



INFORMATIVE NOTE No. 32/2017

THE CONSTITUTIONAL COURT PARTIALLY ANNULS THE RULES ON STATE TAX LEVIED ON THE INCREASED VALUE OF URBAN LAND

The Plenary Meeting of the Constitutional Court has unanimously decided to declare the unconstitutionality and nullity of Arts. 107.1, 107.2 a) and 110.4 of the consolidated version of the Act Regulating Local Tax Authorities, passed by Royal Legislative Decree 2/2004, of 5 March. The Court considers that the tax on the increased value of urban land infringes the constitutional principle of economic capacity, insofar as it is not necessarily linked to an actual increase in the value of the asset, *“but mere ownership of the land over a certain period of time”*. Andrés Ollero acted as Reporting Judge in the resolution.

The judgment reiterates the doctrine laid down by the Court in judgments 26/2017 and 37/2017, respectively referring to the establishment of this same tax in the historical territories of Gipuzkoa and Álava. In these resolutions, the Court reached the conclusion that the legislation of taxes levied on the increased value of urban land is constitutionally admissible provided that the principle of economic capacity (Art. 31.1 Spanish Constitution (*Constitución Española* – “CE”)) is upheld; furthermore, it indicates that in order to guarantee this principle the tax may in no event arise from acts or facts *“not evidencing actual or potential wealth”*.

The Plenary Meeting has explained that the object of the tax regulated by the state rule that is now questioned is the increased value that land may have experienced over a certain time interval; however, the tax is not necessarily linked to the existence of this increase, but *“to mere ownership of the land during a period of time ranging between a minimum of one and a maximum of twenty years”*. Consequently, adds the judgment, *“it suffices to own urban land in order to trigger, as an inseparable and irrefutable consequence, a taxable value increase that is automatically quantified by applying the value of the land for the purposes of real estate tax at the conveyancing date, or a fixed percentage for each year of ownership, irrespective not only of the actual amount but of the existence of this increase itself”*.

In other words, the mere fact of having owned urban land over a certain period of time necessarily requires payment of the tax, even when the asset value has not increased or, even more so, when it has even depreciated. This circumstance, explains the Court, prevents citizens from fulfilling their tax contribution obligations *“based on their economic capacity (Art. 31.1 CE)”*.

As a result, the Court has declared the unconstitutionality and nullity of Arts. 107.1, 107.2 a) and 110.4 of the disputed law, but *“only insofar as it has not foreseen excluding the tax in situations indicating a lack of economic capacity due to a non-existing*

value increase". Following publication of the judgment, the legislator, further to its freedom of regulatory configuration, should carry out "any amendments or adaptations that are necessary in the legal regime of the tax, instrumenting the way in which to not tax situations where there is no increased value in urban land".

Madrid, 17 May 2017.