

Recent Constitutional Court (TC) judgments regarding the Tax on the Increase in Value of Urban Land (municipal capital gain) have declared that the method used to calculate municipal capital gain under Guipúzcoa and Álava regional legislation (subsequently extended to state regulations) is contrary to the constitution. As a result, these territories have amended their respective regional laws in order to adapt them to the content of the aforementioned judgments.

TC judgments dated February 16, 2017, March 1, 2011, concluded that, even when in accordance with the content of the regional regulations of Guipúzcoa, and Álava, the taxable amount on municipal capital gain is the "increase in value" that land could have experienced over a given interval of time. This is quantified and subject to taxation as from the moment of the transfer, and the tax is not necessarily tied to the existence of that "increase", but rather to mere ownership of the land during a period of time subject to calculation, which varies between 1 (minimum) year and 20 (maximum) years.

Under the previous method, even where there was a clear loss of equity (due to the difference between the transfer value and the acquisition value), the tax calculation system attributed a capital gain. This led to a taxation on a non-existent increase in the value of land. The method was deemed unconstitutional as it was contrary to the constitutional principle of economic capacity.

Both regional regulations were modified to adapt to the content of the TC's judgments. In accordance with the provisions set forth in the new regional regulations, events where there is no increase in the value of land will not be subject to taxation. Accordingly, these types of operations will remain outside the tax, and it will therefore not be necessary to calculate the tax base of the municipal gain.

The new regional regulation establishes an objective system for determining whether there is an increase in the value of land, such as the difference between the land transfer value and the acquisition value.

It also sets forth that, for those events in which the value of the plot is not given separately from that of a building, then the difference (with respect to the cadastral value at the time of the tax accrual) between the value of the plot and the value of the building must be used when calculating any hypothetical increase in the value of the land.

In brief, under the new regional regulation, taxation is limited to events in which there is a real increase in the value of the land. However, once the existence of such an increase is determined, the original calculation system remains intact.