

**THE BASQUE ECONOMIC AGREEMENT:  
TAX AND FINANCIAL GLOSSARY**

Gemma Martínez Bárbara

## Table of contents

Author’s preface .....	3
Using the “ <i>Basque Economic Agreement: Tax and Financial Glossary</i> ” .....	4
From A to Z.....	6

### **Appendices**

APPENDIX I: LEGISLATION.....	190
APPENDIX II: CASE LAW.....	191
APPENDIX III: ABBREVIATIONS .....	193
APPENDIX IV: TRILINGUAL INDEX .....	194
APPENDIX V: BIBLIOGRAPHICAL REFERENCES.....	220

## Author's preface

The Economic Agreement between the Autonomous Community of the Basque Country and the Spanish central government is nowadays the cornerstone of the Basque self-government. It is a financial regional model of federal features, unique from an international approach. However, the Economic Agreement is still quite unknown in the international academic, professional and political scopes.

One of the main obstacles for non-Spanish or non-Basque speakers to get to know the Basque Economic Agreement in depth is the shortage of academic and legal materials in the English language. Few books, publications, articles, doctoral thesis or legal texts about the Basque tax and financial system are available in English. In addition, the singularity of the model gives rise to specific financial and tax terms, which do not encounter exact equivalency in English. As a result, even when English speakers find some high quality materials on the topic in English, a good comprehension of said materials requires the knowledge of specific terms and concepts, foreign to other internationally existing financial and tax models that in most cases do have in common a widely accepted and well-known terminology in the English language.

The *Basque Economic Agreement: Tax and Financial Glossary* aims at filling the existing gap in the English terminology concerning the Basque financial and tax system. Globalization -also in the tax and financial world itself- makes more evident the value of this kind of publications and the need of the said materials in order to increase the visibility of the Basque Economic Agreement in the international context.

The *Glossary* is an encyclopedic dictionary covering the Basque tax and financial terms and concepts. It provides a comprehensive and up-to-date list of two hundred entries together with accurate and concise explanations. In providing explanations, a difficult line has been drawn between the meaning of a specific term, its usage, and a mini treatise on a particular legal rule. Details of specific terms and concepts are, therefore, generally given if they help illustrate a particular meaning. This book intends to provide tax professionals, tax officials, researchers, and academics with a practical guide to understand the usual terms and concepts of the Basque tax and financial system, while still giving students and researchers detailed guidance on the principles and theoretical aspects involved. The *Glossary* includes terms and concepts concerning not only the financial and tax relations between the Basque Country and the Spanish central government but also the intra-regional relations among the different administrations coexisting within the Basque Country.

In addition, the *Basque Economic Agreement: Tax and Financial Glossary* seeks to become a handy tool for tax and financial researchers, professionals, academics, and officials from the Basque administration with high knowledge of the Basque tax and financial system. In the global world, many of them must use English as their working language and the *Glossary* may prove to be a useful resource.

Gemma Martínez Bárbara<sup>1</sup>

---

<sup>1</sup> High tax official in the Treasury and Finance Department of the Government of Bizkaia (*Diputación Foral de Bizkaia*) and treasurer of "Ad Concordiam" - a non-for-profit association devoted to promoting the understanding and knowledge of the Basque Economic Agreement-

## Using the *Basque Economic Agreement: Tax and Financial Glossary*

### *Cross references:*

Cross-references are used in the following ways:

- “See also”: indicates other terms which are related to the term in question or which superficially appear related but are in fact unrelated. A maximum of five entries are included under this category, although in many cases more than five entries could be referred.
- “See” indicates that the term is dealt with under another entry or that it is a synonym for- or at least broadly similar to another entry; and
- “Compare” indicates a term that is conceptually the opposite or should be distinguished in some way from the current term.

### *Legal reference:*

Legislation, wherein the term in question is used, can be found under “Legal ref”. At times, the legal context of the term clarifies the concept and may be useful for a better understanding. In Appendix I, most of the referred legislation in the *Basque Economic Agreement: Tax and Financial Glossary* is contained in the English language.

### *Case-law:*

In some entries, the most relevant court judgments and sentences related to the term are referred under “Case-law”. Sentences from the European courts are also available in English version. However, sentences from national Spanish courts are only available in the original Spanish version. In Appendix II, a list of the referred case-law is offered.

### *Author’s Note:*

In some entries, the author offers a clarification on the term from a language perspective under “AN”.

### *Appendices:*

In addition to the terms included in the main body of the *Basque Economic Agreement: Tax and Financial Glossary*, the *Glossary* contains the following appendices:

- Appendix I: Legislation
- Appendix II: Case-law
- Appendix III: Abbreviations
- Appendix IV: Trilingual Index

- Appendix V: Bibliographic references

*Abbreviations:*

A list of the abbreviations used in the *Basque Economic Agreement: Tax and Financial Glossary* is contained in Appendix III.

*Trilingual Index:*

At the end of each term, the equivalent terms in Spanish and Basque are included. The *Basque Economic Agreement: Tax and Financial Glossary* is focused on the English terminology specific to the Basque tax and financial system. However, to assist the user in identifying the equivalent Spanish and Basque terms, a trilingual index is included in Appendix IV.

*Bibliographic references:*

A list of the bibliographic references consulted for the elaboration of the *Basque Economic Agreement: Tax and Financial Glossary* is contained in Appendix V.

# A

## **ACCOUNTABILITY**

Accountability of government to people is one of the most remarkable benefits of a certain degree of tax decentralization. Other benefits are evident, for instance, in the level of efficiency in the provision of public services or in the degree of satisfaction of citizens enjoying these services, which, combined with the risk of migration of individuals or productive factors in response to overtaxation, lead to more efficient regional taxation and expenditure. On the political side, tax decentralization is the natural response to self-government demands in many regions.

The Economic Agreement, a tax and financial pact between the Basque Country and the Spanish central government, guarantees the Basque Autonomous Community full income from all tax figures comprising the taxation systems of the three Basque provinces, also known as the Historical Territories. Tax income finances not only the competences of the three tiers of government- regional, provincial and local- within the Basque Country but also the expenditures of the Spanish central administration on behalf of the citizens of the Basque Country.

In addition, the Economic Agreement acknowledges the autonomy of the Basque Historical Territories to amend and update their tax system in accordance with the government plan of the ruling party and its accountability to Basque citizens. As a result, competence and accountability are two outstanding elements of the Economic Agreement model. These two elements make the Basque model one of a kind among the federal systems in force in Europe today, bringing it closer to confederal unions, such as Switzerland or the United States.

In sum, the Economic Agreement is a fiscal federal model that grants the Basque Country the widest tax and financial powers while requiring the greatest accountability. With due regard for the principles laid out in the Economic Agreement, the Basque Country decides on the degree of fiscal pressure Basque taxpayers must bear, and collects all the income derived from the Basque tax system, while, decides on the expenditure on public services, taking the economic risk of these decisions and being the only one accountable to Basque citizens.

*See also:* Efficiency; Federal State; Unilateral risk

*Spanish:* Responsabilidad

*Basque:* Erantzukizun

## **ADJUSTMENT TO CONSUMPTION FOR MANUFACTURING EXCISE DUTIES**

The Economic Agreement model gives rise to several financial transfers between the State and the Basque Country.

The main financial flows between the Basque region and the central government under the Economic Agreement are the annual Quota paid by the Basque region to the State to cover its share of the general expenses defrayed by the Spanish state; and the adjustments for Value Added Tax paid by the State to the Basque region. So far, the adjustment for Manufacturing Excise Duties is less relevant in size than the two aforementioned flows and consists on a transfer from the Basque Country to the State. VAT and Manufacturing Excises are paid using the origin principle. The Basque Country collects the Manufacturing Excises when the tax liability arises in the Basque Country, however, the tax liability does not arise at the place of consumption point in the Manufacturing Excises. When the origin principle is used, there are ex post adjustments to ensure that the final collection in the Basque Country is equal to the consumption taxes paid by its residents.

In 1997, the Basque Country and the State agreed on the Excise Duties, the main source of indirect tax revenue in conjunction with the Value Added Tax. They were agreed as taxes subject to State legislation. Together with the tax agreement, an adjustment to the Excise Duties collection was fixed in the financial part of the Economic Agreement. Following the same rationale as in the Value Added Tax adjustment, in the five basic Excises Duties – namely, on Alcohol and Alcoholic beverages, on Intermediate Products, on Beer, on Mineral Oils and on Manufactured Tobacco- there is an adjustment for the differences between what the Basque Country collects and what the Basque residents pay for these taxes. In contrast to the VAT adjustment, the State is the overall beneficiary of the sum of the Excise adjustments.

At that time, it was also agreed that the transfer of the collection of Excise Duties to the Basque Country should not change substantially the resources of the Basque Country. To ensure the financial neutrality of the transfer of the Excise Duties, some financial compensations were established. The compensation amounts are calculated by applying the difference between the imputation index -6.24 per cent- and the estimated percentage of consumption for the Basque Country to the revenue from each product taxed in the Excise Duty. Those payments could be in either direction. In practice, the financial compensation for Mineral Oils is paid by the Basque Country and the compensation for all the other Excises is paid by the State.

Manufacturing Excise Duties adjustments are calculated with the same methodology used in the Value Added Tax adjustment with the exception of the adjustment on the Excise Duty on Manufactured Tobacco. Thereby, for each of the Excises, the Basque Country receives a share -equal to the relative consumption of the taxed good- on the collection of the imports of the good, and receives -or pays- a compensation for the difference between the relative tax base accrued in the Basque Country and the relative consumption of Basque residents. In the case of the adjustment on the Duty on Manufactured Tobacco, there is no distinction between imports and domestic operations, and, in addition, there is not a fixed participation rate of the Basque Country Autonomous Community in the global adjustment.

In practice, the adjustment for Mineral Oils is negative and all the other adjustments are positive. The sum of all the excise adjustments is negative and, therefore, the final result is a transfer from the Basque Country to the State.

In accordance with the Economic Agreement, both the relative indexes or rates of Basque consumption and the relative rates of Basque Excise Duty collection capacity are fixed by the Quota Law and, thus, subject to revision every five years. Rates differ depending on each Excise Duty. In practice, all rates have remained unchanged since they were first set in 1997.

*Legal ref:* EA art. 54; QL art.15

*See also:* Adjustment to consumption for the Excise Duty on non-reusable plastic packaging; Adjustment to consumption for the Value Added Tax; Manufacturing Excise Duties; Quota; Quota: legal concept; Quota Law; Quota methodology

*Spanish:* Ajuste a consumo en los Impuestos Especiales de Fabricación

*Basque:* Fabrikazioaren gaineko Zerga Bereziatan kontsumoaren doikuntza

## **ADJUSTMENT TO CONSUMPTION FOR EXCISE DUTY ON NON-REUSABLE PLASTIC PACKAGING.**

The Economic Agreement model gives rise to several financial transfers between the State and the Basque Country.

The main financial flows between the Basque region and the central government under the Economic Agreement are the annual Quota paid by the Basque region to the State to cover its share of the general expenses defrayed by the Spanish state; and the adjustments for Value Added Tax paid by the State to the Basque region. So far, the adjustments for Excise Duties are less relevant in size than the two aforementioned flows and consists on a transfer from the Basque Country to the State. VAT and Excises Duties are paid using the origin principle. The Basque Country collects the Manufacturing Excises and the Excise Duty on non-reusable plastic packaging whenever the tax liability arises in the Basque Country. However, the tax liability does not arise at the place of consumption in the Excises. When the origin principle is used, there are ex post tax collection adjustments to ensure that the final tax income in the Basque Country is equal to the consumption taxes paid by its residents.

In 1997, the Basque Country and the State agreed on the Excise Duties, the main source of indirect tax revenue in conjunction with the Value Added Tax. They were agreed as taxes subject to State legislation. Together with the tax agreement, an adjustment to the Excise Duties collection was fixed in the financial part of the Economic Agreement. Following the same rationale as in the Value Added Tax adjustment, in the five basic Excises Duties – namely, on Alcohol and Alcoholic beverages, on Intermediate Products, on Beer, on Mineral Oils and on Manufactured Tobacco- there is an adjustment for the differences between what the Basque Country collects and what the Basque residents pay for these taxes.



In 2022, a new Excise Duty was incorporated in the Spanish tax system, by virtue of the Law 7/2022 (SP), April 8, on waste and contaminated soils for a circular economy; this is, the Excise Duty on non-reusable plastic packaging.

The Basque region and the central government agreed on this Excise Duty and its adjustment to consumption in the meeting of the Joint Committee on the Economic Agreement on November 17, 2022. This agreement was passed by the Law 9/2023 (SP), April 3, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country.

Regarding this Excise Duty, the distortion between the collection effectively obtained in accordance with the agreed connecting factors, and the economic event, which is the use of such packing imputable to the Basque Country, is also corrected by means of an adjustment.

This adjustment mechanism is calculated following the same methodology as the Manufacturing Excise Duties adjustments, except for the adjustment on the Excise Duty on Manufactured Tobacco, and the Value Added Tax adjustment. Thereby, the Basque Country receives a share -equal to the relative consumption of the taxed goods- on the collection of the imports of the good, and receives -or pays- a compensation for the difference between the relative tax base accrued in the Basque Country and the relative consumption of Basque residents. Therefore, the adjustment has two components, the first one is the actual collection of the Excise Duty obtained by the State for imports, and the second one which relates the collection of each of the tax administrations, central or Basque, with their respective collection capacity, which is focused on the efficiency or capacity to collect of one and the other, for the purpose of taking into consideration that of the administration which is less efficient.

In accordance with the Economic Agreement, both the relative rates or indexes of Basque consumption and the relative rates of Basque Excise Duty collection capacity are fixed by the Quota Law and, thus, subject to revision every five years. For instance, for the 2022-2026 quinquennium, both rates are: 3.657 per cent and 1.745 per cent, respectively.

*Legal ref:* EA art. 54a; QL art.16

*See also:* Adjustment to consumption for Manufacturing Excise Duties; Adjustment to consumption for the Tax on Fluorinated Greenhouse Gases; Adjustment to consumption for the Value Added Tax; Excise Duty on non-reusable plastic packaging; Quota; Quota: legal concept; Quota Law; Quota methodology

*Spanish:* Ajuste a consumo en el Impuesto Especial sobre Envases de Plástico no reutilizables

*Basque:* Berrerabili ezin diren Plastikozko Ontzien gaineko Zerga Berezian kontsumoaren doikuntza

## **ADJUSTMENT TO CONSUMPTION FOR THE TAX ON FLUORINATED GREENHOUSE GASES.**

The Economic Agreement model gives rise to several financial transfers between the State and the Basque Country.

The main financial flows between the Basque region and the central government under the Economic Agreement are the annual Quota paid by the Basque region to the State to cover its share of the general expenses defrayed by the Spanish state; and the adjustments for Value Added Tax paid by the State to the Basque region. So far, the adjustments for Excise Duties are less relevant in size than the two aforementioned flows and consists on a transfer from the Basque Country to the State. VAT and Excises Duties are paid using the origin principle. The Basque Country collects the Manufacturing Excises and the Excise Duty on non-reusable plastic packaging when the tax liability arises in the Basque Country. However, the tax liability does not arise at the place of consumption in the Excises. When the origin principle is used, there are ex post tax collection adjustments to ensure that the final tax income in the Basque Country is equal to the consumption taxes paid by its residents.

In 1997, the Basque Country and the State agreed on the Excise Duties, the main source of indirect tax revenue in conjunction with the Value Added Tax. They were agreed as taxes subject to State legislation. Together with the tax agreement, an adjustment to the Excise Duties collection was fixed in the financial part of the Economic Agreement. Following the same rationale as in the Value Added Tax adjustment, in the five basic Excises Duties – namely, on Alcohol and Alcoholic beverages, on Intermediate Products, on Beer, on Mineral Oils and on Manufactured Tobacco- there is an adjustment for the differences between what the Basque Country collects and what the Basque residents pay for these taxes. In 2022, a new Excise Duty was passed by, by virtue of the Law 7/2022 (SP), April 8, on waste and contaminated soils for a circular economy; this is, the Excise Duty on non-reusable plastic packaging. The Basque region and the central government agreed on this Excise Duty and its adjustment to consumption in the meeting of the Joint Committee on the Economic Agreement on November 17, 2022, and passed by the Law 9/2023 (SP), April 3, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country.

