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Analysis of possible national tax incentives to promote conservation on private land



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This report has been commissioned by the **Biodiversity Foundation**.

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Summary

Within environmental taxation, **tax incentives are a useful tool to encourage the development of conservation initiatives on private land.** Despite this, currently in Spain there are no tax incentives specifically designed for this purpose.

This work gathers and updates proposals for tax incentives in this field. The analysis is focused on state-level incentives, and focuses mainly on promoting land stewardship, although other forms of private conservation are also discussed.

To implement tax incentives in this area, it is important to consider the following issues:

- | Types of initiative to incentivize: in addition to land stewardship, the incentives can also cover land located in protected natural areas that include sustainable forest management plans or certain agricultural and livestock initiatives, among others.
- | Impact of the incentives: to ensure that they fulfill their purpose, the incentives can be accompanied by a series of measures, such as, including specific requirements and conditions, linking them to the land where the conservation is to be carried out (and not to their owners), adjusting the benefits based on the quality or impact of the incentivized measures, establishing commitments to maintain and improve environmental values, offering the possibility of splitting the deductions over different fiscal years, and to prioritize the introduction of benefits specifically designed for nature conservation (instead of expanding existing incentivization models).
- | Application of the incentives: the introduction of incentives should be accompanied by appropriate application and verification mechanisms; In this sense, the possibility of creating a public registry of land stewardship agreements, or private conservation initiatives in general, appears to be especially relevant.

The specific proposals that have been identified affect different subjects (owners, conservation entities, and patrons) and can be applied to most state taxes, the most relevant being the Tax on the Transfer of Assets and Documented Legal Acts, the Inheritance and Donations Tax, the Personal Income Tax and the Corporation Tax. Specifically, the main proposals identified (and the taxes they affect) are:

- | Tax relief for the transfer of property with land stewardship agreements (ITPJD, ISD)
- | Priority given to farm holdings with land stewardship agreements (ITPAJD, ISD, IS, VAT)
- | Tax relief for the setting up of land stewardship agreements and related procedures (ITPAJD)
- | Deductions on donations given to land stewardship entities (IRPF, IS)
- | Deductions on investments and expenses incurred in improving properties with land stewardship agreements (IRPF)
- | Deductions on land stewardship agreements or on sales and leases to stewardship entities (IRPF)

1. INTRODUCTION

Environmental taxation aims to change the behavior of different economic agents, incentivizing behavior that is beneficial to the environment and taxing harmful practices.

The two main tools within environmental taxation are environmental taxes and other tax incentives with an environmental purpose. On the one hand, environmental taxes are those “whose tax base is a physical unit (or its proxy) of something that has a proven negative impact on the environment” (United Nations et al., 2016: p. 125). On the other hand, tax incentives are a form of relief (or other type of tax benefit) in the payment of taxes (generally not environmental) that are granted to certain taxpayers in order to promote certain actions.

This report focuses on this second tool, tax incentives. In recent years, Europe has experienced a notable boom in this type of environmental taxation (see, for example, chapter 4.2.4 in Račinska et al., 2015). Despite being an effective measure in fostering the development of nature conservation initiatives on private land, in Spain there are currently no state-level tax incentives specifically designed for this purpose.

The aim of this work is to carry out an analysis that can be used when considering possible tax incentives that are capable of promoting conservation on private land. The report is commissioned by the Biodiversity Foundation and is part of the LIFE European Land Conservation Network (LIFE ELCN) project.

The focus of this analysis is limited to three areas:

- | State-level measures, therefore ruling out regional and local competences.
- | Promoting conservation, thus focusing on tax benefits and initiatives that encourage patronage (not on measures resulting from applying the “polluter pays” principle or other financing mechanisms such as subsidies or payment for environmental services).
- | Land stewardship actions and other forms of nature conservation on private land.

Firstly (Chapter 2), a series of general criteria for the application of tax incentives with regards to conservation is outlined, with special emphasis on the type of initiatives to be incentivized, how to ensure a positive impact, and how to effectively carry out the incentives.

Following this (Chapter 3), six incentive proposals are discussed in detail, along with a shorter list of four additional proposals. These are proposals that have already been raised previously in other works (Barreira et al., 2010; García Fernández-Velilla, 2010; Moreno Inocencio, 2018; and Amigos de la Tierra et al., 2019), and are duly updated, contextualized and commented upon.

Due to the characteristics of the activities that have been analysed, most of the proposals made in this report focus on the implementation of tax benefits for land stewardship, which is a particularly interesting form of nature conservation at a private level. As discussed in the next section, however, these incentives can also cover other forms of conservation.

2. CRITERIA FOR THE APPLICATION OF FISCAL INCENTIVES.

The introduction of tax incentives at a state level in order to promote nature conservation on private land should be based on a thorough consideration of their scope, directionality, foreseeable effects and means of application. This section discusses some ideas that may be useful, both for the proposals included in this report, as well as for other possible incentives for private conservation.

What kind of initiatives should be incentivized?

