

# Philippines

## Contacts

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## 1. Types of tax

### 1.1 Estate tax and tax on gifts during lifetime

There used to be both inheritance tax (tax on the right of heirs to inherit) and estate tax (tax on the net estate of the decedent) in the Philippines.

Now, the Philippines only imposes estate tax which applies on the fair market value (FMV) of a decedent's estate at the time of the person's death. In determining the value of the gross estate, the FMV of all properties, real or personal, tangible or intangible, is included regardless of their location. With respect to nonresident aliens, only properties located in the Philippines are subject to estate tax.

The following should be included as part of the gross estate:

- ▶ **Decedent's interest.** This refers to value of the decedent's right or expectation (short of naked title) on a property.
- ▶ **Transfers in contemplation of death.** The value of any disposition, whether by trust or otherwise, that is intended to take place only after the decedent's death (*donation mortis causa*).
- ▶ **Revocable transfers.** The value of any transferred property where the decedent retained his or her power to amend, alter or revoke the transfer during his or her lifetime. This is regardless of whether he or she actually exercised that power or not.
- ▶ **Transfers with retention of rights of ownership.** This refers to the value of any transfer where the decedent retained the power to enjoy the fruits or income of the asset during his or her lifetime. Since this means that the transfer performed by the decedent is not absolute and transfer of all rights of ownership will only take place upon his or her death, the value of the asset transferred should still be considered part of his or her gross estate.



- ▶ **Property passing under the general power of appointment.** This refers to the value of any property for which the decedent was given the power to appoint any person, including himself or herself, to be the recipient or beneficiary. Since the decedent enjoys the right to dispose the property any way he or she wants to as if he or she is the owner, the value of such property should be included in his or her gross estate.
- ▶ **Proceeds of life insurance.** The value of insurance proceeds from insurance policies taken out by the decedent upon his or her own life should be included in the gross estate of the decedent when the designation of the beneficiary is revocable, or when the decedent has made himself or herself, or his or her estate, the executor or administrator as the beneficiary regardless of whether the designation is irrevocable or not.
- ▶ **Transfers for insufficient consideration.** This refers to the excess of the FMV at the time of death over the value of the consideration received by the decedent for any disposition by sale that he or she made during his or her that is less than a bona fide sale for an adequate and full consideration in money or money's worth.
- ▶ **Property owned in common with surviving spouse.** The value of any property owned in common with the surviving spouse should be included in the decedent's gross estate. However, the value of the equal share of the surviving spouse should be deducted from the estate after all conjugal expenses have been deducted from the gross estate.

The gross estate is entitled to claim the following deductible expenses to determine the net estate:

- ▶ **Funeral expense.\*** Actual funeral expenses include cost of clothes for bereavement or 5% of the gross estate, whichever is lower, but in no case to exceed PHP200,000.
- ▶ **Judicial expense.\*** Fees of executors, administrators and lawyers as well as expenses for the preservation of the estate.
- ▶ **Claims against the estate.\*** Third-party creditor claims such as loans obtained by the decedent, which must be evidenced by a notarized agreement.
- ▶ **Claims against insolvent persons.\*** Basically, bad and /receivables of the decedent.
- ▶ **Mortgage indebtedness, taxes and loss.\*** Unpaid mortgages, unpaid taxes before the death of decedent and any losses from fire, theft or embezzlement incurred by the estate that is not covered by insurance.
- ▶ **Vanishing deduction.** A certain percentage of the value of an asset may be deducted from the gross estate if it was acquired by inheritance or by gratuitous title by the decedent at a time proximate to the decedent's death. For example, the value of property acquired by the decedent by inheritance at least four years but not more than five years before his or her death may be deducted from his or her gross estate to the extent of 20% thereof. If such property was inherited by the decedent within one year before his or her death, then 100% of the value of such asset is deductible from his or her gross estate.
- ▶ **Transfer for public use.** Any bequeath, legacies or devisees to the Philippine government or any of its political subdivisions for public use.
- ▶ **Family home.\*** The actual FMV of the decedent's family home or PHP1 million, whichever is lower.
- ▶ **Standard deduction.** The amount of PHP1 million is deductible without question.
- ▶ **Medical expenses.** Actual medical expenses incurred within one year prior to the death of the decedent or PHP500,000, whichever is lower.