In 2022 as well, the Law 14/2022 (SP), July 8, amending Law 19/2013 (SP), December 9, on transparency, access to public information and good governance, in order to regulate the statistics of micro, small and medium-sized enterprises (SMEs) in public procurement, redrafted Article 5 of the Law 16/2013 (SP), October 29, which establishes certain environmental taxation measures and adopts other tax and financial measures. Said article amends the regulation of the Tax on Fluorinated Greenhouse Gases, modifying its structure to bring it closer to that of an Excise Duty, even though it is not technically a duty of that kind.

Again, in economic terms, the place where the production of a wide range of goods and services takes place does not really correspond to the territory where the economic events that give rise to taxation, such as consumption, occur. In this case the use of Fluorinated Greenhouse Gases is taxed, while the taxable event is the manufacture, importation, or intra-Community acquisition, or even the irregular tenure of the products subject to the tax.

Consequently, it was also necessary to agree on the consumption adjustment method for the Tax on Fluorinated Greenhouse Gases, which took place at the meeting of the Joint Committee on the Economic Agreement on 17 November 2022. This agreement was passed by the Law 9/2023 (SP), April 3, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country.

This adjustment mechanism is calculated following the same methodology as the Manufacturing Excise Duties adjustments, except for the adjustment on the Excise Duty on Manufactured Tobacco, the Excise Duty on non-reusable plastic packaging, and the Value Added Tax adjustment. Thereby, the Basque Country receives a share - equal to the relative consumption of the taxed good- on the collection of the imports of the good, and receives -or pays- a compensation for the difference between the relative tax base accrued in the Basque Country and the relative consumption of Basque residents. Therefore, the adjustment has two components, the first one is the actual collection of the tax obtained by the State for imports, and the second one which relates the collection of each of the tax administrations, central or Basque, with their respective collection capacity, which is focused on the efficiency to collect of one and the other, for the purpose of taking into consideration that of the administration which is less efficient.

In accordance with the Economic Agreement, both the relative rates or indexes of Basque consumption and the relative rates of Basque Excise Duty collection capacity are fixed by the Quota Law and, thus, subject to revision every five years. For instance, for the 2022-2026 quinquennium, both rates are: 4.337 per cent and 3.994 per cent, respectively.

*Legal ref:* EA art. 54b; QL art.17

*See also:* Adjustment to consumption for Manufacturing Excise Duties; Adjustment to consumption for the Excise Duty on non-reusable plastic packaging; Adjustment to consumption for the Value Added Tax; Tax on Fluorinated Greenhouse Gases, Quota; Quota: legal concept; Quota Law; Quota methodology

*Spanish:* Ajuste a consumo por el Impuesto sobre los Gases Fluorados de Efecto Invernadero

*Basque:* Berotegi-efektuko Gas Fluordunen gaineko Zergan kontsumoaren doikuntza

## **ADJUSTMENT TO CONSUMPTION FOR THE VALUE ADDED TAX**

The Economic Agreement model gives rise to several financial transfers between the State and the Basque Country.

The main financial flows between the Basque region and the central government under the Economic Agreement are the annual Quota paid by the Basque region to the State to cover its share of the general expenses defrayed by the Spanish state; and the adjustments for the Value Added Tax paid by the State to the Basque region. So far, the adjustment for Excise Duties is less relevant in size than the two aforementioned

flows and is a transfer from the Basque Country to the State. VAT and Manufacturing Excises are paid using the origin principle. When the origin principle is used, there are ex post tax collection adjustments to ensure that the final tax income in the Basque Country is equal to the consumption taxes paid by its residents. The VAT adjustment compensates for the difference between how much the Basque provincial treasuries collect - VAT on the value added created in the Basque Country-, and what it should collect -VAT on the consumption of the residents in the Basque Country-. The aim is to ensure that the final VAT resources of the Basque region are relative to its weight in Spain's total consumption.

In 1985, the Value Added Tax was agreed between the Basque Country and the State as an agreed tax subject to State legislation. Together with the tax agreement, an adjustment to the VAT collection was fixed in the financial part of the Economic Agreement. The Economic Agreement differentiates two parts in the VAT adjustment. First, an adjustment for the VAT on imported goods from outside the EU that the State collects exclusively, even if some of these goods are consumed in the Basque Country. This adjustment aims to give the Basque region a share relative to the consumption of Basque residents. In order to meet said aim, the State makes a transfer equal to the relative consumption of the Basque Country multiplied by the VAT collected on imported goods.

The second transfer is the so-called VAT adjustment for the internal market. According to the connecting factors in the Economic Agreement, the VAT collected by the Basque Country is proportional to the added value created by the companies in the region. On the other hand, the VAT paid by the residents in the Basque Country is proportional to their consumption. It is necessary, then, to adjust for the differences between the value added created in the Basque Country and the Basque consumption. According to tax and economic data, the residents in the Basque Country are paying more VAT than what the Basque provincial Treasuries are collecting, and, therefore, the State makes a transfer for the difference.

Under the Economic Agreement, both the relative rate or index of Basque consumption and the relative rate or index of Basque VAT collection capacity are fixed by the Quota Law and, thus, subject to revision every five years. In practice, both rates have remained unchanged since they were first set in 1985: 6.875 per cent and 5.765 per cent, respectively.

The VAT adjustment is the sum of both aforementioned adjustments

In 2017 and 2019, the European Commission undertook an ambitious reform of the Value Added Tax in which, through various phases, it sought to design a system compatible with a changing, globalised world in which consumption decisions and the provision of goods and services are no longer local and national, as the economy and consumers themselves have adapted to an increasingly digital environment. The reform is aimed at modernising and simplifying Value Added Tax on cross-border e-commerce and its pillars are based on the reform of the EU distance selling regime, the application of the one-stop shop mechanism, as well as equal treatment and taxation for EU and non-EU suppliers. All these changes required the transposition of several European Directives by Spain and also the transposition into the foral tax systems

within the framework of the Economic Agreement. Therefore, on 29 July 2021 the Joint Committee on the Economic Agreement agreed on the connecting factors in regard to the transposition of the special scheme for taxable entrepreneurs and professionals, established in the European Union but not in the Member State of consumption, who supply services to non-taxable persons, make distance sales of goods within the European Union, and certain domestic supplies of goods by electronic interfaces, and of the special scheme for distance sales of goods imported from third territories or third countries (OSS VAT), based on the tax at destination and the one-stop-shop mechanism.

Consequently, it was also necessary to agree on the amendment of the consumption adjustment method for VAT, which took place at the meeting of the Joint Committee on the Economic Agreement on 17 November 2022. This agreement was passed by the Law 9/2023 (SP), April 3, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country.

*Legal ref:* EA art. 53; QL art.14

*See also:* Adjustment to consumption for Manufacturing Excise Duties; Adjustment to consumption for the Excise Duty on non-reusable plastic packaging; Adjustment to consumption for the Tax on Fluorinated Greenhouse Gases; Quota; Quota: legal concept; Quota Law; Quota methodology; Value Added Tax

*Spanish:* Ajuste a consumo en el Impuesto sobre el Valor Añadido

*Basque:* Balio Erantsiaren gaineko Zerga kontsumoaren doikuntza

## **ADJUSTMENT TO DIRECT TAXATION**

The Economic Agreement system gives rise to several adjustments to the tax collection of the Basque Country.

The main adjustments in quantity refer to indirect taxation, namely, the adjustments for Value Added Tax paid by the State to the Basque region, and the adjustment for Excise Duties less relevant in size and paid by the Basque Country to the State.

Adjustments to direct taxation are stipulated in article 55 (One) of the Economic Agreement.

Departing from the connecting factors agreed in general for withholding taxes, in the case of withholding taxes on income from assets issued by the State, regions or municipalities in the common territory, and in the case of withholding taxes on salaries of some State civil servants who provide services to the central administration in the Basque Country, the Treasury of the State levies said tax income.

In relation to these withholding taxes collected by the State, it should be noted that all taxpayers with fiscal residence in the Basque Country have to submit their personal income tax returns to the Treasury of one of the three Basque provinces. Therefore, even though the State collects the withheld taxes on certain incomes, that income is also reported to the Basque Treasuries. Since withheld taxes are credited against

personal income tax liabilities, the State collects the withholding taxes and the Basque provincial tax authorities give them back to taxpayers in the form of a tax credit.

The adjustment to direct taxation aims to compensate this revenue loss for the Basque Country, a consequence of the aforementioned connecting factors for withholding taxes laid out in articles 9 (One, first, b) and 7 (Two) of the Economic Agreement. To this end, an estimation of the taxes withheld by the State in the Basque Country is subtracted from the Quota.

*Legal ref:* EA art. 7; EA art 9; EA art. 55

*See also:* Adjustment to consumption for Manufacturing Excise Duties; Adjustment to consumption for Value Added Tax; Quota; Quota: legal concept; Quota Law

*Spanish:* Ajuste la imposición directa

*Basque:* Zuzeneko zergen doikuntza

## **ADJUSTMENT TO THE HORIZONTAL DISTRIBUTION SYSTEM OF RESOURCES**

Adjustments to the horizontal distribution system of resources are applicable to the distribution of resources at the Basque provincial level. The so-called horizontal coefficients of contribution determine what proportion of the general contribution to the Basque government is covered by each of the three provinces, as well as what proportion of the Quota payment to the central government they each pay.

Due to the fact that the Basque provinces make their contributions to the Basque government based on horizontal coefficients of contribution, and not on a proportion to their collection, differences between the coefficient of contribution and the collection of each territory may produce financial territorial unbalance.

In order to correct said unbalance, two final adjustments are made to the horizontal distribution of resources among the three Basque provinces to guarantee that there are not large differences between the horizontal contribution coefficients and the actual collection share of each province.

The first adjustment redistributes the collection of the main indirect taxes in the Basque Country -namely, Manufacturing Excises and Value Added Tax- among the Basque provinces using the horizontal coefficients. After this redistribution, each province obtains a share of those taxes equal to its horizontal coefficient and, consequently, what each territory finally obtains from the main indirect taxes is independent of its actual tax collection.

The second adjustment does not have a redistributive objective. Its purpose is to eliminate the differences between the contribution coefficients and the shares of the three provinces in the total tax resources. This adjustment is implemented through the so-called "General Adjustment Fund". This fund aims to guarantee that each province receives a minimum percentage of the total tax collection in the Basque Country. Once the aforementioned redistribution of the main indirect tax collection and the transfers from this fund have been executed, the share of each province must be equal to at

least 99 per cent of its horizontal coefficient, once deducted their contribution to the fund. The fund is endowed with contributions from the Basque government, in proportion to its vertical coefficient, and from any of the three provinces whose final share of total tax collection is above 99 per cent of its horizontal coefficient. The fund is relatively small since it is designed for final adjustment purposes only, with its maximum size capped at 1 per cent of the total common resources to be shared. Over the years, the three provinces have benefited from the fund at different budgetary years.

*See also:* Contributions Law; Horizontal coefficient; Intra-regional financial relations; Shared risk: intra-regional financial system

*Spanish:* Ajuste al sistema de distribución horizontal de recursos

*Basque:* Baliabideen banaketa horizontal-sistemaren doikuntza

## **AGREED TAX**

From an international tax perspective, agreed tax is a term unique to the Basque tax system. It refers to taxes within the Basque Economic Agreement. The Basque Economic Agreement lays down the criteria by virtue of which the regulation, levying, and inspection powers related to agreed taxes are distributed between the State -the Spanish central government- and the Basque Country. In particular, the Economic Agreement sets the criteria to distribute competence concerning specific, formal or material, areas in relation to each tax.

In fact, the Basque Economic Agreement guarantees a comprehensive tax system composed of agreed taxes to the Basque Country, with the exception of the powers the Agreement confers exclusively on the State; namely, the regulation, levying, and inspection of the Import Duties and Import Levies included under the Excise Duties and the Value Added Tax.

In order for tax powers to be ensured to the Basque Country, the Second Additional Provision of the Economic Agreement requires that in the event of a reform of the Spanish State tax legal system affecting any agreed tax, or of new taxes imposed by the State, both Administrations -the Basque and the Spanish- shall by mutual agreement proceed to adapt the Economic Agreement to the aforementioned modifications.

In the distribution of the competences related to the agreed taxes between the Basque Autonomous Community and the State, the Basque provinces -the so-called Historical Territories of Araba, Bizkaia and Gipuzkoa- are the ones entitled to maintain, establish and regulate, within their territory, their taxation systems. As a result, in the Basque Country there are three tax systems at the provincial level, strongly linked together and subject to various principles and limitations imposed by the 1978 Spanish Constitution, the Statute of Autonomy of the Basque Country and the Economic Agreement.

*Legal ref:* BSA art. 41; EA art. 5; EA from art. 6 to art. 37; EA Second Additional Provision.

*See also:* Agreed tax subject to autonomous legislation; Agreed tax subject to State legislation

*Compare:* Competence exclusive to the State; Non-agreed tax

*Spanish:* Impuesto concertado

*Basque:* Itundutako tributu

## **AGREED TAX SUBJECT TO AUTONOMOUS LEGISLATION**

From an international tax perspective, agreed tax subject to autonomous legislation is a term unique to the Basque tax system. Taking into consideration the powers the Economic Agreement confers upon the Basque Country, agreed taxes are divided into two categories: "Agreed taxes subject to autonomous legislation" and "Agreed taxes subject to State legislation". Agreed taxes subject to autonomous legislation are those taxes established and regulated by the Basque provincial parliaments –the so-called General Assemblies of the Historical Territories- in accordance with the powers and principles set in Part I of the Economic Agreement.

Pursuant to the Economic Agreement, main direct taxes are agreed taxes subject to autonomous legislation; that is, Personal Income Tax, Corporate Income Tax, Wealth Tax and Inheritance and Gift Tax. However, the Non-Residents Income Tax is a relevant exception among direct taxes due to the fact that it is an agreed tax subject to State legislation. In 2014, environmental taxes entered into the Economic Agreement also as direct taxes subject to State legislation. Among indirect taxes, Transfer Tax and Stamp Duty are the only ones subject to autonomous legislation.

Local taxes are also dependent on the legislative power of the General Assemblies of Araba, Bizkaia and Gipuzkoa. However, the Economic Agreement does not use the term "Agreed taxes subject to autonomous legislation". The reason for this is local taxes belong to the tax system of the municipal level. Pursuant to the Basque Statute of Autonomy, the tax and financial system of the Basque municipal level is an exclusive competence to the Basque region.

*Legal ref:* EA art. 6; EA art. 14; EA art.24 and 25; EA art.30; EA Fifth Additional Provision

*See also:* Agreed Tax; Corporate Income Tax; Inheritance and Gift Tax; Personal Income Tax; Wealth Tax; Temporary Solidarity Tax on Large Fortunes.

*Compare:* Agreed tax subject to State legislation

*AN:* In regard to the Transfer Tax and Stamp Duty, most English translations of the Economic Agreement creates a new category of agreed taxes, which could lead to misinterpretation. Instead of using the term "tax subject to autonomous legislation", the term "tax subject to Basque legislation" is used. However, the Economic Agreement, which was enacted by Law 12/2002 (SP), May 23, uses the term "*Impuesto concertado de normativa autónoma*" in Spanish.

*Spanish:* Impuesto concertado de normativa autónoma



*Basque:* Araugintza autonomoko itundutako tributu

## **AGREED TAX SUBJECT TO STATE LEGISLATION**

From an international tax perspective, it is a term unique to the Basque tax system. Taking into consideration the powers the Economic Agreement confers upon the Basque Country, agreed taxes are divided into two categories: "Agreed taxes subject to autonomous legislation" and "Agreed taxes subject to State legislation". The exact wording under the Economic Agreement for the second group is "(...) agreed tax subject to the same rules in terms of substance and form as those established at any given time by the State".

As can be inferred from the legal text, in regard to these taxes the Economic Agreement confers very narrow regulatory powers on the Basque provinces. To be more precise, they can only adopt their own tax forms and returns, which must include at least the same information as those of the common territory, and set payment deadlines for each settlement period, which shall not be substantially different from those set by the State tax administration.

