Unit 3. Transfer Tax and Stamp Duty (TTSD)

Prof. Carlos Javier Correcher Mato. 2024-2025

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1. Introduction

A) CHARACTERISTICS

Indirect, real, objective, and instant

assigned to regional governments (regulatory powers, tax management, and tax collection)

A) Legal system

Royal Legislative Decree 1/1993 (24 September)

↓

Royal Legislative

Decree 828/1995

(29 May)

↓

Regional regulations

B) Modalities of TTSD

- Stamp duty: notarial, commercial, and administrative documents
- Onerous transfers: property sales, overlap with VAT
- Business operations: corporate operations

- **C) APPLICATION PRINCIPLES:**
- QUALIFICATION PRINCIPLE (2 and 3, RLD):
  - tax will be required according to true legal nature of the act or contract
  - regardless of the name given to it by the parties
  - disregarding any formal or intrinsic defects that may affect its validity and effectiveness
  - incidence of suspensive or resolutive conditions
- COMPATIBILITY (1.2 and 31.2, RLD):
  - ONEROUS TRANSFERS AND BUSINESS OPERATIONS ARE INCOMPATIBLE
- PLURALITY OF CONVENTIONS (4 RLD)
  - A single document or contract may contain several agreements or declarations (e.g. mortgage loan documented in a public deed).
- Applicability of Goods for Tax Payment (5 RLD)

Qualification principle (articles 2 and 3, RLD)

- **Tax is required according to the true nature of the acts or contracts, regardless of the name given to it by the parties, and disregarding defects, formal or intrinsic, that may affect their validity and effectiveness.**
  - In general, article 13, SGTL
- The qualification of the conditions will be carried out in accordance with the Civil Code:
  - if it is suspensive: taxation is delayed until it is completed
  - if it is resolutive: the tax is settled, regardless of a refund if the condition is fulfilled
- For the classification of assets, it is necessary to consider the provisions of the Civil Code, and, if absent, refer to administrative law.
- Notwithstanding this, installations of any kind established on a permanent basis are considered real property for tax purposes, provided that, at a minimum, their construction makes them non-transportable, even if the land on which they are situated does not belong to their owner.

Plurality of conventions (article 4)

- One tax corresponds to each agreement.
- Therefore, when a single contract includes several agreements that are each subject to separate taxation, the tax corresponding to each agreement will be payable.
- Except in those cases in which it is expressly determined otherwise: for example, a mortgage guaranteeing a loan, which is taxed only on the concept of loan according to article 15.1 (although loans are exempted).

Applicability of Goods for Tax Payment (article 5, RLD)

The transferred goods and rights are subject, whoever the owner is, to taxes imposed on transfer.

- According to article 43.1.d) SGTL, the purchasers of goods subject to the payment of an unpaid tax are subsidiarily liable (article 79, related to the assignment of goods in general: such as the purchase of a vehicle).

Exceptions:

- A third party is protected by registry public faith, provided that the assignment is expressly recorded in the registry.
- Justification of the acquisition of the goods in good faith and with just title in mercantile or industrial establishments (for movable goods not subject to registration).

