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## The Timing of Taxation in Probate Proceedings: Between the Enforceability of Inheritance and Gift Tax and the Pacifying Function of Division of Assets

*The Timing of Taxation in Probate Proceedings: Between the Moment of ITCMD Liability and the Pacifying Function of Estate Partition*

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### Summary

Probate is a process that requires both legal precision and human sensitivity. In seeking to organize the estate left by a deceased person, he brings into dialogue the National Tax Code (BRAZIL, 1966), the Civil Code (BRAZIL, 2002), the Code of Civil Procedure (BRAZIL, 2015), and the emotional reality of grieving families. In this context, the enforceability of the ITCMD — a tax provided for in Article 155, I, of the Federal Constitution — depends on the completion of the taxable event, a concept structured in Articles 114, 116, and 118 of the National Tax Code (BRAZIL, 1966). Although death initiates the transmission *causa mortis* (article 1,784 of the Civil Code (BRAZIL, 2002)), the definition of shares, values, and holders is only finalized with the homologation of the partition (articles 654 and 659 of the CPC (BRAZIL, 2015)). Advance collection violates the logical structure of the taxable event and destabilizes the pacifying function of the partition. Based on the doctrine of Ataliba, Paulo de Barros Carvalho, Hugo de Brito Machado, and Ricardo Lobo Torres, this article demonstrates that time is a civilizing element of taxation. It concludes that the enforceability of the ITCMD (Inheritance and Gift Tax) is only perfected with the homologated partition, at which point the transmission ceases to be potential and becomes legally effective.

**Keywords:** ITCMD (Inheritance and Gift Tax); Taxable event; Inventory; Division of assets; Tax timeframe.

### Abstract

Probate proceedings demand both legal accuracy and human sensitivity. While the estate attempts to reorganize assets after death, Brazilian tax law — especially the Constitution, the National Tax Code and the Civil Procedure Code — must operate coherently to determine the precise timing of ITCMD liability. Although death initiates inheritance transmission (Civil Code art. 1.784), the taxable event is not complete until the judicial confirmation of partition defines asset ownership, valuation and legal entitlement. Early tax disregards the logic of the legal-tax structure and disrupts the pacifying function of probate. Drawing on authoritative doctrine, this article argues that time is a civilizing force in taxation and that the ITCMD becomes enforceable only with the homologated partition.

**Keywords:** ITCMD; Taxable event; Probate; Estate partition; Tax timing.

### 1. Introduction – Time as the invisible axis of tax and inheritance law

In legal doctrine, there are themes that present themselves as sensitive engineering processes: cogs in a machine. that spin at their own pace, that don't accept improvisation, and that react badly to any attempt at accelerate your natural movements. The inventory, a process of reorganizing the world left for That's exactly the type of mechanism it uses.

Its beginning is marked by an abrupt silence, the instant in which death disrupts bonds. Paperwork and routines. But the Law, far removed from emotional turmoil, demands calm, steps, and prudence. It He knows that reconstruction cannot be rushed. And yet, the State sometimes tries to intervene too early.



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from the moment, demanding the ITCMD (Inheritance and Gift Tax) even before the inheritance takes legal form.

The question that guides our study is simple, but laden with philosophical implications.

Human and normative: When does the tax obligation related to ITCMD actually arise in

Inventory? Answering that involves not only technique, but respect for time — not the

not chronological, but the time of legal maturation, family pacification, and the structure itself.

Systemic framework of Tax Law.

## 2. Methodology

This study adopts a qualitative approach, based on the deductive method, to

To analyze the temporality of the event that triggers the ITCMD (Inheritance and Gift Tax). The research, of a theoretical-conceptual nature,

It is based on a systematic analysis of the relevant legislation — Federal Constitution (art. 155, I), Code

National Tax Code (BRAZIL, 1966) (articles 114, 116, 118), Civil Code (BRAZIL, 2002) (article 1,784)

and the Code of Civil Procedure (BRAZIL, 2015) (articles 654, 659) — and in the classical doctrine of Law

Tax law. Authors such as Geraldo Ataliba, Paulo de Barros Carvalho, Hugo de Brito Machado and

Ricardo Lobo Torres provides the theoretical framework to demonstrate the enforceability of the tax.

It depends on the completion of the taxable event, which only occurs with the approval of the division of assets. The analysis

It dispenses with the use of jurisprudence in order to focus on the logical-systemic coherence of the legal system.

legal.

## 3. The temporality of life and the temporality of Law

Death happens in an instant. The law does not. While the human clock ticks with

With millimeter precision, the minute of death is recorded, but the legal system refuses to change that.

