

VIII ENCUENTRO DE ECONOMIA PUBLICA

CACERES ( Febrero 2001)

**DISTRIBUTION OF WEALTH AND INHERITANCE TAX**

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## 1. THE STATE AND INHERITANCE

Family links have economic implications even after the death of a member of the family because estates are normally transferred from one generation to another when a person dies. Inheritance is therefore of great economic importance not just because it allows for the transfer of the estate but also because it may determine the behaviour of the testator and heirs before the death of the former.

Why do people accumulate a greater amount of assets than they can use while alive and leave them as inheritance to other people, usually their closest relations? There is a wide range of answers to this question. Some people find such accumulation satisfying in itself; others because it protects them against future risks. Let us take the case of a person who finds no satisfaction in setting aside capital nor has any interest whatsoever in transferring his fortune to others. Under ideal conditions in which this person knows with absolute certainty what his flow of income and date of death will be as well as the exact amount of any extra costs arising - illness, hospitalisation, etc. -, he will gain maximum satisfaction from distributing his expenditure during his lifetime in the most convenient way and will leave zero assets, or less, at the time of his death. But, if he lives under conditions of uncertainty with no information on many of these aspects, he will prefer to have set aside some capital to which he can resort if necessary and probably, at the time of his death, his net assets will be positive.

There is a third reason for setting aside capital: the desire to transfer it to one's descendants after death. Alfred Marshall, for example, considered that the greatest motivation for a person to work and save was precisely this desire to leave assets to his children and that, if this possibility did not exist, people would buy a lifelong income with their

capital and would work and save less<sup>1</sup>. This argument means that the members of one generation act in an altruistic way with respect to the members of the following generation because in their own utility functions they are using the utility function of their descendants as their argument. In this case, the process of maximising the utility function will not be limited by the life of the testator but the latter will obtain maximum satisfaction from using his assets both for his own consumption and for leaving an inheritance for his descendants.

The transmission of property at death may also follow other motivations. It is possible that a non-altruistic person for whom the heirs' utility functions mean nothing at all will still transfer his estate to his heirs for his own personal interest. His reason may be to pay for the services rendered to him by them during the last years of his life. The testator may consider it useful to not reduce his capital or lose control of it during his life but to leave it at death to those who cared for him. It may also be acceptable for the heirs to receive no payment at all for the care given - or to accept a lower payment than would be demanded if they were not heirs - and to receive the testator's estate on his death. The agreement may therefore be beneficial for both parties, even where there is no altruism.

There are, however, not only private agreements in inheritance. The State plays an important role in the transfer of property within a family. This does not only involve setting limits to free disposal by the testator or regulating the conditions set by the testator on the usage to be made by the heirs of the property inherited. The State also plays a very important role as tax collector by appropriating part of the property transferred, the amount not being a fixed proportion of the sum donated or bequeathed but varying depending on the sums involved and the personal circumstances of each of the beneficiaries.

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<sup>1</sup> A. MARSHALL (1925),p.228.

## 2. WHY DOES THE TAX EXIST? I. REVENUE

There is little doubt that inheritance tax arose as a source of income. There is plenty of historical evidence to confirm this.<sup>2</sup> In fact, throughout history, the inheritance tax rate has tended to be increased at times of special need.<sup>3</sup> Today, however, things have changed and the returns from inheritance tax are very small, both in absolute terms and in terms of the percentage of total tax revenue.

Table 1 shows trends in this tax in a sample of five countries (United Kingdom, United States, France, Germany and Italy) and how it has become gradually less relevant for modern States.