Pursuant to the Economic Agreement, almost all indirect taxes are agreed taxes subject to State legislation, with the exception of the Transfer Tax and the Stamp Duty. Among them, Excise Duties and Value Added Tax are the most relevant in collection and number of taxpayers. Few direct taxes are within this group, being the most remarkable the Non-Residents Income Tax. In relation to the latter when the non-resident taxpayers operate through a permanent establishment, the Economic Agreement confers on the Basque provinces a wider scope of regulatory competence in comparison with the rest of the agreed taxes subject to State legislation.

*Legal ref:* EA art.21; EA art.26; EA from art. 33 to art. 34c

*See also:* Agreed tax; Excise Duties; Non-Residents Income Tax; Tax on Certain Digital Services; Tax on Financial Transactions; Tax on Fluorinated Greenhouse Gases; Tax on the deposit of waste in landfills, incineration, and co-incineration of waste; Value Added Tax

*Compare:* Agreed tax subject to autonomous legislation

*Spanish:* Impuesto concertado de normativa común

*Basque:* Araugintza erkideko itundutako tributu

## **ALLOCATING CRITERION**

*See:* Connecting factor

*Spanish:* Punto de conexión

*Basque:* Lotura-gune

## **ANTI-AVOIDANCE CLAUSE: FISCAL RESIDENCE**

The criteria for the determination of fiscal residence for individuals are set up in Article 43 of the Economic Agreement.

Individuals, with fiscal residence either in the common territory or in the Basque territory, who change their residence from one to the other, must fulfill their tax obligations according to the new fiscal residence. For Personal Income Tax purposes, notice of change of residence is regarded to be given by the submission of the Personal Income Tax return to the new tax administration.

Under some circumstances, changes of residence are not effective for Personal Income Tax and Wealth Tax purposes. Article 43 (Seven) of the Economic Agreement establishes an anti-avoidance clause in order to prevent individuals from changing their residence with the sole aim of paying fewer taxes. To this effect, the aforementioned article sets that changes of residence made for the purposes of achieving lower tax liability are not effective.

Unless the new fiscal residence extends continuously for a minimum period of three years, changes of residence are regarded as ineffective when the three following circumstances occur:

- For the year in which the change of residence occurs, or the year after, the tax base in the Personal Income Tax of the taxpayer is at least 50 per cent higher than the tax base in the year prior to the change. In the case of Personal Income Tax joint assessments, individualization rules must be applied for the calculation of said percentage.
- For the year in which the change of residence takes place, the taxpayer's effective tax debt for the purposes of the Personal Income Tax is lower than it would have been under the applicable legislation of the territory of residence prior to the change.
- The year after the change of residence, or the following year, the taxpayer becomes again fiscal resident of the territory of origin.

When pursuant to these rules it is deemed that no change of residence has taken place, individuals must file the necessary supplementary returns, including interest for late payment, to the tax administration of origin.

*Legal ref:* EA art.43

*See also:* Changes of fiscal domicile; Fiscal domicile; Fiscal residence

*Spanish:* Clausula anti-elusión: residencia fiscal

*Basque:* Sahieste fiskalaren aurkako klausula: egoliartasun fiskal

It is one of the three Historical Territories, or Basque *foral* provinces, which makes up the Autonomous Community of the Basque Country. By virtue of the Law 19/2011 (SP), July 5, Araba/Álava is the official name of a Basque province formerly officially named "Álava".

*Spanish:* Álava

*Basque:* Araba

## **ARBITRATION BOARD**

The Arbitration Board is one of the administrative organs laid down in Part III of the Economic Agreement. Its main duty is to resolve all disputes arising between the State tax administration and the Basque tax provincial administrations, or between the latter and the tax administration of any other Autonomous Community. The Arbitration Board solves conflicts over the application of the connecting factors in the Economic Agreement; over the determination of the proportion corresponding to each Administration in the cases of joint taxation for the purposes of the Corporate Income Tax or the Value Added Tax; and over the interpretation and application of the Economic Agreement in specific cases concerning individual tax relations. It is also in charge of resolving any disputes that may arise over the fiscal domicile of taxpayers.

The Arbitration Board is made up of three members appointed among experts of prestige with more than fifteen years of professional experience in tax and finance matters. Their appointment is formalized jointly by the Spanish Minister of Finance and by the Basque Minister of Finance for a period of six years. Due to controversies over the appointment of its members, the Arbitration Board began actually to function in 2008, though it was established since the approval of the 1981 Economic Agreement.

In adopting agreements, the so-called Resolutions, the Board must act in accordance with the general principles of Administrative Law and its Resolutions can only be challenged in the Supreme Court.

The Resolutions of the Arbitration Board immediately take effect and the referral of disputes to the Arbitration Board causes the suspension of tax administrative procedures in progress until the Board issues its Resolution. The proceedings for solving disputes in the Arbitration Board are laid down by virtue of the Royal Decree 1760/2007 (SG), December 28.

From 2018, new special procedures have been established with the aim to reinforce the principles of economy, celerity and efficiency, which rule the activity of the Arbitration Board, and the legal certainty and position of taxpayers. A new article 68 is added to the Economic Agreement in order to regulate the said procedures, that is, the summary procedure, the extension of effects procedure, and the enforcement procedure.

*Legal ref:* EA from art.65 to art. 68.

*See also:* Committee

*AN:* Concerning the Board's powers, English translations of the Economic Agreement are not as accurate as they should and, therefore, they may lead to misinterpretation. In fact, instead of using the expression "...connecting factors for agreed taxes", Article 66 (One, a) uses the wording "...points of connection for the taxes transferred hereunder". The use of "transferred taxes" in the scope of the Economic Agreement is an outstanding error.

*Spanish:* Junta Arbitral

*Basque:* Arbitraje Batzordea

### **ASSUMED CHARGE**

Both the Economic Agreement and the Quota legal texts in the English version use the term "assumed charge" which is a literal translation of the original Spanish term "*cargas asumidas*" to refer to the assumed competences of the Basque Country. The use of the term "assumed competence" is recommended for a better comprehension. However, if a literal translation of the original Spanish term is to be made the term 'assumed burden' may be a clearer financial term when referring to the cost of the assumed competences.

*See:* Assumed competence

*Compare:* Non-assumed charge; Non-assumed competence

*Spanish:* Carga asumida

*Basque:* Bereganatutako zama

### **ASSUMED COMPETENCE**

The Economic Agreement establishes the basis for the methodology to calculate the Quota. This methodology is complemented by the five-year period Quota Law.

The Basque Country is entitled to some competences to which other regions in Spain are not, with the exception of Navarre. The expense corresponding to these competences is allocated in the State General Budget and is known as "assumed charges or burdens" under the framework of the Basque financial system.

Article 52 of the Economic Agreement stipulates that the total amount of the non-assumed competences by the Basque Country is calculated by deducting the budget allocation in the State Budget corresponding to the assumed competences by the Basque Autonomous Community from the total State Budget expenditures. In other words, the value of the expenditure of the State in competences not assumed by the Basque Country is determined by the difference between the total State expenditure allocated in the Spanish General Budget and the expenditure of the State in competences assumed by the Basque Country.

In the five-year Quota Law, a global value figure is assigned for the assumed competences without listing them. It is the Basque Statute of Autonomy itself that determines which competences are exclusive to the Basque Country, some of which are also exclusive to Navarre or Catalonia. Among the assumed competences, the Basque police, the financing of local entities or the construction and maintenance of roads stand out.

Once the assumed competences of the Basque Country have been established, the next step is to evaluate them. That is, to determine how much the cost of providing these services for the Basque Country is. In accordance with the rationale of the Quota system, the cost of provision is determined by an imputation method as 6.24 percent of the expenditure of the central government in the rest of Spain in the competences assumed by the Basque Country.

This is the way to calculate how much the central government spends in the rest of the State in competences that are executed by the Basque Institutions in the Basque Autonomous Community.

*Legal ref:* EA art.52; EA art.57; QL art.4 and art.7

*See also:* Imputation index; Quota; Quota: legal concept; Quota Law; Quota methodology

*Compare:* Non-assumed competence

*Spanish:* Competencia asumida

*Basque:* Bereganatutako eskumen

## **ASSYMMETRICAL FEDERALISM**

Asymmetrical federalism refers to a federal system of government that does not confer the same legal powers and areas of jurisdiction upon all its constituent units. An asymmetric federation must have a federal constitution, within which all constituent units have the same formal status as state or region. However, in asymmetric federations some units have greater responsibilities or autonomy than others. Federal systems in India or Canada are examples of asymmetrical federalism.

The words federal or federation are absent from the 1978 Spanish Constitution, yet despite this omission, several scholars place Spain under the federal heading due to its many federal features which turn it into a federation in practice. Unlike other European Constitutions, such as the German one, the Spanish one omits any reference to the form of State, namely centralized, unitary, federal or regional. However, there is a high consensus on the fact that the level of decentralization of public expenditures and, to a lesser extent, of taxation powers, equals that of many formal or traditional federations.

One of the main features of the Spanish decentralization model is the radical asymmetry that exists between two groups of Autonomous Communities in tax and financial matters. On the one hand, pursuant to the First Additional Provision of the

1978 Spanish Constitution, the financial systems applicable to the *foral* territories, that is, the Basque Country and Navarre, which are known as *Concierto* and *Convenio* or Economic Agreement and Covenant. The main characteristic of the *foral* system is a maximum level of tax autonomy, which means that these two regions have separate tax systems and powers to pass tax legislation, with only a few limitations. Due to the fact that the central government is still in charge of providing some public services to these two Autonomous Communities, they have to make a contribution to the State's common expenditure. On the other hand, the other fifteen Autonomous Communities, under the so-called common system, have very limited taxation powers and, as a result, they have a greater financial dependence on the central government. Therefore, most of their revenues are provided by the central government and their financial system is largely based on transfers by the State via several equalization funds.

*See also:* Economic Agreement; Economic Agreement: Navarre; Federal State; First Additional Provision of the Spanish Constitution

*Compare:* Symmetrical federalism

*Spanish:* Federalismo asimétrico

*Basque:* Federalismo asimétriko

#### **ATTRIBUTION RATE**

Some English versions of both the Economic Agreement and the Quota legal texts use the term “attribution rate” to name the percentage of the non-assumed competences paid by the Basque Country to the State. However, the recommended term to be used in financial English would be “imputation index”.

*See:* Imputation index

*Spanish:* Índice de imputación

*Basque:* Egozpen-indize

#### **AUTONOMOUS COMMUNITY OF THE BASQUE COUNTRY**

*See:* Basque Autonomous Community

*Spanish:* Comunidad Autónoma del País Vasco

*Basque:* Euskal Autonomia Erkidegoa

#### **AZORES CASE (EU)**

In the *Azores* judgment, delivered on 6<sup>th</sup> September 2006, the Court of Justice of the European Union considered in detail for the first time the regional selectivity of tax

rules. The starting point was the existing settled case-law on the condition of selectivity. In accordance with said case-law, it was clear that Article 107 TFUE (ex Article 87(1) EC) requires assessment of whether, under a particular statutory scheme, a State tax measure is such as to “favor certain undertakings or the production of certain goods”, in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question. In order to assess the nature of a tax measure as state aid, “normal” taxation from which the contested regime departs in a selective manner is needed.

The main innovation of the *Azores* judgment was the Court did not consider that the Member State as a whole had to be always the reference framework for the analysis. Instead, it also considered the possibility that, for tax rules adopted by a local or regional authority, its territory alone formed the reference framework, if that authority was sufficiently autonomous in relation to the central government of the Member State.

In its earlier case-law on aid from local and regional authorities, the Court had stressed above all that such aid was attributable to the State. Following on from that, in its previous decision-making practice, the Commission had regarded rules which were not applicable to the whole national territory as selective measures, even if they were adopted by local or regional authorities.

In the *Azores* case, however, in determining the reference framework for assessing a reduced tax rate in part of a Member State, the Court distinguished three situations, following the line taken in the Opinion of Advocate General Geelhoed issued in the case.

In situation 1, the central government unilaterally decides that the applicable national tax rate should be reduced within a defined geographical area. In situation 2, fiscal sovereignty is transferred by the central State to all local authorities –fiscal symmetry– and, therefore, the said authorities have the autonomous power to decide, within the limit of the powers conferred on them, the tax rates applicable in the territory within their competence. Finally, in situation 3, a regional or local authority adopts, in the exercise of sufficiently autonomous powers in relation to the central power, which other authorities do not hold –fiscal asymmetry–, a tax rate lower than the national rate which is applicable only to undertakings in the territory within its competence.

In accordance with the Advocate General’s Opinion, the measure is undoubtedly selective in situation 1. The reason for this is that the State level establishes both the general standard and the regional difference; being so, only the State as a whole can be taken as the reference framework. In situation 2, there is no normal taxation applying to the State territory as a whole from which the rules of the individual local or regional authorities depart in an advantageous manner. The relevant local rules, therefore, stand in isolation and the Opinion concludes that they are not selective.

An asymmetrical division of competences characterizes situation 3. In some areas, the local or regional authorities have certain rule-making powers that are held by the central authorities in the rest of the national territory. The crucial factor is the level of autonomy enjoyed by the local and regional authorities in their legislative activity. If the contested measure adopted by the local authority was adopted in the exercise of

sufficiently autonomous powers, situation 3 is comparable with situation 2. The rules of several legislators acting on the grounds of their own competence – here the central State and the local and regional authorities – do not have a common reference framework.

Assuming Advocate General Geelhoed's Opinion, the Court linked the question of whether sufficient autonomy exists to three criteria that must be met cumulatively: institutional autonomy, procedural autonomy, and financial autonomy. In 2008, the European Court applied these criteria in assessing the regional selectivity of the Basque Corporate Income Tax legislation.

*See also:* Institutional autonomy (EU); Financial autonomy (EU); Procedural autonomy (EU); UGT-La Rioja case ("Basque Economic Agreement" case-EU); Regional tax state aid

*Case-law:* Judgment 6 September 2006 of the Court of Justice in Case C-88/03 *Portuguese Republic v. Commission of the European Communities*.

*Spanish:* Caso Azores (UE)

*Basque:* Azores Kasu (EB)



# B

## **BASQUE AUTONOMOUS COMMUNITY**

For purely practical reasons Spanish autonomous communities are regularly referred to in literature in English as “regions” and their governments as “regional governments”, since “autonomous community” is a term unique to the Spanish decentralized setup and “region” is its closest generic equivalent in English. As a result, “autonomous community” refers to the regional level of political administration, widely used in federalism literature in English.

Instead of “Basque Autonomous Community”, tax and financial legal texts more commonly use the term “Basque Country”.

*See also:* Basque Country

*Spanish:* Comunidad Autónoma del País Vasco

*Basque:* Euskal Autonomia Erkidegoa

## **BASQUE COUNCIL OF PUBLIC FINANCES**

Part II of the Historical Territories Law organizes the General Treasury of the Basque Autonomous Community and the Provincial Treasuries of the Historical Territories, devoting the Second Chapter to the distribution of resources between both tiers of government with respect to the principles of collaboration and solidarity, since the provincial level raises the tax revenues to be spent mainly by the regional government.

Article 42 (a) of the Basque Statute of Autonomy stipulates that the revenue of the General Treasury of the Basque Country shall consist of the monetary contributions of the Historical Territories to the budget expenditure of the Basque Country. A Law of the Basque Parliament -the so-called Contributions Law- establishes the criteria for equitable distribution of the resources, once agreed by both the regional and the provincial levels of government.

The Basque Council of Public Finances, set up in Article 28 of the Historical Territories Law, is the parity committee in charge of determining how the tax revenues raised by the three Basque provinces should be distributed between the regional government and the provinces in order to finance their respective competences, in accordance with the criteria stipulated in Article 22 of the aforementioned law, and then set in the Contributions Law approved by the Basque Parliament.

The Basque Council of Public Finance is comprised of six members, three appointed by the Basque regional government and the other three by the provincial governments. The Council is chaired by a representative member of the Basque Government, who is

in charge of the call for meetings on his or her own initiative, or at the request of any of the provincial representatives. The Council adopts its agreements by an absolute majority, except in those cases in which the law requires a qualified majority.

In 2016, Article 28 of the Historical Territories Law was amended by the Law 2/2016 (BP), April 7, on the Local Institutions of the Basque Country. Among other aims, this Law reinforces the role of the Basque Council of Public Finances in regard to Basque municipalities. To this end, said Law guarantees the active participation of the representatives of the Basque municipalities in the decision processes within the Basque Country that may directly affect them. To this effect, three representatives of the Basque municipal level take part in the meetings of the Basque Council of Public Finances when the agenda includes matters of their interest.

