

## **Tax Law | Some provisions of the Municipal Added Value Tax Regulation are declared unconstitutional**

**The decision affects the Provincial Law of Guipúzcoa in cases where there is no value increase**

On February 17 the Constitutional Court rendered a decision on the unconstitutionality claim brought regarding Provincial Law 16/1987 of 5 June, on the increase in value of urban land in Guipúzcoa (“Municipal Added Value”).

It should be noted that the invalidity only affects the Provincial Law, not the Local Revenue Services Law that applies in Spain’s common tax territory. However, considering that an unconstitutional claim was also brought against the latter, it is expected that the decision on this will be similar, since the approaches to tax assessments are also similar.

The constitutionality doubts refer to the method used to determine the increase in value and to the fact that there is no way to prove that the value is different than that resulting from the enforcement of the provisions governing the tax regulation. The municipal regulation includes an objective rule to quantify the taxable base, regardless of any evidence to the contrary, which allows for non-existent added value to be taxed, which contravenes the financial capacity principle and the seizure prohibition laid down in article 31 of the Spanish Constitution.



The Court argues that financial capacity –whether actual or potential– suffices to safeguard this constitutional principle, but in no case can lawmakers create a tax based on events or facts that do not actually reflect current or potential wealth or where the financial capacity taxed is not even potential, but altogether non-existent, virtual or fictitious. Likewise, the seizure constitutional prohibition would apply in cases where the use of different tax mechanisms results in taxpayers being stripped from their income and properties, which also contravenes the right to private property.

It should be recalled at this point that the Municipal Added Value Tax is imposed on the increase in value experienced by land owned by taxpayers. The increase is exposed when the land is transferred and is calculated by multiplying a coefficient by a given

land's cadastral value at the time the tax is levied, based on the number of years the property is held. The taxable base will be applied the tax rate established by the City Council. Therefore, this tax is not linked to an actual increase in value, but solely to the ownership of land that is held for a given period of time.

According to the Court, then, this is a tax imposed on potential income derived from the ownership of urban land, whose transfer exposes such alleged income. The regulations challenged assume –regardless of any evidence to the contrary– that the mere fact of having title to a land for a period of time is indicative of an increase in value and, therefore, it is assumed that there exists financial capacity subject to taxation.

The Court concludes that the regulation is baseless, as imposing the same taxes that apply to *de facto* scenarios derived from the passage of time results in the taxation of non-existing financial capacity, which contravenes the financial capacity principle.



Consequently, the legal provisions challenged should be declared unconstitutional, but only to the extent that a tax exemption has not been established for those cases where there is no actual financial capacity because no increase in value actually takes place. The Court further argues that it is not possible to defend the challenged regulation because it does not include a scenario where there is no increase in value or even a decrease. Nor does it allow for a different value to be determined other than that resulting from the strict application of the rule.

Therefore, the provisions of the Provincial Law are declared unconstitutional, null and void only to the extent that they impose taxes on events that do not actually reflect the existence of financial capacity, without allowing for the possibility to submit any supporting evidence.

Lastly, the Court points out that the approach to determining whether there is an increase in value subject to taxation can only be established by lawmakers, who should make the relevant amendments or adaptations that would in turn make it possible to prevent taxation from being imposed in cases where there is no increase in value.

The Constitutional Court does not adopt a position on the temporary effects of its decision, although in principle it would affect cases that are not barred by the statute of limitation, provided that the non existence of an increase in value can be demonstrated.

While lawmakers do not amend the regulation to adapt it to the decision, ordinary courts have to examine each case in order to determine whether there are enough grounds to overturn tax assessments. Taxpayers will have to prove in each case that there is no increase, but a loss in value (or an increase lower than that determined by the authorities) through valuations or by simply considering the land's acquisition and sale value.

If you require further information on this matter, please contact us.

**Tax law Department**  
[Lidia Bazán](#)