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<sup>2</sup> This type of tax apparently already existed in ancient Egypt in a highly developed form. It was then copied but in a simplified version by the Greeks and Romans. The Roman *Vicesima haereditarium* was a tax on inheritance, legacies and donations, except for when these went to very close relatives. It was established by Augustus at a time of financial difficulty, as a tax which was not likely to cause widespread protest. During the Middle Ages there was also a tax on *mortis causa* transfers. In feudal institutions, it was compulsory for vassals to hand over a sum of money or certain goods to the lord when they passed on the use of the land to their heirs. As from the 17<sup>th</sup> century, when royal power was established, first in Holland and then in England, France, Spain and Portugal, a tax was placed on inheritance in the form of a stamp duty. In some countries, the monarchs inherited the former rights of the feudal lords or the monarchs themselves created an inheritance tax. In England, at the end of the 18<sup>th</sup> century and because of the financial problems caused by the Napoleonic Wars, taxes were levied on income and inheritance and were considered the Public Treasury's two most modern levies. Subsequent reforms in 1894 drew up the general lines for today's inheritance tax. Subsequent modifications tried to introduce progressive taxation or to raise tax rates, especially during times of special need for public funding, such as the First World War. L. BELTRAN (1945), p.p. 79-128. J.J. CLAMAGERAN (1867-1876). Vol.I, p.p. 207-208 . A. SMITH (1776), book V, ch. II, sec.2, appendix to arts. 1,2.

<sup>3</sup> In addition to the English example mentioned above, in the United States a federal tax was created in 1864 on inheritances as an exceptional measure to finance the Civil War. This was done again in 1898 for the war against Spain and in 1916 when the US entered the European War. France, Germany and Italy also raised inheritance taxation sharply during the post-war years.

TABLE N° 1. Revenue from inheritance tax in a sample of five countries (% of total tax revenue)

UNITED KINGDOM	(1913-14) 16.8	(1933-34) 12	(1943-44) 3.4	(1965) 2.62	(1985) 0.64
UNITED STATES	(1917-18) 1.2	(1931-32) 5.4	(1940-41) 5.2		0.79
FRANCE	(1913) 7	(1938) 3.8	(1941) 4.3	0.56	0.61
GERMANY		(1929-30) 0.9	(1939-45) 0.5	0.22	0.22
ITALY	(1916-17) 1.4	(1929-30) 0.3	(1939-40) 0.7	0.85	0.24

Source: Drawn up by the authors based on L. BELTRÁN *El Impuesto sobre las herencias*. Ed. Bosch. Barcelona, 1945, pp. 85 - 128 and J.A. ESTEBAN PAUL "El Impuesto sobre Sucesiones y Donaciones en Derecho Comparado" in *Carta Tributaria*. 1990

The current situation for the OECD countries is given in Table 2. This shows that, except for Japan and Greece, none of the member States of the OECD receives even one per cent of its tax revenue from this tax.

TABLE N° 2. Percentage of revenue from inheritance and gift taxes over total tax revenue in OECD countries (1992)

Australia	0.00
Austria	0.18
Belgium	0.74
Canada	0.00
Denmark	0.56
Finland	0.46
France	0.93
Germany	0.25
Greece	1.04
Iceland	0.22
Ireland	0.30
Italy	0.14
Japan	2.01
Luxembourg	0.32
Netherlands	0.53
New Zealand	0.29
Norway	0.19
Portugal	0.25
Spain	0.42
Sweden	0.17
Switzerland	0.85
Turkey	0.11
UK	0.58
US	0.91

Non-weighted average.

EEC	0.50
OECD (Europe)	0.42
OECD (Total)	0.48

Two countries – Australia and Canada – have no Inheritance and Gift Tax. In both cases, it was abolished fairly recently. In Switzerland, where there is no State inheritance tax, the figures are for revenue from the taxes in the various cantons. In Spain, the tax has been transferred to the regional governments but the revenue is similar because, although the Autonomous Communities are acknowledged as having legislative authority, there are

certain limits and the structure of the rate set up by each region must be scaled in a similar way to the State tax and must be the same as the latter in the amount of the first tranche of the tax base and the minimum marginal rate.

Obviously, the fact that a tax does not bring in a large revenue is no reason why it should not be established. What is more relevant is its differential tax incidence measured as the costs for the society of collection by the State of a certain amount of resources through inheritance tax in comparison with the costs of collecting the same amount of money through other taxes, such as income or sales tax. The theoretical analysis of the income and substitution effects of this tax is well known and does not need to be repeated here. It is also a fact that there is no consensus amongst the specialists over how to quantify the effects of these taxes on the rate of saving. However, there are important empirical studies which establish a close link between the accumulation of capital and the possibility of this capital being inherited by descendants. Basically, it is not necessary to accept the well-known figures drawn up by Kotlikoff and Summers<sup>4</sup> - whereby as much as two-thirds of capital accumulation is due to inheritances - to realise that this tax may have a high cost in terms of efficiency. Moreover, there is no agreement on the idea that revenue from this tax has a low social cost, because the tax is levied on resources which have been received at no cost at all, not earned as a result of personal effort. And since the cost of collection in comparison with the actual fiscal revenue is rather high, clearly other reasons must be found to explain why this tax still exists in most countries.

