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TAX ALERT

Constitutional Court Judgement Partially Nullifying the Regional Rule That Establishes the Tax on the Increase in the Value of Urban Land in Guipúzcoa Province

The Constitutional Court's website has made public the text of a judgement which rules on a question of unconstitutionality raised against several articles of Regional Rule 16/1989, of July 5, on the Tax on the Increase in the Value of Urban Land in the historical territory of Guipúzcoa (hereinafter, the "Rule").

In the judgement, **the Court unanimously upholds that the Tax on the Increase in the Value of Urban Land (the "Tax") in Guipúzcoa province is contrary to the economic capacity** indicated in Article 31.1 of the Spanish Constitution. Consequently, the regional legislature must amend the regulation on the Tax so as not to tax situations in which there is no increase in the value of urban land (Articles 4.1, 4.2.a), and 7.4 of the Rule).

In the specific situation of the judgement, a **value decrease occurred due to the sale of a real estate property, for which a non-existent increase in land value was taxed**. The Constitutional Court rejects that the Rule establishes that the increase takes place in any event, automatically, for the mere possession of a plot of land for a given period of time.

While the Constitutional Court limits the scope of the question on unconstitutionality exclusively to the articles of the Rule mentioned, **it must be borne in mind that the national regulation gives rise to situations analogous to that declared unconstitutional**. Thus, we understand that the criteria established will be transposed to the common territory (regulated in Legislative Royal Decree 2/2004, of March 5, which approved the Revised Text of the Law Regulating Local Tax Administrations).

For situations analogous to that covered by the judgement, in keeping with previous situations, in no event will the Administration initiate on its own procedures for the refund of the Tax unduly paid. It is indispensable that the affected party request the refund of the amounts unduly collected (together with the relevant interest for delay) through the relevant revision procedures, considering the time which has passed and the specific circumstances of the case.