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Greening up Local Taxes (an Environmental Approach to Municipal Taxation from a Spanish Perspective)²

1. Legal and constitutional background

Traditionally, local taxes and charges in Spain have not been related to protecting the environment. Although the Spanish Constitution³ requires public authorities to protect the environment (Art. 45(2)), the original Act on Local Finances (LHL)⁴ only provided tax exemptions for “forests populated with slow-growing species” (Art. 62(1)(f) LHL) and for “the surface of the mountains in which afforestation or regeneration of wooded masses are carried out subject to management projects or technical plans approved by the Forest Administration” (Art. 62(2)(c) LHL).⁵

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³ ES, Spanish Constitution of 27 December 1978 [*Constitución Española*], Official Gazette No. 311, 29 December 1978, amended.

⁴ ES, Act on Local Finances (consolidated text), enacted by Royal Legislative Decree No. 2 of 5 March 2004 [*Ley de Haciendas Locales*], Official Gazette No. 59 of 9 March 2004, amended. The original Act on Local Finances, No. 39 of 28 December 1988 was published in the Official Gazette No. 303 of 30 December 1988.

⁵ A. Tandazo Rodríguez, *La fiscalidad de los bosques*, Instituto de Estudios Fiscales, Madrid 2014, p. 134; C. Galarza, *Las Haciendas Locales frente al cambio climático*, “Revista Aranzadi de Derecho Ambiental” 2010, No. 18, Para. III.3.1.

2. Environmental tax credits regarding local taxes

From 1998 on, various reforms of the Act on Local Finances (LHL) have granted local authorities the *possibility* to introduce environmental tax credits through regulations (so-called *optional* tax credits).⁶

2.1. Specific tax credits

2.1.1. Real estate tax (IBI)

Regarding the real estate tax (IBI), the law provides “a tax credit of up to 90% of the tax due [...] for the immovable property with special features”.⁷ Municipalities can implement this provision to promote wind and solar farms (Art. 74(3) LHL). Local authorities can also apply reduced or increased tax rates to power plants (Art. 72(2) LHL).

Furthermore, “local regulations may provide a tax credit of up to 50% [...] for an immovable property with facilities for the thermal or electrical use of solar energy”. The application of this credit requires technology approved by the competent administration (Art. 74(5) LHL).

2.1.2. Tax on economic activities (IAE)

The tax on economic activities (IAE) includes an optional tax credit of up to 50%. Requirements include:

1. The business should use or produce renewable or co-generated energy.
2. Taxpayers should “carry out their industrial activities, from the beginning of their activity or by subsequent transfer, in facilities far from the most populated areas of the municipality”.
3. Taxpayers should “provide a transportation plan for their workers that aims to reduce energy consumption and emissions caused by travelling to the workplace and to promote the use of the most efficient means of transport, such as public transport or the shared one” (Art. 88(2)(c) LHL).

⁶ A. García Martínez, *El ejercicio del poder tributario municipal en el Impuesto sobre Actividades Económicas*, “Tributos Locales” 2006, No. 58, pp. 11 et seq.; L. Gil Maciá, *Cómo regulan las capitales españolas las bonificaciones medioambientales en sus impuestos*, “Revista Aranzadi de Derecho Ambiental” 2019, No. 42.

⁷ Cf. J. Calvo Vérguez, *En torno a la discutida categoría de los «bienes inmuebles de características especiales» en el IBI*, “Jurisprudencia Tributaria Aranzadi” 2007, No. 13.

2.1.3. Circulation tax (IVTM)

The circulation tax (IVTM) provides optional tax credits of up to 75% for environmentally friendly motor vehicles (Art. 95(6) LHL).

2.1.4. Tax on constructions, facilities, and works (ICIO)

Regarding this tax (ICIO), local authorities can implement a “tax credit of up to 95% in favour of constructions, facilities or works with devices for the thermal or electrical use of solar energy”. The application of this credit requires approval from the competent environmental administration (Art. 103(2)(b) LHL).

2.1.5. Tax on the increase in value of urban land (IIVTNU)

The tax on the increase in value of urban land (IIVTNU) is the only one without specific environmental incentives.

2.2. General tax credit for economic activities of particular interest

Besides, the legislation of all local taxes – except for the circulation tax – includes an optional tax credit of up to 95% for economic activities declared of particular interest or municipal utility for social, cultural, historical, artistic circumstances, or for employment promotion.⁸

A city council will decide on the declaration of particular interest, upon request of the taxpayer, by a simple majority of its members (Art. 74(2)(4) LHL regarding IBI, Art.88(2)(e) regarding IAE, Art. 103(2)(a) regarding ICIO and Art. 108(5) regarding IIVTNU). Such provisions are controversial. The legal requirements are ambiguous, and, in our view, a city council enjoys an excessive margin of discretion.⁹ Furthermore, they could be considered forbidden state aid.¹⁰

⁸ J.M. Martín Rodríguez, *Las nuevas bonificaciones potestativas por especial interés o utilidad municipal en IBI, IAE e IIVTNU. Análisis crítico a través del antecedente en el ICIO, “Tributos Locales”* 2014, No. 116, p. 7.

