

## *Chapter II*

# **ESTATE AND DONOR'S TAXES<sup>115</sup>**

### **A. ESTATE TAX**

#### *1. Taxpayer and Tax Base*

The estate tax is imposed on the transfer of the decedent's estate to his lawful heirs and beneficiaries based on the fair market value of the net estate at the time of the decedent's death. It is not a tax on property. It is a tax imposed on the privilege of transmitting property upon the death of the owner. The estate tax is based on the laws in force at the time of death notwithstanding the postponement of the actual possession or enjoyment of the estate by the beneficiary.

#### *2. Computation of Net Estate*

##### **a. Gross estate**

The value of the gross estate of the decedent includes the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.<sup>116</sup>

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<sup>115</sup> Title III of the National Internal Revenue Code (NIRC) of 1997, as amended.

<sup>116</sup> Sec. 85, *supra*.

In the case of a nonresident decedent who at the time of his death was not a citizen of the Philippines, only that part of the entire gross estate situated in the Philippines is included in the taxable estate.<sup>117</sup>

Gross estate<sup>118</sup> includes property falling under any of the following categories:

- (1) Decedent's interest, to the extent of his interest therein at the time of his death;
- (2) Transfers in contemplation of death;
- (3) Revocable transfers;
- (4) Property passing under general power of appointment;
- (5) Proceeds of life insurance;
- (6) Prior interests; and
- (7) Transfer for insufficient consideration.

The following are excluded from the gross estate:<sup>119</sup>

- (1) GSIS proceeds/ benefits

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<sup>117</sup> No estate tax shall be collected in respect of intangible personal property if (a) the decedent at the time of death was a citizen and resident of a foreign country which did not impose a transfer tax of any character, in respect of intangible personal property of citizens of the Philippines not residing in that foreign country; or (b) if the laws of the foreign country of which the decedent was a citizen or resident allows a similar exemption from transfer or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country. (Sec. 104, NIRC).

<sup>118</sup> Sec. 85(a) to (g), *supra*.

<sup>119</sup> Source: <[http://www.bir.gov.ph/taxinfo/tax\\_estate.htm](http://www.bir.gov.ph/taxinfo/tax_estate.htm)> (August 16, 2010).

- (2) Accruals from SSS
- (3) Proceeds of life insurance where the beneficiary is irrevocably appointed
- (4) Proceeds of life insurance under a group insurance taken by employer (not taken out upon his life)
- (5) War damage payments
- (6) Transfer by way of bona fide sales
- (7) Transfer of property to the National Government or to any of its political subdivisions
- (8) Separate property of the surviving spouse
- (9) Merger of usufruct in the owner of the naked title
- (10) Properties held in trust by the decedent
- (11) Acquisition and/or transfer expressly declared as not taxable
- (12) Personal Equity and Retirement Account (PERA) assets of the decedent-contributor.<sup>120</sup>

**b. Net estate<sup>121</sup>**

The net estate is determined by deducting from the value<sup>122</sup> of gross estate the total amount of allowable deductions.

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<sup>120</sup> Section 14, RA 9505 or the "Personal Equity and Retirement Account (PERA) Act of 2008".

<sup>121</sup> Sec. 86, *supra*.

<sup>122</sup> The computation for estate tax purposes of real properties shall be based on the zonal value or the value as shown in the schedule of market values prepared by the Provincial or City Assessors whichever is higher. See Sec. 88(b), *supra*.

**c. Deductions**

(1) *In the case of citizens or residents of the Philippines*<sup>123</sup>

- (a) Expenses, losses, indebtedness, and taxes consisting of:
  - (i) Actual funeral expenses or five percent (5%) of the gross estate, whichever is lower, but not exceeding Two Hundred Thousand Pesos (PhP200,000.00);
  - (ii) Judicial expenses of the testamentary or intestate proceedings;
  - (iii) Claims against the estate;
  - (iv) Claims of the deceased against insolvent persons where the value of such claim is included in the value of the gross estate;
  - (v) Unpaid mortgages in favor of the estate, under certain conditions;
  - (vi) Unpaid taxes; and
  - (vii) Casualty losses.
- (b) Value of property previously taxed (estate or donor's tax), under certain conditions.
- (c) Transfers to or for the use of the Philippine Government or any political subdivision thereof, exclusively for public purposes.
- (d) Current fair market value of the decedent's family home. If the said current fair market value exceeds One Million Pesos (PhP1,000,000), the excess shall be subject to estate tax. Also, said family home must have been the

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<sup>123</sup> Sec. 86(A), *supra*.

decedent's family home as certified by the barangay captain of the locality.