Private nature conservation can occur in the context of different means and situations. On the one hand, land stewardship agreements are a tool that is clearly focused on conservation objectives, since they come about via the will of owners and stewardship entities with the aim of achieving a more sustainable management of the land. When the property belongs to individuals or owner associations, land stewardship is a clearly identifiable private conservation tool and, therefore, capable of being promoted through tax incentives. On the other hand, a substantial part of the different forms of nature protection, such as the definition of natural parks or the Natura 2000 Network, also occur on private land. In these instances, the owners may be subject to obligations and limitations that usually contribute to conservation objectives. As well as land stewardship and protected natural areas, there are also other initiatives that can contribute to nature conservation, such as sustainable forest management plans, certain agricultural cultivation methods or the use of extensive livestock farming as a fire preventative measure, among others.

The setting up of new tax incentives must be carried out with a clear perspective regarding what forms of nature conservation are to be incentivized. The broader the type of subsidized actions, the more relevant the effect of the incentives will potentially be, although this is also likely to complicate their application.

The incentive proposals presented in this report are aimed at specific forms of conservation (mostly land stewardship agreements). However, some of them could be extended to other forms of conservation (see, in particular, proposals 3.1, 0, 3.4 and 3.5).

How to ensure that the incentives have a relevant impact?

The introduction of tax incentives must be governed by the principle of conditionality, that is, they must be associated with the carrying out, or maintenance of actions that effectively contribute to nature conservation. This is relevant because if not, the incentives are not effective for the purpose for which they were designed, but also because their application entails a loss of government revenue. Likewise, it is advisable to avoid incentives that could be considered to be of a fraudulent nature, such as the signing of land stewardship agreements with little or no real content just to be able to access certain tax benefits.

It follows that there is a risk in linking the incentives to generic actions or conditions (for example, the signing of a stewardship agreement, or the inclusion of a property in a protected natural area, without taking into account other contextual factors. On the contrary, when possible, it is prudent to subject the

granting of tax incentives to certain conditions that ensure their effectiveness in terms of conservation. As discussed below, this may require the introduction of a registration or monitoring system.

Some proposals in this regard are:

- | Establish recordkeeping requirements for the circumstances that give rise to the tax benefits (stewardship agreements, forest management plans, inclusion in a protected natural area etc.) for a specified period. Due to the nature of what is being incentivised (nature conservation), it makes sense that this period is relatively long, for at least 10 years. If these requirements are not met, there would be an obligation to return the subsidized amount, either in its entirety, or in proportion to the period when the given criteria are not satisfied.
- | Link the incentives, as far as possible, to the land where the conservation action takes place or to the conservation actions themselves. The alternative, which is to link the incentives to the owners of the said lands could lead to the receiving of significant incentives for actions of a non-conservation nature (see, for example, the discussion in proposal 0).
- | Discriminate between types of actions or subsidies based on their impact on nature conservation. This can be implemented from a minimum threshold (for example, only subsidizing stewardship agreements that also meet certain requirements) or through some form of bonus scale (continuing the example, subsidizing stewardship agreements in proportion to their impact on conservation). This is conditional to the viability of discriminating the quality or impact of the incentivized measures (see next question).
- | Establish other commitments to maintain and improve environmental, natural, heritage or landscape values. This may vary depending on the type of action being subsidized. Consider, for example, the need for the beneficiary of the incentive to adhere to codes of good practice, statements of intent, or more specific regulations.

Conversely, it is also necessary to ensure that those actions with a greater implication regarding nature conservation have the possibility of benefiting from adequate tax incentives. In this regard, the following suggestions may be useful:

- | Establish the option of splitting the tax benefits into different fiscal years. This may be relevant in circumstances where the tax relief is considerable (for example, on property transfers, or major conservation investments) in these instances, the beneficiary can easily reach the threshold limits that have been set on the regulation of the tax in question. In the event that the tax benefit can be divided into different fiscal years, it would be guaranteed that the incentive can be enjoyed in its entirety.
- | Prioritize the introduction of specific tax incentives for nature conservation on private lands instead of the alternative of applying existing incentives to private conservation actions (see, for example, proposal 0, assimilation of stewardship agreements to priority farm holdings). Although the second option can simplify the regulatory introduction of incentives, the setting up of specific incentives facilitates the control of their directionality in the sense of being able to adjust them to conservation priorities and to the circumstances of the beneficiaries (which is more useful to them); likewise, it also facilitates the possibility of modifying them discreetly when necessary.

How to set up the tax incentives?

The incentives must not only clearly specify the applicability of the actions or situations, but they must also be verifiable by the administrations responsible for applying the incentive or collecting the tax in question.

A first possibility is that the beneficiary of the incentive be in charge of demonstrating compliance with the requirements by presenting the pertinent documentation (stewardship agreement, certification that the property is within a protected natural area, forest management plan, certificate of registration in a registry of entities, etc.).

Another option is to have a public registry of private nature conservation initiatives. This could consist of a single registry where different forms of private conservation are included, or different registries according to the type of conservation. It should also be considered whether it is more convenient to establish it at state level or through the autonomous communities. Some existing examples in this sense are the registry of priority farm holdings and the registry of environmental entities, both set up through the autonomous communities. In 2018, the Catalan Local Authority began the process of creating a registry of land stewardship agreements, precisely with the aim of facilitating the application of tax incentives. It should be noted that the Property Registry can also be a useful tool to define which properties are categorised as being protected, even if the registry itself is not specific to such areas.

