

THE NEW TAX ON INCREASE IN VALUE OF URBAN PLOTS (PLUSVALIA MUNICIPAL IIVTNU)

Popularly known as “plusvalia municipal” and technically as IIVTNU (Tax on the increase in value of urban plots of land), the tax is levied on the deemed appreciation of urban land and has been one of the main sources of funding for local governments. For many years, municipalities taxed any transfer of real estate older than one year, regardless of whether the seller made or lost money on the transaction.

The Constitutional Court (CC), in Spain (TC) has questioned the structure of this tax in several rulings.

In decision 59/2017 of the TC, some articles of the Municipal Finance Law were declared unconstitutional, but only in cases where there is no profit or increase in value for the transferor.

In decision 126/2019 of the TC, cases were declared unconstitutional where there was an increase in value but the tax payable was higher than the profit made.

At the time, the situation was curious or rather unfortunate, as many taxpayers asked City Hall for a refund of the tax paid on the grounds that they had not received an increase in value, but City Halls reacted very differently, while some agreed to the refund, others unfortunately resisted it and it was necessary to go to court to force them to refund the tax paid, and many of these lawsuits are still pending in court to be resolved.

The same applies to those who, when transferring a property, ask the local government not to pay the tax because there was no increase in value. Some municipalities waived payment, but most continued to demand payment undeterred, forcing the taxpayer to subsequently reclaim the tax through administrative or even judicial channels.

The TC caused a scare with its ruling 182/ of 26.10.2021 by declaring the formula for calculating the tax base unconstitutional because it violates the principle of economic capacity by subjecting all transfers of urban land obtained in more than one year to taxation, regardless of whether the seller has actually experienced an increase in the value of the land.

The ruling was accompanied by a great deal of controversy, as the court inexplicably leaked the outcome of the ruling, but did not publish the full contents of the ruling on its website or in the Official Gazette for days, giving rise to all kinds of speculation.

The judgment, which annulled several articles of the Municipal Treasuries Act, on the one hand left the funding system of the municipalities in shambles and left them without one of their best sources of income, and on the other hand, in an attitude that we call clearly partisan and even shameful, precluded the recovery of payments made over the last four years, except for those that had already been challenged at the time of the judgment, which would have given the municipalities a great advantage by saving them from having to repay a lot of money.

On 9 November 2021, the government urgently approved Royal Decree 25/2021, in which it amended some articles of the Local Government Finance Act to bring the law into line with the TC ruling, reinstate the tax and allow the municipalities to continue collecting it.

We must not forget that the so-called "plusvalia municipal" tax is not only levied on the sale of urban land, but also on the sale of any urban property for the proportional share of the land it contains.

The decree basically distinguishes between two cases, whether a profit has arisen or not.

If a profit has been made, the taxpayer (the seller) can choose between two ways of calculating the tax base

a) By objective assessment (a system that is practically the same as before).

To determine the tax base, the municipalities take the cadastral value of the land and apply coefficients that depend on the age of the acquisition and can be at most be as follows:

CREATION PERIOD	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	0,1
9 Years	0,09
10 Years	0,08
11 Years	0,08
12 Years	0,08
13 Years	0,08
14 Years	0,1
15 Years	0,12
16 Years	0,16
17Years	0,2
18 Years	0,26
19 Years	0,36
20 years ore more	0,45

Once the tax base has been determined according to this formula, the tax rate is set by each municipality, with a maximum rate of 30%.

The above maximum coefficients may be modified by the government within the framework of the General State Budget Law.

In addition to applying lower coefficients, municipalities may reduce the cadastral value of the land by up to 15 % when calculating the tax base in order to avoid excessive taxation.

b) By direct valuation.

In this case, the taxpayer must prove the actual profit that existed between the value of the land at the time of acquisition and the value of the land at the time of transfer by submitting appropriate supporting documents. This difference constitutes the tax base, to which a maximum tax rate of 30%, to be determined by each municipality, is applied.

When a property has been sold with a building, the proportions of the value of the land and the value of the building, as determined by the cadastral value, are used as a reference to calculate the real increase in value of the land and to distinguish between the part attributable to the building and the land.

Absence of an increase in value

In this case, a tax exemption is granted and the taxpayer must prove that the land has neither benefited nor increased in value.

The municipalities can check this and take the higher of the declared value and the proven value as the transfer value.

What happens in the case of transfers of less than one year?

The Royal Decree introduces an unpleasant innovation: The transfer of real estate with a term of less than one year is also subject to taxation, with the pretext of making supposed speculative transactions taxable.

What is the situation in the Balearic Islands?

The Balearic Islands Tax Office (ATIB) has set up a system on its website for submitting the statement with the result payable for both objective and direct assessment calculations using form 080 and will soon set up a form to be submitted via the electronic register for those who claim that they are not liable to pay because they have not experienced an increase in value.

What will happen to transactions carried out between 26 October 2021 and 9 November 2021?

In our opinion, they will be exempt from taxation because the method of calculating the tax base on these dates has been declared unconstitutional.

What do we recommend from this point on?

If you are planning to sell a property, you should definitely consult a tax advisor to determine exactly whether it is possible to avoid the tax or whether it is payable and which is the most favorable calculation formula of this tax.

For more information on this subject, please contact our office.

Miquel Angel Riera
Asesor Fiscal-Abogado
Rechtsanwalt-Steuerberater
Lawyer-Accountant
m.a.riera@januarconsulting.com

JANUAR
Consulting
1957

Januar Consulting, S.L. • CIF: B-07578446 •
C/ Armadura, 1 E • 07500 **Manacor** • Teléfono: (0034) 971 553 161 • Fax: (0034) 971 551 286 email
info@januarconsulting.com
• Passatge Mestre Antoni Torrandell, 2 entresuelo. • 07003 **Palma de Mallorca** • Teléfono: (0034) 971 495835 •
email palma@januarconsulting.com

www.januarconsulting.com
info@januarconsulting.com