There is a proposal under House Bill (HB) No. 5636 to reduce the estate tax to 6% of the net taxable estate. HB 5636 was approved by the Lower House on 31 May 2017 and might become law in 2017.

\* The family home deduction is being proposed by HB No. 5636 to be increased to PHP3 million.



HB No. 5636 also proposes removing ordinary expenses, losses, indebtedness and taxes as one of the allowable deductions from the gross estate of a nonresident alien; it also proposes removing the requirement that a nonresident alien declare all of his or her non-Philippine assets in his or her Philippine estate tax return before he or she can be allowed to claim the other allowable deductions.

## 1.2 Gift tax

Donations made during the lifetime of the donor (*donation inter vivos*) are subject to donor's tax. Donor's tax is imposed on total net gifts made in any calendar year. Generally, any donation to a "stranger" is subject to donor's tax at the rate of 30% of the FMV of the property or cash donated. Otherwise, the donation is subject to the graduated scale under Section 3 below. A "stranger" is a person who is not a:

- Brother, sister (whether by whole or half-blood), spouse, ancestor or lineal descendant
- Or
- Relative by consanguinity in the collateral line within the fourth degree of relationship

Donor's tax is also imposed on any transfer of any property (other than real property classified as a capital asset) for less than adequate and full consideration in money or money's worth.

## 1.3 Real estate transfer tax

There is a real estate transfer tax in the Philippines that is imposed on all transfers of real estate property, including transfer by way of inheritance. This is referred to as local transfer tax (LTT) and is imposed by the local government unit having jurisdiction over the location of the property and not by the National Government. In the case of cities, the maximum rate of LTT is 75% of 1% of the FMV, zonal value or consideration received, whichever is higher of the three. On the other hand, municipalities cannot impose LTT that is higher than 50% of 1% of the FMV, zonal value or consideration received, whichever is higher.

In case of transfer by way of inheritance, the LTT should be paid within 60 days from the time of death of the decedent.

## 1.4 Endowment tax

There is no endowment tax in the Philippines.

## 1.5 Transfer duty

There is no transfer duty in case of transfer by way of inheritance. Documentary stamp tax (DST) is applicable, however, on any transfer or disposition of real property or shares of stock in a domestic company during the lifetime of the person. The DST rate on transfer of shares is PHP0.75 for every PHP200, or fraction thereof, of the total par value of the shares. The DST on transfers of real property is PHP15 for every PHP1,000, or fraction thereof, of the zonal value, FMV or consideration received, whichever is higher.

## 1.6 Net wealth tax

There is no net wealth tax in the Philippines.

# 2. Who is liable?

The estate tax should be paid by the executor or administrator of the estate or any person in actual or constructive possession of the property. The estate tax is a lien on the property of the decedent and must be paid before any distribution can be made to the heirs. Heirs are secondarily liable for estate tax to the extent of his or her distributive share in the estate.



## 2.1 Residency

The estate of any decedent, citizen or not, who, at the time of their death, is a resident of the Philippines, shall be subject to estate tax in the Philippines, regardless of the location of the property, tangible or intangible, real or personal property.

Nonresident aliens are subject to estate tax only on properties situated in the Philippines, whether they are real or personal, tangible or intangible. However, intangible personal properties of such nonresident alien will be excluded in the gross estate if the foreign country (of which the decedent is a resident at the time of his death) 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 (reciprocity rule).

Residence is generally determined by presence of intent to return (*animus revertendi*). It usually refers to a permanent home where one intends to return whenever away for business or pleasure.