The creation of a registry of private nature conservation initiatives is strongly related to the type of tax incentives that may be introduced. Thus, it is necessary to consider in advance what forms of conservation will be included, what information will be collected from each one, how this information will be organized (by property, by owners / entities ...), how it will be updated, which body will manage the registry, etc.

Finally, to guarantee a correct application of the tax incentives, it is necessary that they be compatible and consistent, both with current regulations, and with other existing incentives. In this sense, it is convenient to bear in mind, in addition to state regulations, regional and local tax legislation.

3. TAX INCENTIVE PROPOSALS

The following proposals address the reform of existing tax benefits and the introduction of new incentives for nature conservation on private land at a state level. The proposals can affect one, or distinct subjects:

- Owners: individuals or legal entities who carry out nature conservation activities on their property, either through the adoption of a stewardship agreement or other types of commitments, or indeed, simply by the fact that these properties are located in areas of special natural interest.
- Conservation entities: associations, foundations and other types of private entities that promote land stewardship initiatives or other forms of nature conservation.
- Patrons: citizens and civil society organizations (institutions, companies ...) that support nature conservation activities, especially through donations.

These incentives can affect the following taxes:

- | Tax on the Transfer of Assets and Documented Legal Acts (ITPAJD)
- | Inheritance and Donation tax (ISD)
- | Personal Income tax (IRPF)
- | Corporation tax (IS)
- | Property tax (IP)
- | Value Added tax (IVA)
- | Construction, Installations and Works tax (ICIO)

In addition to the subjects and taxes concerned, each proposal specifies, whenever possible, its background (document where the proposal was originally formulated), description, legal proposal, discussion (on its application, possible modifications, rationale, etc.), comparable experiences (especially within the Spanish tax framework) and other related proposals (concerning the same tax, having a multiplier effect, or other aspects).

Table 1 presents a summary of the main proposals, which are developed in the subsections that follow (3.1 to 3.6). In the last section (3.7), some additional proposals that are not considered to be so relevant or adequate for the purpose of incentivising nature conservation on private land are presented in a more summarized way.

Table 1. Summary of the fiscal incentive proposals

#	Name of the incentive	Taxes affected	Subject affected	Type of proposal
3.1	Tax relief for the transfer of property with land stewardship agreements.	<ul style="list-style-type: none"> • ITPAJD • ISD 	<ul style="list-style-type: none"> • Owners 	Creation of new incentives
3.2	Farm holdings with a land stewardship agreement are given priority status	<ul style="list-style-type: none"> • ITPAJD • ISD • IS • IVA 	<ul style="list-style-type: none"> • Owners 	Reform of existing incentives
3.3	Tax benefits for land stewardship agreements and related procedures.	<ul style="list-style-type: none"> • ITPAJD 	<ul style="list-style-type: none"> • Owners • Conservation entities 	Creation of new incentives
3.4	Deductions on donations to land stewardship entities	<ul style="list-style-type: none"> • IRPF • IS 	<ul style="list-style-type: none"> • Conservation entities • Patrons 	Reform of existing incentives
3.5	Deductions on investments and expenses incurred in the improvement of properties with land stewardship agreements	<ul style="list-style-type: none"> • IRPF 	<ul style="list-style-type: none"> • Owners 	Creation of new incentives
3.6	Deductions on land stewardship agreements or for sales or leases to custodial entities	<ul style="list-style-type: none"> • IRPF 	<ul style="list-style-type: none"> • Owners 	Creation of new incentives
3.7	Other proposals	<ul style="list-style-type: none"> • IRPF • IS • IP • ICIO 	<ul style="list-style-type: none"> • Owners • Conservation entities 	Creation of new incentives

Source: Compiled by the authors on the basis of existing proposals

3.1. Tax relief for the transfer of property with land stewardship agreements

Taxes concerned

ITPAJD, ISD

Subject concerned

Owner

Type of modification

Creation of new tax benefit

Background to the proposal

| Barreira *et al.* (2010): pages. 259-260.

| García Fernández-Velilla (2010): page. 112.

| Amigos de la Tierra *et al.* (2019): pages. 29-31.

Description

The transfer of land between different owners is subject to ITPAJD (in the case of onerous transfers) or the ISD (for lucrative transfers), levies that fall on the purchaser or beneficiary of the transfer.

This proposal consists of introducing tax benefits for the transfer of properties that are linked to land stewardship agreements. This incentive could be applied to the purchase of land whose original owners have previously signed stewardship agreements and also to acquisitions of lands on which the new owners agree to enter into a stewardship agreement. In both cases, the following elements should be considered:

| The percentage of tax relief, which could range, for example, to between 80 and 100% of the value of the tax, and which could also be adjusted according to the characteristics of the transaction (higher for inheritance and donations, or proportional to the percentage of the surface area included in the stewardship agreement, among other possibilities).

The condition of maintaining the stewardship agreement (existing or new) for a significant period of time (for example, 25 years from the time of transfer¹).

The minimum percentage of surface area in the transferred property that must be under an existing or new stewardship agreement (for example, 50%, with the possibility of adjusting the tax relief to this value).