### 3. WHY DOES THE TAX EXIST? II. THE OBJECTIVE OF WEALTH REDISTRIBUTION AND FAMILY STRUCTURE

The most important argument to justify inheritance taxes is based on the fact that they constitute an important tool for redistributing income because they help to create equality. To take the old argument used by J.S. Mill, people are entitled to transfer their property when they die because, if this were not possible, the right to ownership would not exist in the full sense of the word, but this does not mean that society cannot limit the amount received by each heir<sup>5</sup> in order to eliminate the large fortunes that are useless for society and, in Mill's opinion, can only be spent on ostentation and on buying up power. Reduction of inequality of wealth is usually presented as an important objective because the data show that wealth is distributed in all countries in a less equal way than income.<sup>6</sup> And it is thought that this distribution might distort competition based on the talent and hard work of the individual.

Clearly, one of the reasons why wealth continues to be unequally distributed is family organisation. People tend to marry within their social group or class. If this were not so, it could be argued that in the long term there would be an increasing reduction in the inequality of wealth distribution and a convergence of estates towards average values.<sup>7</sup>

In traditional societies, marriages used to be arranged by the parents who generally chose the prospective partner from amongst their close circle or social environment. But when couples are free to choose their partner, they still tend to choose someone having a similar background. Since the

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<sup>4</sup> L. Kotlikoff and L. Summers (1981), pp. 706-732.

<sup>5</sup> J.S. Mill (1848). London: Longmans.

<sup>6</sup> Note that calculations of the distribution of wealth are often seriously flawed by methodological errors because they do not usually consider as wealth the updated value of the flows of returns from retirement pensions, especially in the case of public pension schemes.

<sup>7</sup> G.S. BECKER (1993). Chapter 4



family is a consumer unit, the best results can be expected when the husband and wife have the same tastes and preferences. According to this criterion, marriages in which the two partners are from the same class, religion or social group are more likely to succeed as they are likely to have similar tastes, interests and types of behaviour.

However, there are also arguments against this idea that marriage is a determining factor in the concentration of wealth. Firstly, the family is not only a consumer unit but also a production unit. This means that the choice of partner will take into account the comparative advantage of each member of the couple and the complementarity of their respective types of human capital. The choice of partner may therefore be based more on differences than similarities. According to the principle of hypergamy, a husband with a high level of human capital or wealth is likely to look for a wife who will basically be responsible for care of the home and who, therefore, will be of a lower social rank than his own.

If we accept the possibility that the benefits of marriage are not shared out on an equal basis but that, provided the position of each of the spouses will be better than before marriage, it might be that each spouse will attempt to maximise not the total utility of the couple but personal individual utility by marrying a person who has less desirable characteristics. This would allow him or her to maintain a dominant position in the marriage, with his or her individual utility being higher than that which would result from higher combined utility shared out in a more equal way. From our point of view, the effect of such a strategy would be a reduction in the accumulation of family wealth over a number of generations.

Other factors also affect the accumulation of wealth. Some of these are related to inheritance but they are distributed in a more random way

than the estate amongst the members of a specific generation. These are factors such as intelligence or diligence which are not inherited from parents in the same proportion as wealth so may increase or decrease inequality in the distribution of wealth. Fertility is another important factor which may substantially reduce the accumulation of wealth because the more children a couple has, the smaller the concentration of wealth in the following generation will be. The influence of this variable, however, is affected by the inheritance law which is in force in the country and at the time.

In spite of these factors, clearly family inheritance is one of the most important variables for explaining a person's wealth in his or her lifetime. This being so, if one of the main objectives of inheritance tax is to reduce differences in the distribution of wealth, then the following question must be posed. Why do tax regulations discriminate in favour of heirs who are close family members – especially the children – of the deceased person?

