



## INFORMATION NOTE No. 13/2016

### THE TC ANNULS AN ARTICLE OF THE GALICIAN ACT ON TAX AND ADMINISTRATIVE MEASURES, DUE TO INVADING THE STATE'S COMPETENCE ON TWO ASSIGNED TAXES

The Plenary Meeting of the Constitutional Court (TC) has partly upheld the unconstitutionality appeal filed by the Government against two articles of Galician Act 12/2014, of 22 December, on tax and administrative measures. The Court has declared the unconstitutionality and consequently nullity of Art. 27.5 of the challenged rule, on the grounds that it invades the State's competence when regulating two assigned taxes; on the other hand, it considers that Art. 84, on the lapsing of mining concessions, is constitutional and also conforms to the Statute of Autonomy. Juan José González Rivas acted as Reporting Judge.

The first challenged provision refers to inheritance and gift tax [*impuesto sobre sucesiones y donaciones*] (ISD) and capital transfer tax and stamp duty [*impuesto de transmisiones patrimoniales y actos jurídicos documentados*] (ITPyAJD), both of which assigned by the State to autonomous communities. According to the judgment, this assignment means that although the State is still entitled to said taxes, Autonomous Communities are in charge of their management and are assigned regulatory capacity, enabling them “to regulate certain tax matters” but always “within the framework established by the State”, both in the General Public Act on the Financing of Autonomous Communities [*Ley Orgánica de Financiación de las Comunidades Autónomas*] (LOFCA) and in each tax assignment law.

Art. 27.5 of the challenged rule provides that “for inheritance and gift tax and capital transfer tax and stamp duty, the verification procedure foreseen in Art. 57.1.a) of General Taxation Act 58/2003, of 17 December, may be used. To this effect, the percentage used will be the default interest referred to in Art. 26.6 of the Act”. The State Attorney considered that this provision, in fact, infringed Art. 57.1.a) of the General Taxation Act [*Ley General Tributaria*] (LGT), which establishes “capitalization or attribution of return to the percentage foreseen in each tax law” as a means to check figures.

The object of the dispute focuses on the words “each tax law” of the state rule, the scope of which is disputed by the State Attorney (who considers that it should only be interpreted as referring to state laws) and the Attorney of *Xunta de Galicia* (who claims that it covers both state and autonomous laws).

The Court's analysis is based on verifying that the capitalization of the default interest return referred to in the challenged precept is a method to check figures “not foreseen in respective state laws on both these taxes”.

Furthermore, according to the case-law, when the General Taxation Act (LGT) uses the words “each tax law” it is referring “to state laws only”. The LGT is “an authentic rule to unify criteria, to guarantee a minimum uniformity that is essential for basic tax matters”; it is therefore essential “to guarantee that all citizens receive the same treatment before the Public Administrations”.

Consequently, states the judgment, to uphold that the disputed words “*each tax law*” also cover, as claimed by the representative of *Xunta de Galicia*, what is provided in autonomous laws, would mean that the latter could establish different rules in relation to certain taxes (ISD and ITPyAJD in this case) to the one foreseen in state laws, “*consequently generating material differences amongst Autonomous Communities when calculating the determining items of a tax obligation; in particular, in the case of state taxes such as ISD and ITPyAJD, this would run contrary to said purposes- to guarantee minimum uniformity in basic tax matters and to ensure that all citizens receive the same treatment before the Public Administrations-, which constitutional case-law has been upholding*”.

The Court reaches the conclusion that the challenged provision is unconstitutional due to invading the competence attributed by the Constitution to the State in Art. 149.1.14, in relation to Arts. 133 and 157.3.

The second challenged precept (Art. 84) provides the causes of lapsing of mining exploitations which, by concession date, had been regulated in the first transitional provision of the 1973 Mines Act.

The judgment explains that the State is competent to establish the causes of lapsing of pre-1973 concessions. When the challenged rule refers to “*refusal to grant an exploitation permit for any legal cause*” it is not adding, as claimed by the appellant, a new cause of lapsing to those already regulated by the 1973 Act, “*which is why it is not unconstitutional*”.

Today, explains the Plenary Meeting, there are still concessions regulated by said pre-constitutional law which, without meeting the requirements foreseen therein, “*have not been the object of an administrative resolution declaring that they have lapsed*”. In mining matters the Autonomous Community of Galicia is entrusted with the enforcement of state legislation, which is why the *Xunta* should ensure that the provisions of the 1973 Mines Act are fulfilled.

Therefore, the *Xunta* is fulfilling its “*executory competence*”, entitling the Autonomous Community to pass a rule such as the one challenged, insofar as it merely regulates “*the set of steps required to implement state regulations and, consequently, is covered by the competence to enforce state legislation*”, attributed by the Statute of Autonomy to the Autonomous Community of Galicia.

Madrid, 19 February 2016.