- (e) Standard deduction equivalent to One Million Pesos (PhP1,000,000).
  - (f) Medical expenses not exceeding Five Hundred Thousand Pesos (PhP500,000.00), incurred by the decedent within one year prior to his death, duly substantiated with receipts.
  - (g) Amount received by heirs under RA 4917<sup>124</sup> (retirement benefits of employees of private firms) provided such amount is included in the gross estate of the deceased.
  - (h) The net share of the surviving spouse in the conjugal partnership property.
- (2) *In the case of a nonresident not a citizen of the Philippines*<sup>125</sup>
- (a) That portion of the funeral expenses, losses and indebtedness, and taxes which the value of the decedent's gross estate situated in the Philippines bears to his entire gross estate wherever situated;
  - (b) Value of property previously taxed, under certain conditions, if part of decedent's gross estate is situated in the Philippines;
  - (c) Transfers to or for the use of the Philippine Government or any political subdivision thereof, exclusively for public purposes; and

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<sup>124</sup> An Act Providing that Retirement Benefits of Employees of Private Firms Shall Not Be Subject to Attachment, Levy, Execution, or Any Tax Whatsoever.

<sup>125</sup> Section 86(B), *supra*.

- (d) The net share of the surviving spouse in the conjugal partnership property as diminished by the obligations properly chargeable to such property.

#### d. Exemptions<sup>126</sup>

The following shall not be taxed:

- (1) The merger of usufruct in the owner of the naked title;
- (2) The transmission or delivery of the inheritance or legacy by the fiduciary heir or legatee to the fideicommissary;
- (3) The transmission from the first heir, legatee, or donee in favor of another beneficiary, in accordance with the desire of the predecessor; and
- (4) All bequests, devises, legacies or transfers to social welfare cultural or charitable institutions, no part of the net income of which inures to the benefit of any individual, provided that not more than 30% of said bequests, devises, legacies or transfers shall be used for administration purposes.

### 3. Rates of Estate Tax <sup>127</sup>

If The Net Estate Is		The Tax Shall Be	Plus	Of Excess Over
Over	But Not Over			
-	PhP 200,000	Exempt	-	-
PhP 200,000	500,000	0	5%	PhP 200,000
500,000	2,000,000	PhP 15,000	8%	500,000
2,000,000	5,000,000	135,000	11%	2,000,000
5,000,000	10,000,000	465,000	15%	5,000,000
10,000,000	And Over	1,215,000	20%	10,000,000

<sup>126</sup> Section 87, *supra*.

<sup>127</sup> Section 84, *supra*.

#### 4. *Filing Requirements and Payment of Tax*<sup>128</sup>

##### a. **Persons required to file notice of death**

A written notice of death to the Commissioner of Internal Revenue shall be filed by the executor, administrator or any of the legal heirs, as the case may be, within two (2) months after the decedent's death, or within a like period after qualifying as such executor or administrator, in all cases of transfers subject to tax, or where, though exempt from tax, the gross value of the estate exceeds Twenty Thousand Pesos (PhP20,000).<sup>129</sup>

##### b. **Persons required to file estate tax returns**<sup>130</sup>

The estate tax return shall be filed by the executor or administrator, or any of the legal heirs, in cases of transfers subject to estate tax, or where though exempt from estate tax, the gross value of the estate exceeds Two Hundred Thousand Pesos (PhP200,000.00) or regardless of the gross value of the estate, where the said estate consists of registered or registrable property such as real property, motor vehicle, shares of stock or other similar property for which a clearance from the BIR is required as a

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<sup>128</sup> In the case of the heirs of deceased landowners of agrarian reform-covered lands, the Land Bank of the Philippines (LBP) upon receipt of the heirs' undertaking to pay the estate and real property taxes shall deduct the said taxes from the landowner's compensation and remit the same immediately to the BIR and the LGUs concerned. The BIR shall then issue the necessary clearance for the registration of document transmitting ownership of landowner's compensation to the heir/s. This policy, however, shall not apply if there is a pending just compensation case filed by the heirs of the deceased landowner before the Department of Agrarian Reform Adjudication Board (DARAB), Special Agrarian Court or a higher court having jurisdiction. [Joint Department of Agrarian Reform (DAR)-Department of Finance (DOF)-Department of Justice (DOJ)-LBP Administrative Order (AO) No. 1, Series of 2012 dated April 18, 2013] as clarified under RMC 77-2015 issued on December 17, 2015.