## 2.2 Domicile

Domicile is similar to residence as far as Philippine estate tax is concerned.

# 3. Rates

### Estate tax

The net estate of every decedent, whether resident or nonresident, shall be subject to estate tax based on the value of such net estate in accordance with the following schedule (in PHP):

Table 1

Over	But not over	The tax shall be	Plus	Of the excess over
	200,000	Exempt		
200,000	500,000	0	5%	200,000
500,000	2,000,000	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

As noted in Section 1.1, there is a proposal under HB No. 5636 to reduce the estate tax to 6% of the net taxable estate.





- ▶ Gifts made to or for the use of the national government or any entity created by any of its agencies that is not conducted for profit, or to any political subdivision of the said government
- ▶ Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, accredited nongovernment organization, trust or philanthropic organization or research institution or organization provided, however, that no more than 30% of said gifts shall be used by such donee for administration purposes

In the case of a nonresident alien, only the first and second bullets above are exempt.

## 5. Filing procedures

### Estate tax

Before an estate tax return can be filed, the executor, administrator or heirs must apply for a new tax identification number (TIN) for the estate using Bureau of Internal Revenue (BIR) Form 1901. The TIN of the decedent will be cancelled.

A notice of death must be filed by the executor, administrator or any of the legal heirs within two months after the decedent's death with the Revenue District Office (RDO) that has jurisdiction over the place of the decedent's residence at the time of his death or, if there is no legal residence in the Philippines, with the Office of the Commissioner. The notice of death is required to be filed where the gross value of the estate exceeds PHP20,000.

An estate tax return (BIR Form 1801) is required to be filed when the gross value of the estate is over PHP200,000 or, regardless of the gross value of the estate, when the estate is composed of real properties, shares of stock or motor vehicles, or any property where a BIR tax clearance is required as a condition precedent for the transfer of ownership.

Estate tax returns showing a gross value exceeding PHP2,000,000 shall be supported with a statement duly certified by a certified public accountant containing the following:

- ▶ Itemized assets of the decedent with their corresponding gross values at the time of his death, or, in the case of a nonresident and not a citizen of the Philippines, of that part of his gross estate situated in the Philippines
- ▶ Itemized deductions from gross estate allowed under the law
- ▶ The amount of tax due whether paid or still due and outstanding

Estate tax returns are required to be filed within six months from the decedent's death. The Commissioner shall have authority to grant, in meritorious cases, a reasonable extension not exceeding 30 days for filing the return.

If there is estate tax payable, the estate tax must be filed and paid with the authorized agent bank of the Revenue District Office that has jurisdiction over the place of the decedent's residence at the time of his or her death or, if there is no legal residence in the Philippines, with the Office of the Commissioner.

The estate tax must be paid at the time the return is filed by the executor, administrator or the heirs. However, if the Commissioner finds that the payment on the due date of the estate tax or of any part thereof would impose undue hardship upon the estate or any of the heirs, he may extend the time for payment of such tax or any part thereof not to exceed five years, in case the estate is settled through the courts, or two years in case the estate is settled extra-judicially. In such case, the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment as provided in Section 203 of the National Internal Revenue Code shall be suspended for the period of any such extension.



A certified copy of the schedule of partition and the order of the court approving the same shall be furnished to the Commissioner within 30 days after the promulgation of such order.

## 7. Trusts, foundations and private purpose funds

## Life insurance trust





## Generation-skipping trust

However, again, this can only be done on properties that are not part of the legitime of forced heirs, as legitime cannot be the subject of any condition, burden or substitution.







However, the BIR recently issued a revenue regulation that requires the incremental increase in value of the underlying real property to be included in the computation of the book value of the shares. The revenue regulation purportedly is meant to capture the gain from the increase in value of the real property.

The transferor in a tax-free exchange has, of course, the option of retaining ownership of the shares until he or she dies, in which case the incremental increase in value of the underlying real property will not be included in the computation of the estate tax.