The Basque Council of Public Finances usually meets twice per year, once in February to settle the final revenues for the previous calendar year and, thus, the final contributions, and once in October to draw up the Basque income budgets for both the provincial and regional levels for the coming year.

*Legal ref:* BSA art. 42; HTL art. 22; HTL art. 28

*See also:* Contributions Law; Historical Territories Law; Municipal Law

*Spanish:* Consejo Vasco de Finanzas Publicas

*Basque:* Herri Dirubideen Euskal Kontseilua

## **BASQUE COUNTRY**

As used in the Basque tax and financial system, it refers to the administrative and political organization encompassing the three Historical Territories, that is, the provinces of Araba, Bizkaia and Gipuzkoa. The Basque Country is one of the seventeen autonomous communities, or self-governing sub-state units, into which the 1978 Spanish Constitution structures “the State of Autonomies”. Its basic institutional legal framework is the Statute of Autonomy of the Basque Country, known as the Statute of Gernika, approved by Organic Law (SP) on December 18, 1979. Within this legal order, the Economic Agreement is a tax and financial pact between the Spanish central State and the Autonomous Community of the Basque Country.

Article 1 of the Basque Statute of Autonomy states: “The Basque People or Euskal-Herria, as an expression of their nationality (...), constitute an Autonomous Community within the Spanish State under the name of Euskadi or the Basque Country, in accordance with the Constitution and with this Statute, (...)”.

In this context, it should not be mistaken for the term “Basque Country” in its widest sense which, for historical reasons long prior to the creation of the 1978 Spanish State of autonomies, also incorporates Navarre - an autonomous community of its own nowadays- and the French territories of *Basse Navarre*, *Labourd* and *Soule* in the *Pyrénées-Atlantiques* Department, southwestern France. Since 1 January 2017, the said French provinces constitute an intercommunal structure: the *Communauté d'Agglomération du Basque* or the Basque Municipal Community.

*Legal ref:* BSA art.1

*See:* Autonomous Community of the Basque Country; Basque Autonomous Community

*Spanish:* País Vasco

*Basque:* Euskadi

## **BASQUE PARLIAMENT**

The Basque Parliament is the legislative body of the Basque Autonomous Community and the elected assembly to which the Basque Government is responsible. It is composed of seventy-five deputies representing citizens from the three provinces of the Basque region. Each province -Araba, Gipuzkoa and Bizkaia- elects the same number of deputies, despite having very different population densities. This means that the election of a representative for Bizkaia needs almost four times the votes of a representative for Araba and one and a half time the votes of a representative for Gipuzkoa.

This electoral system is unique within Spain and differs from the ones applicable in other Autonomous Communities, which include the criterion of population in addition to the territorial representation. The reason for this is that in the case of the Basque Country, for historical reasons, relevant competences do not belong to a unitary subject - the Autonomous Community- but to the three Historical Territories.

Pursuant to the First Additional Provision of the 1978 Spanish Constitution, to the Statute of Autonomy and to the Economic Agreement, each Basque Historical Territory has its own tax system separate from the others. In each of the three tax systems, the General Assemblies -provincial parliament directly elected by the people- is competent to establish and regulate each particular tax. Therefore, the principle no taxation without representation is respected. However, these tax regulations -the so-called *foral* tax norms- are formally of administrative nature and not formal laws. The reason for this is that, according to the Basque Statute of Autonomy and to the Historical Territories Law, the power to pass by regulations that have the formal status of law belongs exclusively to the Basque Parliament at the regional level.

The Basque Statute of Autonomy, the Economic Agreement and the Historical Territories Law put the role of designing the framework for intra-regional tax coordination and harmonization, among the three provincial tax systems, in the hands of the Basque Parliament, with no powers to legislate in tax matters, in order to balance tax powers within the Basque Country.

In 1989, the Basque Parliament approved the Law 3/1989, of May 30, on Fiscal Harmonization, Coordination and Collaboration, known as the Tax Harmonization Law, which is the legal framework for the Basque Parliament to exercise the aforementioned competence.

*Legal ref:* BSA art.25; BSA art.41; EA art 2; HTL art. 6 and art.14

*See also:* Tax Harmonization Law; “Ironclad” of the *foral* tax norms

*Spanish:* Parlamento Vasco  
*Basque:* Eusko Legebiltzarra

## **BASQUE PROVINCE**

*See:* Historical Territory

*Spanish:* Provincia vasca  
*Basque:* Euskal probintzia

## **BASQUE REGION**

*See:* Basque Country; Basque Autonomous Community; Autonomous Community of the Basque Country

*Spanish:* Region vasca  
*Basque:* Euskal erregio

## **BASQUE TAX COORDINATION COMMITTEE**

The Basque Tax Coordination Committee was envisaged in the Tax Harmonization Law, passed by the Basque Parliament in 1989, as a means of ensuring that the three Basque provinces complied with the principle of internal tax harmonization required by the Basque Statute of Autonomy. The Committee comprises six representatives: three from the Basque Government and one from each of the three *foral* provinces. The Tax Harmonization Law stipulates that the provincial governments will each inform the Tax Coordination Committee of any changes they intend to implement to their tax legislation. The Committee, then, will issue a report within a month to determine whether the draft tax measures comply with the legislation on tax harmonization issued by the Basque Parliament.

In practice, since no harmonization law to develop the legal framework of the Tax Harmonization Law has ever been passed, the framework law, which lists the main aspects of the different taxes that should be harmonized, but does not provide rules for harmonizing them, is the only benchmark to which the Tax Coordination Committee refers.

The reports issued by the Committee are non-binding, but the Basque provincial tax authorities generally tend to follow their recommendations. Almost all reforms of direct taxes undertaken by the Basque provinces have been agreed within the Tax Coordination Committee in order to comply with the obligation of harmonizing the three tax provincial systems. The work of the Tax Coordination Committee seeks to ensure that any new tax measures introduced by the provincial governments are very similar in each of the three provinces and, as a result, they have usually avoided the introduction of tax measures that could cause a serious lack of harmonization between

the three tax systems. Lack of harmonization has exceptionally occurred, being the most remarkable occasion the one related to the tax rate of the Corporate Income Tax in 2007.

In 2016, the Third Final Provision of the 2/2016 Law (BP), April 7, on the Local Institutions of the Basque Country -known as the Municipal Law- amended the composition of the Basque Tax Coordination Committee. Since then, representatives of the municipal level participate in its meetings, when issues affecting the tax legal framework of Basque municipalities are in the meeting agenda.

*Legal ref:* BTHL art. 16

*See also:* Coordination principle; Municipal Law; Tax Harmonization; Tax Harmonization Law

*Spanish:* Órgano de Coordinación Tributaria de Euskadi

*Basque:* Euskadiko Zerga Koordinaziorako Organoa

## **BILATERALITY**

Bilateral relations or bilaterality between the Basque Country and the Spanish central government is one of the hallmarks of the Basque Economic Agreement. The Basque Statute of Autonomy, the Economic Agreement and other legislation deriving from it, - in particular, the five-yearly Quota Laws governing the Basque contribution to the State- require mutual agreement between the Basque and Spanish administrations on tax and financial matters. The bilaterally agreed legislation is then always presented to the Spanish Parliament as a single Act, thus, it can only be accepted or rejected following parliamentary debate -in practice it has always been accepted-, without being subject to the potential amendment of individual articles.

The Joint Committee on the Economic Agreement ensures the bilateral nature of the Economic Agreement. The existence and composition of this Joint Committee is set out in the Basque Statute of Autonomy and the Economic Agreement establishes its faculties and duties.

Aside from being a legal instrument, the Economic Agreement is the cornerstone of bilateral relationship in the area of taxation and finance. The very etymology of the word used to describe this type of pact, namely “agreement”, clearly shows the spirit with which this legal instrument was adopted.

The bilateral nature of the Economic Agreement was consolidated by its renewal in 2002. The agreed legal text keeps some of the most outstanding tools to guarantee bilateral relations. In addition, new instruments were set out in order to reinforce it.

The 1981 Economic Agreement established a specific clause to ensure bilateral relations in practice. The 2002 Economic Agreement reintegrates this clause in the Second Additional Provision. According to it, any amendments to the Economic Agreement shall be made by the same legal procedure followed for its enactment in the Spanish Parliament. In addition, said provision foresees that in the event of a

reform of the State tax legal system affecting the taxes subject to agreement; or of an alteration in the distribution of the regulatory competences affecting the scope of indirect taxation; or of new tax figures or payments on account, both Administrations shall by mutual agreement proceed to adapt the Economic Agreement to any aforementioned modifications with a quantification of the corresponding financial effects.

Aside from the Joint Committee on the Economic Agreement, the 2002 Economic Agreement also provides for another bilateral committee, that is, the Coordination and Legislative Evaluation Committee.

*Legal ref:* BSA art.41; EA from art. 61 to art.62; EA Second Additional Provision

*See also:* Committee; Coordination and Legislative Evaluation Committee; Joint Committee on the Economic Agreement

*Spanish:* Bilateralidad

*Basque:* Aldebikotasun

## **BISCAY**

In the past, e.g., in the Middle Ages, Bizkaia was rendered into English as Biscay, a seldom-used denomination at present.

*Spanish:* Vizcaya

*Basque:* Bizkaia

## **BIZKAIA**

It is one of the three Historical Territories, or Basque *foral* provinces, which makes up the Autonomous Community of the Basque Country. By virtue of the Law 19/2011 (SP), July 5, Bizkaia is the official name of a Basque province, formerly officially named "Vizcaya".

*Spanish:* Vizcaya

*Basque:* Bizkaia

## **BUSINESS TURNOVER**

For the purposes of the Corporate Income Tax, the Income Tax on Non-Residents with permanent establishments in Spain, and of the Value Added Tax, the distribution of the tax powers between the Basque Country and the central government is made in accordance with three connecting factors; namely, fiscal domicile, business turnover and place of transactions.

The definition of business turnover is stipulated under Article 14 of the Economic Agreement for the Corporate Income Tax, and under Article 27 of the Economic Agreement for the Value Added Tax. In both cases, the total business turnover is defined as follows: "The total income, net of Value Added Tax and the equivalency surcharge, where applicable, obtained for supplies of goods and of services performed in the course of the taxable person's business or professional activity".

The operations defined as such in the legislation on Value Added Tax shall have the consideration of supplies of goods and of services. In order to identify the supply of goods and/or services that are considered to be performed in the Basque Country, the Economic Agreement sets some rules to determine the place of performance of the transactions or operations.

Business turnover is a connecting factor that determines the size of the company in order to distribute tax liability between the Basque Country and the State. The Economic Agreement sets a maximum amount of business turnover over which the size of the company is big enough as to involve the taxpayer with the different tax administrations where the company operates; thus, the joint taxation rule applies. In such a case, the company or the permanent establishment will pay the Corporate Income Tax, the Income Tax on Non-Residents and the Value Added Tax in accordance with the business turnover performed in each territory, taking into account the supply of goods and services carried out in each territory. This proportion is expressed as a percentage of no more than two decimal numbers.

Under said figure of business turnover, tax powers are distributed between the Basque Country and the State in accordance with fiscal domicile, and thus the exclusive taxation rule applies. Therefore, in regard to the aforementioned taxes, legislation-except for the VAT purposes-, levying, and inspection powers are assigned to the Basque Country as long as the fiscal domicile of the company is in the Basque territory.

When enacted in 2002, the Economic Agreement set the figure of business turnover in 6 million euros in a fiscal year. Under that figure, Corporate Income Tax, Income Tax on Non-Residents with permanent establishments and Value Added Tax were paid to the tax administration of the fiscal domicile, irrespective of the territories where the company operated.

In accordance with the Sixth Additional Provision of the Economic Agreement, the figure of business turnover should be updated every five years by agreement of the Joint Commission on the Economic Agreement. Therefore, in 2007 the figure was increased up to 7 million euros.

Ten years went by without a new update. In 2018, the figure is finally increased up to 10 million euros. This new threshold is in line with the definition of small-sized enterprises, laid down in the European Commission Recommendation of 6 May 2003, concerning the definition of micro, small and medium-sized enterprises.

A specific rule for business turnover calculation is established in relation to the levy of the Gaming Activities Tax.

*Legal ref:* EA art.14 and 15, EA art. 19; EA art. 27; EA art. 36; EA Sixth Additional Provision

*See also:* Exclusive Taxation; Fiscal Domicile; Joint Taxation; Place of transactions

*AN:* It is to be noted that commonly the meaningless term in English “volume of operations” - a direct translation of the Spanish term “*volumen de operaciones*”- is used instead of the term “business turnover”.

*Spanish:* Volumen de operaciones

*Basque:* Eragiketen zenbateko



# C

## **CAPITAL TRANSFER TAX**

*See:* Transfer Tax and Stamp Duty

*Spanish:* Impuesto sobre Transmisiones Patrimoniales

*Basque:* Ondare Eskualdaketan gaineko Zerga

## **CHANGE OF FISCAL DOMICILE**

The criteria for the determination and for changes of fiscal domicile for individuals, corporations and other entities are set up in Article 43 of the Economic Agreement.

In regard to fiscal domicile, tax payers subject to Corporate Income Tax or to Income Tax on Non-Residents with permanent establishments must give notice to both the Basque and the State tax administrations of changes of fiscal domicile, which involve changes in competence concerning said taxes. In the case of individuals subject to Personal Income Tax, notification is deemed by the submission of the tax return to the new tax administration.

Article 43 establishes a rebuttable presumption concerning changes of fiscal domicile. To that end, it is presumed that no change of fiscal domicile of corporate persons has taken place if, in the year before or after the change, the company becomes a dormant company or ceases the economic activity.

It also establishes the proceedings for changes in fiscal domiciles or residence promoted by tax administrations. Changes in the fiscal domicile or residence of the taxpayer may be promoted by any of the tax administrations involved. Prior to referring a proposal of change of residence or domicile, the interested tax Administration may, in collaboration with the other tax administration, verify the fiscal residence or domicile of the taxpayer matching it to the tax census.

The administration shall send its proposal, together with the necessary documentation, to the other administration, which, in four months' time, must give an answer to the change of domicile and to the date of effect of the change. In case the proposed change is endorsed by the other administration, the new Administration shall inform the taxpayer. Should the Administrations fail to reach an agreement, the proceedings may continue before the Arbitration Board.

In the event of a change of fiscal residence or domicile, with previous agreement by both the Basque and the State tax Administrations or as a result of a resolution by the Arbitration Board, there is a rebuttable presumption in favor of the new fiscal residence or domicile for a period of three years after the date of said agreement or resolution.

*Legal ref:* EA art.43

*See also:* Anti-avoidance clause: fiscal residence; Fiscal Domicile; Fiscal residence

*Spanish:* Cambio de domicilio fiscal

*Basque:* Egoitza fiskalaren aldaketa

## **CHARTER**

In general terms, a charter is the grant of authority or rights, stating that the granter formally recognizes the prerogative of the recipient to exercise the rights specified. It is implicit that the granter retains sovereignty, and that the recipient admits a limited status within the relationship.

A city charter, town charter or provincial charter -generically, municipal charter- is a legal document establishing a municipality such as a city or town. The concept developed in Europe during the Middle Ages. Traditionally the granting of a charter gave a settlement and its inhabitants the right to privileges under the feudal system. These territories were often free, in the sense that they were directly protected by the king or emperor and were not part of a fief.

The English translation of the First Additional Provision of 1978 Spanish Constitution on the website of the Spanish Congress uses the term “charters” as an equivalent to the Spanish word *fueros*. However, this Spanish legal term and concept of *fueros* has a wide range of meanings, depending upon its context. In particular, in the case of the *fueros* of the Basque territories of Araba, Bizkaia, Guipuzkoa and also of Navarra, whose historical rights are currently constitutionally guaranteed and protected by said Additional Provision, the English term “charter” does not express accurately the historical origin and legal status linked to the said *fueros*.