<sup>129</sup> Section 89, *supra*.

<sup>130</sup> Section 90(A), *supra*.

condition precedent for the transfer of ownership thereof in the name of the transferee.

In case the estate tax return shows a gross value exceeding Two Million Pesos (PhP2,000,000) it must be supported with a statement certified to by a Certified Public Accountant.

**c. Time of filing** <sup>131</sup>

The estate tax return shall be filed within six (6) months from the decedent's death. The Commissioner shall have the authority to grant, in meritorious cases a reasonable extension not exceeding thirty (30) days for filing the return.

**d. Place of filing** <sup>132</sup>

The return shall be filed with an authorized agent bank, Revenue Collection Officer or duly authorized Treasurer of the City or municipality in the Revenue District Office having jurisdiction over the place of domicile of the decedent at the time of his death. In case of a non-resident decedent, with executor or administrator in the Philippines, the estate tax return shall be filed with the AAB of the RDO where such executor/administrator is registered or is domiciled, if not yet registered with the BIR. For non-resident decedent with no executor or administrator in the Philippines, the estate tax return shall be filed with the AAB under the jurisdiction of RDO 39–South Quezon City.<sup>133</sup>

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<sup>131</sup> Section 90(B), *supra*.

<sup>132</sup> Section 90(D), *supra*.

<sup>133</sup> RMC 34-2013, Clarification on the Proper Accomplishment and Filing of Estate Tax Returns, dated April 22, 2013.



**e. Payment of tax** <sup>134</sup>

The estate tax shall be paid at the time the return is filed by the executor, administrator or the heirs. The Commissioner may grant extension of time not exceeding five (5) or two (2) years depending on whether the estate was settled judicially or extrajudicially.

In case the available cash of the estate is not sufficient to pay its total estate tax liability, the estate may be allowed to pay the tax by installment and a clearance shall be released only with respect to the property the corresponding/computed tax on which has been paid. There shall, therefore, be as many clearances (Certificate Authorizing Registration) as there are as many properties released because they have been paid for by the installment payments of the estate tax. The computation of the estate tax, however, shall always be on the cumulative amount of the net taxable estate. Any amount paid after the statutory due date of the tax shall be imposed the corresponding applicable penalty thereto. However, if the payment of the tax after the due date is approved by the Commissioner or his duly authorized representative, the imposable penalty thereon shall only be the interest.<sup>135</sup>

**f. Penalties**

Violations of the estate tax provisions are subject to the applicable common penalties prescribed under Title X (Statutory Offenses and Penalties) of the NIRC, as amended.

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<sup>134</sup> Sec. 91, *supra*.

<sup>135</sup> Sec. 9 (F), RR 2-2003.

**B. DONOR'S TAX****1. Taxpayer and Tax Base**

The donor's tax is imposed on the transfer by any person, resident or nonresident, of property by gift.<sup>136</sup>

The taxable base is the fair market value of the total net gifts made by a donor during the calendar year.

**a. Coverage of the Tax**

“**Gifts**” include real and personal property, whether tangible or intangible, or mixed wherever situated. In case of a nonresident alien, his real and personal property so transferred but which are situated outside the Philippines are not included as part of the gross gift.<sup>137</sup>

The following are considered situated in the Philippines and includible as gifts:

- (1) Franchise which must be exercised in the Philippines;
- (2) Shares, obligations or bonds issued by any corporation or *sociedad anonima* organized or constituted in the Philippines;
- (3) Shares, obligations or bonds by any foreign corporation 85% of the business of which is located in the Philippines;

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<sup>136</sup> Sec. 98, op.cit. The donations subject to donor's tax are donations *inter vivos* or those made between living persons to take effect during the lifetime of the donor. Donations *mortis causa* or those which are to take effect upon the death of the donor and therefore partake of the nature of testamentary dispositions are subject to estate tax. [Articles 728, 729, and 734, New Civil Code as cited in Hector S. De Leon, et. al., *The National Internal Revenue Code Annotated, Vol. I, 8<sup>th</sup> Ed.*, (Manila: Rex Bookstore, 2003)p.619].