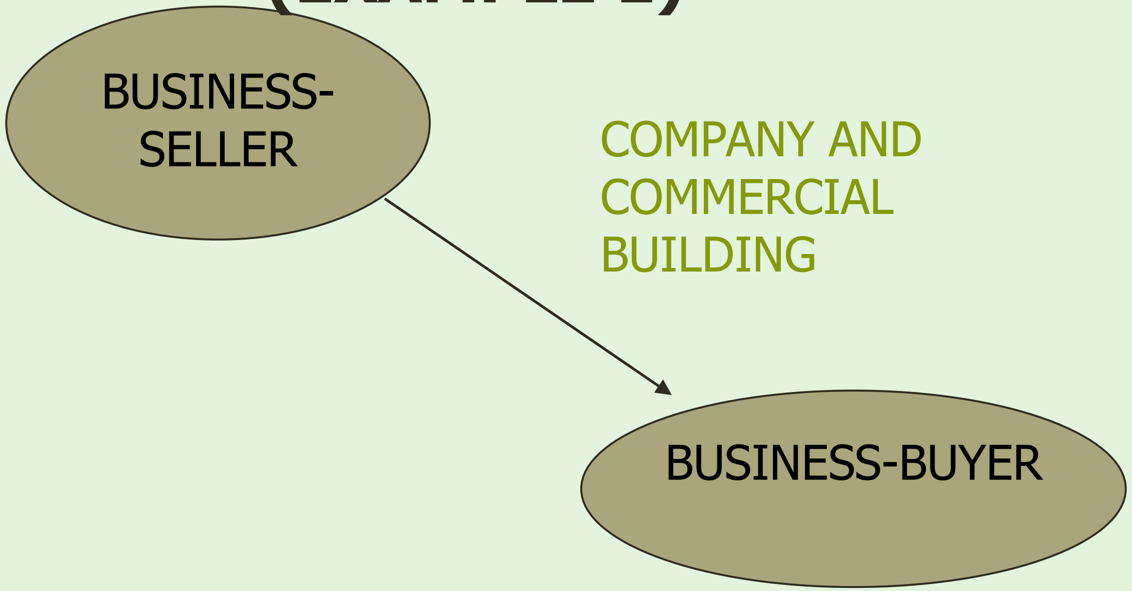
COMPATIBILITIES AND INCOMPATIBILITIES

	Onerous transfer	Business operations	GRADUAL Stamp duty	FIXED Stamp duty	VAT	Inheritance and gift tax
Onerous transfers		I	I	C	I *	
Business operations	I		I	C	C	
GRADUAL Stamp duty	I	I		C	C	I
FIXED Stamp duty	C	C	C		C	C
VAT	I *	C	C	C		
Inheritance and gift tax			I	C		

Transfer Tax and Stamp Duty-VAT DELIMITATION (article 7.5, RLD)

- **Incompatibility between VAT and Transfer Tax and Stamp Duty** is summarized as follows:
- **THEORETICAL POSSIBILITY OF DOUBLE TAXATION**:
- **VAT vs Transfer Tax and Stamp Duty**
  - **VAT:** Transfers carried out by businesspeople or professionals in the exercise of their activity, regardless of the condition of the acquirer.
  - Supplies of goods and services subject (exempt or otherwise) from VAT
- **LIMITED POSSIBILITY OF DOUBLE LIABILITY FOR VAT-Transfer Tax and Stamp Duty**:
  - Liable for transfer tax and stamp duty on the full amount of real estate operations that can benefit from VAT exemption
- **REAL ESTATE INTEGRATED IN THE TRANSMISSION OF A COMPANY IS NOT SUBJECT TO VAT** (even if it has been carried out in the exercise of a business or professional activity).
  - TRANSMISSION OF AN AUTONOMOUS ECONOMIC UNIT (7.1º VATL)
- GRADUAL TAXATION Stamp Duty (31.2, RLD)

DELIMITATION OF TRANSFER TAX
and STAMP DUTY and VAT
(EXAMPLE 1)

