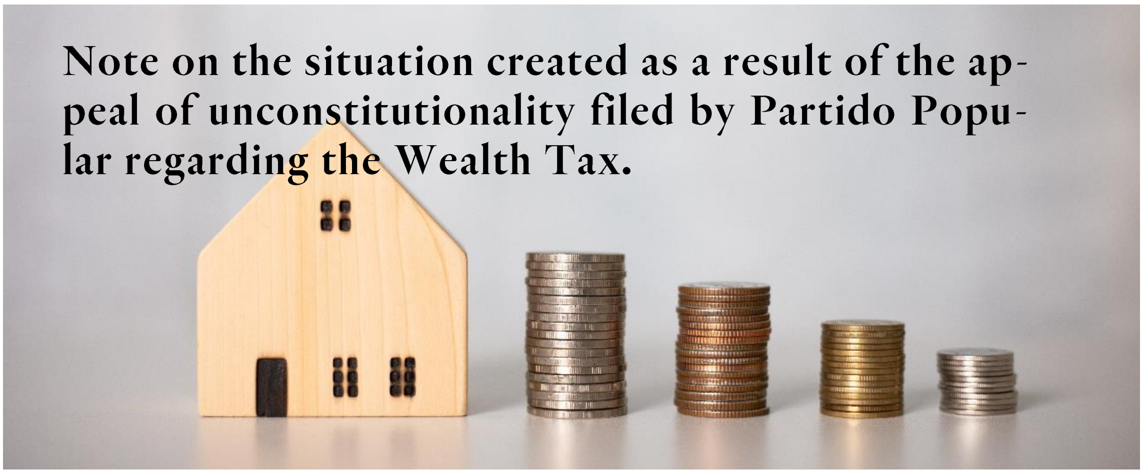
RocaJunyent Informs

Tax Law Deparment
1 June 2023

Note on the situation created as a result of the appeal of unconstitutionality filed by Partido Popular regarding the Wealth Tax.



In February 2021, RocaJunyent prepared a report analysing the possible confiscatory nature of Wealth Tax.

Only two months later, in April 2021, the Constitutional Court admitted the appeal for unconstitutionality filed by the parliamentary group Partido Popular against the regulation of this tax introduced in the General State Budget Law (LPGE) for 2021.

The appeal of Partido Popular is directed against the two provisions introduced in the above-mentioned Budget Law relating to this tax: the increase in the maximum rate of the tax rate, and the permanent abolition of the 100% tax rebate.

This fact has opened the debate on the situation in which the taxpayers of this tax would find themselves from the financial year 2021 onwards if the appeal is successful.

For this reason, RocaJunyent has prepared this brief Note to provide information on the possibility of challenging the Wealth Tax self-assessments for the 2021 and 2022 tax years, as well as on the consequences of doing or not doing so.

Aspects of Wealth Tax appealed before the Constitutional Court

The appeal brought by the Partido Popular is directed first of all against Article 66 of Law 11/2020, of 30 December, on the General State Budget for 2021, which amends Article 30 of Law 19/1991 on Wealth Tax.

By means of this amendment, the maximum marginal rate of Wealth Tax has been increased from 2.5% to 3.5%. This fact has been used as a basis to justify the possible confiscatory nature of this tax by exhausting taxable wealth or subjecting situations of non-existent or fictitious economic capacity to taxation. This would determine its unconstitutionality for violating the provisions of Article 31 of the Spanish Constitution.

Secondly, the appeal is directed against the first derogatory provision of the Budget Law repealing the second paragraph of the sole article of Royal Decree-Law 13/2011, of 16 September, which temporarily re-established the Wealth Tax.

This modification entails that the tax becomes a tax that is payable indefinitely and not merely temporarily, as it has been to date. This is tantamount, in the words of Partido Popular itself, to "be creating" a new tax. This would also be unconstitutional because it would go against the provisions of Article 134, paragraph 7, of the Spanish Constitution, which prevents the Budget Law from creating taxes. Although it is true that the Second Final Provision of the Wealth Tax Law contains an express authorisation so that the Budget Law could modify some aspects of the tax (exemptions, taxable base, tariff, etc.), it does not seem, in the opinion of the Popular Group, that its conversion into a permanent tax (which would be tantamount to its creation) is within the scope of these modifications.

Consequences of a possible upholding of the appeal by the Constitutional Court

- Modification of the tax rate:

  It is reasonable to understand that if unconstitutionality were to be declared, it would be limited to the State rate of the tax introduced by the LPGE for 2021. Therefore, the unconstitutionality would only affect those Autonomous Communities that have not approved their own tax rate, and also non-residents who are taxed at the State rate.

- The definitive abolition of the 100% bonus:

If the Constitutional Court were to declare the definitive abolition of the 100% tax rebate unconstitutional, the consequence would be that in the years 2021 and subsequent years this rebate would be in force. As a consequence, since the tax is 100% subsidised, the Administration would have to refund the whole amount of the tax paid in those years.

Convenience or not of urging the rectification of the Wealth Tax self-assessments for the 2021 and 2022 financial years

In its last ruling on municipal capital gains (STC 182/2021), the Constitutional Court annulled certain articles of the Law on Local Treasuries, but limited the effects of this annulment to those cases in which the taxpayer, at the date of the ruling, had appealed a settlement or urged a rectification of his or her self-assessment.

If the Constitutional Court were to uphold this criterion, only those taxpayers who, at the date of the ruling, had acted against their self-assessments for Wealth Tax for 2021 and subsequent years would be able to benefit from the possible declaration of unconstitutionality. Otherwise, no refund would be possible as it is a "consolidated situation".

Acting against a self-assessment of wealth tax for the tax year 2021 or 2022 interrupts the statute of limitations for the tax. Therefore, it must be assessed whether or not the result of a possible favourable ruling by the Constitutional Court justifies the interruption of the statute of limitations and, therefore, the prolongation in time of the Tax Administration's capacity for verification.

Furthermore, procedural aspects should also be assessed, such as, for example, the most appropriate moment to urge the rectification of the self-assessment, taking into account the time it may take for the appeal to be decided by the Constitutional Court.