*Legal ref:* SC First Additional Provision

*See also:* *Fuero*; *New Fuero*; *Old Fuero*

*Spanish:* *Fuero*

*Basque:* *Foru*

## **CENTRAL GOVERNMENT**

*See:* State

*Spanish:* Gobierno central

*Basque:* Gobernu zentral

## **COMMITTEE**

Part III of the Economic Agreement, under the heading "Committees and Arbitration Board of the Economic Agreement", lays down the regulation of the administrative organs in charge of solving any issue and dispute in regard to the interpretation and application of the Economic Agreement. Three different committees are set up: the Joint Committee on the Economic Agreement, the Coordination and Legislative Evaluation Committee, and the Arbitration Board of the Economic Agreement.

Due to the bilateral relations between the Basque Country and the State inherent to the Economic Agreement, the Joint Committee and the Legal Coordination and Legislative Evaluation Committee are made up of an equal number of representatives of both the State and the Basque administrations.

On the other hand, the Arbitration Board, due to its scope and competences, is made up of three members appointed by experts of professional renown with broad experience in tax and finance matters.

Finally, the Tax Harmonization Law sets up an intra-regional Committee, that is, the Basque Tax Coordination Committee, as a means of ensuring that the Basque provinces comply with the principle of internal tax harmonization required by the Basque Statute of Autonomy.

*Legal ref:* EA art.61 to 68; BTHL art.16

*See also:* Arbitration Board; Tax Harmonization Law; Bilaterality; Coordination and Legislative Evaluation Committee; Joint Committee on the Economic Agreement

*Spanish:* Comité

*Basque:* Batzorde

## **COMMON FINANCIAL SYSTEM**

A term unique to the 1978 Spanish State of Autonomies. It refers to one of the two financial systems for the regional level in Spain, being the other one the *foral* system.

One of the main features of the 1978 Spanish Constitution decentralization model is the radical asymmetry between the two different coexisting tax and financial models. One, the so-called "*foral* or *Quota* system", applicable to two autonomous communities; namely the Basque Country and Navarre, and the other, known as the "common system", is applied to the other fifteen autonomous communities. Strictly speaking, within the "common system" there are three other jurisdictions with special tax regimes: the Canary Islands and the autonomous cities of Ceuta y Melilla, which are a hybrid between municipalities and autonomous communities.

The common financial system is a revenue-sharing model under which the regions receive revenue transfers from the central government and obtain some additional resources via more limited regional taxation powers than the ones within the "*foral* system" and via local charges for services.

Each system, the *foral* and the common, is grounded on a different rationale. In the common system, the resources of each autonomous community depend on its

estimated need. In the *foral* system, the resources of the Basque Country and Navarre depend on fiscal capacity.

Whereas the *foral* system is the result of a bilateral agreement between each of the two *foral* communities and the central government, the common regime is the result of a multilateral agreement between the fifteen common autonomous communities and the central administration. The legal base of the common system of regional finance is the Organic Law 8/1980 (SP), September 22, on the Financing of the Autonomous Communities, known as *LOFCA*, the basic law that establishes the principles of the system. The specific provisions of this regional finance model are set in Law 22/2009 (SP), December 18.

The system of regional finance for the fifteen “common regime” autonomous communities consists of ceded taxes from the State to the autonomous communities, and a variety of equalization transfers. The aim of the system is the equalization of resources per unit of need, so that the same service level can be provided by all regions irrespective of their fiscal capacity. In contrast to the *foral* system, ceded taxes do not cover the whole range of taxes accrued in the territory of the respective autonomous community. Since 1997, several degrees of decentralized powers were granted to regional governments with regard to some of the ceded taxes, allowing autonomous communities, for instance, to set tax rates and establish tax credits. In 2009, tax decentralization in favor of regions stepped up and, thus, autonomous communities have progressively more powers over some of the ceded taxes.

*See also:* Asymmetrical federalism; Common territory; Financial capacity of the common system; Symmetrical federalism,

*Compare:* Financial system of the Basque Country; *Foral* financial system; *Foral* territory

*Spanish:* Regimen común de financiación

*Basque:* Lurralde erkideko finantza-sistema

## **COMMON TERRITORY**

In the Basque Economic Agreement scope, common territory refers to the Spanish territory with the exception of the Basque Autonomous Community.

The relevance of the term is remarkable. It is used more than seventy times along the legal text of the Economic Agreement. The correct understanding of this term turns out to be essential when distributing the power to tax between the Basque Country and the central government.

In a first approach, the term “common territory” seems to be fully identified with the term “common system”. In other words, the common territory would be the territory where the common system applies, that is, the non-*foral* fifteen autonomous communities.

Notwithstanding, disputes arose on which the territorial scope of the term “common territory” is. The question was whether the term “common territory” in the Economic Agreement includes the *Foral* Community of Navarre or not. The fact that the Economic Agreement is a bilateral tax and financial pact between the Basque Country and the State makes quite unclear the position of Navarre in this relation. Clearly, Navarre is not an actor in the Economic Agreement. Nevertheless, it would be contradictory, to a certain extent to presume, that, to the purpose of the Economic Agreement, the *foral* territory of Navarre should be included within the term “common territory”.

The same uncertainty arose regarding the Basque Country and its position in the Navarrese Economic Covenant, when setting relations in tax and financial matters between Navarre and the State.

In fact, the first formal dispute was between Navarre and the State and a Resolution on this issue by the Navarrese Arbitration Board was challenged to the Supreme Court. It was finally solved in 2009 when the Supreme Court established that "common territory" in the Economic Covenant must be considered integrated by the Spanish territory different from the territory of the *Foral* Community of Navarre, including the *foral* territories of the Basque Country.

In 2014, the Supreme Court issued three judgments, which confirmed the 2009 sentence and settled case-law stating that Navarre and the Basque Country must be regarded as “common territory” for the purposes of the application of the Navarrese Economic Covenant and of the Basque Economic Agreement, respectively.

*Case-law:* Spanish Supreme Court 2009, 26 May; Spanish Supreme Court 2014, 13 November; Spanish Supreme Court 2014, 14 November; Spanish Supreme Court 2014, 17 November. (OV Spanish)

*See also:* Common financial system; Common system; Navarre

*Compare:* Financial system of the Basque Country; *Foral* financial system; *Foral* territory

*Spanish:* Territorio común

*Basque:* Lurralde erkide

## **COMPETENCE EXCLUSIVE TO THE STATE**

According to Article 5 of the Economic Agreement in force, the only tax competences conferred exclusively on the State are the regulation, administration, inspection, review and collection of the import duties and import levies included under the Excise Duties and the Value Added Tax. Since 1981, when the first Economic Agreement of the post-Franco era was signed, competences exclusive to the State have been gradually reduced in favor of shared tax competences with the Basque Country. Excise Duties, e.g., taxes on tobacco and on alcohol, were competences exclusive to the State until 1997. Later on, in 2002, the Tax on Income of Non-Residents became an agreed tax. In 2014, environmental taxes entered into the agreement as well.

In accordance with the Basque Statute of Autonomy, the State is also the only administration entitled to the official inspection of the application of the Economic Agreement. According to the Economic Agreement, an annual report on the results should be issued by the State. However, no report has been issued since the imposition of such obligation in 1981. Therefore, in practice, this competence has turned into a mere formality reserved to the State by the Basque Statute of Autonomy.

*Legal ref:* BSA art.41; EA art.5

*See also:* Non-agreed tax

*Compare:* Agreed tax

*Spanish:* Competencia exclusiva del estado

*Basque:* Estatuaren eskumen eskusibo

### **CONNECTING FACTOR**

As far as international tax principles are concerned, it is a basic rule that there must be a reasonable connection between the taxing powers of the State or jurisdiction and the taxpayer or the concerned economic transaction. International taxation governs the taxing rights of sovereign jurisdictions. Each jurisdiction's rights depend on the fiscal jurisdiction. Connecting factors link the taxpayer to a specific tax jurisdiction.

In regard to the internal distribution of tax powers in Spain, the rationale of connecting factors in tax relations between the Basque Country and the central government in Spain is very close to the one behind international taxation.

The Economic Agreement lays down the allocating criteria or connecting factors in order to assign and distribute the tax regulation, levying and inspection powers between the Basque Country and the State administration, in respect of each agreed tax within the tax systems of the Basque provinces. The distribution model of these competences is based on the classic criteria used and determined in the OECD Model Tax Convention to prevent double taxation, in order to distribute tax powers between different jurisdictions. Connecting factors in the Economic Agreement give the Basque Country the right to tax based on personal criteria – fiscal residence or fiscal domicile of the taxpayer- and on the territorial criteria -business turnover and place of transactions-.

*See also:* Business turnover; Fiscal Domicile; Fiscal residence; Place of transactions

*AN:* In the Economic Agreement literature and legal texts in the English language, the term “points of connection” can be frequently found. However, it is not a standardized or clear term in international tax terminology.

*Spanish:* Punto de conexión

*Basque:* Lotura-gune

## CONSTITUTIONAL PRINCIPLE

In addition to the specific principles set in articles 2, 3 and 4 of the Economic Agreement, the Basque tax systems must respect the constitutional principles of taxation under the Spanish Constitution.

Article 31 of the 1978 Spanish Constitution establishes that “Everyone shall contribute to sustain public expenditure according to their ability to pay, through a fair tax system based on the principles of equality and progressive taxation, which in no case shall be of a confiscatory scope”. Therefore, the main tax constitutional principles are: ability to pay, generality, equality, progressive taxation, and prohibition of confiscation.

It is worth noting that the fulfilment of the equality principle is to be decided based on the practical effects of the law and not just on its wording. Equality is, thus, judged based on an appraisal of the law’s results.

In general, the Spanish Constitutional Court has been fairly deferential to the legislator, finding that the legislator has considerable scope for discretion under article 31 of the Spanish Constitution. The Constitutional Court, however, has decided on a few occasions the unconstitutionality of tax laws based on this provision. For example, in regard to the Personal Income Tax, the Constitutional Court deemed unconstitutional the obligation of joint taxation for families.

Article 41 (2, f) of the Basque Statute of Autonomy specifically obliges the Basque tax and finance system to be applied in respect for the principle of solidarity referred to in articles 138 and 156 of the Constitution. On the one hand, Article 138 of the Spanish sets that: “(1) The State guarantees the effective implementation of the principle of solidarity proclaimed in section 2 of the Constitution, by endeavouring to establish a fair and adequate economic balance between the different areas of the Spanish territory and taking into special consideration the circumstances pertaining to those which are islands.” On the other hand, Article 156 establishes that: “(1) The self-governing Communities shall enjoy financial autonomy for the development and exercise of their powers, in conformity with the principles of coordination with the State Treasury and solidarity among all Spaniards.”

*Legal ref:* SC art.31; SC art.138; SC art.156; BSA art.41.

*See also:* General principles; Cooperation principle; Coordination principle; Solidarity principle; Tax harmonization

*Case-law:* Among others, Spanish Constitutional Court 1989, 20 February; Spanish Constitutional Court 2000, 17 February (OV Spanish)

*Spanish:* Principio constitucional

*Basque:* Konstituzio-printzipio

## CONTRIBUTION

See: Contributions Law; Horizontal coefficient; Intra-regional financial relations; Shared risk : intra-regional financial system; Vertical coefficient

*Spanish:* Aportación

*Basque:* Ekarpen

## **CONTRIBUTIONS LAW**

Article 22 of the Historical Territories Law establishes that the Basque Council of Public Finances is in charge of approving the exact methodology for the distribution of resources, and for the calculation of the contribution of each Historical Territory to the Basque regional government's budget.

Likewise, Article 22 obligates the Government to propose the corresponding draft Contributions Law that incorporates the aforementioned methodology agreed by the Basque Council of Public Finances to the Basque Parliament. The Contributions Law must comprise a single article, thus, it is not subject to partial amendment by the political parties in the Basque Parliament. Said Law determines how much each province must transfer to the Basque regional government, as well as how much of the Basque Quota each must pay to the central government. It also recommends a minimum share of revenues each provincial government should give to municipalities in its territory.

Under the Historical Territories Law, each Contributions Law originally had to be valid for at least 3 tax years. Since 1992, however, the Contribution Laws have been five-yearly, so they are in force approximately during the same period of time as the five-yearly Quota laws governing the payment of the Basque region to the Spanish central government. In practice, all the Contribution Laws approved so far have tended to be very similar, since territorial conflicting interests make it very difficult to push through any changes to the calculation of the contributions.

The Contributions Law 2/2007 (BP), March 23, approves the methodology of distribution of resources and determination of the contributions of the provincial governments to the financing of the budgets of the Autonomous Community of the Basque Country applicable to the period 2007-2011. Pursuant to its final provision, this Contributions Law is in force since 2012 until a new Contributions Law is enacted. No new Contributions Law has been approved afterwards so the 2007 Law is the one currently in force.

*Legal ref:* HTL art.22

*See also:* Horizontal coefficient; Intra-regional relations: framework; Intra-regional financial relations; Shared risk: intra-regional financial system; Vertical coefficient.

*Spanish:* Ley de Aportaciones

*Basque:* Ekarpen Lege



## COOPERATION ON TAX ACTIVITY

The Economic Agreement imposes cooperation obligations on the State when the Basque provincial tax authorities have to carry out tax investigation and verification activity outside the Basque Country in order to levy taxes under their competence. To this effect, under request of the Basque *foral* Treasury responsible for the main tax procedure in accordance with the agreed connecting factors, the competent tax unit of the State Treasury, or that of the pertinent Autonomous Community when affecting ceded taxes, must carry out said tax investigation and verification activity.

In many cases, tax actions to be taken outside the Basque Country aim at getting information from financial institutions and from individuals or corporations engaged in banking and credit transactions with taxpayers under the authority of the Basque *foral* Treasuries.

Other cooperation obligations affect both the State tax administration and the Basque provincial tax administrations. In particular, when, as a consequence of their inspection and verification activities, any of both tax administrations gathers information of fiscal relevance for the other tax Administration, the former administration must notify the latter of said information.

*Legal ref:* EA art.45.

*See also:* Cooperation principle; Coordination on tax levy and inspection; Coordination principle; Exchange of tax information; General principles

*Spanish:* Colaboración en la actuación tributaria

*Basque:* Tributatu-jardunean lankidetza

## COOPERATION PRINCIPLE

Cooperation or collaboration is one of the fundamental principles underlying the Basque tax and financial system. The Basque Statute of Autonomy imposes it and refers to the Economic Agreement and to the Basque Parliament for its specification. Cooperation plays a main role in two different scopes, that is, *ad extra*, in the bilateral relationship between the Basque Country and the State, and, *ad intra*, within the Basque Country. In addition, it affects not only taxation matters but financial ones as well. As a result, it is quite a complex principle in theory and in practice. This principle is strongly connected to the coordination principle.

Article 2 of the Economic Agreement states that the taxation system established by the Historical Territories shall respect the cooperation principle with the State, in accordance with the rules laid down in the Economic Agreement. To this purpose, Article 4 of the Economic Agreement sets the three different scenarios for cooperation; namely the regulatory scope, the international scenario and the tax levy and inspection field. The Coordination and Legislative Evaluation Committee plays a main role in this scope.

In respect to financial matters, Article 48 of the Economic Agreement states that financial relations between the State and the Basque Country shall be governed by the cooperation principle with the State in matters of budgetary stability. To this effect, reaching agreements on coordination and commitments on cooperation in said matters is one of the duties of the Joint Committee on the Economic Agreement.

In the Basque intra-regional tax cooperation field, Article 41 of the Basque Statute of Autonomy imposes the cooperation or collaboration principle and refers to particular rules passed by the Basque Parliament. With this aim, in 1989 the Basque Parliament passed by the Law 3/1989 (BP), May 30, on Tax Harmonization, Coordination and Collaboration -known as the Basque Tax Harmonization Law-. According to this Law, cooperation is focused on promoting best practices of the three Basque territories in the levying, collection and inspection of taxes. To achieve this target, the cooperation principle requires the three tax administrations to exchange data and information among them. Under the provisions of this Law, the Basque Tax Coordination Committee was created in order to foster and safeguard the coordination and cooperation principles in practice within the Basque Country.

*Legal ref:* BSA art.41; EA art.2; EA art. 4; EA art.48; EA art.62; EA art. 64.

*See also:* Coordination and Legislative Evaluation Committee; Coordination principle; Exchange of tax regulations; Exchange of tax information; International cooperation

*Spanish:* Principio de colaboración

*Basque:* Lankidetzta-printzipio

## **COORDINATION AND LEGISLATIVE EVALUATION COMMITTEE**

The Coordination and Legislative Evaluation Committee is the bilateral administrative body in charge of resolving any concerns put forward on the application and execution of the Economic Agreement, mainly, all issues related to the practice of the cooperation principle as laid down in Article 4 of the Economic Agreement.

