

**Charge Levied on the Municipal Administrative Activity Regarding Empty Dwellings in Barcelona is Declared Null and Void**

**Ruling of the Superior Court of Justice of Catalonia. Contentious-Administrative Chamber, Section 1, Ruling 531/2017, 30 June 2017, Appeal 778/2016**

The Contentious-Administrative Chamber of the Superior Court of Justice of Catalonia has issued a ruling on the administrative appeal filed by the Spanish Banking Association ("AEB") against the City of Barcelona in relation to the newly-created charge on the municipal administrative activity regarding empty dwellings.

The subject of the appeal regards the claims surrounding the direct jurisdictional challenge by the AEB of the new section 9 of Article 2 -taxable event- and of the new sections 1.11.1 and 1.11.2 under the Charge Appendix of Tax Ordinance 3.1 of the City of Barcelona, regulating the municipal charge for general services (the Tax Ordinance).

The arguments put forth by the claimant AEB to uphold its claims include, among others: (i) the content of the Tax Ordinance infringes the principle of specificity, in that the content of the definition of the taxable event and of the sections of the corresponding charge appendix are vague and contradictory, as well as the principle of legality, by infringing the principle of legal reserve of the tax law; (ii) the Tax Ordinance exceeds the scope of jurisdiction of the City of Barcelona, by encroaching autonomous jurisdiction on the subject of housing, insofar as it overlaps the autonomous tax on empty housing (suspended by appeal for unconstitutionality pending resolution); and (iii) the Tax Ordinance infringes the principle of equivalence or the self-financing of charges, because the amount of the charges exceeds the cost of the service, as well as the principle of non-retroactivity, by applying the charge to situations of vacancy prior to its entry into force.

With respect to the first of the grounds referenced in the preceding paragraph, the court concluded that the content of paragraph 9 of Article 2 of the Tax Ordinance and the corresponding Charge Appendices of the Tax Ordinance under appeal, included *ex novo*, were not in accordance with the principle of legal reserve of the tax law defended by the Spanish Constitution and the Spanish General Tax Act, which does not accommodate the two taxable events of the new municipal charges with respect to the provisions of Article 20 of Spanish Royal Legislative Decree 2/2004, 5 March, approving the recast text of the Act Regulating Local Taxation ("TRLHL"), according to which local entities may establish certain charges for the private or special use of local public domain, as well as for rendering services or undertaking administrative activities of local jurisdiction providing these fulfil certain requirements and a series of circumstances.

Within this context, while contentious-administrative case law has observed the untaxed or *numerus clausus* nature of the list of administrative services or activities that may be subject to the levy of a charge by local entities, contained in the aforementioned Article 20 TRLHL, the court held that **it is obvious that none of the two specific hypotheses to which the two taxable events refer may be included in any of the 28 groups of events contained in Article 20.4 TRLHL.**

Lastly, in relation to the third ground claimed by the AEB, the charge under dispute is established by the ordinance within the scope of the exercise of the administrative powers made possible by Spanish Act 18/2007 on the right to housing in Catalonia. Nevertheless, it infringes the powers expressly vested by this Act in the Administration of the Autonomous Government of Catalonia with respect to empty or vacant housing.

On the one hand, **Articles 7 and 8 of this Catalan Act 18/2007 reserve jurisdiction on housing to the Administration of the Autonomous Government of Catalonia.** Article 7 attributes the Autonomous Government of Catalonia with a general jurisdiction, when granting it housing powers that allow the assurance of the effective preservation of general interests in this sphere, while Article 8 grants local governments with the powers of promotion and management only, without prejudice to the fact that they may arrange housing policies of their own with the Administration of the Autonomous Government of Catalonia.

On the other hand and more specifically, Articles 41 and 42 of the same Act 18/2007 grant the autonomous administration with powers for (a) the detection of abnormal housing uses and situations, such as continuous vacancy or over-occupancy of housing as well as under-occupancy, establishing the possibility of this giving way to the appropriate administrative proceedings that enable the necessary investigation proceedings, and (b) undertaking actions aimed at avoiding the continuous vacancy of housing, enhancing policies to encourage the inclusion in the market of empty or continuously vacant housing.

**Consequently, it may hardly be upheld that the municipal charges under controversy are the obligation of an administrative activity of local jurisdiction of compulsory acceptance for the taxpayer because it is imposed by legal or regulatory provision, because the administrative activity to which the new charge refers is in all cases the jurisdiction of the autonomous region and, therefore, an encroachment of the powers that are expressly attributed to the Administration of the Autonomous Region of Catalonia.**

Therefore, **insofar as the fulfilment of the constitutional principle of legal reserve of the tax law is not proven** in relation to the principle of jurisdiction, for tax liabilities regulated as municipal charges, **the court ruled to uphold the administrative appeal** filed by the AEB **and declared the nullity of section 9 of Article 2 -taxable event- and of the new sections 1.11.1 and 1.11.2 of the Charge Appendix** of the Tax Ordinance.

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