



INFORMATION NOTE No. 18/2015

THE TC ENDORSES THE CREATION OF A BANK DEPOSIT TAX

The Plenary Meeting of the Spanish Constitutional Court has dismissed the appeal lodged by the Parliament of Catalonia against Art. 19 of Act 16/2012, of 27 December, adopting various tax measures to consolidate the public treasury and encourage economic activity. The TC does not agree with the appellants' argument that the competence of the State to create taxes and the financial independence of Autonomous Communities have been violated. The Judgment, where Judge Ricardo Enríquez Sancho acted as Reporting Judge, includes the particular dissenting votes of Vice-President Adela Asua and Judges Luis Ortega, Encarnación Roca, Fernando Valdés Dal-Ré and Juan Antonio Xiol.

The challenged provision establishes a tax on bank deposits (IDEC) with the purpose, according to the Preamble of the rule, of *“ensuring a harmonized tax procedure to guarantee more effective operation of the financial system”*.

The judgment analyses firstly the legal nature of IDEC in order to be able to determine whether its creation falls within the tax competences granted to the State by the Constitution (Arts. 133.1 and 149.1.14). In this regard, the Court explains that, in principle the *“main purpose”* of taxes is raising funds, but other aims are possible, in addition to funding the Public Treasury. Therefore, it is possible for the Legislator to create a tax with a *“zero taxation rate”*, i.e. *“not ultimately aimed at obtaining a tax payment”*, although this does not mean, as the appellants state, that it is *“simulated tax”*.

After clarifying the tax nature of IDEC, the judgment also disagrees with the fact that the State is not competent to create a tax *“as intended, to ensure the harmonized tax treatment”* of bank deposits. In fact, the Plenary Meeting points out that for new taxes, the Organic Act on the Financing of Autonomous Communities (LOFCA) grants *“preference to the State when establishing taxable situations”* specifically anticipating *“the possibility of the State, ‘when exercising its original tax powers, establishing taxes on taxable events already taxed by Autonomous Communities’”*. In other words, the LOFCA, in compliance with the constitutional mandate of Art. 149.1.14, empowers the State to *“limit”* the competence of Autonomous Communities to establish new taxes with the *“ultimate goal”* of *“coordinating its own taxation system with that of Autonomous Communities”*. The State, the judgment concludes, *“will also be competent to establish a tax with the ultimate purpose of coordinating the mandatory taxation of banks, in other words, the harmonization of this specific taxable matter”*.

The Plenary Meeting also disagrees that the challenged rule may violate the financial independence of Autonomous Communities. The creation of a new tax, such as IDEC, by the State has certain consequences *“anticipated in LOFCA”* and which, in practice, entail *“the impossibility of all Autonomous Communities establishing a similar tax”*. *“This limitation on financial independence – the judgment recalls- arises (...) from the original competence allocated in the matter, and, specifically, from the provision included in Art. 6.2 LOFCA”*, by

virtue of which, from the moment the State creates a new tax, Autonomous Communities will not be able to establish taxes on “*similar taxable events*”.

In their particular dissenting vote, Judges Xiol, Asua, Ortega, Roca and Valdés consider that the appeal should have been upheld. Among other reasons, they believe that the new state tax “*does not respond to a material purpose which is constitutionally legitimate in terms of an autonomous-based State and the recognition of financial independence of Autonomous Communities*” to the extent that the State’s purpose of “*harmonization or coordination*” (the tax in question is not aimed at collecting funds) “*consists of preventing or voiding the tax powers of Autonomous Communities*”. They also consider it unconstitutional because the State’s coordination powers should have been exercised in the form of an organic act.

Madrid, 27 February 2015