#### 4. PROBLEMS AND INCONSISTENCY OF THE FUNCTION OF REDISTRIBUTION

An interesting feature of inheritance tax is that it aims to reduce inequality in the distribution of wealth but is based on regulations which go against achievement of this objective. Two aspects of the tax which affect the objective of equality are studied below – most importantly, the discriminatory treatment of heirs and, secondly, discrimination in favour of family firms.

#### 4.1. Heirs apparent and other heirs

The structure of tax rates, which gives beneficial treatment to the closest family members, creates incentives for the inheritance to remain within the family. This principle has always been present in inheritance taxation which often exempts the direct heirs and the spouse from any payment at all.

The privileged treatment which fiscal law gives the closest family members is really only another aspect of the favourable attitude shown towards the family in almost all inheritance legislation which is undoubtedly based on consideration of the family as something more than just a group of related persons that establish agreements involving the provision of services in line with the general principle of freedom of contract. It can even be affirmed that some of the characteristic institutions of family law in some countries are based on the existence of a certain type of community of assets within the family which not only affects the two or three generations that usually live together but reaches into the past and towards the future to include previous and subsequent generations. According to this traditional vision of the family, the person who at a specific time owns property - most of which has probably been received in the form of inheritance - does not own it in the full sense of the term but rather just holds and administers the family property and must eventually pass it on to the following generation. The case of entailed estates governed by the right of primogeniture in which the majority of the family property - especially real estate - is inherited by the eldest child to prevent it from being split up is probably the most significant example. But it is not the only case. More important is at the present time the legitimate share system - namely the obligation to set aside part of the estate for the heirs by necessity of the deceased person with the testator being entitled to freely dispose of another part of it- that is the rule in the civil law of the majority of the European countries

The great social changes that have taken place in western society in recent decades have resulted in the disappearance of many of the characteristic institutions of the traditional family. But law in some countries still governs inheritance as if the family community were more important than it really is. The legitimate share can be understood as an attempt to equalise the position of the children who had previously been treated in a discriminatory fashion by favouring the first-born. But the idea behind such systems is still the existence of a family community within which the property must necessarily be transmitted. However, traditional families also imposed duties and patterns of behaviour. One of these and perhaps the most important was the acceptance by the family members of a hierarchical structure headed by the old patriarch who administered the property. Today this hierarchical structure has disappeared because it is incompatible with a modern economy and modern society. And in most cases the different generations do not even live under the same roof. The elderly have lost their authority within the family but, surprisingly, they have not lost their obligation to leave most of the property to their children over whom they no longer have any authority.

Fiscal laws have reinforced this favourable treatment for close family members. The data given below refer to Spain but are fairly indicative of the general situation. In Spain, most inheritances have remained within the family as a result of testators' wills, the law and the structure of tax rates. Table 3 shows 5-yearly averages for the destination of inheritances amongst heirs apparent (mostly children) or other heirs for both the tax base and the revenue got by the State.

TABLE N° 3. Inheritance taxes in Spain by groups of heirs (1900-1964)

5-YEAR PERIODS (Annual averages)	TAXABLE BASE (%)		REVENUE(%)	
	Heirs apparent	Other heirs	Heirs apparent	Other heirs
1900-1905	78.26	21.74	47.96	52.04
1906-1910	78.12	21.88	44.59	55.41
1911-1915	84.30	15.70	57.05	42.95
1916-1920	80.30	19.70	46.52	53.48
1921-1925	80.83	19.17	49.93	50.07
1926-1930	80.36	19.64	49.50	50.50
1931-1935	76.15	23.85	40.06	59.94
1940-1944	73.30	26.70	35.93	64.07
1945-1948	83.74	16.26	48.26	51.74
1949-1953	85.04	14.96	51.25	48.75
1954-1957	85.84	14.16	53.22	46.78
1958-1962	85.70	14.30	53.39	46.61
1963-1964	84.67	15.33	51.55	48.45

Source: Drawn up by the authors based on data from the Spanish Institute for Fiscal Research

This historical series shows that the largest volume of estates transmitted that was subject to this tax was amongst heirs by necessity in a ratio of 4 to 1 to those transmitted to other heirs. However, because of the different rates based on the degree of relationship with the deceased person, the amounts collected are almost equal for the two types of heir. The amount transmitted to heirs by necessity is between 78 and 81 per cent of the total inheritance before 1945; and since 1945 there has been an even greater accumulation in favour of the closest family relations.

