

Circular No 06 / 2018

Supreme Court  
Judgement on capital  
gains tax

Barcelona, 10 July 2018

Dear client,

Judgement 1163/2018 of the Supreme Court, delivered on 9 July, has clarified the interpretation of judgment 59/2017 of the Constitutional Court with respect to urban land value increment tax, commonly known as “municipal capital gains tax”, addressing the different (and often contradictory) interpretations that were being made by local administrations, the courts and the High Courts of Justice.

The recent Supreme Court judgement, which was made in response to an appeal, interprets that:

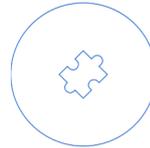
- Concerning Article 107.1 and 107.2 a) of the Law on Local Tax Authorities, relative to the calculation of the tax base for this tax, the Constitutional Court has ruled that said provisions are partially unconstitutional, in that **they are only unconstitutional insofar as they are applied to situations in which there has been no increase in the value of the urban land**, but that their application is constitutional in cases where such an increase exists.
- Concerning Article 110.4 of the same law relating to the administration of the tax, this has been declared to be totally unconstitutional and therefore **the possibility arises that the taxpayer could prove the non-existence of the increase in value resulting from the transfer.**

This approach will have to be followed by the courts of law and therefore the differing interpretations of the effects of Constitutional Court Judgement 59/2017 by the Administration and the courts will have to be brought into line with the criteria laid down in the Supreme Court judgement passed yesterday. For this reason, the High Court of Justice of Catalonia will have to cease to consider as void all the payments of this tax made after Constitutional Court Judgement 59/2017 on the basis (erroneously, according to the Supreme Court) that the unconstitutionality of these articles caused a legal void that precluded the payment of the tax.

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In practical terms, this judgement means that the municipal capital gains tax will continue to be a valid tax, which will continue to be paid or self-assessed unless the taxpayer can evidence by any means accepted in law (value of public deeds, expert reports, etc.) that there has been no taxable increase in value.

This interpretation opens up the possibility of claiming a reimbursement of settlements of this tax that are not statute-barred in relation to transfers that have generated a loss, as has often been the case in recent years.

The other situation that can arise has not been resolved, i.e. when a small increase in value is excessively taxed due to the application of the system for assessing the tax. The Supreme Court acknowledges that this matter is still pending, since it has not been addressed or resolved by the Constitutional Court.

We would be happy to discuss any matter related to above information. As well as the professionals that regularly work with your company, **Mateu Lázaro, Javier Aquilué and Luis Gil** are at your disposal for any clarification or additional information you may require in relation to the content of this Circular Letter and to assess, if applicable, the possibility of filing a claim for unduly paid taxes in relation to the tax in question.

Yours sincerely,  
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