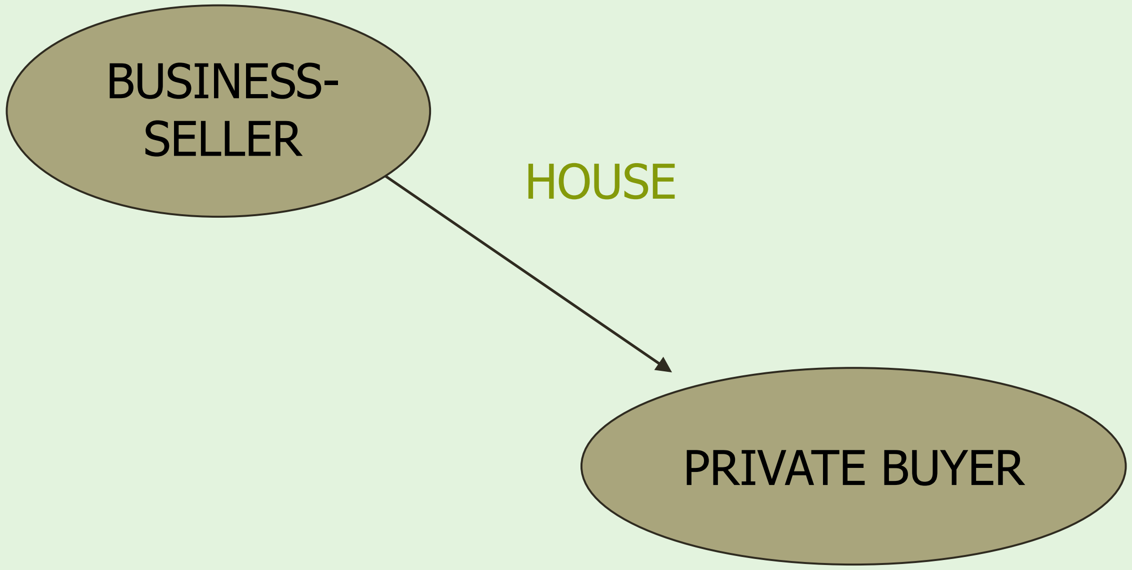


TRANSMISSION OF SECOND-HAND COMMERCIAL BUILDINGS

NO VAT (IN THE EVENT OF TRANSMISSION OF ALL BUSINESS ASSETS)

TRANSFER TAX AND STAMP DUTY MUST BE PAID BY THE BUSINESS-BUYER

DELIMITATION OF TRANSFER TAX AND STAMP DUTY AND VAT (EXAMPLE 2)

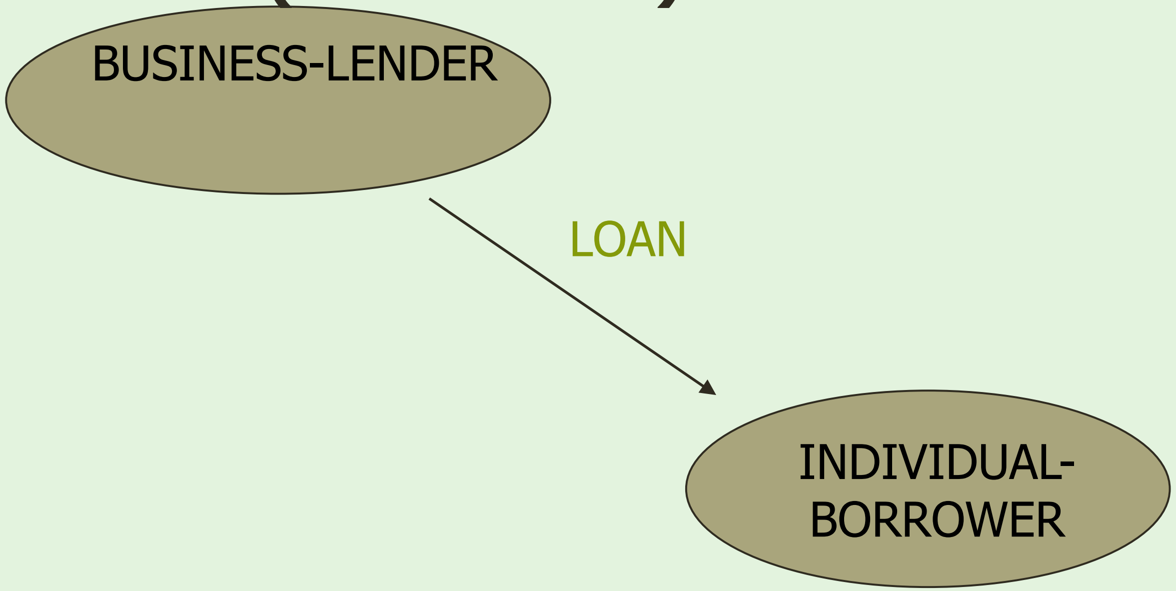


TRANSMISSION OF SECOND-HAND HOUSE

VAT EXEMPT (2ND OR SUBSEQUENT SALE OF BUILDINGS - article 20 VATL)

PRIVATE BUYER WILL BE TAXED BY TRANSFER TAX AND STAMP DUTY

DELIMITATION OF TRANSFER TAX AND STAMP DUTY AND VAT (EXAMPLE 3)