It is a bilateral high technical Committee on tax issues. It is made up of eight members, as follows: four representatives of the tax administration of the State and four representatives of the Autonomous Community appointed by the Basque Government, three of which shall be at the proposal of each of the respective *foral* provincial governments. In practice, the representation of the *foral* governments is assigned to the three provincial Ministers for Treasury and Finance, and the representation of the Basque Government to the Vice-Minister for Treasury and Finance of the Autonomous Community. The delegation of the State is made up of high officials of the Ministry of Finance, headed by the State Secretary of Finance. Since there are no provisions regarding the rules for adopting agreements within the Committee, general rules for administrative procedures are applicable.

The main duties of the Coordination and Legislative Evaluation Committee are related either to disputes concerning the evaluation of the draft tax legislation subject to information exchange between tax administrations, or to the resolution of tax rulings

put forward on the application of the connecting factors in the Economic Agreement. In the event of disagreement on the resolution, the dispute is to be referred to the Arbitration Board for its decision.

Some other tasks involve making studies, providing both tax administrations with uniform action criteria, analyzing cases and questions between both Administrations on inspection matters, or issuing reports requested by the Ministry of Finance, the Treasury and Finance Departments of the Basque Government or of the *Foral* Governments, and by the Arbitration Board.

*Legal ref:* EA art.63 and art. 64.

*See also:* Arbitration Board; Coordination on tax levy and inspection; Cooperation principle; Coordination principle; General principles

*AN:* Some English translations of the Economic Agreement use, along with the proper name, to name this Committee the denomination “Regulatory Assessment and Coordination Committee”, which can lead to misunderstandings.

*Spanish:* Comisión de Coordinación y Evaluación Normativa

*Basque:* Araugintza Koordinatu eta Ebaluatzeko Batzordea

## **COORDINATION ON TAX LEVY AND INSPECTION**

From 2018, a new approach is brought into the tax levy and inspection in the scope of the Economic Agreement; that is, new procedures are set for coordination in order to prevent conflicts arising from situations in which both, the Basque and the State tax administrations, have tax authority over the same economic transaction due to the fact that the taxpayers involved are subject to both tax administrations.

Two kinds of transactions are affected by the new coordination procedures: one, in regard to the regularization of transactions between related parties; the other, concerning a change of the tax category of transactions according to tax law, provided that the new category provokes a modification in the input or output tax in indirect taxation.

When, in accordance with the Economic Agreement, both the Basque and the State tax administrations are the competent authorities for the tax inspection and regularization of the abovementioned transactions, all tax administrations involved must coordinate their tax levy and inspection activities through the following procedure.

Prior to the submission of the proposal of regularization to the taxpayer or of the notice of reassessment, the tax administration acting on any of the both abovementioned transactions must inform the rest of the involved tax administrations of the factual and legal issues of the intended proposal of regularization.

In the event that observations over the proposal are not submitted by the rest of the tax administrations within two months, the proposal is deemed approved and all involved tax administrations must apply the approved criteria for the regularization of the taxes.

In the event that observations are submitted, they should be referred to the Coordination and Legislative Evaluation Committee wherein an agreement may be reached. In any event, two months after the observations are submitted without reaching an agreement, the Coordination and Legislative Evaluation Committee or any of the Administrations concerned can refer the dispute to the Arbitration Board within the following month. Within a month, the Board must resolve the controversy, after hearing the affected taxpayers, following the summary procedure laid down in Article 68 of the Economic Agreement.

*Legal ref:* EA art. 4; EA art.47 b; EA art. 68

*See also:* Arbitration Board; Coordination and Legislative Evaluation Committee; Coordination principle; General principles

*Spanish:* Coordinación en la exacción e inspección tributaria

*Basque:* Tributuen ordaintzeko eta ikuskatzeko koordinazio

## **COORDINATION PRINCIPLE**

Coordination is one of the fundamental principles underlying the Basque tax and financial system. The Basque Statute of Autonomy imposes it and refers to the Economic Agreement and to the Basque Parliament for its specification. Coordination plays a main role in two different scopes, that is, *ad extra*, in the bilateral relationship between the Basque Country and the State, and, *ad intra*, between the three provincial tax systems within the Basque Country. In addition, it affects not only taxation matters but financial ones as well. As a result, it is quite a complex principle in theory and in practice. This principle is strongly connected to the cooperation principle.

Article 2 of the Economic Agreement states that the taxation system established by the Basque Historical Territories shall respect the coordination principle with the State, in accordance with the rules laid down in the Economic Agreement. The bilateral nature of the Economic Agreement implies the need for coordination of both parts for the proper functioning of the system.

The Coordination and Legislative Evaluation Committee, one of the two bilateral Committees in the Economic Agreement, is the administrative body in charge of resolving any concerns put forward on the application and execution of the Economic Agreement, particularly pertaining to issues about connecting factors and how to apply them in relation to which a common coordinated interpretation is essential. However, reaching agreements between both parts sometimes becomes difficult and disputes arise. In this case, the State tax administration or the *foral* tax administrations can refer the dispute to the Arbitration Board for resolution.

In respect to financial matters, Article 48 of the Economic Agreement states that financial relations between the State and the Basque Country shall be governed by the coordination principle with the State in matters of budgetary stability. To this effect,

reaching agreements on coordination and cooperation commitments in said matters is one of the duties of the Joint Committee on the Economic Agreement.

In the Basque intra-regional tax cooperation field, Article 41 of the Basque Statute of Autonomy imposes the coordination principle and refers to particular rules passed by the Basque Parliament in these matters. In 1989 the Basque Parliament passed by the Law 3/1989 (BP), May 30, on Tax Harmonization, Coordination and Collaboration - known as the Basque Tax Harmonization Law. The Law sets two main fields for coordination among the three Basque tax administrations: the tax inspection activity regarding the economic sectors to be examined, and the criteria on tax rulings. Under the provisions of this Law, the Basque Tax Coordination Committee was created in order to foster and safeguard in practice the coordination and cooperation principles within the Basque Country.

*Legal ref:* BSA art.41; EA art.2; EA art. 4; EA art.48; EA art.61; EA art.64.

*See also:* Basque Tax Coordination Committee; Coordination and Legislative Evaluation Committee; General principles; Joint Committee on the Economic Agreement; Tax Harmonization Law

*Spanish:* Principio de coordinación

*Basque:* Koordinazioa-printzipio

## **CORPORATE INCOME TAX**

Under the Economic Agreement, the Corporate Income Tax is an agreed tax subject to autonomous legislation. As in the case of most direct taxes, the Basque Historical Territories have full capacity to regulate the Corporate Income Tax, subject to the general principles laid down in Article 2, 3 and 4 of the Economic Agreement. There are very few restrictions on the regulatory capacity of the Basque provinces, mainly in regard to withholding taxes and to groups of entities.

For the purposes of the Corporate Income Tax, the Non-Residents Income Tax for taxpayers operating through permanent establishments in Spain, and of the Value Added Tax, the distribution of tax powers between the Basque Country and the State is made in accordance with three connecting factors; namely, fiscal domicile, business turnover and place of transactions.

In the case of the Corporate Income tax, the tax powers under distribution between the two tax administrations are the following ones: the regulatory power, the levy and collection power and the inspection power. The general rule is that companies with fiscal domicile in the Basque Country and under a certain amount of business turnover are exclusively under the tax legislation and the tax authority of the Basque provinces. The rationale behind this allocation of tax power is to diminish the tax compliance costs for the smallest companies, which are better off under the jurisdiction of just one tax authority. In other words, this competence rule aims at simplicity in the application of the rather complex distribution of tax powers concerning the Corporate Income Tax in the Economic Agreement. On the contrary, the Economic Agreement considers a

bearable burden for bigger companies to be involved with the different tax administrations where they operate and under whose authority the profits are earned and, thus, the joint taxation rule applies.

Since the last modification of the Economic Agreement in effect from 2018, said figure of business turnover is updated from 7 to 10 million euros. Therefore, companies with fiscal domicile in the Basque Country and with a total business turnover in the previous year under 10 million euros are exclusively subject to the tax powers of the Basque provinces, regardless of where the company operates. And, vice versa, companies with fiscal domicile in the common territory and with a total business turnover in the previous year under 10 million euros are exclusively subject to the tax powers of the State, regardless of where they operate.

In the case of companies with a total business turnover in the previous year exceeding 10 million euros, Articles 14 and 19 of the Economic Agreement state that the Basque legislation and tax inspection are applicable to companies with fiscal domicile in the Basque Country, except for companies that performed 75 per cent or more of their total operations in the common territory, in which case, the Corporate Income Tax legislation and the tax inspection of the common territory is applicable. The mirroring distribution of tax powers is stated for companies with fiscal domicile in the common territory and operating 75 per cent or more of their total operations in the Basque Country, with an exception for entities comprising a group of entities.

In regard to levy and collection powers, Article 15 stipulates that the Basque provincial Treasuries are the only tax authorities responsible for collecting and levying the Corporate Income Tax on companies with fiscal domicile in the Basque Country, whose business turnover in the previous year did not exceed 10 million euros. And, vice versa, the State Treasury is responsible for collecting and levying the Corporate Income Tax on companies with fiscal domicile in the common territory whose business turnover in the previous year did not exceed 10 million euros.

Joint taxation only affects the levy and collection powers of the tax administrations in the following situation. Companies with business turnover in the previous year exceeding 10 million euros, regardless of the territory where their fiscal domicile is, must pay the Corporate Income Tax to each tax administration, that is, Araba, Bizkaia, Gipuzkoa, Navarre and the State, in accordance with the business turnover corresponding to the operations performed in each territory during the year. Article 16 of the Economic Agreement lays down the criteria to determine the place of transactions and, consequently, the proportion of business turnover performed in each territory.

From 2018, following the criteria of the Board of Arbitration in several Resolutions on administrative tax conflicts, a new paragraph has been included in Article 19 of the Economic Agreement to prevent that, in cases of joint taxation wherein the tax inspection authority corresponds exclusively to a tax administration, adjustments are not unilaterally imposed provided that they have an effect on the tax levy power of other Administrations. To this end, the new provision entitles the tax administrations with no tax power for inspection to verify all operations that have an effect on the

determination of the business turnover for the purpose of informing the competent tax administration for inspection.

*Legal ref:* EA art.14 and art. 15; EA art.19

*See also:* Business turnover; Corporate Income Tax: groups of entities; Corporate Income Tax: joint taxation; Fiscal Domicile; Place of transactions

*Spanish:* Impuesto sobre Sociedades

*Basque:* Sozietateen gaineko Zerga

## **CORPORATE INCOME TAX: ECONOMIC INTEREST GROUPING AND UTE**

*UTE (Unión Temporal de Empresas)* is a Spanish legal term meaning that two or more companies or individuals, submitting a joint offer to a public bid, expressly commit themselves to incorporate a *UTE* in case they are finally awarded the contract. *UTES* do not have legal personality, notwithstanding their being incorporated through a public deed by a notary public. Their only aim is to carry out the contract they have been awarded, so they are extinguished at the end of said contract. It is usually translated into English as “temporary consortium” or “joint venture”; both terms are similar to *UTE* but they differ from the Spanish term in some relevant characteristics.

Economic Interest Grouping and *UTE* are both taxpayers subject to Corporate Income Tax. Therefore, the connecting factors for this tax under the Economic Agreement are also applicable to them, as well as some specific rules established in Article 20 (1) of the Economic Agreement.

In particular, the Basque Corporate Income Tax *foral* norms will only be applicable to the Economic Interest Groupings and to the *UTES* when all the entities comprising the Economic Interest Grouping or the *UTE* are individually subject to the Corporate Income Tax of any of the three Basque provinces. Should some of the entities be subject individually to the Basque legislation and some other to the State legislation, the Corporate Income Tax Law of the State would be the applicable regulation to the Economic Interest Grouping or the *UTE* they comprise.

The Economic Interest Grouping or the *UTE* must attribute to the entities within them their share of business turnover from the operations performed in each territory, which then said entities shall take into account in determining the proportion of operations they perform in each territory.

*Legal ref:* EA art.20

*See also:* Business turnover; Corporate Income Tax; Fiscal Domicile; Place of transactions

*AN:* English translations of Article 20 (1) of the Economic Agreement do not fully respect the meaning of the Spanish original version.

*Spanish:* Impuesto sobre Sociedades: Agrupación de Interés Económico y UTE

*Basque:* Sozietateen gaineko Zerga: Interes Ekonomikoko Elkartea eta ABEE

## **CORPORATE INCOME TAX: GROUP OF ENTITIES**

Under both the Basque and the State Corporate Income tax legislation, groups of entities apply the tax consolidation mechanism under which the results of the group are consolidated for tax purposes, inter-company transactions thereby being eliminated.

General rules in the Economic Agreement for the Corporate Income Tax are applicable to groups of entities with some particularities.

First, the Basque tax consolidation system is only applicable to groups of entities when all the entities comprising the group are individually subject to the legislation of any of the three Basque Historical Territories. In parallel, the tax consolidation system of the common territory is only applicable to groups of entities when all the companies comprising the group are individually subject to the Corporate Income Tax of the common territory. For these purposes, entities subject to the other legislation, Basque or common, are excluded from the group of entities for tax purposes.

Since 2018, the rules for the application of the Basque Corporate Income Tax to individual companies differ depending whether they comprise a tax consolidated group or not. In general, Article 14 and Article 19 of the Economic Agreement state that, in the case of companies with a total business turnover in the previous year exceeding 10 million euros, the Basque legislation and tax inspection are applicable for companies with fiscal domicile in the Basque Country, except for companies that performed 75 per cent or more of their total operations in the common territory, in which case, the Corporate Income Tax legislation and the tax inspection of the common territory is applicable.

The mirroring distribution of tax powers is stated for companies with fiscal domicile in the common territory, except for entities comprising a tax group in which case 100 per cent of the business turnover, instead of the 75 per cent, is required to be performed in the Basque Country for the Basque Corporate Income Tax to be applicable individually to the company as to be eligible for the application of the Basque tax consolidated group of companies regulation.

Second, in regard to the regulatory power, although the Basque provinces have full capacity to regulate the Corporate Income tax, one of the few restrictions they bear concerns the tax consolidated system for groups of entities. To this effect, the Basque provinces must apply identical rules to those of the State for defining the following items within the Basque tax consolidated system: group of entities, dominant entity, dependent entity, representative entity, degrees of control, and inter-company transactions within the group.

In the application of the tax consolidation system, there are also some specific rules different from the general rules in the Corporate Income Tax. In the case of groups of entities, joint taxation rules apply for the levying and collection of the Corporate Income Tax, regardless of the performed amount of business turnover. Therefore, the entities comprising the group must submit individually their Corporate Income Tax tax



return to its tax authority, in accordance with the general rules to distribute tax competence over Corporate Income tax, whereas the dominant entity or the representative entity must pay or be refunded the Corporate Income Tax to or by all the tax administrations involved; namely, the State, each of the Basque tax administrations, and Navarre, according to the business turnover performed in each of said territories.

In order to calculate the business turnover performed in each territory, the business turnover of each of the entities in the group performed individually therein must be added, before any inter-group transaction is eliminated.

*Legal ref:* EA art.14; EA art.19 and art. 20.

*See also:* Business turnover; Corporate Income Tax; Fiscal Domicile; Place of transactions

*Spanish:* Impuesto sobre Sociedades: grupo de entidades

*Basque:* Sozietateen gaineko Zerga: talde-fiskal

## **CORPORATE INCOME TAX: JOINT TAXATION**

In regard to levy and collection powers, Article 15 stipulates that the Basque provincial Treasuries are the only tax authorities responsible for collecting and levying the Corporate Income Tax on companies with fiscal domicile in the Basque Country, whose business turnover in the previous year did not exceed 10 million euros; and, vice versa, the State Treasury is responsible for collecting and levying the Corporate Income Tax on companies with fiscal domicile in the common territory, whose business turnover in the previous year did not exceed 10 million euros.

