



SPANISH CONSTITUTIONAL COURT

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THE CONSTITUTIONAL COURT ANNULS THE PROVINCIAL LAW REGULATING THE INCOME TAX (IRPF) IN THE HISTORIC TERRITORY OF GUIPUZCOA

The Constitutional Court has annulled Article 30.2 of the Provincial Rule 10/2006, of 29th December, regulating the income tax in the historic territory of Gipuzkoa. The Judgment, whose rapporteur has been the Constitutional Judge Antonio Narváez, states that the contested regulation contravenes the Basque Economic Agreement because the method to establish the tax base is not in accordance with the General Law on Taxation.

This is the first time that the Constitutional Court renders a Judgment on a preliminary ruling concerning Tax Rules passed by the provincial bodies of any of the historic territories of Gipuzkoa, Alava or Biscay. The Administrative Section of the High Court of Justice of the Basque Country had submitted this preliminary ruling procedure following the procedure established in the Organic Law of the Constitutional Court after its reform of 2010. The constitutionality of this reform was endorsed by the Plenum of the Court last June in Judgment 118/2016. In the order of submission, the High Court stated that the contested provision regulated the “*improper*” direct assessment method of tax base and “*does not observe the inherent aspects that establishes this method in the General Law on Taxation*”. This was due to the possibility of taxing the differences between the real throughput of a certain economic good and the objectively estimated throughput.

The Judgment points out that, under the Spanish Constitution, the responsible institutions of the historic territories may “*keep, establish and regulate, within their territory, the tax regime*” provided they observe “*the general taxing structure of the State*” and the provisions of the Economic Agreement. Ultimately, they shall adapt to the “*General Law on Taxation...*”. This Law foresees three methods to establish the base of the tax income: direct, objective and indirect assessment. This same Law provides that tax bases shall be determined “*generally*” through the direct assessment method. The Law could also be able to establish assumptions to apply the objective assessment method. Nevertheless, the latter will have “*volunteer nature*”. Therefore, under the General Law on Taxation, the objective assessment is “*an alternative method to the direct one*”. The Court states that the challenged regime does not observe the objective assessment concept. That is because the contested Provincial Law, in the assumption of a difference between the real throughput and the throughput derived from the objective assessment obliges the contributor to deposit or return the resulting sum of the difference. The Judgment states that the assessment method may be different in Gipuzkoa. However, it should always “*observe the inherent aspects of the objective assessment method provided by the General*

Law on Taxation”, and that “*the irrevocability of the amount resulting from the objective assessment is an inherent aspect of that base establishment method*”.

The challenged provision “*settles a base to establish that is not alternative to the direct assessment, but oversteps it, allowing the successive application of both methods*”. This, concludes the Court, violates the rule of harmonization imposed by the Economic Agreement Law, which obliges the provincial bodies to adapt their rules to the General Law on Taxation. Thus, it declares the nullity of the provincial provision “*because it distorts the concept of objective assessment*” as defined in the aforementioned General Law on Taxation.

Madrid, 14th December 2016.