

CHAPTER VII

ESTATE AND GIFT TAX

I. General Description

The taxation of estates was proposed in the early years of the ROC. In 1915, an act was drafted under the name of the Act for Collection of Estate Tax, and it was redrafted in 1929 as the Act of Estate Tax. Neither act was released for implementation due to civil disorder. By 1938, after war between China and Japan had been formally declared, the government was in urgent need of financial resources, and thus the Tentative Act for Estate Tax was drafted and implemented on 1st July, 1940. In 1946, following victory in the war against Japan, the aforesaid Tentative Act for Estate Tax was revised to be the Estate Tax Act, and further revised in 1950 and 1952. As the Act chose to tax the property left by the deceased at his or her death, property owners could easily circumvent the levy of estate tax by bestowing gifts while still alive. Therefore, the act was replaced in 1973 by the Estate and Gift Tax Act to close this loophole and also to reflect the rapid growth of the domestic economy and substantial price fluctuation. In 1981, several provisions of the Act were revised in line with the enactment of the Tax Collection Act and also the price fluctuations resulting from the oil crisis at that time. Then, in 1995, in order to adjust the tax burden, implement a sound tax structure, and prevent tax evasion, the tax law was further revised to rationalize and simplify tax rates and tax brackets, and to include provisions for the counter-acting of evasions by changing nationality. Following that, there were no further immediate major revisions to the estate and gift tax law, although the 2000 and 2001 revisions added the exemption of farmland and tax provisions of trusts, respectively.

Then as the economic environment evolved, numerous countries began to undertake tax reforms to cope with the trend of economic liberalization, internationalization, and innovation in financial products, and reform of the estate and gift tax was an important part of this movement among others in the various tax administrations. Following this trend and as a part of a process of overall reform, the estate and gift tax laws were substantially revised in 2009. The aim of the revision was, from the aspect of improving effectiveness, to reduce the inducement of tax evasion, to increase efficiency in the use of capital, and to enhance tax compliance. The major revisions included an adjustment of the structure of the estate and gift tax rates and tax exemptions and also an improvement in the current tax payment system. The tax structure was adjusted from 10 tax brackets with a highest marginal tax rate of 50% to a single flat rate of 10% with higher tax exemptions.

II. Estate Tax

A. Tax Scope

1. Objects subject to taxation

- a. Property left by the deceased who was an ROC citizen and resided in the ROC ordinarily shall be subject to the levy of estate tax, irrespective of whether the property was located within or outside the ROC.
- b. Property left by the deceased who was an ROC citizen and did not reside in the ROC ordinarily or who was a non-ROC citizen shall be subject to the levy of estate tax only to the extent that it is located within the ROC.

2. Estate and constructive estate

- a. Estate: Movables, immovables, and other properties having market value such as cash, bank savings, stocks, land, houses, rights of claim, mineral rights, and the like.
- b. Constructive estate: Property disposed of through donations in favor of the following persons by the deceased within two years prior to the date of his or her death is regarded as estate property and subject to levy of estate tax:
 - (1) The surviving spouse of the deceased;
 - (2) Heirs prescribed under Article 1138 and 1140 of the Civil Code; and
 - (3) The spouses of the heirs named in the preceding paragraph.

3. Evaluation of estate

The estate is evaluated according to the value prevailing at the time of death, or the current value prevailing at the time the deceased was adjudicated to be dead by the court. The “prevailing value” shall mean the government-assessed value as published from time to time in the case of land, or, in the case of a dwelling, the price evaluated by the tax office for the purpose of the levy of house tax.

4. Definition of ordinary residence within or outside the ROC

- a. The deceased is regarded as having resided in the ROC ordinarily, provided he or she had maintained a domicile in the ROC within two years prior to his or her death or maintained a residence accompanied by the fact that he or she had stayed in the ROC up to 365 days within two years immediately prior to his or her death, except for a deceased foreigner who was performing a service contracted with the ROC government and had only stayed in the ROC for a specific period of time.
- b. The deceased shall not be regarded as having resided in the ROC ordinarily, provided he or she had not met with the requirements set forth in the preceding paragraph.

5. Source rules for estate

The location of the property left by the deceased determines whether it is within or outside the ROC, namely:

- a. For movables, immovables, and attachments, the physical location will govern. However, for ships, automobiles, and aircraft, the location of the agency where the ships, automobiles, and aircraft are registered will govern;
- b. For mineral rights, the physical location of the mines or mining area will govern;
- c. For fishing rights, the location of the relevant administrative agency will govern;
- d. For patents, trademarks, copyrights, and publishing rights, the locations of the relevant registration agencies will govern;
- e. For business rights, the place of business will govern;
- f. For deposits received by financial institutions, the business address of the said financial institution will govern;
- g. For rights of claim, the ordinary residence or the place of business of the debtor will govern;
- h. For bonds, corporate debentures, stocks and equity investments, the principal place of business of the issuing body or invested enterprise will govern;
- i. For trust benefits, the place of operation of business of the trust enterprise will govern; and
- j. In the event of any difficulty in determining the location of other property, the decision of the MOF will govern.