Joint taxation only affects the levy and collection powers of the tax administrations in one situation. In particular, companies with business turnover in the previous year exceeding 10 million euros, regardless of the territory where their fiscal domicile is, must pay the Corporate Income Tax to each tax administration, that is, Araba, Bizkaia, Gipuzkoa, Navarre and the State, in accordance with the business turnover corresponding to the operations performed in each territory during the year. Article 16 of the Economic Agreement lays down the criteria to determine the place of transactions and, consequently, the proportion of business turnover performed in each territory.

Some specific rules concerning the tax returns for companies subject to joint taxation are established in Article 18 of the Economic Agreement.

Regarding formal obligations, taxpayers must submit, within the deadlines and in due form, the Corporate Income tax returns to all the involved administrations, stating to each of them the applicable proportion of business turnover in each territory and the debt tax, or the tax to be refunded.

In case of tax debts, these must be paid to the State Treasury and/or to Navarre's Treasury and/or to any of the three Basque provincial Treasuries, according to the

relative business turnover performed in each territory during each tax period. The same rule is applicable in case of tax refunds.

*Legal ref:* EA art.18

*See also:* Business turnover; Corporate Income Tax; Fiscal Domicile; Place of transactions

*Spanish:* Impuesto sobre Sociedades: tributación en volumen de operaciones

*Basque:* Sozietateen gaineko Zerga: eragiketen zenbatekoaren arabera zerga ordaintze

# D

## DEPUTATION

Deputation is a Latin root term which, in a broad sense, refers to a group of people appointed to represent others. Strictly speaking about the Spanish decentralized territorial organization, a deputation is the governing body of a province in Spain. When referring to the governing bodies of the Basque Provinces, the use of the adjective *foral* is the way to differentiate both categories.

The fact is that, in order to respect the historical rights of Araba, Bizkaia and Gipuzkoa, under the Basque Statute of Autonomy, the Basque provinces retained their elected governments and their parliaments or General Assemblies. Opposite to the rest of the provincial governments, in each Basque province the government is elected by provincial parliaments. In addition, Basque provinces are endowed with far more substantial powers than the provinces elsewhere in Spain, which are more purely administrative levels of authority.

*See also: Foral; Deputy; Provincial government; Territorial government*

*AN:* The term “*foral* deputation” can be frequently found in the Basque Economic Agreement literature written in English by Spanish native speakers. However, for English native speakers is quite difficult to comprehend truly the precise meaning of the term without a good knowledge of the Basque and Spanish context. The term “provincial council” is also found in some English texts. Generally speaking, the term “council” refers to a tier of government with limited competence and powers. Due to the peculiarities of the Basque decentralization system, the term “provincial council” does not fit exactly with the powers and capacities of the Basque provinces. The singularity of the powers of the Basque provinces is enough to make them unique and absolutely different from the rest of the provincial governments in Spain. Therefore, the use of the term “provincial government of Araba”, “provincial government of Bizkaia” and “provincial government of Gipuzkoa” is suggested, since *foral* deputations are specific to the Basque history and setting and have no direct equivalent in English. Nevertheless, the term “*foral* government” may be also used but an explanation of the concept is advisable for the best understanding of the legal texts and literature in English.

*Spanish:* Diputación

*Basque:* Aldundi

## DEPUTY

In politics, a deputy is the representative of the citizens in Parliament. In many countries with bicameral parliaments, this category includes specifically members of the lower house, as upper houses often have a different title. This is the case of the Spanish system where deputy is a member of Congress, the lower house, and senator is a member of Senate, the upper house.

In the Basque decentralized setting, the common usage of the term “deputy” to refer to members of the provincial governments can be regarded as a straight translation from the Spanish word “diputado”, which may lead to misunderstanding. The term “provincial councilor” is also found in some English texts. However, generally speaking, this term refers to member of a tier of government with limited competence and powers. Due to the peculiarities of the Basque decentralization system, the term “provincial councillor” does not fit exactly with the powers and capacities of the members of the Basque provincial governments.

Both terms should be preferably replaced by a more appropriate term in English. Being the term “provincial government” the one that best reflects the legal and jurisdictional reality of the government of the Basque provinces in English, the denomination of the members of the provincial government should be coherently adopted.

Therefore, the use of the terms “provincial minister” would be the most appropriate in English. *Foral* minister could also be used for English native speakers familiar to Basque history and setting, or else, an explanation of the concept is advisable for the best understanding of the legal texts and literature in English.

*See also: Foral; Deputation; Provincial government*

*Spanish: Diputado*

*Basque: Diputatu*

# E

## **ECONOMIC ACTIVITIES CLASSIFICATION**

It is one of the particular criteria to be fulfilled by the Basque tax legislation in order to meet the tax harmonization principle required by the Economic Agreement. This criterion pertains to tax relations between the Basque Country and Spain.

Where the Basque provinces have legislative autonomy, that is, in regard to agreed taxes subject to autonomous legislation, they are still subject to four general harmonization rules with the Spanish State, which are laid out in Article 3 of the Economic Agreement. The Economic Activities Classification harmonization rule stipulates that the Basque tax systems must use the same system for classifying industrial, commercial, professional and artistic activities as well as services, as in the common territory, without prejudice to further disaggregation, as the State tax system.

This harmonization rule is the simplest and least limitative among the four ones stipulated in Article 3 of the Economic Agreement. In general, this criterion is applied without conflicts and controversies. In the few cases the Basque tax legislation has been challenged to courts on the basis of violating this principle, courts have confirmed and determine the limits for the Historical Territories to establish a different classification of economic activities.

The rationale for this limitation is that the same classification of economic activities, following the National Classification of Economic Activities in Spain, for the purposes of the Tax on Economic Activities is applied in the Basque territories and in the rest of the Spanish territory in order to provide with a tool for statistical data and research for the whole of the Spanish State.

*See also:* Common territory; Fiscal pressure; General Tax Law; Non-distortion principle; Tax harmonization

*Legal ref:* BSA art.41; EA art.2 and art.3

*Case-law:* Among others, sentences on how to interpret the principle of respect for the economic activities' classification: Spanish Supreme Court 1997, 8 March; Spanish Supreme Court 1998, 14 May. (OV Spanish)

*Spanish:* Clasificación de actividades económicas

*Basque:* Jarduera ekonomikoen sailkapen

## **ECONOMIC AGREEMENT (1876-1936)**

The abrogation of the *foral* system in 1876 gave rise to the end of the military and fiscal exemption of the Basque Territories. There was, notwithstanding, a strong popular support for the *fueros*. In addition, the Spanish government did not want the *foral* abolishment to be regarded as a vengeance of the King for the Basque support to the Carlist cause. As a result, the 1876 Abrogation Law included a clause that allowed the establishment of special fiscal regimes between the central government and each of the three Basque provinces. This clause was the legal grounds for a fiscal pact between the Basque provinces and the central government, namely the Basque Economic Agreement, which ensured a certain degree of autonomy for the Basque territories.

The first Economic Agreement was signed in 1878. Pursuant to it, the State would collect some taxes in the Basque territories, and the other taxes, henceforth called agreed taxes, would be collected by the Basque provinces. In exchange for tax powers, each territory had to pay the Central Government a certain amount of money known as the Quota. This contribution to the State was obtained subtracting the collection costs and a compensation for the expenditure of the *foral* provincial governments on public services provided in the rest of Spain by the central government from the estimated collection of agreed taxes

The 1878 Economic Agreement established a fiscal regime that, in principle, was temporary. It became a permanent system with the signature of the second Economic Agreement in 1887. There were other Agreements in 1894, 1906 and 1925. The duration of the Agreements was variable.

All the Agreements were in essence the same as the one signed in 1878. The tendency was, however, an increase in both agreed taxes and compensations because, gradually, the authority of the Basque provincial governments was substantially strengthened. On the one hand, since the traditional parliamentary General Assemblies had disappeared, the *foral* provincial governments assumed all decision powers on public affairs in the territories. On the other hand, the expenditure responsibilities of the provinces progressively increased. Traditionally, the main powers of the Historical Territories had been police force and road construction. Between 1878 and 1936, they assumed many other functions such as social assistance, education, penitentiary institutions, and the control of municipalities.

Concerning tax power, the Basque provinces could establish and collect any tax in order to finance the Quota and any other expenditure. As a result, taxes were different in each province and, in general, were lower than those levied in the rest of Spain.

The 1925 Economic Agreement was to last 25 years. However, the end of the monarchy and the proclamation of the II Spanish Republic in 1931 changed the scenario. The new Constitution established that Spain was a unitary State “compatible with the autonomy of municipalities and regions”. This constitutional provision was the legal basis to approve Statutes of Autonomy for the regions willing to enjoy self-government, namely, the Basque Country, Catalonia and Galicia.

The approval of a Basque Statute was delayed until 1936, and took place during the Spanish Civil War (1936-1939). The Statute endorsed the system of Economic Agreements and acknowledged the right of the Basque Country to establish freely its

fiscal system. Due to the defeat of the constitutionalists in the war, the Statute was in force just for a few months.

*See also:* Economic Agreement (1981-2002); Historical Background (1200-1812); Historical Background (1812-1876)

*Spanish:* Concierto Económico (1876-1936)

*Basque:* Ekonomia Ituna; Kontzierto Ekonomikoa (1876-1936)

## **ECONOMIC AGREEMENT (1981-2002)**

After the abrogation of the *foral* historical rights in 1876, once the Second Carlist War finished, the Economic Agreement was enacted as the system for the contribution of the Basque provinces to the finances of the Kingdom of Spain; a system which acknowledges the capacity of the *foral* provincial governments of Araba, Bizkaia and Gipuzkoa to collect their own taxes in order to defray not only their own expenses but those which were common in Spain as well.

The first Economic Agreement was signed in 1878 and since then it was renewed in several occasions. In 1937, during the Civil War, the dictator Franco abolished the Economic Agreement with Bizkaia and Gipuzkoa because those provinces did not support his military rebellion to overthrow the democratic republican government. Araba, however, maintained its Economic Agreement during all Franco's era because it joined the rebellion since the beginning. The 1952 Economic Agreement of Araba had the same structure as the Agreements before 1936. That is, some taxes were agreed, and the provincial government paid a Quota equal to the estimated collection of the agreed taxes minus the cost of the services provided by the *foral* government of Araba.

Following the death of Franco and the start of the Democratic Transition, the demands for Statutes of Autonomy were revived in Catalonia and the Basque Country, and this process spread to the rest of the State. As a result, the 1978 Spanish Constitution, currently in force, set out the State of Autonomies.

The First Additional Provision of the Constitution safeguards the Economic Agreement as part of the core of the historical rights of Araba, Bizkaia and Gipuzkoa and lays down its general updating within the framework of the Constitution and of the Statute of Autonomy of the Basque Autonomous Community. In order to do so, Article 41 (1) of the 1979 Statute of Autonomy of the Basque Country states: "Tax relations between the State and the Basque Country shall be regulated by the traditional system of the Economic Agreement or Conventions", while Article 41 (2) establishes the main pillars of the system.

On these legal grounds, the negotiation of the Economic Agreement took place during 1980 and ended with an agreement in December. Due to the political scenario at the time, it was not enacted until May 1981, when the Law 12/1981, May 13, was finally approved by the Spanish Parliament. The 1981 Basque Economic Agreement had a sunset clause according to which it expired in 2001.

While being in force, the 1981 Economic Agreement was amended on five occasions by the Spanish Parliament through the same procedure followed for its enactment; namely, by the Law 49/1985, December 27; the Law 2/1990, June 8; the Law 27/1990, December 26; the Law 11/1993, December 13, and the Law 38/1997, August 4. The aim of the amendments was to update and adapt the Economic Agreement to the evolvement of the tax systems over twenty years. Among the different amendments of the 1981 Economic Agreement, the 1997 agreements stood out as it strongly reinforced the tax autonomy of the Basque Country.

The Economic Agreement currently in force was signed in 2002 and enacted by the Law 12/2002 (SP), May 23, and has an indefinite duration.

The first amendment of the Economic Agreement took place in 2007 by the Law 28/2007 (SP), October 25. In the European scope, the 2008 landmark judgment of the European Court of Justice, 2008 September 11, acknowledged that the Economic Agreement and the Basque regulatory capacity concerning the Corporate Income Tax are in line with the European Union legal order and do not constitute regional State aids. In 2010, the judicial status of the Basque provincial tax norms was finally “ironcladed” by amending the basic legislation governing the Constitutional Court.

In 2014, the Economic Agreement was amended again, by virtue of the Law 7/2014 (SP), April 21, in order to incorporate into the agreement six environmental taxes, which had been created in the State tax system.

Since its approval in 2002, the most relevant modification of the Economic Agreement was agreed in 2017 July 19 by the Joint Committee on the Economic Agreement. Twenty articles were amended, and some new coordination and collaboration procedures between tax administrations and one new tax were agreed in effect from 2018. The Law 10/20017 (SP), December 28, incorporated the new agreements to the 2002 Economic Agreement.

*Legal ref:* SC First Additional Provision; BSA art.41

*See also:* Bilaterality; Economic Agreement (1876-1936); “Ironclad” of the *Foral* Tax Norms; Solidarity principle; Unilateral Risk

*Spanish:* Concierto Económico (1981-2002)

*Basque:* Ekonomia Ituna; Kontzertu Ekonomikoa (1981-2002)

## **ECONOMIC AGREEMENT (NAVARRRE)**

The Law 28/1990 (SP), December 26, enacts the Economic Agreement or Economic Covenant between the State and the *Foral* Community of Navarre, which regulates the tax and financial system of Navarre and determines the way to calculate the contribution that Navarre has to pay the Spanish central administration.

As with the Basque Economic Agreement, the Economic Covenant expressly recognizes the bilateral nature of the agreement, which is unilaterally unmodifiable. For its reform, a negotiation between the parties and its subsequent enactment by the



Spanish Parliament is necessary. Once the negotiation is closed, the amendment of the Covenant can only be approved or rejected, not modified, in the parliamentary chamber.

In short, the Economic Agreement establishes the taxes within the tax system in Navarre, the necessary coordination and collaboration tools between both the Navarrese and the central tax administrations, the rules to harmonize both tax regimes, and the criteria for calculating the contribution of Navarra to the State for the non-transferred services and competences to Navarre.

Since its approval in 1990, the Agreement has been updated on five occasions by the Spanish Parliament: by the Law 12/1993, December 13; by the Law 19/1998, June 15; by the Law 25/2003, July 15; by the Law 48/2007, December 19; and by the Law 14/2015, June 24, to accommodate, fundamentally, the changes in the Spanish tax system.

*Legal ref:* SC First Additional Provision, NSA art.45

*See also:* Charter; *Fuero*; Historical right; Navarre

*Spanish:* Convenio Económico

*Basque:* Ekonomia Hitzarmen

## **EFFICIENCY**

Many of the second-generation theories of federalism suggest that sub-state governments should have a high degree of tax autonomy. This means that they should finance most of their expenditures -ideally all- with their own taxes and should have enough tax autonomy to decide how much to collect. This recommendation is based on different arguments. Presumably, such tax autonomy creates a fiscal interest in the sub-state governments to enact market-enhancing fiscal policies because they will receive part of the growth induced as additional tax collection. It is also argued that fear of revenue loss will reduce corruption and inefficient expenditures.

Another advantage would be that tax autonomy forces fiscal discipline. If a substantial part of their revenue comes from transfers, sub-central governments will have incentives to expand their expenditures beyond their means and later ask for a bailout from the central government. Full tax autonomy reduces the justification for central government's bailouts and induces fiscal discipline.

Finally, a high degree of tax autonomy increases efficiency because it makes the cost of expenditure visible to taxpayers. The taxpayers will, then, exert more control on the expenditure and vote out of office governments expending inefficiently. Therefore, the higher the tax autonomy is, the higher the accountability will be. One potential risk with high tax autonomy is that it may give rise to a fiscal competence that would lead to inefficiently low levels of taxation and regional expenditure. The second generation of federalism advises, in order to prevent this, that sub-state taxes should not unduly distort the allocation of resources.

In addition, decentralization is a process essentially driven by political reasons. In this context, high degrees of tax autonomy may satisfy the political demands of the regions.

The Economic Agreement assigns almost all taxes to the Basque Country, which has to raise the revenue necessary to finance the expenditure of the three tiers of Basque administration, that is, regional, provincial and municipal, and to pay for the Quota to the State. The Basque provinces administer and levy their tax systems and have full autonomy in the main direct taxes. To avoid distortions, though, its autonomy in direct taxes is limited by some general harmonization principles with the State tax system. On the contrary, concerning indirect taxes the bases and tax rates are established by the central government.

