

News Alert

Tax Department

LAW DECREE 8/2019 OF THE 14TH OF MAY: FIRST APPLICATION OF TAX ON NON-PRODUCTIVE ASSETS OF LEGAL ENTITIES

The Parliament of Catalonia approved the Law 6/2017, of the 9th of May, that approved the Tax on Non-Productive Assets of Legal Entities (hereinafter, TNPAL). The aforementioned tax was challenged by the Spanish government before the Constitutional Court, due to which its application was suspended. Even though the initial suspension has been lifted, this tax was not legally developed due to which its payment was not demanded.

Recently, the Constitutional Court passed the sentence 28/2019, on the 28th of February, confirming the legitimacy of the aforementioned tax. After this sentence, Law Decree 8/2019 of the 14th of May (effective 17th of May) was passed, which signifies the first application of this tax.

This Law Decree slightly modifies the tax rate approved in the Law, but without practical importance (it corrects a numeric error in a figure, and replaces the concept “taxable income” with “tax base”).

On the other hand, this Decree establishes the income period without waiting for any regulatory development. Tax is due on the 1st of January each year and an income period is established between the 1st of June and 30th of June of that same year. The tax return will be made electronically via the Electronic Office of the Catalonia Tax Agency.

Finally, the transitional provision establishes that **the tax corresponding to the years 2017, 2018 and 2019, must be deposited between the 1st of October and 30th of November, 2019.**

At the time of publishing this Alert, the corresponding tax form has not yet been issued.

Arguments of the Constitutional Court to confirm the legitimacy of this tax

When this tax was approved, a strong controversy was generated regarding whether or not it was in line with the Law. Finally, the Constitutional Court rejected all arguments raised by the Spanish government and confirmed the tax. Concisely, the Constitutional Court notes:

- There is no duplication with Wealth Tax (WT) due to it having, in addition, a different subjective scope (the TNPAL, the legal entities, and the WT of natural persons. In addition, the purpose of both taxes is different, with the TNPAL having the objective of encouraging the productive use of assets.
- There is also no duplication with the Real Estate Local Tax (IBI in Spanish). First of all, the IBI can be differentiated, because the taxable aspect is different, by taxing the lack of exploitation, and not like the TNPAL that taxes the payment capacity derived from the mere ownership of the asset. In addition, the TNPAL taxes accumulatively all of the taxpayer's unproductive

assets by means of a progressive rate. Whereas, the IBI taxes each asset individually and at a fixed rate.

- There is no duplication with the Mechanical Traction Vehicle Tax (MTVI) because this tax is taxed on the owner of the vehicle as a payment capacity index, whereas the TNPALE does this only to mercantile entities that do not economically exploit the vehicle and only whilst this situation lasts. In addition, only vehicles with a power exceeding 200-horsepower are taxed in the TNPALE and are accumulatively taxed with all other assets of the taxpayer.

As regards vehicle ownership, the Constitutional Court notes that what is relevant is the address of the owner, apart from where they are located at any given time. Therefore, if the company is domiciled outside of Catalonia, it will not pay this tax; and instead, companies domiciled in Catalonia will be taxed on non-productive vehicles although they may physically be located outside of Catalonia, without the need to consider whether there is any territorial excess.