B. Taxpayers

The taxpayers of estate tax shall be determined according to the following sequence of priority:

1. Executor of the will;
2. Heir(s) or legatee(s), in case that no executor is appointed;
3. An administrator elected pursuant to the law, in the case of the non-existence of heir(s) or executor of the will; and in the event that an administrator is not elected for whatever reason within six months immediately following the death, the tax office may submit a petition to the court for appointment of an administrator pursuant to the provisions of the Non-Litigation Law.

C. Exclusions, Deductions, and Exemptions

1. Exclusions

- a. Property contributed to government agencies at various levels or public, educational, cultural, social welfare, and charitable organizations by the legator, legatee(s), or heir(s);

- b. Property contributed to government-owned businesses by the legator, legatee(s), or heir(s);
 - c. Property contributed by the legator, legatee(s), or heir(s) to private incorporated educational, cultural, social welfare, charitable, or religious organizations, or property set aside for the purpose of worshipping ancestors, which is in accordance with the regulatory criteria prescribed by the Executive Yuan;
 - d. Cultural, historical or artistic books, and articles duly recorded with a competent tax office, provided, however, that the estate tax on such books or articles shall be recaptured in the event of the transfer of the same;
 - e. Copyright, patented discovery, and artistic articles invented by the deceased;
 - f. Necessities of the deceased excluded to the extent of NT\$890,000;
 - g. Apparatus for professional use by the deceased to the extent of NT\$500,000;
 - h. Forests banned or restricted from cutting pursuant to the law, provided, however, that the release of the ban or restriction will subject the same to the recapture of estate tax thereon;
 - i. Payment to the appointed beneficiary matured at the time of death under life insurance, labor insurance, farmer insurance, or insurance covering soldiers, civil servants, or teachers;
 - j. Property inherited by the deceased within five years prior to his or her death, provided that estate tax on the inherited property was paid;
 - k. Property originally or specifically owned by the spouse or children of the deceased, the ownership of which can be proved with registration or otherwise;
 - l. Land contributed to or used by the government for public passage, provided that detail of registration should be certified by the competent authority;
 - m. Unrecoverable claims inherited, provided that there is appropriate documentation supporting the irrecoverability.
2. Deductions
- a. A deduction of NT\$4,930,000 for the surviving spouse;
 - b. A deduction of NT\$500,000 for each lineal descendant of the deceased and a further deduction of NT\$500,000 for each year counting from the current age of each lineal descendant up to the age of twenty;
 - c. A deduction of NT\$1,230,000 for each parent;
 - d. A deduction of NT\$6,180,000 for the handicapped or mentally-disabled heirs;
 - e. A deduction of NT\$500,000 for each of the dependent brothers, sisters, and grandparents of the deceased and a further deduction of NT\$500,000 for each of the

dependent brothers and sisters for each year counting from the current age of the dependent brothers or sisters up to the age of twenty;

- f. Farm products and agricultural land that is inherited by the heir(s) or legatee(s) for agricultural purposes. If the heir(s) or legatee(s) does (do) not continuously use the farmland inherited by him, her, or them for the five years from the date of inheritance, and if the heir(s) does (do) not resume farming before the deadline set by the competent agency, then the tax shall be made due retroactively. However, the tax is not applicable if the heir(s) dies (die) or if the land is requisitioned by the government or if any law provides for the land to be used for non-farming purposes;
- g. 80%, 60%, 40%, or 20% of the value of the property inherited by the deceased, depending upon whether the said property was inherited six, seven, eight, or nine years immediately prior to his or her death, respectively;
- h. Taxes, penalties and fines incurred before the death and owed by the deceased;
- i. Debt owed by the deceased, the existence of which can be evidenced by solid proof;
- j. A standard deduction for funeral expenses in the amount of NT\$1,230,000 without requirement of supporting documents;
- k. Any direct and necessary expense incurred by an executor or administrator.

Items a. to g. shall not be applicable in cases where the deceased, being an ROC citizen, did not reside in the ROC ordinarily, or he or she was not an ROC citizen. The deductions described in Items h. to k. shall be available only to the extent that they are incurred within the territory of the ROC. Items a. to e. shall not be applicable to (an) heir(s) who waive(s) the rights of inheritance.