<sup>137</sup> Section 104, *supra*.

- (4) Shares, obligations, or bonds issued by any foreign corporation if such shares, obligations, or bonds have acquired a business situs in the Philippines; and
- (5) Shares or rights in any partnership, business or industry established in the Philippines, which are to be considered as situated in the Philippines.

The following are the requisites of a donation for purposes of the donor's tax:

- (1) Capacity of the donor;
- (2) Donative intent, or an intent of the donor to make a gift;
- (3) Delivery, whether actual or constructive, of the subject matter of the gift; and
- (4) Acceptance of the gift by the donee.

### **b. Exemptions**

The following gifts or donations are exempt from the donor's tax, under certain conditions:<sup>138</sup>

- (1) *In case of gifts made by a resident of the Philippines:*
  - (a) Dowries or gifts made on account of marriage and before its celebration or within one year thereafter by the parents to each legitimate, recognized, natural, or adopted children to the extent of the first PhP10,000.00;
  - (b) Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not

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<sup>138</sup> Section 101, *supra*.

conducted for profit, or to any of its political subdivisions;  
and

- (c) Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, accredited non-government organization, trust or philanthropic organization or research institution or organization provided that not more than 30% of said gifts shall be used by such donee for administrative purposes.

(2) *In case of gifts made by a nonresident alien of the Philippines:*

- (a) Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any of its political subdivisions;  
and
- (b) Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, foundation, trust or philanthropic organization or research institution or organization, provided that not more than 30% of said gifts shall be used by the recipient for administrative purposes.

### 3. *Donor's Tax Rates* <sup>139</sup>

- a. The tax for each calendar year shall be computed on the basis of the total net gifts made during the calendar year, in accordance with the following schedule:

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<sup>139</sup> Section 99(A), *supra*.

If the Net Gift is		The tax shall be	Plus	Of Excess Over
Over	But Not Over			
-	PhP 100,000	Exempt	-	-
PhP 100,000	200,000	0	2%	PhP 100,000
200,000	500,000	PhP 2,000	4%	200,000
500,000	1,000,000	14,000	6%	500,000
1,000,000	3,000,000	44,000	8%	1,000,000
3,000,000	5,000,000	204,000	10%	3,000,000
5,000,000	10,000,000	404,000	12%	5,000,000
10,000,000	-	1,004,000	15%	10,000,000

- b. When the donee or beneficiary is a stranger, the tax payable by the donor shall be 30% of the net gifts.
- c. Any contribution in cash or in kind to any candidate or political party for campaign purposes, duly reported to the Commission, shall not be subject to the payment of donor's tax.<sup>140</sup>

#### 4. Filing Requirements <sup>141</sup>

##### a. Filing and contents of returns

A return is required in all cases of transfers by gift except those which are exempt under the NIRC, and shall set forth: each gift made during the calendar year which is to be included in computing net gifts; the deductions claimed and allowable; any

<sup>140</sup> Section 13, RA 7166 (entitled "An Act Providing For Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes," approved on November 26, 1991) and Rule 3, Section 3, Commission on Elections' (COMELEC) Resolution No. 9476 - Rules and Regulations Governing Campaign Finance and Disclosure in Connection With the 13 May 2013 National and Local Elections and Subsequent Elections Thereafter (promulgated June 22, 2012).

<sup>141</sup> Section 103, *supra*.

previous net gifts made during the same calendar year; name of donee; relationship of the donor to the donee; and such other information as may be required.

**b. Time and place of filing and payment**

The return shall be filed within thirty (30) days after the date the gift is made and the tax due thereon shall be paid at the time of filing with an authorized agent bank, Revenue District Officer, Revenue Collection Officer or duly authorized Treasurer of the city or municipality where the donor was domiciled at the time of the transfer or if there is no legal residence in the Philippines, with the Office of the Commissioner. In case of gifts made by a non-resident, the return may be filed with the Philippine embassy or Consulate in the country where the donor is domiciled at the time of the transfer, or directly with the office of the Commissioner.