⁹ Cf. *ibidem*, pp. 44 et seq.

¹⁰ Cf. T. Calvo Salés, *Los beneficios fiscales en tributos locales bajo la lupa del TJUE, “Consultor de los ayuntamientos y de los juzgados”* 2019, No. 4 extra, Para. III.3.

These tax credits are not specifically designed to protect the environment. However, environmental damage has a social impact. Therefore, local authorities could use them to promote environmental protection as long as their social impact is justified. Some cities have followed this path in the tax on constructions (ICIO).

3. Use of levies other than taxes for environmental goals

3.1. Charges

The regulation of charges in the Act on Local Finances (LHL) does not refer to protecting the environment, although it offers various possibilities by providing environmental-related services or controls: vehicle parking fees (Art. 20(3)(u)), rural nursery (Art. 20(4)(d)), special surveillance (Art. 20(4)(f)), granting of urban planning licenses or administrative control activities (Art. 20(4)(h)), licenses to open a business (Art. 20(4)(i)), sanitary inspection services (Art. 20(4)(1)), sewerage and wastewater treatment services (Art. 20(3)(4)), collection of solid urban waste and its treatment and disposal (Art. 20(4)(s)).

Also, literature has proposed higher rates for intensive polluters regarding waste or sewerage charges.¹¹ According to the Supreme Court, local entities can only introduce non-fiscal purposes in taxes to the extent that there is an explicit or *implicit* legal authorization.¹²

3.2. Fees

We can apply analogue reasoning to the fees mentioned in Art. 20(6) LHL (related to waste collection, sewage, water supply, etc.), when the city provides services through a private legal status or administrative franchises.¹³

¹¹ I. Puig Ventosa, *El uso de instrumentos económicos para potenciar las energías renovables y el ahorro energético desde el ámbito local*, "Conferencia Europea sobre Gestión Energética en la Administración Local", Sevilla, 26 March 2003, pp. 4 et seq., <https://ent.cat/el-uso-de-instrumentos-economicos-para-potenciar-las-energias-renovables-y-el-ahorro-energetico-desde-el-ambito-local/?lang=es> (accessed: 29.03.2021); C. Galarza, *Las Haciendas...*, Para. III.3.6.

¹² ES, Supreme Court, judgment, 22 May 2019, case No. 1800/2017.

¹³ Cf. A. Tandazo Rodríguez, P.M. Herrera Molina, *Una nueva para fiscalidad: Constitucionalidad de las tarifas como prestaciones patrimoniales de carácter público*, "Tributos Locales" 2019, No. 142, pp. 29 et seq.

3.3. Special contributions

So-called “special contributions” (*Beiträge* in German) are compulsory payments to finance public works or implement or expand public services.

They offer green possibilities when the public work or the relevant public service is related to protecting the environment or repairing environmental damage (Arts. 28 et seq. LHL). Legal literature suggests implementing special contributions to finance works required by the polluting activity of the taxpayer. An example will be the financing of public works for ground and water decontamination.

4. General assessment of the current legislation

In our opinion, the current legislation is inadequate. In particular, in the area of taxes, credits have a threefold limitation:

1. They are external to the fundamental tax design. It would be advisable to tax polluting activities and not only grant credits for less polluting activities.

2. They are optional for local authorities and, if applied, will reduce local tax revenue. Consequently, municipalities use them in a limited way (although we must recognize that all the provincial capitals have established some of the tax credits mentioned above).

3. The Act on Local Finances barely defines the requirements to implement the environmental tax credits. Therefore, local authorities find it challenging to design a proper regulation. Some cities have abused tax credits to introduce “tax havens” in the field of circulation taxes.¹⁴

The Commissions for the Spanish Tax System Reform (2014) and the Local Finances Reform (2017) have proposed to modulate the circulation tax based on the polluting emissions of the vehicles (CO₂, particles)¹⁵ and to

¹⁴ Cf. A. García Martínez, F. Vega Borrego, *El Impuesto sobre Vehículos de Tracción Mecánica*, [in:] D. Marín-Barnuevo Fabo, J. Ramallo Massanet (eds), *Los tributos locales*, Civitas, Madrid 2011, Para. 8.8.1; C. Banacloche Palao, *Algunas cuestiones en torno al IVTM a la luz del Informe de la Comisión de Expertos para la Revisión del Sistema de Financiación Local (julio 2017)*, [in:] P. Chico de la Cámara (ed.), *Aspectos de interés para una futura reforma de las Haciendas Locales*, Tirant lo Blanch, Valencia 2019, p. 118.