3. Exemptions

An exemption of NT\$12,000,000 is allowable. However, the exemption shall be doubled in the case that the deceased was an ROC citizen, had resided in the ROC ordinarily, and was a soldier, policeman, civil servant, or teacher and died in the performance of his or her duty.

D. Tax Rates

A 10% flat rate has been adopted and became effective from 23rd January, 2009.

E. Tax Return and Payment

1. Deadline for report and jurisdiction

- a. Whether there is any estate tax payable or not, an estate tax return reporting the property left by the deceased shall be submitted within six months from the date of death to the competent tax office where the household registration of the deceased was located. That six-month period shall count from the date of judgment when the deceased was adjudicated to be dead by the court, or from the date when an

administrator was appointed by the court where an application for the aforesaid appointment was requested.

- b. An estate tax return reporting property left in the ROC by the deceased, who was a non-ROC citizen or an ROC citizen who did not reside in the ROC ordinarily, shall be submitted to the tax office where the central government is located.
- c. Written application with due cause for an extension of three months may be made before the maturity of the original six months. The tax office may, at its discretion, extend the period in the event of acts of God or other irregular events.

2. Tax payment

- a. Estate tax payable shall be paid within two months from the date of receipt of a tax notice by the taxpayer(s), within which time application may be made with due cause for an extension of two months may be obtained from the tax office.
- b. In cases where the estate tax payable amounts to NT\$300,000 or more, and the taxpayer has difficulty paying the total in cash, payment may be made in 18 installments through an application submitted to the tax office within the time limit stated in the tax notice. Each installment interval shall not exceed two months. Payment of tax may also be satisfied by surrendering property in the ROC on which estate tax has been assessed, or other property that is easy to sell and take into custody. When using the assessed property in the ROC which is of low liquidity or difficult to take into custody, or for which the price on the date of application is lower than on the date of death, the amount of tax which may be offset by such property shall be limited to the ratio of its value to the value of the total assessed estate.
- c. In cases where payment in installments has been approved, interest at the postal savings rate for a one-year certificate of deposit shall be paid together with the outstanding estate tax counting from the date following the maturity of the time limit stated in the tax notice until the date of full payment.

III. Gift Tax

A. Tax Scope

1. Objects subject to taxation

- a. Any gift made by a donor who is an ROC citizen and resides in the ROC ordinarily shall be subject to the levy of gift tax irrespective of whether the property given away is located within or outside the ROC.
- b. A gift made by a donor who is an ROC citizen but resides outside the ROC ordinarily or who is a non-ROC citizen shall be subject to the levy of gift tax only to the extent that the property given away is located in the ROC.

2. Gifts and constructive gifts

- a. Definition of gift: A gift is a contract whereby the donor offers to transfer his or her property gratuitously to the donee who in turn accepts the transfer.
 - b. Constructive gift: The following transfers are regarded as gifts for gift tax purposes:
 - (1) To forgive rights of claim or assume obligations without receipt of any consideration before the right of claim is due;
 - (2) To transfer property, or forgive rights of claim, or assume obligations with substantially inadequate consideration, in which case gift tax shall be payable to the extent of the difference between the fair market value of the property transferred or the right forgiven or the obligation assumed and consideration received;
 - (3) To purchase property in favor of others with the funds of the purchaser. However, such funds used for purchase of land or housing will be evaluated by means of the government-announced assessed value of land or housing;
 - (4) To purchase property in favor of others with the funds of the purchaser upon receipt of substantially inadequate consideration from the beneficiary nominees, in which case gift tax shall be payable to the extent of the difference between the purchase price and the consideration received from the nominees;
 - (5) Property purchased in the name of the person having no or restricted legal capacity shall be deemed as a gift from the attorney-in-law or guardian of the beneficiary nominee, unless evidence clearly indicates that the purchase price payment came from the funds of the nominee; and
 - (6) Sales between relatives within two degrees, unless evidence clearly indicates the existence of the payment of a sale price.
 - c. Trust deed
 - (1) In the case of a trust deed where the beneficiary of the whole or any part of the trust benefit is designated to any person other than the settlor himself or herself, such action will be regarded as a transfer of the beneficial interest to another person constituted as a gift and will be subject to gift tax.
 - (2) If the settlor was the beneficiary of the whole or any part of the trust benefit of a trust deed and subsequently the beneficiary was replaced by a person other than the settler such action will be subject to gift tax.
 - (3) During the term of the trust relation, if the settlor adds property to the trust, thereby resulting in an increase in interest benefits to beneficiaries other than the settler, then the increased trust benefit will be subject to gift tax.
3. Evaluation of donated property
- Property shall be evaluated at the market value prevailing at the time of the gratuitous transfer.