Legislation

The implementation of this incentive should be carried out by means of primary legislation. Specifically, it would be necessary to modify the state regulations that regulate the two affected taxes:

for the ITPAJD, Royal Legislative Decree 1/1993, of September 24, approving the Consolidated Text of the Transfer Tax Law (specifically in its article 45, where tax benefits are established);

and for the ISD, Law 29/1987, of December 18, on Inheritance and Donations Tax (chapter VII, on tax liability) and Royal Decree 1629/1991, of November 8, which approves the Inheritance and Donation Tax Regulations.

In both cases, it should be taken into account that both the ITPAJD and the ISD are taxes assigned to the Autonomous Communities, which have regulatory powers over them as established by Law 22/2009, of December 18, which regulates the financial system of the Autonomous Communities and Cities with Statute of Autonomy, and modifies certain tax regulations. This should not be an obstacle to applying tax relief at a state level, since in both taxes the relief approved by the Autonomous Communities must subsequently be applied to those regulated by the State and may not undergo any form of modification. However, it is foreseeable that Local Authority laws should be adapted in the case of any modification of the state framework.

Discussion

This tax relief would encourage new purchasers of rural properties to enter into land stewardship agreements, or to maintain previously existing ones. This second case can be especially beneficial for some owners who want the land to be inherited by relatives but who do not have the financial capacity to pay Inheritance or Donations tax

Also, this incentive could be reworked so that its application would include, in addition to the land stewardship agreements, other forms of nature conservation on private land. This could include, for example, rural properties located in areas included in the Spanish Inventory of Protected Natural Areas or in the Natura 2000 Network, or those that have a management plan or sustainable management agreement that has been approved by the competent administration.

In any case, the application of this incentive would depend on the possibility of quickly verifying that the properties that are the subject of the tax relief comply with the set requirements. In this sense, as in other

¹ 25 years is the timeframe suggested, but this is a very long period compared to other similar proposals. In any case, as suggested in section 2, the important thing is to establish some requirements

proposals, it would be convenient to have a registry of private conservation initiatives or, more specifically, a registry of land stewardship agreements.

Comparable experiences

Current state legislation contemplates relief of between 50 and 90% on ISD on transfers of forest properties, under certain conditions².

The Autonomous Communities of Catalonia and Galicia have additional tax benefits that extend this relief, especially in the event that the properties are within protected natural areas³. As a guideline, the economic impact of this incentive in Catalonia was estimated to be € 1.4 million for 2019⁴, with slightly higher amounts in previous years.

In addition, priority farm holdings enjoy tax benefits very similar to those proposed in this incentive (see proposal 0 for more information).

Relationship with other proposals

Proposal 0, consisting of giving priority to farm holdings with land stewardship agreements, would introduce similar tax incentives with respect to property transfers. However, unlike proposal 0, this proposal would cover a wider variety of land with stewardship agreements, which therefore makes sense to give it preference.

Since the transfers contemplated in this proposal would be subject to the need to establish, or renew a stewardship agreement, (subject to ITPAJD), it would be interesting to link this incentive to proposal 3.3. Thus, the transfer of property with stewardship agreements would be fiscally subsidized, for the transfer itself, and for the registration of new agreements.

² The legislation (fourth additional provision of Law 19/1995, of July 4, on the modernization of farm holdings) establishes that the relief will be 50% for transfers of rustic areas with a commitment to forestry under the condition that the transfer does not alter the forestry characteristics of the farm and that the purchaser maintains the property for a minimum of 5 years. The relief is increased to 75% for areas with an approved Forest Management plan, and to 90% for areas included in regional or state level conservation plans.

³ In the case of Catalonia, see Law 19/2020, of June 7, regulating inheritance and donation tax, articles 20 and 21. For Galicia, see articles 7 and 8 of Legislative Decree 1/2011, of July 28.

⁴ See the report on the tax benefits set out in the Catalanian Autonomous Community Budgets for the year 2019 (and earlier): http://economia.gencat.cat/web/.content/70_tributs/arxius/2019/Memories_Tributaries/MEMORIA-BENEFICIS-FISCALS-2019.pdf

3.2. Farm holdings with a land stewardship agreement are given priority status

Taxes affected

ITPAJD, ISD, IS, IVA

Subject affected

Owners (only farm holdings)

Type of modification

Reform of existing incentive

Background to the proposal

Barreira *et al.* (2010): págs. 258-259.

Description

Family-run farm holdings or associations that meet the requirements defined by Law 19/1995, of July 4, on Modernization of Farm Holdings (LMEA), and by Law 35/2011, of October 4, on shared ownership of farm holdings, can be given priority status. The certification of these holdings, as well as their inclusion in the corresponding catalogue, is the responsibility of the Autonomous Communities. The status of priority farm holdings allows their owners to access the following tax benefits:

Tax relief of between 50 and 100% on ITPAJD or ISD, as appropriate, for the purchase of other farm holdings⁵.

