

CONSTITUTIONAL COURT JUDGMENT OF FEBRUARY 16, 2017

The taxable event for the tax on increase in urban land value is defined in the law on that tax as the increase in value experienced by urban land over a time period of up to 20 years which is realized on its transfer.

The system for determining the tax base contained in the legislation consists of an objective mechanism which gives a positive amount of tax payable in every case. In other words, the rule on quantifying the tax base implies a presumption, without any option for correction or proof to the contrary, that transferring the land after a period of time has passed by will always give rise to a gain. It also limits the local authorities' auditing powers to strict application of the law, without allowing them to allocate different values, bases or amounts payable.

In a judgment rendered on February 16, 2017, the Constitutional Court examined the compliance with the principle of economic capacity recognized in the Spanish Constitution of the articles in the Guipúzcoa regional legislation on the tax on increase on urban land value (identical to those for Spain as a whole, under the Revised Local Finances Law) on the calculation method for the tax base and the option for the taxpayer to report a value other than that obtained by applying those calculation rules. It concluded that those articles (articles 4.1, 4.2.a) and 7.4 of Regional Law 16/1989 of July 5, 1989 on the tax on increase in urban land value) are unconstitutional and null and void, but only insofar as they tax scenarios with nonexistent value increases.

Using its power to modulate the application of its judgments, the Constitutional Court, with a hitherto unfamiliar style of wording, appears to give express validation to the objective quantification method currently in force for the tax on increase in urban land value for scenarios in which an increase in value occurs, regardless of the amount, and to hold, without any time limit whatsoever (and subject to the general rules that apply in each case), that the article is null and void and unconstitutional where the nonexistence of an increase in land value or a decrease in land value has been confirmed. It will therefore continue to be absolutely necessary to be able to substantiate the nonexistence of an increase in value in any transfers that are made.

It is expected that the Constitutional Court will shortly deliver a decision in the same respect on the central government legislation, rendering void and holding unconstitutional on similar terms articles 107.1, 107.2.a) and 110.4 of the Spanish Local Taxation Law as worded in Legislative Royal Decree 2/2004 of March 5, 2004.

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