4. Ordinary residence inside or outside of the ROC.
5. Source rules under gift tax.

The location of the donated property at the time of gratuitous transfer shall govern. (Please refer to the rules stated in the section on the Estate Tax.)

B. Taxpayers

1. The donor shall be liable for payment of the gift tax incurred. However, the donee shall be liable for payment under any one of the following instances:
 - a. The donor disappears; or
 - b. The donor fails to pay the gift tax within the time limit and none of his or her property is available for enforcement; or
 - c. The gift tax has not been assessed by the time of the death of the donor.

The donees shall be liable to pay the gift tax in proportion to the value of the property received by each of the donees.

2. The taxpayer of a trust deed which constitutes a gift is the settlor, but if the settlor conforms to the proviso set out in Paragraph 1, Article 7, the taxpayer shall be the trustee.

C. Exclusions, Deductions, and Exemptions

1. Exclusions

- a. Contributions made to government agencies of various levels or public, educational, cultural, social welfare, charitable, or religious organizations;
- b. Contributions made to government-owned businesses;
- c. Contributions made to incorporated private educational, cultural, social welfare, charitable, or religious organizations, or property set aside for the purpose of honoring ancestors, which must satisfy the criteria of such regulations as are prescribed by the Executive Yuan;
- d. Living, education, and medical expenses defrayed in favor of the dependents of the donor;
- e. Agricultural land given to the heirs provided under Section 1138 of the ROC Civil Code. If the donees do not continuously use the farm land received by them for five years from the date of transfer, and if the donees not resume farming before the deadline set by the competent agency, then the tax shall be made due retroactively. However, the tax is not applicable if the donee dies or if the land is requisitioned by the government or if any law provides for the land to be used for non-farming purposes;
- f. Transfers between spouses; and

g. Marriage gifts given by parents to the extent of NT\$1,000,000.

2. Deductions

- a. A deduction is available to the extent of the liability transferred together with the donation, provided that the performance of the said liability is of proper value and has been fully performed or its performance is secured. The deduction shall not be allowed in cases where the liability is a payment or delivery to be made or conveyed to persons other than the donor, in which case such payment is regarded as an indirect gift; and
- b. The deed tax and/or land value increment tax incurred from the donation of real estate shall be deductible.

3. Exemptions

An annual exemption of NT\$2,200,000 shall be available for each donor.

D. Tax Rates

A 10% flat rate has been adopted and became effective as of 23rd January, 2009.

E. Tax Returns and Payments

1. Time limit for report and jurisdiction

- a. A donor shall submit a gift tax return within 30 days following the date of a gratuitous transfer to the extent of his or her donation(s) made during each taxable year in excess of the annual exemption, i.e., NT\$2,200,000.
- b. A donor who is an ROC citizen and resides in the ROC ordinarily shall submit a gift tax return to the tax office where his or her household is registered. A donor who is an ROC citizen and does not reside in the ROC continuously or who is a non-ROC citizen shall submit a gift tax return to the tax office where the central government is located.
- c. An extension may be obtained for the submission of a gift tax return through a written application supported with due cause filed prior to the lapse of the above-mentioned time limit.
- d. The gift tax return submitted by the same donor shall also contain the information of his or her previous donations made within the same taxable year.

2. Tax payment: The same as the method applied under estate tax.

IV. Other Provisions

A. Penalty Provisions

- 1. A penalty of up to two times the estate or gift tax payable shall be imposed on a taxpayer who fails to submit an estate or gift tax return in a timely manner.

2. A penalty of up to two times the estate or gift tax levied on property unreported or under-reported shall be imposed on a taxpayer who submits an estate or gift tax return in a timely manner.
3. A penalty of one to three times the estate or gift tax calculated at the rates prevailing in the year of inheritance or at the time of gratuitous transfer shall be collected together with the estate or gift tax not received from a taxpayer who has avoided estate or gift tax through fraudulent or other improper methods.

B. Waiver of Penalty

The above-mentioned penalties shall be waived where a taxpayer, prior to the discovery of non-reporting, omission of report, or under-reporting by the tax office itself or through information provided to it by various channels or prior to investigations begun by the appointee of the MOF, submits a late or supplemental estate and gift tax return reporting the estate or donations omitted in the previous return, provided that interest for the late payment is collected along with the tax payable.

C. Administrative Remedy

Upon receipt of the tax notice, the taxpayer may apply to the tax office for recheck within one month after the lapse of the time limit stated in the notice. The taxpayer may further contest the recheck by submission of an appeal, or pursuit of an administrative lawsuit, with the competent agencies.