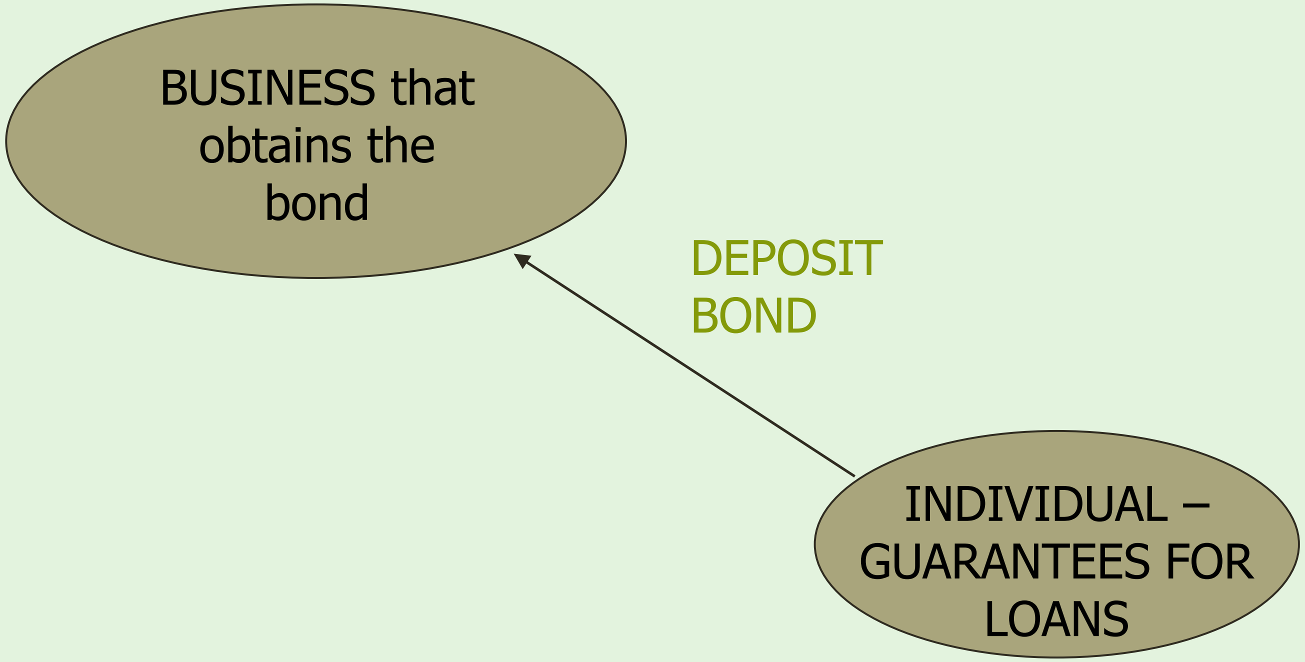
TWO TAXES ARE LEVIED CONCURRENTLY:

PREFERENCE FOR SUBJECTION TO VAT (7.5, RLD)

NO TRANSFER TAX AND STAMP DUTY LIABILITY

STAMP DUTY (DOCUMENTED LEGAL ACTS)

DELIMITATION OF TRANSFER TAX AND STAMP DUTY AND VAT (EXAMPLE 4)



TRANSFER TAX AND STAMP DUTY ONLY:

