouse, ascendants and adopters	Fixed reduction of €100,000

Degree of disability	Applicable reduction
Equal to or greater than 65%	€240,000
Less than 65% and equal to or greater than 33%	€120,000

6. PAYABLE BASE

d) REGIONAL REDUCTIONS

1. Valencia Region reductions *mortis causa*
2. **Transmission mortis causa of the habitual residence**

   When the habitual residence of the deceased is transmitted *mortis causa* to the spouse, ascendants, descendants, or a collateral relative over 65 who has lived with the deceased the two years prior to their death: the reduction limit is increased to €150,000, and the maintenance obligation is reduced from 10 to 5 years.
3. **Transmission *mortis causa* of an agricultural company (own reduction)**

   When an agricultural company is transmitted *mortis causa* in favour of the spouse, descendants, adopted children, ascendants, adopters and collateral relatives, up to the third degree, of the deceased, a reduction of 99% of the net value of the assets assigned to the company will be applied to the tax base, provided that:

   - The activity does not constitute the main source of income of the deceased
   - The deceased had exercised the activity habitually, personally, and directly
   - The acquirer maintains the company for a period of five years, unless the acquirer dies within that period
   - If the deceased had retired between the ages of 60 and 64, the reduction percentage is 90%.

6. PAYABLE BASE

d) REGIONAL REDUCTIONS

1. Valencia Region *mortis causa* reductions

4. Mortis causa transmission of an individual company or professional business (analogous reduction)

When an individual company or professional business is transmitted *mortis causa* in favour of the spouse, descendants, adoptees, ascendants, adopters, and collateral relatives, up to the third degree, of the deceased, a reduction of 99% of the net value of the assets related to the company or business will be applied to the tax base, provided that:

- The deceased exercised the activity habitually, personally, and directly.
- The activity constituted the main source of income, understood as the one that provides the largest amount of income from work or economic activities.
- Maintenance is required only for a period of five years.
- If the deceased had retired between the ages of 60 and 64, the reduction percentage is 90%.

6. PAYABLE BASE

d) REGIONAL REDUCTIONS

1. Valencia Region *mortis causa* reductions

5. Mortis causa transmission of shares in entities (mixed)

When an entity's shares are transferred *mortis causa* in favour of the spouse, descendants, adopted children, ascendants, adopters, and collateral relatives up to the third degree, of the deceased, a reduction of 99% of the value of the shares will be applied to the tax base, provided that:

- The main activity of the entity is not the management of movable or real estate assets. It will be understood that the entity has that purpose when more than half of its assets are made up of real estate that is not affected by the activity, or it is made up of securities.
- The net amount of the company's turnover enables the application of tax incentives for small businesses
- The deceased or a member of the family group, exercised management functions, receiving a remuneration that represents the largest source of income, understanding that as the one that provides the largest amount of income from work or economic activities.
- The minimum participation in the capital of the entity is 5% if the participation is individual or 20% if it is owned jointly with a family group member
- Maintenance is required only for a period of five years
- If the deceased retired between the ages of 60 and 64, the reduction is 90%.

6.- PAYABLE BASE

d) REGIONAL REDUCTIONS

1. Valencia Region *mortis causa* reductions

6. Mortis causa **transmission of assets that are part of the historical-artistic heritage**

When assets of historical-artistic heritage are transferred *mortis causa*, a reduction will be applicable to those that are officially registered, providing they are ceded for exhibition with the following conditions:

- The assignment be made in favour of the Generalitat and local entities of the Valencia Region; public universities, higher public artistic education centres and research centres of the region and certain non-profit entities of a cultural nature that are registered in the corresponding regional registers.
- The assignment is made free of charge
- The property is going to be used for the cultural purposes of the donating entity

The reduction will be based on the period of cession of the asset:

- 95% for cessions of more than 20 years
- 75% for cessions of more than 10 years
- 50% for cessions of more than 5 years

6.- PAYABLE BASE

d) REGIONAL REDUCTIONS

2. Valencia Region *inter vivos* reductions

1. Depending on relationship and age

Group	Amount of the reduction
Acquisitions by children or adopted children under 21	Reduction of €100,000 plus €8,000 for each year less than 21, without exceeding €156,000
Acquisitions by children or adopted children aged 21 or over, spouse, ascendants and adoptive parents	Fixed reduction of €100,000
Acquisitions by grandchildren	Reduction of €100,000 if the grandchild is over 21 years old, or €100,000 + €8,000 per year if under 21 with a limit of €156,000
Acquisitions by grandparents	Fixed reduction of €100,000

6. PAYABLE BASE

d) REGIONAL REDUCTIONS

2. Valencia Region *inter vivos* reductions

1. Depending on handicap

Degree of disability	Applicable reduction
Equal to or greater than 65%	€240.000
Between 65% and 33%	€120.000

6. PAYABLE BASE

d) REGIONAL REDUCTIONS

2. Valencia Region *inter vivos* reductions

   2. **Reduction for donation of an agricultural company**

This is a regional reduction that does not exist at state level. The difference with the *mortis causa* reduction focuses on the subjective aspect, because it is limited to children or adopted children and, if there are none, to parents or adoptive parents, or to the grandchild if the donor's child dies before accrual.

The reduction is from 95% to 99% in 2021. The rest of the requirements are the same as those for the *mortis causa* reduction in this case.

