

ESADE

Universidad Ramon Llull

Tax Treatment of Donations Under Law 49/2002

CURRENT TAX TREATMENT FOR PURE AND SIMPLE DONATIONS

1. Tax concept

In accordance with Law 49/2002 of 23rd December, on the tax treatment of non-profit organisations and the tax incentives of patronage, taxpayers that pay the Personal Income Tax (natural persons) or the Corporate Tax (legal persons) **shall have the right to deduct from the total amount due** for said taxes **a percentage of any irrevocable, pure and simple donations** or contributions made to entities subject to the tax treatment outlined in the aforementioned Law.

In the case of monetary donations, the aforementioned percentage shall be applied to the actual amount of the donations; in the case of donations of goods or rights, the percentage shall be applied to the book value of said assets at the time of their transmission or, failing that, to the value determined in accordance with the regulations governing the Property Tax.

2. Applicable percentages or deduction rates

The most recent tax reform, enacted by Law 27/2014 of 27th November, on the Corporate Tax (Official State Gazette no. 288 of 28th November), introduces amendments, **effective as of 1st January 2015**, to Law 49/2002 of 23rd December, on the tax treatment of non-profit organisations and the tax incentives of patronage.

The amendments affect patronage, specifically by establishing an **increase in the deduction rates applicable** to donations made by natural and/or legal persons to foundations subject to the special tax treatment.

To summarise, the changes that came into effect on 1st January 2015 are as follows:

1. **The deduction percentage applicable for natural persons in their Personal Income Tax has been increased** from 25% to 30%, although this percentage is temporarily set at 27.5% for 2015. In addition, the first €150 donated overall by a given taxpayer who owes Personal Income Tax is subject to a 75% deduction (up from 50% in 2015).
2. The new conditions **encourage loyalty in donations** made by natural or legal persons:
 - a. For **natural persons**, a deduction of 35% (as opposed to the standard 30%) shall be applied for donations in excess of €150 provided that the natural person has made donations to the same entity in the past three years, although this percentage is set at 32.5% for 2015.

- b. Recurring donations made by **legal persons** over the course of at least three years shall be subject to a Corporate Tax deduction of 40%, although this percentage is established at 37.5% for 2015.

Therefore, following the reforms described above, the tax treatment of donations to foundations subject to Law 49/2002, as is the case for the ESADE Foundation, is established as summarised in the tables below. The first table refers to natural persons (Personal Income Tax) and the second refers to legal persons (Corporate Tax).

Natural persons:

Personal Income Tax	2014 fiscal year	2015 fiscal year	2016 fiscal year and beyond
First €150	—	50%	75%
Rest	25%	27.5%	30%
Multi-year donations (to the same entity for at least 3 years) > €150	—	32.5 %	35%
Maximum deduction on amount due	10%	10%	10%

Legal persons

Corporate Tax	2014 fiscal year	2015 fiscal year	2016 fiscal year and beyond
Donations in general	35%	35%	35%
Multi-year donations (to the same entity for at least 3 years)	—	37.5%	40%
Maximum deduction on amount due	10%	10%	10%