PROFESSIONAL NOT ACTING IN THAT CAPACITY

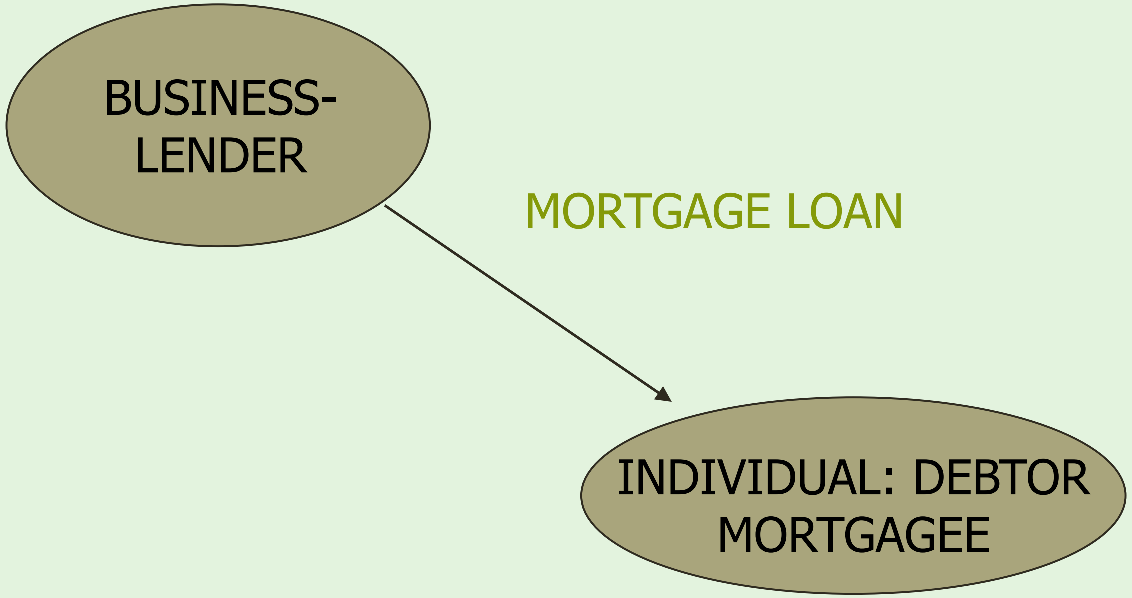
THE DEPOSIT IS PROVIDED BY AN NON-BUSINESS INDIVIDUAL

BUSINESS WILL BE TAXED FOR TRANSFER TAX AND STAMP DUTY

IT IS NOT POSSIBLE TO REQUEST A GRADUAL LEVY STAMP DUTY

DELIMITATION TRANSFER TAX

AND STAMP DUTY AND VAT (EXAMPLE 5)



THE LOAN WILL BE TAXED FOR VAT AND THE MORTGAGE FOR STAMP DUTY - article 15, RLD.

LOAN IS TAXED FOR VAT (exempt) BECAUSE IT WAS A PROFESSIONAL LOAN (PROVISION OF SERVICES VAT)

MORTGAGE WILL BE TAXED FOR STAMP DUTY

D) Territorial scope of application

The **TERRITORIAL SCOPE OF APPLICATION** is analyzed in relation to each taxable event.

It should be noted that as this tax is assigned to the regional governments in accordance with article 26 of Act 22/2009, it is necessary to determine to which region the revenue corresponds, following the criteria set out in Article 33 of the same act.

2. ONEROUS TRANSFERS

Taxable event (1)

01

A) **Onerous transfers by acts *'inter vivos'*** of all types of goods and rights that are part of the assets of individuals or legal entities

02

B) Constitution (or extension) of rights in rem, loans, bonds, leases, pensions, and with some exceptions, administrative concessions

T.E. (2). A) Onerous transfers

- **Real estate or real estate rights**, if the transferor is not a VAT-taxable person or, if they are, the transaction is VAT-exempt and the exemption has not been waived (vid. real estate VAT exemptions)
- **Securities** (17 Reg., 314 TRLMV)
- **Acquisitions at auction**
- **Permutes** (23 Reg.)
- **Transfers with retro clause** (46 Reg.)
- **Transfers of rights whose exercise allows the acquisition of certain assets**
- **Transfer of the totality of business assets**

Taxable event (3). Equivalent to transfers

The following are considered equivalent to transfers:

- **Adjudications as payment or for the payment of debts and express adjudications in payment for assumption of debts** (article 11.1 and 30 Reg.).
- **Declared adjudication excesses**, except in the case of indivisible assets or those that are greatly diminished because of the division – as well as excesses of adjudication proven in *mortis causa* successions under specific terms.
- **Ownership records, notary acts, complementary acts of public documents and certifications issued in favour of public institutions or the Catholic Church,** as referenced in mortgage regulations:

- These documents ensure continuity of transactions in public registries.