The usual method for benefiting the closest family members is to establish different taxation rates for different degrees of relationship but this is not the only possible strategy. Other ways of giving precedence to close family is to allow for certain sums to be exempt from taxation when the beneficiaries are direct family members, or to create a second tax on the amounts received by each of the heirs who are distant relatives or are not family members. The effects are obviously the same.

It is normal for the testator to obtain greater utility if the estate is left to the closest family members and anyway civil and fiscal regulations give greater incentives for this type of behaviour. The person would have to make an additional effort to save if he or she planned to pass the inheritance outside the close family circle and this would result in a reduction of the amounts transmitted to people outside the family. These incentives have a double effect on efficiency and distribution. With regard to efficiency, privileges for the closest family members have a negative effect in that they limit property rights by restricting the capacity of a specific person to negotiate with third parties to receive care in exchange for a future inheritance. But they may also have a positive effect by restricting inefficient rent-seeking behaviour by possible heirs.<sup>8</sup> The effects on distribution are clear in that such regulations tend to concentrate wealth among the deceased's direct descendants.

In some countries and at certain times of history, clauses were drawn up to penalise heirs having, in a *ceteris paribus* situation, a large estate. Some European countries (such as Germany and Italy) introduced this type of regulation after the First World War.<sup>9</sup> But in other cases it has become just another element of the tax. This is the case in Spain where heirs have

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<sup>8</sup> For an analysis of these possible strategies, see F. CABRILLO (1999), pp.124-126.

<sup>9</sup> It was stabilised in both countries in 1919 and, as the tax with the surcharge could take the whole state, Germany limited the total amount of the inheritance tax to 90% of the value of the state. L. BELTRÁN (1945), p.p. 117,124.

to pay a 5 per cent supplement if their estate before the inheritance was in excess of 385,000 Euros; 10 per cent if it was in excess of 1,900,000 Euros, and 20 per cent if it was in excess of 3,873,000 Euros. This is commonly known as “the prodigal son clause”. It has been much criticised because it discriminates amongst heirs and penalises saving. It means that if there are two direct heirs who have started out in life with equal opportunities, the heir who has saved is penalised in favour of the heir who has consumed his rent. This is clearly inefficient but, if the main aim is to achieve greater distribution of wealth, we have to accept that it is reasonable to penalise the heirs having a larger initial estate.

#### 4.2. Transmission of the family firm

The favourable fiscal treatment given to family firms in the inheritance tax of some countries gives rise to discrimination amongst heirs who receive the inheritance through a family firm and those who receive an estate of a different type. This privilege is usually justified, as shown below, as a method for helping to maintain the family business when the owner/manager dies. However, considering that many family firms are medium-sized or even large, this fiscal regulation may clearly go against the objective of reducing inequality in the distribution of wealth.

Let us take the example of Spain once again, this being a country in which family firms receive very favourable treatment, although this is a result that certain pro-family firm lobbies might reject. In the case of a firm being passed on through inheritance, for the purpose of inheritance tax the value of the firm is reduced by 95 per cent, provided that the heirs are spouses, descendants or adopted descendants and provided that the heirs undertake to maintain the firm or their shares for ten years. These advantages go together with especially favourable treatment in wealth tax whereby the goods and rights of the persons who are necessary for carrying

out the social or professional activity are exempted from taxation, provided that the activity is carried out habitually, personally and directly by the person in question and is his or her main source of income. This is an important exemption considering that, although wealth tax has fairly low rates, it is a progressive tax.