⁵ The tax relief is applied indistinctly to onerous transfers (subject to ITPAJD) and lucrative transfers (subject to ISD). It can occur, on the one hand, in the acquisition of new properties by someone who already owns a priority farm holding (as long as the acquisition does not alter this condition); in this case, the relief is 90% when the whole of the new property is acquired (extendable to 100% when the purchaser is the surviving spouse) and 75% when only part of the new property is acquired. Relief is also given in the event that the acquisition of a new property in its entirety allows the purchaser to obtain priority farm holding status (in this case, the relief is also extended to 100% when the area necessary to obtain said condition comes under a single land boundary). In both cases, the relief is conditional on the property being maintained for

- | Exemption from ITPAJD for certain deeds related to mortgage loans⁶.
- | Tax relief of 90% on ITPAJD for registered cases⁷.
- | Exemption from ITPAJD or VAT, as appropriate, for the exchange of certain rural properties⁸.
- | Freedom of depreciation for associations and 80% relief on IS for specially protected holdings⁹.

The amendment proposal consists of farm holdings being given priority status, in addition to those that already meet the requirements established by current legislation, when the owners of those properties have signed a land stewardship agreement that covers 50% or more of its surface area. This would allow such owners to access the described tax benefits.

Legislation

The proposal would require a modification of Law 19/1995, of July 4, on the Modernization of Farm Holdings (LMEA). Specifically, a sentence with a wording similar to the following should be added at the end of article 4.1:

| " Farm holdings will be given priority status as long as they have a signed land stewardship agreement, and that the said agreement covers at least 50% of the property's surface area".

This modification should be made through the approval of legally binding regulation¹⁰.

the 5 years following the transfer and that no parcel divisions are made during this time (articles 9, 10 and 11 of the Modernization of Farm Holdings).

⁶ Specifically, exemption is given to "the first copies of public deeds documenting the constitution, modification or cancellation of mortgage loans subject to Value Added Tax, when they are granted to owners of priority holdings for the implementation of improvement plans and to property owners that, whilst not given priority status, attain said consideration through acquisitions financed with the loan" (Article 8 of the Modernization of Farm Holdings).

⁷ The relief is applied to the taxable base of onerous property transfers for "domain files, notary acts and any other procedures to register or to renew an interrupted chain of succession in the Property Registry of integrated holdings for priority holdings or those that, with their integration, allow it to be constituted as such" (article 13 of the Modernization of Farm Holdings).

⁸ The exemption applies to voluntary exchanges of rustic properties authorized by the Ministry of Agriculture, Fisheries and Food or by the corresponding bodies of the Autonomous Communities when at least one of the owners is the proprietor of a priority farm holding and the exchange is for the purpose of eliminating isolated plots of land, for the elimination of rights of way, or for land reparcelling (article 12 of the LMEA).

⁹ Freedom of depreciation (which allows a higher initial depreciation to be applied and thus reduce the total tax burden) applies to all priority associative holdings and affects "property, plant and equipment used to carry out agricultural activities, and that is acquired during the five first years from the date of its recognition as a priority holding". The 80% discount on the full IS fee applies only to priority associative holdings that are specially protected agricultural cooperatives (article 14 of the LMEA).

Discussion

The application of this incentive would be relatively simple due to the fact that it would tie certain properties with stewardship agreements to a regulation (that of priority farm holdings) that is already established and up and running. This fact makes the proposal more interesting as it is an easy and feasible way to enhance nature conservation on private land. However, there are at least two reasons why it could also be problematic.

Firstly, because the land in question would be linked to tax incentives that were designed (and therefore may be modified in the future) with criteria and aims that do not have to coincide with any desire or will to promote nature conservation. And the same consideration, but in the opposite sense: if at any time the benefits received by farm holdings with stewardship agreements were to be modified, they should also be modified for all priority farm holdings.

Secondly, this incentive could prove to be inappropriate because it would allow owners to benefit from significant relief on the ISD or ITPAJD for the purchase of new holdings without these having to be subject to land stewardship agreements (the only thing necessary would be that, prior to the transaction, the purchaser would have had to have signed a stewardship agreement that covers over half or more of the initial holding). This would compensate homeowners who have existing stewardship agreements but would not necessarily encourage the signing or preservation of new agreements. To avoid this situation, conditions could be added to the application of tax benefits: for example, that the property in question would need to already be under a stewardship agreement (or have a commitment from the new owner to sign one), or that as a consequence of the transaction, the purchaser would continue to have at least 50% of the holding under a stewardship agreement. However, these conditions would require a broader reform of the LMEA

From an operational point of view, it must be taken into account that to apply this incentive it should be possible to quickly verify the existence and scope of the stewardship agreement involved. From this it follows, as occurs in other proposals, that it would be convenient to create a registry of land stewardship agreements.

Finally, the possibility of extending the circumstances where tax relief is applicable could be considered. It could include, not only farm holdings with stewardship agreements, but also holdings located in protected natural areas, or those that use environmentally friendly forms of cultivation (for example, with eco-certification).

Comparable experiences

The current benefits for priority farm holdings are the best reference to understand what effect the introduction of this modification could have.