6.- PAYABLE BASE

d) REGIONAL REDUCTIONS

2. Valencia Region *inter vivos* reductions

3. Reduction for donation from an individual company or business owner

This is a mixed reduction of the VC and differs from the state reduction in:

- The reduction is 99%
- It extends the subjective scope to the spouses, descendants, or adoptees **or if there are none, parents or adopters of the donor**
- The condition of a donor being over 65 does not apply
- The condition does not apply that the donor ceases to carry out the activity on a regular, personal, and direct basis
- WT exemption is not necessary
- The activity is constituted as their main source of income, understood as the one that provides a largest amount of income from work or economic activities **(the state requirement refers to the main source of income)**
- Maintenance is required only for **five years.**

6. PAYABLE BASE

d) REGIONAL REDUCTIONS

2. Valencia Region *inter vivos* reductions

4. **Reduction for donation of shares in entities**

It is a mixed reduction by the region and differs from the state reduction in:

- The reduction is 99%.
- It extends the subjective scope to the spouses, descendants, or adoptees, **or if there are none, parents or adopters of the donor.**
- The condition of donor being 65 does not apply.
- The condition that the donor ceases to exercise the function of management of the entity and to receive remuneration for it is not required.
- It includes the requirement for the company's net turnover to meet the criteria necessary to qualify for incentives for small companies.
- Maintenance is required only for a **period of five years**. At the state level, the permanence of the value of what is received is required. In the region, substantial maintenance of the property itself is required. For this reason and due to the inability to apply the exemption of Article 33.3 c) of the Personal Income Tax Act, the reduction is mixed.

REDUCTIONS: SUMMARY

- **STATE:**
  - inheritances:
    - kinship
    - handicap
    - company or individual business
    - habitual residence
    - stocks and shares
    - PHA assets
    - successive transmissions
  - Donations:
    - company or individual business
    - stocks and shares
    - historical and artistic heritage assets

- **VALENCIA REGION:**
  - inheritances:
    - relationship
    - handicap
    - habitual residence
    - agricultural company
    - company or individual business
    - shares and stocks
    - historical and artistic heritage assets
  - Donations:
    - relationship
    - handicap
    - agricultural company
    - company or individual business
    - stocks and shares

7. TAX LIABILITY

The **tax liability of IGT** is the result of:

a) Applying a progressive rate to the payable base to obtain the total payable

b) Multiplying the total payable by a multiplier coefficient that varies depending on two parameters: the degree of kinship and the taxpayer's previous assets

c) Application of the deductions and increases

7. TAX LIABILITY

1. State deductions and bonuses:
    2. International double taxation deduction
    3. Reduction for residing in Ceuta and Melilla (50%)
2. Valencia Region reductions:
    - **A 99% reduction** applies to both inheritances and donations and is granted to direct relatives, such as children and parents of descendants, and other ascendants, and spouses (Groups I and II). Additionally, acquisitions made by individuals with a physical or sensory disability of 65% or greater, or by individuals with a mental disability of 33% or greater, shall also enjoy the same benefit.

TAX LIABILITY FORMULA INHERITANCE AND GIFT TAX

Valuation of inheritance assets and rights
- Deductible charges
= Hereditary quadal
+ Value of household furnishings
- Debts and deductible expenses
= **Hereditary mass**

Distribution for each taxpayer (taxable base)
- Reductions
= Payable base
x rate
= Total payable
x Multiplier coefficients
= Tax liability
- Deductions and bonuses
= Net tax liability

TAX LIABILITY FORMULA INHERITANCE AND GIFT TAX

Taxable base
- Reductions
= Payable base
x rate
= Total payable
x Multiplier coefficients
= Tax liability
- Deductions and bonuses
= Net tax liability

8. ACCRUAL AND LEGAL LIMITATION

1. The tax is accrued:
   - In *mortis causa* acquisitions and life insurance, the date of death of the deceased or the insured
   - In *inter vivos* acquisitions free of charge: the date on which the act or contract is completed

2. Legal limitation period:
   - Within four years from the end of the voluntary period for submitting the tax return
     - Note: Article 25 of the IGTL specifies that the legal limitation period must be applied according to the provisions in the SGTL, particularly article 66, which establishes, among others, a four-year legal limitation period for the tax authority to determine tax liability. However, article 48 of the IGT Regulation states that the tax authority has up to five years to determine tax liability. As legislation prevails over a regulation, this discrepancy is simply a matter of the regulation not being updated to reflect the correct legal limitation period.

9. SPECIAL RULES

There are special situations that can occur in gratuitous transmissions *mortis causa* and *inter vivos*, which include:

1. Lifetime and temporary usufruct
2. Use rights and room
3. Substitutions
4. Trusts
5. Reserves
6. Award excesses
7. Repudiation and resignation
8. Accumulation of donations

10. TAX MANAGEMENT

A. Transfer of tax management to the regions: connection points (the same as those that determine the applicable regional regulations)

B. Duality of tax settlement systems (ex article 31, Inheritance and Gift Tax Act)

1. **Self-assessment**: file the tax return declaring the performance of the taxable event and determining tax liability – article 120 of the General Tax Act (form 650 Inheritance and form 651 Donations).

2. Simply file a **declaration,** reporting the performance of the taxable event, consigning all the data with tax significance, and from that moment on, the tax authority is in charge of making a tax **assessment.**

- The **self-assessment is mandatory in the following regions**: Andalusia, Aragon, Asturias, Balearic Islands, Canary Islands, Cantabria, Castille-La Mancha, Castille and Leon, Catalonia, Galicia, Madrid, Murcia, and Valencia.

10. TAX MANAGEMENT

C. DEADLINE FOR FILING THE DECLARATION/TAX RETURN

- 1. *Mortis causa* acquisitions: within a period of **six months**, counted from the day of the deceased's death or from the date on which the declaration of death becomes final.
  - An extension of another six months is allowed when there is a prior request from the heirs within the first five months.
  - The extension is understood to have been granted if a month elapses without a negative response.
  - The extension generates interest on arrears

- 2. Other assumptions: a period of **30 business days** from the day following the day on which the act or contract is caused. This term has been established as **one month** in Valencia.