Tax laws to protect family businesses may, as in the cases considered in the previous section, take many forms – from across-the-board privileges, to the restriction of privileges to very small firms, excluding medium-sized and large firms and eliminating many of the problems of discrimination in favour of large estates. There are also special regulations that are applied only to companies having specific characteristics or being in specific sectors such as farms when inheritance law is sometimes adapted to allow one of the heirs to receive the whole of the business even if this goes against the system of the legitimate share. Or more simply, payment of inheritance tax may be deferred so that payment can be made out of returns from the business over time rather than from the sale of the firm's assets.

The idea behind these tax benefits is, as stated above, to help family businesses to survive. It has been shown in estimates carried out in a number of countries that the death of the entrepreneur places the business at risk. In France, for example, it is calculated that 10 per cent of business shut-downs are the result of inheritance problems and, over the next decade, the death of 60,000 family entrepreneurs will lead to the loss of one million jobs. In Spain it has been estimated that only one third of family firms survives into the second generation, and the figure is 15 per cent in the third generation.<sup>10</sup>

But is privileged treatment in inheritance tax the best way of preventing the disappearance of family firms? Inheritance after death of the

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<sup>10</sup> See M.A. GALLO (1995), p.51. G.GARCIA CANTERO (1995) p. 99 . VIDAL (1993)



head of the family business is certainly one of the variables that may be involved in the firm's disappearance. But the main problem for this type of firm is a matter of organisation. It is often difficult to identify the role that the family can play in business activity. There are three normal types of behaviour which affect economic efficiency and may lead to the disappearance of a firm. These are confusion between ownership and management capacity, confusion of the entrepreneur's economic, social and private flows and confusion of emotional links with contractual links. While management capacity is based on certain innate qualities or may be developed through training or practice, ownership of shares in the family firm is bought or inherited and does not necessarily come together with such capacity. In addition, family firms often do not follow market rules for the payment of management or productive work and dividends, reinvestment or extension policies are often not based on principles of economic efficiency. Finally, emotional factors may play an important role in family firms, so much so that the contractual relationships which are fundamental if a firm is to be competitive are neglected. In comparison with these factors, a change in inheritance tax is only of relative importance. The incentives provided by fiscal measures are not therefore the only variable affecting continuity of the firm and anyway involve discriminatory treatment of the heirs, possibly favouring people who already have a large estate.

## 5.- CONCLUSIONS

There are many arguments in favour of the disappearance of inheritance tax. Some are based on a person's right to dispose of his or her property and others are based on economic considerations in that this tax has negative effects on the rate of saving while bringing in only limited revenue. In this paper we have focused, however, on a critical discussion of

the argument which is most widely used to defend this tax, namely, its capacity to achieve greater equality in distribution of wealth and to put a limit to excessive economic power which might have undesirable consequences on society as a whole.

Several factors are taken into account in this argument. Firstly, the idea that it is good for a fiscal system to achieve more equal distribution of wealth is a value judgement which is accepted by many but rejected by many others. Even if we accept this as a desirable objective, it is not clear that inheritance tax is the best possible method of achieving it. Although there are no reliable figures, there is a widespread feeling that the degree of tax evasion in this connection is directly related to the size of the inheritance in question. There are two reasons for this. Firstly, incentives for tax evasion increase the greater the estate to be inherited and, secondly, the possibility of concealing assets from the tax office are greater for larger estates. For most people, the home is the main asset and real estate is the part of the assets which is easiest for the State to tax. But if the estate is made up of financial assets in an international scenario of free movement of capital, fiscal pressure is more limited.<sup>11</sup>

This paper emphasises the inconsistency existing between two basic objectives of this tax – on the one hand, limitation of the inheritance for an heir who already has an excessively large estate and, on the other, promotion of the transfer of property within a family. If the latter is the main objective, then clearly the former must be relinquished to a large extent. If the main aim is redistribution of wealth, then the closest family members or family firms should not be favoured.

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<sup>11</sup> In some countries and during certain historical periods, fiscal treatment showed discrimination in favour of real estate property. This, however, was done to reduce taxation not on small inheritances but on large land-owners. This is the case, for example, of the first inheritance taxes applied in England which used the argument that the real owner of real estate property was not a single person but the whole family, especially in cases in which properties were entailed. W.L. MILLER (1980). L. BELTRA (1945), p.86.

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