Relationship with other proposals

The previous proposal (3.1) proposes tax relief for the transfer of any type of farm holdings with land stewardship agreements; In addition to farm holdings, it also encompasses other areas of great importance for

¹⁰ As an example, the same article 4.1 of the Modernization of Farm Holdings has already been modified by Law 35/2011, of October 4, on joint ownership of properties (Second final provision).

nature conservation (unexploited forest estates, wetlands, ravines, etc.). Given its broader scope, it makes sense to give priority to this aforementioned proposal. However, if for some reason it could not, or would not be introduced, the proposal outlined here may constitute an alternative that would offer benefits to at least farm holdings (agricultural, livestock or forestry). It must also be considered that the giving of priority status to farm holdings would not only introduce tax relief on property transfers (although this is probably the most relevant incentive), but also on the other circumstances described (exchanges, registrations ...).

3.3. Tax relief for the constitution of land stewardship agreements and other related procedures.

Taxes affected

ITPAJD

Subject affected

Owners and conservation entities

Type of modification

Creation of new incentive

Background to the proposal

- | García Fernández-Velilla (2010): pág. 112.
- | Amigos de la Tierra *et al.* (2019): págs. 29-31.

Description

Collaborations through land stewardship can be legislated in the form of contracts, leases, usufructs, easements and the assigning of rights, among other options¹¹. The constitution of these legal agreements is taxed by the ITPAJD, with tax rates ranging between 1 and 6% of the object value in the case of the constitution and transfer of real rights, and variable rates for leases, dependant on the Autonomous Community. Its payment corresponds to either the property or to the stewardship entity, depending on the type of agreement that has been signed.

¹¹ The Land Stewardship website offers a full list of legal formulae that can be used in land stewardship: <https://www.custodia-territorio.es/opciones-de-custodia-del-territorio>.

This proposal consists of establishing tax exemptions in its three formats (property transfers, company transactions and documented legal acts) for the constitution of agreements linked to some form of land stewardship, as well as any notarial documents derived from such agreements.

Legislation

The implementation of this proposal would require the modification of Royal Legislative Decree 1/1993, of September 24, which approves the Consolidated Text of the Tax on the Transfer of Assets and Documented Legal Acts (article 45).

At the same time, it should be noted that any modification of the state legislation on the ITPAJD may require a subsequent adaptation of regional regulations regarding this tax.

Discussion

This tax exemption would facilitate the establishment of land stewardship agreements, directly incentivizing private nature conservation initiatives. Likewise, it would favor maintaining existing stewardship agreements in the transfer of properties (especially relevant in the case of inheritance and donations).

In addition, it should be noted that the legislation that regulates the ITPAJD contemplates a large number of exceptions and benefits (Royal Legislative Decree 1/1993, article 45), among which a total exemption of the procedures discussed here when concerning entities that can benefit from the special tax regime for non-profit entities as determined by articles 2 and 14 of Law 49/2002, of 23 December. This means that land stewardship entities that have been legally set up as a foundation, or that are associations recognised as serving public interest, already enjoy this exemption. Consequently, this proposal would have a limited additional impact to the extent that it would simply provide a new incentive for the signing of agreements with stewardship entities that do not meet these requirements (that is, companies or associations without a declaration of public interest).

Comparable experiences

-

Relationship with other proposals

It is interesting to raise this proposal alongside 3.1, which consists of giving relief on the transfer of holdings with stewardship agreements. Thus, since these transfers require the renewal of the agreement, introducing the two proposals together would generate an important incentive to maintain stewardship agreements in the event of any transferring of the property.

3.4. Deductions for donations to land stewardship

Taxes affected

IRPF, IS

Subject affected

Conservation entities and patrons

Type of modification

Reform of an existing incentive

Background to the proposal

| Barreira *et al.* (2010): pág. 260.

| García Fernández-Velilla (2010): págs. 112-113.

| Amigos de la Tierra *et al.* (2019): págs. 25-29.

| Moreno Inocencio (2018).

Description

A part of the donations (both monetary and transfer of rights) made to certain non-profit entities can be deducted from personal income tax and corporation tax. These entities include, among others, foundations and associations declared to be of public interest, as regulated in article 16 of Law 49/2002, of December 23, on the tax regime of non-profit entities and tax incentives for patronage.

The main tax benefits for donations to these type of entities are the deduction of 75% in the total tax liability of personal income tax (up to the first € 150) and 30% (from that amount onwards) on gifts, donations or contributions made by individuals (up to 10% of the taxable base) and the deduction on corporation tax of 35% on donations made by legal entities (up to 35% of the total tax due).

The proposal consists of improving the conditions for this type of deduction through three modifications:

| Extend the deduction to donations made to all types of stewardship entities, and not only those declared to be of public interest (or that are foundations or Local Entities).

| Raise the deductible percentage.

| Raise the deduction limits. Alternatively, a timeframe could be established (for example, the 5 years following the donation) to continue applying the deduction without reaching the established limits.

Legislation

The inclusion of all stewardship entities in the list of entities that qualify for deductions in the event of a donation would require a modification of Law 49/2002, of December 23, on the tax regime of non-profit

entities and tax incentives for patronage. This could be developed by including stewardship entities in article 16 of said law (referring to entities benefiting from patronage), or by including them in article 2 (which, in addition, would allow them to access the special tax regime for non-profit entities¹²).