- Therefore, the tax does not apply if payment, exemption, or non-subjection for the transfer recorded in the document is duly accredited.

- **The recognition of ownership in favour of a specific person**, with the same exceptions as noted in the previous case.

T. E.(4). B) Constitution real estate rights, loans, bonds, leases, pensions, and administrative concessions

- **Constitution real rights**: usufruct (467 CC), use and habitation (524 CC), surface, servitudes, and censuses (14.4, RLD)
- **Real rights of guarantee:** real estate mortgage, chattel mortgage, pledge, non-possessory pledge, and antichresis
- **Loans**
- **Bonds**
- **Leases**
- **Pensions (1802 CC):** obligation to pay an annuity in exchange for property
- **Administrative concessions**
- **Extension of rights**

Taxable event (5)

- **Territorial scope of application**. The tax applies to OT of assets and rights located or that can be exercised or must be fulfilled
  - in Spain or,
  - abroad when the person obliged to the payment resides in Spain, unless:
    - Real estate property located abroad
    - OT of goods or rights carried out abroad and with effects outside Spain

Taxable event (6)

- **POINTS OF CONNECTION WITH REGIONAL GOVERNMENTS** (assigned tax, article 33, Act 22/2009):
  - **Real estate and rights over the same**: region in which they are located
  - **Movable goods**: habitual residence or tax residence of the acquirer
  - **Chattel mortgage or non-possessory mortgage:** scope of the registry in which they must be recorded
  - **Transfers of securities**: the place where the transaction is carried out
  - **Constitution of loans, bonds, leases, and pensions**: habitual residence or tax domicile of the passive subject
  - **Administrative concessions**: where the assets are located, the works are executed, or the services are rendered
- **Limited regulatory powers are granted** (in certain cases, tax rates and deductions) (article 49, Act 22/2009)

TAXPAYERS (articles 8 and 9, RLD)

TAXPAYERS:

- THE ACQUIRER OF THE GOOD OR RIGHT, IN THE **TRANSFERS OF GOODS AND RIGHTS**
- IN THE **CONSTITUTION OF REAL RIGHTS**, THE PERSON IN WHOSE FAVOR THE RIGHT IS CONSTITUTED
- IN **MORTGAGE PROCEEDINGS,** THE PROMOTER
- IN THE **RECOGNITION OF OWNERSHIP**, THE PERSON IN WHOSE FAVOR IT IS MADE
- IN THE **CONSTITUTION OF LOANS**, THE BORROWER
- IN THE **CONSTITUTION OF BONDS**, THE CREDITOR
- IN THE **CONSTITUTION OF LEASES**, THE LESSEE
- IN THE **CONSTITUTION OF PENSIONS**, THE PENSIONER
- IN THE **ADMINISTRATIVE CONCESSION**, THE CONCESSIONAIRE

SUBSIDIARY TAX LIABILITY PERSONS (article 9):

- **IN LEASES**, IF THE LESSOR HAS BEEN PAID WITHOUT REQUIRING PROOF OF PAYMENT
- **PUBLIC OFFICIALS WHO AUTHORIZE A CHANGE OF TAXABLE PERSON FOR ANY TAX**, WHEN SUCH CHANGE IMPLIES TAXATION IN TTSD, IF THEY HAVE NOT REQUESTED PROOF OF TAX PAYMENT

TAXABLE BASE (article 10, RLD)

IN GENERAL, the real value of the property or right transferred (MARKET VALUE: Not equivalent to price, declared value, or administrative value).
REAL ESTATE: reference value

The charges that diminish its value can be deducted, but not the debts, even if they are guaranteed with mortgage.

The tax authority can verify the declared value.

SPECIAL RULES (usufructs, use and habitation, mortgages, concessions, etc.).

