

THE SPANISH GOVERNMENT APPROVES THE ROYAL DECREE-LAW MODIFYING THE TAX ON THE INCREASE IN VALUE OF URBAN LAND

Royal Decree-Law 26/2021 approving amendments to the regulation of the tax on the increase in value of urban land comes into force on 10 November. The Royal Decree-Law modifies the way the taxable amount is determined and gives the taxpayer two possible calculation methods: (i) multiplying the cadastral value of the land by new coefficients the local councils will set, or (ii) taking the difference between the actual value of the property when it was acquired and when it is sold. Transactions involving properties built on land that has not increased in value will not be taxed. The Royal Decree-Law also stipulates that capital gains generated in less than one year will be taxed.

1. BACKGROUND

Spanish Constitutional Court judgment 182/2021 of 26 October (“**Judgment**”) finds that the statutory provisions establishing the rules for calculating the taxable amount of the tax on the increase in value of urban land (“**TIVUL**”) are unconstitutional and void. The Judgment, which has not yet been published in the Spanish Official Gazette, specifically declares unconstitutional and void the second paragraph of article 107.1, and articles 107.2.a) and 107.4 of Royal Legislative Decree 2/2004 of 5 March approving the consolidated text of the Local Treasuries Law (“**Local Treasuries Law**”). For further information, we refer to our [newsletter](#) dated 4 November.

The Judgment directly requests the legislator to amend the TIVUL regulations to align them with the constitutional principles set out in the Judgment and two previous Constitutional Court judgments (59/2017 of 11 May and 126/2019 of 31 October). Royal Decree-Law 26/2021 of 8 November, published in the Spanish Official Gazette on 9 November (“**Royal Decree-Law**”), does just that by modifying the Local Treasuries Law.

2. NEW METHOD OF DETERMINING THE TAXABLE AMOUNT

The [Royal Decree-Law](#) gives the taxpayer two ways to calculate the TIVUL taxable amount:

2.1 OBJECTIVE ASSESSMENT METHOD

The taxable amount is the result of **multiplying the cadastral value of the land at the time the TIVUL accrues (i.e. when the property is sold or transferred) by the coefficients corresponding to the period in which the gain accrues how long the transferor/seller owned the property for and that the local authorities will set.** These coefficients cannot exceed the following maximum amounts:

Accrued period	Maximum coefficient
Less than 1 year	0.14
1 year	0.13
2 years	0.15
3 years	0.16
4 years	0.17
5 years	0.17
6 years	0.16
7 years	0.12
8 years	0.10
9 years	0.09
10 years	0.08

Accrued period	Maximum coefficient
11 years	0.08
12 years	0.08
13 years	0.08
14 years	0.10
15 years	0.12
16 years	0.16
17 years	0.20
18 years	0.26
19 years	0.36
20 or more years	0.45

These maximum coefficients will be updated yearly, possibly in the National Budget Law. If any of the coefficients the local tax regulations approve were to exceed the maximum coefficients, these maximum coefficients will apply until new local tax regulations enter into force establishing a permitted coefficient.

Only full years of ownership are taken into account to determine the applicable coefficient, except when the taxpayer has owned the property for less than one year, in which case the proportional part of the yearly coefficient (corresponding to full months) will apply.

Furthermore, in order to adapt the TIVUL to the reality of the real estate market in each municipality, the Royal Decree-Law authorises local authorities to establish a coefficient that reduces the cadastral value of the land (by up to 15%).

2.2 REAL CAPITAL GAIN METHOD

Alternatively, the taxpayer can choose to be taxed based on the actual capital gain obtained when they transfer the property, which equals the **difference between the land's acquisition and transfer values.**

Thus, if the real capital gain when the property is transferred is less than the capital gain calculated using the objective assessment method, the taxpayer can use this alternative method.

In transfers of both land and buildings, the taxpayer must first calculate the percentage of the total cadastral value of the property corresponding to the land on the date the TIVUL accrues, and then apply that percentage to the property transfer/sale price to determine the value of the land. This same percentage must be applied to the acquisition value to determine the actual capital gain corresponding to the land. Local councils may check these calculations.

The acquisition and transfer values used will be the greater of (i) the value stated in the deed documenting the sale in transfers for consideration, and the value declared in the inheritance and gift tax returns for transfers without consideration (e.g. inheritances, donations or gifts); or (ii) the value the tax authorities set. Expenses or other taxes levied on the transactions are not included.

3. TRANSACTIONS IN WHICH LAND HAS NOT INCREASED IN VALUE WILL NOT BE TAXED

The Royal Decree-Law introduces a new non-taxable event of transactions in which the taxpayers declare that there **has been no increase in the value of the land**.

In doing so, the Royal Decree-Law complies with the Constitutional Court's ruling (in judgment 59/2017 of 11 May) that no tax should be due when the land's value has not increased.

In order to prove that the land's value has not increased, the taxpayer must notify the transfer to the local authorities and provide the public deeds documenting its acquisition and subsequent transfer.

Again, the acquisition and transfer values used will be the greater of (i) the value stated in the deed documenting the sale in transfers for consideration, and the value declared in the inheritance and gift tax returns for transfers without consideration (e.g. inheritances, donations or gifts); or (ii) the value determined by the tax authorities.

4. TAXING CAPITAL GAINS GENERATED IN LESS THAN ONE YEAR

The Royal Decree-Law establishes that **capital gains generated over less than one year** (i.e. when the property is transferred less than one year after its acquisition, and which, therefore, may be considered speculation) **will also be taxed**. Some local authorities have already been taxing this type of transaction.

5. ENTRY INTO FORCE AND AMENDING LOCAL TAX REGULATIONS

The Royal Decree-Law comes into force on the day following its publication in the Spanish State Gazette (i.e. on **10 November**).

Local authorities that levy the TIVUL must **modify their local tax regulations within six months from this date**. Until they do, the Royal Decree-Law will apply and, thus, the maximum coefficients it establishes will have to be used to determine the taxable amount.

Finally, worth noting also is that, the Judgment does not formally affect neither the Historical Territories of the Basque Country nor the Chartered Community of Navarra, since it is the provisions of the Local Treasuries Law – and not the regional TIVUL regulations that apply in these territories – that have been declared unconstitutional, even though the content of the regional regulations is very similar or identical to the provisions declared unconstitutional. Likewise, although these territories can regulate TIVUL based on their agreed tax regime and economic agreements and therefore the content of this Newsletter does not apply to them, they must still adapt their regional regulations to the Judgment.

6. NO RETROACTIVE EFFECT

The Royal Decree-Law **neither applies retroactively nor establishes any transitory effects** for taxable events occurring prior to its entry into force. Thus, the TIVUL will not be levied in these situations, save for those final or settled situations that judgment 126/2019 refers to and we explained in our [newsletter](#) dated 4 November 2021.

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7. CONTACT LAWYERS



Miguel Cremades Schulz
Partner
+34 91 586 04 37
miguel.cremades@uria.com



Víctor Viana Barral
Partner
+34 91 586 45 56
victor.viana@uria.com



Gloria Marín Benítez
Partner
+34 91 586 03 84
gloria.marin@uria.com



Miguel Alejandro Morales Rilo
Partner
+34 93 416 51 56
miguel.morales@uria.com



Carlos García-Olías Jiménez
Partner
+34 96 353 17 62
carlos.garcia-olias@uria.com



Iratxe Celaya Acordarrementería
Partner
+34 94 479 49 92
iratxe.celaya@uria.com

BARCELONA
BILBAO
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MADRID
PORTO
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