¹⁵ M. Lagares et al., *Informe de la Comisión de Expertos sobre el Sistema Fiscal Español*, Ministerio de Hacienda, Madrid 2014, p. 331; A. Muñoz Merino et al., *Informe de la Comisión de Expertos para la Revisión del Modelo de Financiación Local*, Ministerio de Hacienda, Madrid 2017, p. 42.

introduce a municipal tourist tax related to preserving the environment.¹⁶ However, the legislator has not embraced such proposals.

Regarding charges and special contributions, the provisions of the Act on Local Finances are also inadequate. In theory, they offer a great deal of flexibility to local authorities. In practice, many small municipalities lack the means to prepare a proper regulation that will withstand court challenges. It would be advisable to have more detailed legislation that would offer legal certainty to both local entities and taxpayers.

5. Regional environmental taxes

Given the central powers' inaction, regional parliaments have introduced environmental taxes, which probably would make more sense at a local level.

As some examples, we can mention:

- 1) several regional taxes on large stores¹⁷ (which have been accepted by the Spanish Constitutional Court¹⁸ and the European Court of Justice¹⁹);
- 2) the Catalan tax on CO₂ emissions from motor vehicles (which has also been declared constitutional)²⁰;
- 3) the Catalan and Balearic taxes on tourist stays (one of whose goals is to tackle the "former excessive exploitation of territorial and environmental resources").

We must also mention the "compensatory levy"²¹ established by the Autonomous Community of Andalusia on the construction of wind and solar parks. The tax revenue is transferred to the municipalities.

According to the Spanish constitutional framework, some of these levies might be turned into municipal taxes by the Central Parliament, establishing adequate compensation to the affected autonomous communities. However, it will not be easy from a political point of view.

¹⁶ A. Muñoz Merino et al., *Informe...*, p. 42.

¹⁷ A. del Blanco García, P.M. Herrera Molina, *El impuesto sobre grandes establecimientos comerciales y el Derecho europeo*, "Rivista di Diritto Tributario Internazionale" 2018, No. 3, pp. 7 et seq.

¹⁸ Cf. ES, Constitutional Court, judgment, 5 June 2012, No. 122.

¹⁹ CJEU, judgment, 26 April 2018, *ANGED*, C233/16.

²⁰ A. Tandazo Rodríguez, P.M. Herrera Molina, *Constitucionalidad y comentario crítico del impuesto catalán sobre emisiones de dióxido de carbono de los vehículos de tracción mecánica. Análisis de la STC 87/2019, de 20 de junio*, "Revista de Contabilidad y Tributación" 2020, No. 44, pp. 99 et seq.

²¹ J. Carpizo Vergareche, *La fiscalidad energética autonómica y local: Problemática y posibles soluciones*, "Estudios sobre la Economía Española" 2019, No. 21, p. 8.

6. Conclusions

The current local tax model is in crisis. Some examples are the tax on economic activities (which currently only applies to large companies) and the tax on the increase in the value of land (which the Constitutional Court has declared unconstitutional).²²

On the other hand, local authorities are in an excellent position to deal with specific environmental problems, given their proximity to pollution sources. Administrative measures (limitation of vehicle entry to city centres) may be necessary. Still, they are insufficient and must be coordinated with economic instruments such as environmental taxes and environmental tax credits.

Since 1998, the central legislator has introduced optional tax credits with environmental goals in the Act on Local Finances. They are optional, meaning that it is up to the local municipal governments to implement them and approve the detailed regulation.

Local charges and fees could also include environmental goals through increased tax rates for intensive pollutants. Legal reforms would be advisable to promote the implementation of environmental charges, fees, and so-called special contributions.

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²² ES, Constitutional Court, judgment, 11 May 2017, no. 59; ES, Constitutional Court, judgment 31 October 2019, No. 126; ES, Constitutional Court, judgment 26 October 2021, No. 182. Cf. C. Palao Taboada, *Por qué yerra el Tribunal Constitucional en las sentencias sobre el IIVTNU*, "Nueva Fiscalidad" 2017, No. 2, p. 23.

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Abstract

Spanish local taxes and charges are not adequately designed to protect the environment. Nevertheless, most of them include tax credits to foster environmentally friendly activities (e.g. installation of solar panels or acquisition of electric vehicles). Our paper deals with the current legislation and proposes reforms to improve the environmental role of local taxes and charges.

Keywords: local taxes, environmental taxes and charges, tax incentives