

Tax Remark

The Constitutional Court dismisses the question of unconstitutionality raised by the Supreme Court in relation to the Tax on the Value of the Production of Electrical Energy (IVPEE)

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On 10 January 2018, the Supreme Court (SC) raised for the second time a question of unconstitutionality in relation to the IVPEE. The SC's doubts regarding this tax were based, among other things, on its possible extra-fiscal nature, mainly calling into question its purpose in terms of environmental protection.

However, the most significant doubts arose when it was questioned whether the IVPEE might not be respecting the principle of economic capacity established in article 31.1 of our Constitution, since the controversial tax could be taxing a manifestation of economic capacity already subject to taxation by the Tax on Economic Activities.

In response to all these questions, the Constitutional Court (CC) has decided, in short, to dismiss the doubts raised by the High Court. Although it is only an order of non-admission, the Constitutional Court has gone into the substance of the question of why it considers the tax to be compatible with the provisions of our Constitution.

To this end, appealing from its judgment of 13 March 2013, the SC points out *that 'the same economic activity may be taxed on different taxes from different perspectives (obtaining income, consumption, ownership of assets, movement of goods, environmental impact, etc.) without necessarily entailing double taxation'*. In this respect, it concludes *that 'the above shows that not every phenomenon of double taxation is prohibited'*.

In addition, the Court reinforces the previous thesis by stating that in our legislation only double taxation caused by regional taxes in relation to state or local taxes is prohibited. However, it argues that in the other cases, such as the one at issue here, *'they should be judged on the basis of capacity to pay and not on the basis of confiscation'*.

In short, the Constitutional Court states that the IVPEE *'responds to an option of the legislator, which has a wide margin for the establishment and configuration of the tax'*, and that, in addition, in this case, the Tax cannot be considered to contravene any of the principles contained in our Magna Carta.

Therefore, the case goes back to the Supreme Court, which will have to rule on the contentious-administrative appeal pending before it.



For your information and knowledge, you can consult the order of the Constitutional Court on this [link](#)

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