Official simulators:

http://www.ivat.gva.es/tributos-valoracionbienes

TAX LIABILITY (article 11, RLD)

Transfer of movable or immovable assets and constitution or assignment of real rights over the same (except real rights of guarantee): tax rate set by the region or, in default:

- 6%: real estate (in general, 10% in Valencia region)
- 4%: movable assets

Constitution of real rights of guarantee, pensions, bonds, loans, and credit assignment: **1%**

Special rules: leases, transfer of securities, and concessions

3. BUSINESS OPERATIONS

TAXABLE EVENT (1)

- This type of tax is levied on the **transfer of assets related to company contracts**
- **and on the transfer of a registered company offices (subject to certain requirements)**

TAXABLE EVENT (2)

- **BUSINESS OPERATIONS SUBJECT TO TAXATION** (article 19, RLD):
  - Company constitution
  - Capital increase
  - Decrease of capital (only if there is a return of contributions)
  - Dissolution of companies (only if there are refunds)
  - Contributions from shareholders to replace losses
  - Transfer to Spain of a company from outside the EU (CJEU 9-7-2009)
  - Merger and split? (not subject)

- **ACCRUAL:** The date when the act is formalised

TAXABLE EVENT (3)

- **THE CONCEPT OF COMPANY IS WIDE and even covers entities without legal personality** (article 22, RLD).

- **Equal to companies for TTSD purposes (civil or commercial):**
  - Legal entities that pursue profit
  - Contracts of accounts in participation
  - Co-ownership of ships
  - Partnerships that carry out economic activities if they:
    - Have been constituted '*inter vivos*'
    - or they have been constituted or originated '*mortis causa*', when the business of the deceased continues in undivided ownership for a period of more than three years

TAXABLE EVENT (4)

- **Territorial scope of application** (connection points)
  The tax is levied for:

- Operations carried out by entities in which any of the following circumstances apply (article 6.1.B), TR):
  - Entities that have a head office of effective management in Spain.
  - Entities that have a registered office in Spain and do not have a head office of effective management in another EU state that applies a similar tax.
  - Entities that carry out operations in Spain and do not have a head office of effective management or registered office in another EU country that applies a similar tax.

TAXABLE EVENT (5)

- **POINTS OF CONNECTION WITH REGIONAL GOVERNMENTS:** business operations carried out by entities that have in the region, by preferential order of application:

  - tax domicile
  - registered office, or
  - carry out commercial activities in the territory

- No attribution of regulatory powers

TAXPAYERS - (article 23, RLD)

A) THE COMPANY in the following cases:

- incorporation
- capital increase
- transfer of head office of effective management or registered office
- shareholder contributions to cover losses

B) MEMBERS, CO-OWNERS, CO-PROPRIETORS, OR PARTICIPANTS FOR THE ASSETS AND RIGHTS RECEIVED in the cases of:

- **DISSOLUTION** of companies, and
- **REDUCTION** of capital

Article 24 RDL: subsidiary tax liability: **IN CERTAIN CASES, THE PROMOTERS, ADMINISTRATORS, OR LIQUIDATORS**

TAXABLE BASE (article 25, RLD)

TAXABLE BASE DEPENDS ON THE CASE:

- **Nominal value**: incorporation and capital increase of companies that limit shareholder liability. Capital increases are not taxed if funded by reserves established exclusively to cover share issuance costs.
- **Net value of the contribution** (real value of assets and rights contributed minus expenses, costs, and debts assumed by the company): other transactions that differ from the above and contributions to cover losses.
- **Liquid assets of companies**: transfer of registered office in Spain or head office of effective management.
- **Real value of assets and rights distributed to shareholders** (without deduction of expenses and debts): return of capital and dissolution.

TAX LIABILITY (article 26, RLD)

- In all cases, a **1% TAX RATE** is applied to the corresponding taxable base

4. STAMP DUTY (DOCUMENTED LEGAL ACTS)

INTRODUCTION

- This form of taxation is a result of the special protection granted by law to certain documents.
- **TAXABLE EVENT. The following documents are taxed**:
  - Notarial documents
  - Commercial documents
  - Administrative documents
- **Two types of levies** are established depending on whether the document pertains to a valuable asset at any point during their validity (GRADUAL LEVY) or not (FIXED LEVY).
- **STAMP DUTY** gradual LEVY IS **INCOMPATIBLE** with the taxation of onerous transfers and business operations.

