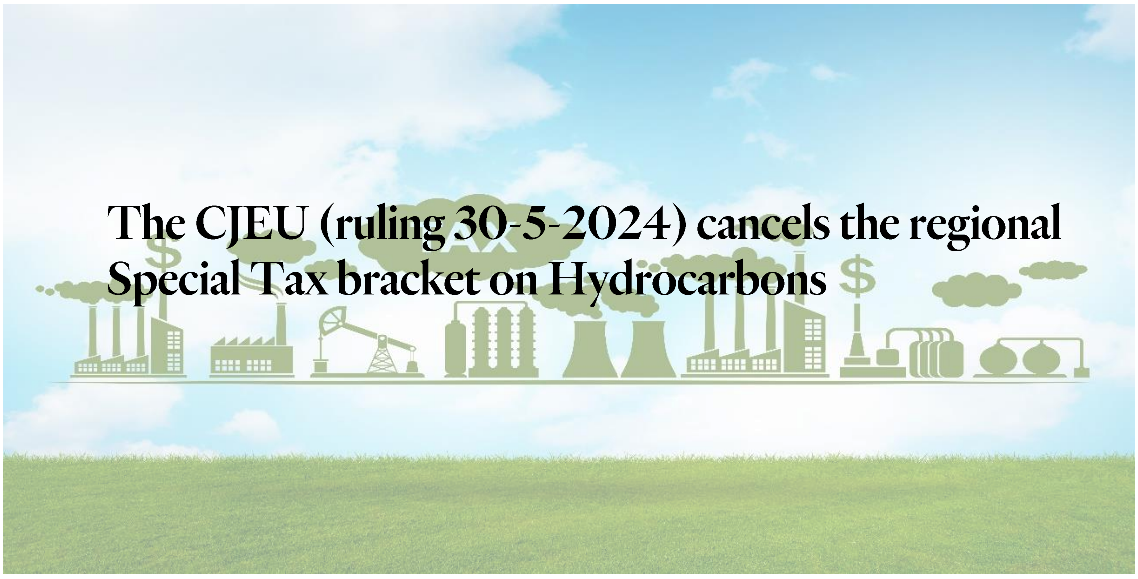
RocaJunyent Informs

Tax Law Department

14 June 2024



Recently, the CJEU, in its ruling of 30-5-2024 (case C-732/22), declared that the autonomous community bracket of the Special Tax on Hydrocarbons (IEH) does not comply with European Union law. The CJEU stated, in response to a preliminary ruling by the Supreme Court, that this regional tax bracket is contrary to European law as it allows different tax rates to be applied to the same product and use.

There are currently several cases before the Supreme Court concerning applications for the refund of undue income arising from the payment of the aforementioned regional section of the IEH. Two controversies are raised in these appeals:

a) On the one hand, to determine whether or not the autonomous community section of the IEH is in accordance with EU law. The Supreme Court considered it appropriate to refer a question to the CJEU for a preliminary ruling, which is the one resolved in this judgment.

b) On the other hand, in the event that the tax is not due (as mentioned above), it is necessary to determine who is entitled to claim a refund of the tax unduly paid.

Once it has been decided that the autonomous tax bracket of the IEH is not in accordance with the law, the Supreme Court will have to rule on who is entitled to claim a refund of the tax. This question is not clear. The reason for this is that the operation of the IEH is different from that of the "céntimo sanitario" (or Tax on the Retail Sale of Certain Hydrocarbons -IVMDH-) which was annulled by the CJEU in its ruling of 27-2-2014. The "céntimo sanitario" was paid by those who purchased hydrocarbons (petrol, diesel...) at service stations. Therefore, its annulment gave rise to the right of those who refuelled at service stations to obtain a refund of the amount unduly paid.

On the other hand, the autonomous region's IEH is a tax that is paid at the time of manufacture or import of the hydrocarbon; it is not paid at the time of sale at the service station.

In the case of the autonomous community section of the IEH, there is no doubt that those taxable persons (manufacturers or importers of hydrocarbons) who paid the tax through their corresponding self-assessments are entitled to request a refund.

But what is also at issue is whether or not the persons or entities, who financially bore the improper tax when it was passed on to them (e.g. owners of service stations or users of service stations), are also entitled to claim a refund of what was unduly paid.

Depending on the Supreme Court's ruling on who can apply for a tax refund (whether only manufacturers and importers, or also sellers - service stations - or final purchasers), it will have to be analysed which will be the appropriate way to try to recover the tax unduly paid.