## 10.2 Succession

The Philippines has, by law, institutionalized the concept of compulsory heirs and their legitime. Thus, regardless of the wishes and desires of a testator as provided in his or her will, the legitime of compulsory heirs must be respected. Legitime cannot be the subject of any burden, restriction, condition or substitution.

## 10.3 Forced heirship

Legitime, or automatic inheritance of compulsory heirs, must be respected at all times. Compulsory heirs can rescind or collate inofficious dispositions of the decedent/testator if they impair their legitime. Hence, legitime is the minimum amount of inheritance that compulsory heirs are entitled to. Once the legitime of each compulsory heir is satisfied, everything else is considered part of the “free portion,” which the testator can freely dispose of or bequeath to any person, natural or juridical, and which may be subject to conditions imposed by the testator.

If a citizen dies without a last will and testament, intestate succession rules will govern the distribution of the decedent’s entire estate and there will be no “free portion” to speak of.

Compulsory heirs are legitimate and illegitimate children, a spouse and, in some instances, parents or ascendants.

## 10.4 Matrimonial regimes and civil partnerships

If the marriage was solemnized after August 1988, the default property regime is the Absolute Community of Property (ACP) where everything brought into the marriage and acquired during the marriage is presumed co-owned by the parties. Thus, if a husband and wife do not execute any prenuptial agreement, their property regime will be the ACP.

Marriages solemnized before August 1988 are governed by the Conjugal Partnership of Gains (CPG) regime, unless the parties agreed by way of a prenuptial agreement that they will be governed by another property regime, such as complete separation of property. Under the CPG regime, everything brought in as the exclusive properties of the husband or the wife remains as his or her own, respectively. However, everything acquired during the marriage is presumed co-owned by the parties.

Common law relationships (living together without the benefit of marriage), when there is no legal impediment to marry each other, is deemed governed by the rules on co-ownership.



## 10.5 Intestacy

Intestate succession rules will govern when a citizen dies without a will.

When a citizen dies with a will, the will has to be probated in court where the extrinsic (formal) and intrinsic (substantive; for example, were the legitimes respected?) validity of the will and testament will be determined.

For aliens, resident or not, the formal validity of wills is determined by the rules of the jurisdiction in which the will was executed. Generally, the rules of succession of the foreign country of his or her nationality will determine the hereditary rights of his or her heirs. The rules of his country of domicile or residence may also come into play. In some cases, Philippine rules on succession will apply if his country of nationality or residence, as the case may be, adheres to the *renvoi* doctrine (referring back to the decedent's country of residence at the time of death).

## 10.6 Probate

As long as a will exists, a probate proceeding has to take place during which the validity or invalidity of the will is determined. If the entire will is invalidated for violating formal or substantive rules in making a will, the intestate succession will be determined in the same proceeding.

# 11. Estate tax treaties

## 11.1 Unilateral rules

A foreign tax credit for estate taxes paid in a foreign jurisdiction may be claimed in the Philippines with respect to assets situated or subject to estate tax in the Philippines. The foreign tax credit may be claimed in accordance with the following formula:

**One other foreign country is involved:**

$$\text{Tax credit} = \frac{\text{Net estate in foreign country}}{\text{Entire net estate}} \times \text{Philippine estate tax}$$

Or

The actual estate paid in foreign country, whichever is lower



### Two or more foreign countries are involved:

#### Limit 1: Per foreign country

$$\frac{\text{Net estate per foreign country}}{\text{Entire net estate}} \times \text{Philippine estate tax}$$

#### Limit 2: By aggregate

$$\frac{\text{Net estate all foreign countries}}{\text{Entire net estate}} \times \text{Philippine estate tax}$$

Or

The actual amount of foreign estate tax paid, whichever is lower

## 11.2 Double-taxation treaties

The Philippines does not have any estate tax treaties with any other country to date.