TERRITORIAL SCOPE OF APPLICATION: CONNECTION POINTS (article 6.1.A, RLD)

- **Documented legal acts formalised in Spain are taxed**, or if formalised abroad, they are taxed if they have any legal or economic effect in Spain.

- This applies regardless of international treaties or conventions and the Basque Country and Navarra regions.

Connection points with regional governments

- Ceded tax to the common-regime regional governments, according to article 25, Act 22/2009: **CONNECTION POINTS:**
  - Notarial documents:
    - Fixed levy: in regions where authorized or granted
    - Gradual levy: region corresponding to the jurisdiction of the registry where the goods must be registered or recorded.
  - Commercial documents:
    - Region where the issuance takes place, or
    - where the company has its habitual residence or tax domicile if the issuance occurred abroad
  - Preventive annotations (administrative documents):
    - Region where the administrative registry in which they are produced is domiciled
- <u>Regulatory powers (tax rates and deductions) are delegated solely for notarial documents.</u>

Notarial documents (articles 28 to 32, RLD)

- **TAXABLE EVENT**: deeds, acts, and notarial testimonies

- They are always written on stamped paper (**FIXED LEVY**).
- A **VARIABLE LEVY** is required in the case of:
  - first copies of deeds and acts that meet the following criteria:
    1. pertaining to an amount or a valuable item
    2. containing acts or contracts inscribable in the property, mercantile, industrial property, and movable property registries
    3. and not subject to VAT, inheritance and gift tax, and the other modalities of transfer tax or stamp duty
- **VARIABLE LEVY**: regional tax rate - article 14, Act 13/1997, Valencia and, in its absence, 0.5%

Commercial documents (articles 33 to 39)

- **TAXABLE EVENT:** the release, issuance, or dispatch of commercial documents that fulfill the function of a draft or incorporate a credit that is susceptible to endorsement or transfer:
  - bills of exchange
  - documents that replace bills of exchange
  - transferable bills of exchange or certificates of deposit
  - promissory notes, bonds, debentures, and similar securities issued in series, for a term not exceeding 18 months

- **TAX LIABILITY:**
  - Bills of exchange, which must be stamped in the corresponding class according to their amount, are taxed in accordance with the rate in article 37.1, RLD.
  - This rate also applies to documents that replace bills of exchange, as well as transferable deposit slips or certificates.
  - In the case of bonds and similar securities, a rate of €0.02 is applied for each €6.01 or fraction thereof of the taxable base.

Administrative documents (articles 40-44, RLD)

- Restoration and transfer of noble titles
- Preventive annotations in public registries, when they have as object a right or valuable interest and are not ordered ex officio by the judicial authority (**VALUE OF THE RIGHT OR INTEREST X 0.50%**)

EXEMPTIONS (article 45, RLD)

- **SUBJECTIVE EXEMPTIONS**: state, regional governments, and local entities
- **OBJECTIVE EXEMPTIONS**:
  - AFFECT CERTAIN MODALITIES OF TTSD
    - Loans, cash deposits, and transfer of securities that document them
    - Contributions to joint ventures and transfers at the time of dissolution as payment for jointly-owned property (article 45.I.B.3)
    - Transfers of securities
- **TAX BENEFITS ESTABLISHED IN SPECIAL REGULATIONS**

6. RETURNS (article 57, RLD)

- **Tax will be reimbursed in cases of nullity, rescission, or termination of an act or contract declared or recognized judicially or administratively by a final resolution, provided that**:
  - It has not resulted in any profit for the taxpayer.
  - The refund is requested within the legal limitation period, starting from the date on which the decision became final.

7. TAX MANAGEMENT

- **TAX MANAGEMENT IS THE RESPONSIBILITY OF REGIONAL GOVERNMENTS** by delegation.
- **SELF-ASSESSMENT: a tax return** must be filed (except in the case of payment by means of stamp duty).
- **DEADLINE** is 30 days after the act or contract is caused.
- **THE TAX AUTHORITY CAN AUDIT THE DECLARED VALUE**. Taxpayers may request a contradictory expert appraisal.
- **REGISTRY:** The registries of property, as well as mercantile and industrial property, will not accept any document for inscription or annotation that does not provide proof of payment, exemption, or non-subjection to the tax.