The modifications in the deductible percentages, limits and conditions would require a reform of the state laws that regulate the two affected taxes: Law 35/2006, of November 28, on Personal Income Tax, and Law 27/2014, of November 27, on Corporation Tax.

In the case of personal income tax, it should be noted that there is a state tranche and a regional tranche, and that the modification of the conditions for deductions at a state level should be consistent with what is regulated in regional government legislation.

Discussion

Encouraging donations to stewardship entities would have a positive effect both for the donors (whether third parties with monetary contributions or homeowners giving over property rights), as well as for the entities receiving the donations. For this reason, this proposal would be especially useful for promoting nature conservation on private land.

Also, in the case of substantial real estate, donations to stewardship entities can have a potentially high value. Due to these specific circumstances, an extension of the deduction limit (or the possibility of splitting them into different fiscal years) would be especially important as donors could enjoy the whole of the deduction, thus increasing the effect of this incentive.

Regarding the proposal to extend the circumstances where the relief can be applied, it should be noted, as in the previous proposal (3.3), that a large number of the stewardship entities (foundations and associations with a declaration of public interest) are already eligible for these incentives.

As in other proposals included in the report, the introduction of these incentives would require having a land stewardship registry or an alternative verification system.

Finally, as has also been suggested in other proposals, these incentives could be extended to more forms of private nature conservation if, in addition to stewardship entities, they would benefit other types of environmental entities dedicated to nature conservation.

Comparable experiences

In 2008, Catalonia established a deduction on the regional tranche of personal income tax for donations to foundations or associations registered in its census of environmental entities, with a value of 15% of the

¹² The inclusion in the special tax regime of non-profit entities entails tax benefits on different taxes (for example, those described in proposal 3.3 in relation to ITPAJD).

donated amounts and a limit of 5% on regional tax liability (See article 34 of Law 16/2008, of December 23, on fiscal and financial measures). In 2018 the total amount deducted by applying this incentive was € 129,245¹³.

Also, in the Balearic Islands there is a similar benefit system, although in this case it is not related to environmental entities but to donations or agreements linked to cultural or sports patronage (see articles 5 bis and 5 ter of Legislative Decree 1/2014, of June 6, of the Balearic Islands).

Finally, the possibility of extending the time period for deductions derived from a donation (to be able to enjoy the integrity of the deduction regardless of the single fiscal year limits) has no precedent in Spain, but it has been analysed in detail by Moreno Inocencio (2018) through a comparison with the system used in the United States of America, where it is a widely implemented option.

Relationship with other proposals

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3.5. Deductions on investments and expenses incurred in the improvement of properties with land stewardship agreements

Taxes affected

IRPF

Subject affected

Owners

Type of modification

Creation of new incentive

Background to the proposal

| Barreira *et al.* (2010): pág. 261.

¹³ Consult the web site of the Registry of Environmental and Sustainability Entities for data on previous years: http://mediambient.gencat.cat/es/05_ambits_dactuacio/educacio_i_sostenibilitat/tercer_sector_ambiental/registre_dentats/index.html

García Fernández-Velilla (2010): pág. 113.

Description

The proposal consists of allowing owners to deduct from the state income tax quota a part of the expenses or investments made in conservation and improvement activities carried out on properties with a signed land stewardship agreement. The application of this incentive would require determining the following elements:

- What part of the investment is subject to deduction (for example, between 30 and 50%).
- How to allocate investments that affect more than one property (when one of the said properties is not subject to a stewardship agreement).
- Requirement to maintain the agreement for a prolonged period (for example, 10 years).
- Requirement that the property (or the part of the holding on which the deduction has been requested) must not generate income or an increase in equity, and that the investments in questions must not have already been deducted from gross income in order to determine the tax base¹⁴.
- Deduction limits on the state income tax quota and the possibility of splitting the deductions into different fiscal years (so as not to exceed the limits).

Legislation

This incentive should be established by means of a law that modifies Law 35/2006, of November 28, on Personal Income Tax.

Discussion

This measure would complement stewardship agreements, since it would be giving financial support to conservation measures that in many cases are a requirement in said agreements.

As in other proposals, its application would require having a registry of land stewardship entities or an alternative verification system.

Another issue to consider would be the possibility that these deductions could also affect investments made on properties included in protected natural areas, or those subject to duly approved nature conservation agreements, or other forms of conservation. In fact, the organizations of the forestry sector have repeatedly

¹⁴ This requirement is established because the purpose of the relief is to incentivize or compensate actions carried out with nature conservation objectives, therefore, in the event that these generate benefits, the incentive is no longer necessary.

suggested the establishment of an incentive comparable to the one proposed here¹⁵, consisting of the reduction of 30% (extendable to 50% under certain circumstances) on the investments and expenses made on forest farms with a duly approved forest management plan. The proposal has also been endorsed by the main environmental groups (Friends of the Earth et al., 2019: pp. 25-29).

Comparable experiences

The Autonomous Communities of Valencia and Castilla y León have established additional discounts on the regional tranche of personal income tax that are similar to the proposal described here, both for investments in conservation and improvement of natural and cultural assets¹⁶.