Instantaneous transmission. It requires steps, verifies facts, investigates debts, and sets limits.

shares. As Cristiano Chaves de Farias and Nelson Rosenvald (2020) rightly point out, the inventory

It is an instrument for restoring an order disrupted by death. Therefore, it is, above all...

Everything, a rite of reorganizing life.

And it is precisely in this interval — between the emotional rupture and the legal reconstruction — that

There is a risk that the State will act at the "wrong time." The premature collection of ITCMD (Inheritance and Gift Tax) is not just one of the problems.

Technical error: it's a mismatch between two worlds. And when those worlds are out of sync, the sharing...

It loses its pacifying character.



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#### **4. The normative construction of enforceability: CTN (Brazil, 1966), Civil Code (Brazil, 2002) and CPC (Brazil, 2015)**

The National Tax Code (BRAZIL, 1966) does not allow for improvisation. Ataliba (2003) states that the generating event is the complete realization of the normative description. Paulo de Barros Carvalho (2022) It teaches that the tax base is not merely an accessory, but a structural element of the resulting tax liability. Hugo de Brito Machado (2019) reinforces that the requirement can only occur when "the elements "The constituent elements are fully outlined." Death, in itself, does not provide a basis for calculation, the holder. defined, nor a determined share.

#### **5. Supreme Court Precedent 114 as an interpretative guide**

Supreme Court Ruling 114 establishes: "The inheritance tax is not enforceable." before the calculation is approved." It functions as a hermeneutical compass, consolidating a understanding that was already in the CTN (BRAZIL, 1966), in the CC (BRAZIL, 2002) and in the CPC (BRAZIL, 2015).

#### **6. State legislation: The example of Law 11.615/2019 (PB)**

The law in Paraíba reinforces that the calculation basis depends on an assessment; the determination must be formal. And the definition of assets precedes the requirement. It shows that the taxing state recognizes the need. to wait.

#### **7. Hermeneutics and the problem of anticipation**

The anticipation violates: contributory capacity (Brazilian Federal Constitution, art. 145, § 1º), legal certainty (Brazilian Federal Constitution, art. 5th), reasonableness, proportionality, and substantive due process. Charging before the due date is To reverse time — and to reverse time is to subvert the law.

#### **8. The practical and human effects of advance payment.**

When the State demands ITCMD (Inheritance and Gift Tax) without the estate being fully formed, it creates emotional pressure, risk of conflict among heirs, and uncertainty regarding the values. It's like demanding the... Payment for the contents of a still-locked safe. Time is part of justice.



## 9. The pacifying function of the inventory

The inventory is, as Farias and Rosenvald (2020) state, an instrument of pacification. ITCMD, when demanded at the correct time, brings peace. When demanded too early, it creates noise and... Wear and tear. Taxation should be an element of order, not of fracture.

## 10. Philosophy of Taxation: Time as a Civilizing Principle

Ricardo Lobo Torres (2000) teaches that time stabilizes the tax system. Maturation Regarding the triggering event, it's not bureaucracy: it's prudence. Like in the natural cycle of the seasons, anticipating the harvest. It destroys the fruit. In probate, anticipating the tax destroys justice.

## 11. Public policy and succession governance

When the State respects time: processes flow more efficiently, agreements are more As things become easier, tax collection is more stable, litigation decreases, and trust in institutions increases. Tax timing protects everyone.

## 12. Conclusion

The ITCMD (Inheritance and Gift Tax) does not arise upon death; that is, there is no complete taxable event at the exact moment of death. death. It only comes into effect when the estate is defined, the share is delimited, and the judgment is issued. The division of assets was approved and the title deed was issued. Demanding taxes before that point violates the Brazilian Tax Code (CTN). (BRAZIL, 1966), the Civil Code (BRAZIL, 2002), the CPC (BRAZIL, 2015), and Supreme Court Ruling 114 and The civilizing principle of time. Respecting time is respecting justice.

## Ethical Statements

Author's statement of responsibility: I declare that this article is the result of my own research. developed exclusively by the author, without the participation of third parties. The ideas, arguments and My conclusions represent my academic understanding of the topic.

Declaration of originality: I affirm that the present manuscript is unpublished and has not been... submitted simultaneously to another journal, and that all sources used were duly verified. mentioned.

Declaration of conflict of interest: I declare that there are no conflicts of interest of any nature.



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personal, financial, institutional, or commercial matters related to the content of this article.

Statement on ethics and research: This study does not involve human subjects or sensitive data.

These are interviews or experiments, as this is exclusively theoretical research. Therefore, it does not require review by a Research Ethics Committee.

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