

In relation to the tax on the increase in value of urban properties (IIVTNU), we must bear in mind that since the approval of the consolidated text of the *Law of Public Treasuries* (LHL) in 2004, the IIVTNU is calculated on the cadastral value of the land at the time of accrual, being allocated a revaluation according to the years lapsed since the previous transfer.

Given the existence of a considerable difference in many cases between the cadastral value of a property and its market value, when a property is sold it may happen that, in accordance with the IIVTNU calculation rules, there may appear to be an increase in value that is larger than what has actually taken place – in some cases even in the event of a loss in value.

As a result, many taxpayers have been forced to pay very high amounts by way of IIVTNU despite a loss in property value, which has led them to take the matters to court. In such cases it is worth mentioning that the Contentious Administrative Court number 3 of San Sebastián has considered the issue of unconstitutionality.

The case in question involved a company that purchased a property in 2003 for €3.1 million and sold it in 2014 for €600,000 – suffering an approximate loss of 80% of the value. Despite this, the city hall in question demanded the payment of €17,899 by way of IIVTNU.

In considering the unconstitutionality of this situation, the Court pointed to the possibility that this tax might contravene the principle of economic capacity, set forth in article 34 of the Spanish Constitution. In this instance, there would be no increase in property value for the taxpayer leading to the taxable event levied by this tax.

We therefore await the response from the Constitutional Court for clarification on how to proceed in such situations and, as the case may be, adjust the legislation to current situation.