Relationship with other proposals

The following proposal (3.6), like this one, is based on the application of tax relief on personal income tax for owners with land stewardship agreements. Consequently, it would be interesting to consider them together, especially given the possibility of introducing both incentives under a single regulatory reform.

3.6. Deductions on land stewardship agreements or for sales or leases to stewardship entities

Taxes affected

IRPF

Subject affected

Owners

Type of modification

Creation of new incentives

¹⁵ See the press release “COSE, ASEMFO, ASPAPEL y CONFEMADERA proponen al MAGRAMA un programa de impulso a la economía de la madera” (Madrid, 20 de julio de 2014): <http://www.aspapel.es/content/cose-asemfo-aspapel-y-confemadera-proponen-al-magrama-un-programa-de-impulso-la-economia-de->

¹⁶ Specifically, the Valencian Community has established a deduction of 15% of the amounts allocated to conservation, repair or restoration of the assets registered in the General Inventory of Valencian Cultural Heritage (article 4, point 1, section 1.3 of Law 13 / 1997, of December 23, of the Generalitat Valenciana). For its part, in Castilla y León there is a deduction of 15% on the amounts invested in the restoration, rehabilitation or repair of Assets of Cultural Interest by their owners, as well as for actions (subject to being authorized and favorably viewed by the regional administration) of conservation and improvement by the owners of natural assets located in natural spaces and areas that are integrated into the Natura 2000 Network (Articles 9.a, 9.b and 10 of Legislative Decree 1/2013, of September 12, of Castilla y León).

Background to the proposal

Barreira *et al.* (2010): pág. 261.

García Fernández-Velilla (2010): págs. 112-113.

Description

Under this proposal three circumstances are grouped together that could allow owners with land stewardship agreements to apply deductions or concessions in personal income tax:

When the value or yield of a property decreases as a result of signing a stewardship agreement, as long as no payment is received for it.

In the sale of land or assignation of rights to stewardship entities or to the public administration, when the sale occurs below the market price and is covered by a conservation agreement (in this case, the seller could deduct the difference between both values).

When the lease of land or exploitation rights to stewardship entities generates income that is subject to personal income tax (for example, because the entities carry out certain strategic activities such as hunting or logging).

In all three cases, the deductible percentage, the deductible limit and maintenance commitments, among others, should be specified.

Legislation

This incentive could be established by modifying Law 35/2006, of November 28, on Personal Income Tax.

Discussion

The proposals could be applied together or separately.

In the three cases proposed, the objective of the tax incentive would be to compensate the loss of profits on the part of the owners as a result of signing a stewardship agreement or selling or leasing to stewardship entities. The first case would apply precisely when such losses were not compensated in any other way; in the second, when there is a difference between the market price and the sale price; and in the third, the deduction would compensate for the fact that there is often a difference between the market price of the lease or right of exploitation and the price paid by the stewardship entities, which is generally lower.

As in other proposals, the application of the incentive would probably require having a registry of land stewardship agreements.

Likewise, it makes sense to consider the possibility of dividing the deductions into different fiscal years in order not to exceed the annual deduction limits, and thus enjoy the deduction in its entirety.

Comparable experiences

Currently a deduction similar to that of the third circumstance described here (leases to stewardship entities) is applied for home rentals. It consists of a 50% reduction on the net return on housing rentals (extendable to 100% if the tenant is between 18 and 35 years of age) for the purpose of calculating the base rate of personal income tax (art. 23.2 of Law 35/2006, of November 28, of the Personal Income Tax).

Relationship with other proposals

This proposal, as with the previous one (3.5), is based on the application of tax relief on the personal income tax of landowners with land stewardship agreements. Consequently, it would be interesting to consider them jointly, especially given the possibility of introducing both incentives under a single regulatory reform.

3.7. Other proposals

Other proposals that have been raised in previous works are:

Deduction in personal income tax for property owners with land stewardship agreements

This proposal would benefit owners as long as they have a signed stewardship agreement for some part of their property. It differs from the previous proposals because, in this case, it would not be necessary for the owners to invest in improvements (see 3.5) or suffer prejudicial conditions as a consequence of the stewardship agreement (see 3.6).

Background to the proposal: Amigos de la Tierra et al. (2019): pág. 25.

Corporation tax exemption for certain conservation activities

This proposal is based on an exemption for, among others, activities related to the protection of biodiversity, land stewardship and sustainable rural development.

Background to the proposal: Amigos de la Tierra et al. (2019): págs. 34-37.

Property tax exemption for land subject to stewardship agreements

Individual property tax is a competence of the Autonomous Communities, most of which have established relief for different circumstances (with the extreme case of Madrid, where there is a general 100% benefit). Even so, a modification of the tax regulations could be considered that would oblige all communities to adopt the proposed exemption.

Background to the proposal: Barreira *et al.* (2010): págs. 261-262.

Benefits in the Construction, Installations and Works tax (ICIO) Spanish acronym, for works or facilities located on property with a stewardship agreement, or that is linked to conservation actions

The ICIO is a tax of local/municipal jurisdiction and of an optional nature. Even so, as in the previous case, a modification of the tax framework regulations could be considered.

Source: García Fernández-Velilla (2010): page. 113.



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