Consequently, the Economic Agreement model of tax decentralization promotes efficient government because it forces the Basque Public Sector to raise the taxes necessary to finance all its expenditure and emphasizes in accountability and no distortion. Therefore, it is consistent with the principles of tax decentralization derived from the second generation of models of fiscal federalism.

*Legal ref:* SC First Additional Provision, BSA art.41

*See also:* Accountability; Federal State; Tax Harmonization; Unilateral risk

*Spanish:* Eficiencia

*Basque:* Efizientzia

## **EQUALIZATION FUND**

Unlike the Basque Agreement, where the level of resources per capita is based fundamentally on the region's own fiscal capacity, the common financing system is primarily a needs-based system. The final level of resources granted to each region by the central government is based on the estimation of what each region needs to fulfil its competences. In other words, each regional administration should have appropriate revenues to provide a similar level of basic services, thereby ensuring equality among citizens in Spain.

A key feature of the model is an equalization mechanism to redistribute wealth to ensure each region has more or less the same financing per unit of need. Prior to 2009, this was achieved via the so-called Sufficiency Fund. The 2009 reform of the Organic Law 8/1980 (SP), September 22, on the Financing of the Autonomous Communities, aimed at improving the equalization mechanism via the creation of three new funds in addition to a revised Sufficiency Fund. Since 2009, most of the resources within the system are pooled into what is known as the Fund for the Guarantee of Fundamental Public Services, which has replaced the previous Sufficiency Fund as the main vehicle of redistribution and solidarity in the common system.

The funds to distribute resources under the common system are the Fund for the Guarantee of Fundamental Public Services, the Fund for Global Sufficiency, the Fund for Competitiveness, and the Fund for Cooperation.

The first one is the largest fund and distributes approximately 80 per cent of the revenues pertaining to the Autonomous Communities. This fund divides the resources among the regions to ensure that they each have the same level of resources per unit of need to provide essential public services; namely, education, health, and social services to their citizens. These needs are determined according to each region's adjusted population, calculated via a formula, which takes into account various demographic and geographical weightings.

The second one is designed to ensure that the regions have sufficient resources for the remainder of their devolved competences and are net winners with the change of model in 2009.

The last ones are the smallest funds, together distributing less than 5 per cent of resources in the system. The Competitiveness Fund compensates the usually richer regions with typically higher population growth - e.g. Catalonia and Madrid- if the distribution results go against them. The Cooperation Fund is aimed at increasing resources in the poorer regions with lower per capita incomes and/or negative population growth.

*See also:* Common financial system; Common territory; Financial capacity of the common system; Tax capacity of the common system

*Spanish:* Fondo de nivelación

*Basque:* Parekatze-funts

## **EXCHANGE OF TAX REGULATIONS**

Under the principle of cooperation between the Basque Country and the State, exchange of tax regulations is one of the three specific scopes, wherein cooperation must be carried out by both parts, in accordance with Article 4 of the Economic Agreement.

In particular, the Basque provinces must inform the State Administration, with due notice prior to coming into force, of any draft bills on tax regulations. Likewise, the State Administration shall inform the aforementioned provinces of any draft tax bills. The purpose of this bilateral commitment is mainly to ensure the Basque draft tax regulations respect the fiscal pressure and the non-distortion harmonization rules prior to their approval by the Basque provincial General Assemblies.

Regarding observations presented either by the State tax administration, or by the Basque tax administration, the Coordination and Legislative Evaluation Committee is the governing body. To this purpose, any of both parts can request in writing and with good cause the Committee to assemble. Within fifteen days from the date of request, this Committee must analyze whether the tax draft regulation subject to observations is in line with the Economic Agreement. Said Committee, where both Basque and State tax administrations are jointly represented, shall make every effort to reach an agreement on any controversies about the tax legislation prior to the adoption of the conflictive regulation.

The mediation role of the Committee and the lack of faculties to impose consequences in case of disagreement leave up to the tax administrations in conflict the effectiveness of the Committee's actions. Obviously, the absence of coercive measures undermines the Committee and its decisions do not have any legal force. As a result, even in the case that the Committee concludes the draft tax regulation subject to observations violates or may violate the Economic Agreement, the Basque provincial parliaments or governments and the Spanish parliament or government are still able to enact the regulation under dispute.

*Legal ref:* BSA art.41; EA art.2; EA art. 4; EA art.63 and art. 64.

*See also:* Coordination principle; Coordination and Legislative Evaluation Committee; Exchange of tax information; General principles; International cooperation

*Spanish:* Intercambio de proyectos normativos

*Basque:* Araugintza-proiektuak trukatzte

## **EXCHANGE OF TAX INFORMATION**

Under the principle of cooperation between the Basque Country and the State, exchange of information regarding tax levy, collection and inspection activities is one of the three specific scopes where cooperation must be carried out by both parts in accordance with Article 4 of the Economic Agreement. The exchange of information between both tax administrations aims at increasing efficiency.

In particular, both Administrations must provide each other, through their data processing centers, with any information they may require to execute their competences. To this end, the necessary technical connections between them must be set out and a jointly coordinated fiscal information system plan is drawn up on a yearly basis.

Inspection departments in both tax administrations shall draw up joint programs with common objectives, economic sectors and selection procedures. They also work together on taxable persons who have changed their fiscal domicile, entities under tax transparency and companies subject to joint taxation in proportion to business turnover for the purposes of the Corporate Income Tax.

The exchange of tax information is not just a domestic issue. In fact, the State and the Basque Country introduce the required procedures for the exchange of tax information in order to ensure the enforcement of International Treaties or Agreements signed by Spain, and, in particular, of the European Union legislation in matters of administrative cooperation and mutual assistance. In fact, the actions within the OECD Base Erosion and Profit Shifting (BEPS-2015), as well as the measures in the European Union Anti-Tax Avoidance Directives, which require an ambitious system of tax information exchange, have already been implemented in both the Basque and the State tax systems.

*Legal ref:* BSA art.41; EA art.2; EA art. 4.

See also: Coordination and Legislative Evaluation Committee; Coordination principle; Exchange of tax regulations; General principles; International cooperation

AN: Most English translations of Article 4 (3) of the Economic Agreement do not fully respect the meaning of the Spanish original version.

*Spanish:* Intercambio de información tributaria

*Basque:* Tributuen informazioa trukatzte

## **EXCISE DUTIES**

Under the Economic Agreement, Excises Duties are agreed taxes subject to State legislation, that is, their regulation in the Basque Country must respect the same rules in terms of substance and form as those established by the State. Nevertheless, the Basque provinces are able to establish, when applicable, the tax rates within the limits and under the same terms the State cedes the regulatory capacity to the Autonomous Communities under the common financing system.

The only regulatory scope in which the Basque *foral* Treasuries have some room for maneuver is concerning tax forms with the restriction of having to include at least the same information as those of the State; and deadlines for payment and submission of tax returns, which shall not be substantially different from those set by the tax administration of the State.

The Basque Treasuries have the power to levy and collect the Excise Duties whenever the tax accrual occurs in the Basque Country, that is, in general, when the taxed goods are issued for consumption or self-consumption in said territory. The main Excise Duties, under the category of Manufacturing Excise Duties, are as follows: Excise Duties on Alcohol and Alcoholic Beverages; Excise Duty on Intermediate products; Excise Duty on Beer; Excise Duty on Fermented Drinks; Excise Duty on Mineral Oils; and Excise Duty on Manufactured Tobacco. Out of this category, the Excise Duties on Certain Means of Transport, the Excise Duty on Electricity, and the Excise Duty on Coal are also excise duties agreed under the Economic Agreement.

Refunds of Manufacturing Excise Duties are due to be made by the tax administration of the territory to which the Excise Duty has been paid. Nevertheless, in cases where it is not possible to determine in which tax administration the Duty was paid, the refund shall be made by the administration of the territory where entitlement to the refund is generated. The Basque *foral* Treasuries, subject to prior notice to the State and to the Coordination and Legislative Evaluation Committee, are in charge of the authorization and control over the establishments related to the goods subject to the aforementioned Duties located in the Basque Country.

In effect since 2018, a new connecting factor is established for the Excise Duties on Certain Means of Transport, in which case the levy and collection corresponds to the Basque Treasuries when the company or the individual who acquires the mean of transport has fiscal domicile or fiscal residence in any of the three provinces of the Basque Country.

*Legal ref:* EA art.33

*See also:* Adjustment to consumption for Manufacturing Excise Duties; Agreed tax subject to State legislation

*Spanish:* Impuestos Especiales

*Basque:* Zerga Bereziak

#### **EXCISE DUTY ON CERTAIN MEANS OF TRANSPORT**

*See:* Excise Duties

*Spanish:* Impuesto Especial sobre Ciertos Medios de Transporte

*Basque:* Zenbait Garraibideren gaineko Zerga Berezia

#### **EXCISE DUTIES ON ELECTRICITY**

*See:* Excise Duties

*Spanish:* Impuesto Especial sobre la Electricidad

*Basque:* Elektrizitatearen gaineko Zerga Berezia

#### **EXCISE DUTY ON NON-REUSABLE PLASTIC PACKAGING.**

Under the Economic Agreement, Excises Duties are agreed taxes subject to State legislation, that is, their regulation in the Basque Country must respect the same rules in terms of substance and form as those established by the State. Nevertheless, the Basque provinces are able to establish, when applicable, the tax rates within the limits and under the same terms the State cedes the regulatory capacity to the Autonomous Communities under the common financing system.

The only regulatory scope in which the Basque *foral* Treasuries have some room for maneuver is concerning tax forms with the restriction of having to include at least the same information as those of the State; and deadlines for payment and submission of tax returns, which shall not be substantially different from those set by the tax administration of the State.

The Basque Treasuries have the power to levy and collect the Excise Duties whenever the tax accrual occurs in the Basque Country, that is, in general, when the taxed goods are issued for consumption or self-consumption in said territory.

The Law 7/2022 (SP), April 8, on waste and contaminated soils for a circular economy, lays down some fiscal measures to boost the circular economy and creates two tax instruments in the field of waste. Their purpose is to reduce waste generation and improve the management of waste whose generation cannot be avoided, by means of

taxation on treatments lower down the waste hierarchy (landfilling, incineration and co-incineration), with the aim of reducing these less favourable management options from the point of view of the waste hierarchy principle. To this purpose, this law passes by two new tax figures: the Excise Duty on Non-Reusable Plastic Packaging and the Tax on the Deposit of Waste in landfilling, incineration and co-incineration of waste.

The Law 9/2023 (SP), April 3, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country, agrees on the distribution of powers regarding both taxes.

The Excise Duty on Non-Reusable Plastic Packaging shall be levied by the Administration of the State or by the respective Provincial *Foral* Government in each Historical Territory according to the following rules:

First. In the case of the manufacture of the products within the objective scope of the Excise Duty, the tax shall be levied by the Administration of the territory where the establishments in which the activity is carried out are located.

Second. In the case of intra-community acquisition of products within the objective scope of the Excise Duty, the tax shall be levied by the Administration of the territory where the fiscal domicile of the taxpayer is located. Should the intra-community acquisitions be made by a non-established taxpayer, the tax shall be levied by the Administration of the territory where the fiscal domicile of its representative is located.

Third. In the case of irregular possession of the products subject to the Excise Duty, the tax shall be levied by the Administration of the territory where the products are located at the time when the irregular introduction is proved.

Any applicable refunds shall be made by the Administration of the territory where the tax liability in question was paid into. Nevertheless, in cases where it is not possible to determine in which Administration the duty was paid into, the refund shall be made by the Administration of the territory where entitlement to the refund arises.

The registration and the register of taxpayers must be made by the Administration of the State or by the competent Provincial Foral Government in each Historical Territory, pursuant the abovestated rules for levying.

Verification and inspection shall be competence of the Administration entitled to levy the tax, without prejudice of the collaboration between Administrations.

*Legal ref:* EA art.33a

*See also:* Adjustment to consumption for the Excise Duty on Non-Reusable Plastic Packaging; Agreed tax subject to State legislation; Excise Duties

*Spanish:* Impuesto Especial sobre los Envases de Plástico no Reutilizables

*Basque:* Berrerabili ezin diren Plastikozko Ontzien gaineko Zerga Berezia

## EXCLUSIVE TAXATION

The general rule in the Economic Agreement is the exclusive taxation to one tax administration rule. However, joint taxation to the Basque and the State tax administration may occur in regard to the Corporate Income Tax, to the Non-residents Income Tax, for individuals or corporations operating through permanent establishments in Spain, and to the Value Added Tax. In order to set the proportion corresponding to each tax Administration, the application of the connecting factors to determine the place of transactions set the percentage of the tax liability that must be paid in each territory.

Exclusive taxation is mainly based on the classic connecting factors of fiscal residence and fiscal domicile, in similar terms as the ones used and determined in the OECD Model Tax Convention to prevent double taxation, in order to distribute tax powers between different jurisdictions.

The criteria for the determination of fiscal residence for individuals and fiscal domicile for corporations are set up in Article 43 of the Economic Agreement, requiring necessarily for their application the precondition that the taxpayer is tax resident in the Spanish territory according to the State tax law.

For individuals, on the one hand, fiscal residence is the connecting factor set to assign exclusive taxation either to the Basque Country, or to the State, concerning the Personal Income Tax, the Wealth Tax, the Inheritance and Gift Tax, and the Value Added Tax. On the other hand, for companies, fiscal domicile assigns exclusive taxation or joint taxation, both to the Basque Country and to the State, depending on the business turnover of the corporation or permanent establishment and on the place of transactions, in regard to the Corporate Income Tax, the Income Tax on Non-Residents operating through permanent establishments in Spain, and to the Value Added Tax.

In respect to indirect taxation, the Economic Agreement sets some other connecting factors in order to assign exclusive competence to one of the tax administrations. For instance, the connecting factor for the Transfer Tax on real property is the location of the assets, and the connecting factor for the Transfer Tax on shares is the place wherein the transaction is formalized.

*Legal ref:* EA art.43

See also: Business turnover; Fiscal domicile; Fiscal residence; Place of transactions

Compare: Joint taxation

*Spanish:* Tributación exclusiva

*Basque:* Tributazio eskusibo



# F

## **FAMILY UNIT: FISCAL RESIDENCE**

The criteria for the determination of fiscal residence for individuals are set up in Article 43 of the Economic Agreement, requiring necessarily for their application the precondition that the taxpayer is tax resident in the Spanish territory according to the State tax law.

The Spanish and Basque tax systems are ruled by the residence principle of taxation, according to which tax residents of a country or jurisdiction are subject to tax on their worldwide income.

Under the Economic Agreement, the Personal Income Tax is an agreed tax subject to autonomous legislation. Fiscal residence of the taxpayer in the Basque Country, in accordance with the criteria in Article 43 of the Economic Agreement, is the connecting factor used to assign the regulatory, levying and inspection capacities to the Basque provinces. Therefore, Basque-fiscal residence individuals are liable for personal tax on their worldwide income.

Under both the Spanish Personal Income Tax and the Basque Personal Income Tax, an individual may opt to be taxed as part of a family unit, usually consisting of two spouses and children under the age of 18, except those living independently with parental consent. The members of a family unit may file separate tax returns as well. If one member of the family files a separate return, then the other members of the family unit must also file separately.

In the case of opting to file a joint return as a family unit, fiscal residence of the different members in the family unit can be located in different territories, the Basque and the common territory. In such a case, Article 6 of the Economic Agreement assigns tax powers to the administration of the territory wherein the fiscal residence of the family member having the largest net tax base for Personal Income Tax purposes is located.

*Legal ref:* EA art.6

*See also:* Fiscal Residence; Personal Income Tax; Residence principle of taxation

*Spanish:* Unidad familiar: residencia fiscal

*Basque:* Familia-unitate: egoiliartasuna fiskal

## **FEDERAL STATE**

In accordance with federalism theories, no matter how different federal systems are, all of them have some common characteristics. Among them:

- At least two different tiers of government: one for the whole country and the other for the constituent units of the federation. Each government has a direct electoral relationship with its citizens.
- A written constitution, which cannot be amended, at least in some parts, without substantial consent of the units and which allocates legislative, including fiscal, powers to the different existing levels, ensuring some genuine autonomy for each level.
- Some legal provisions regarding Upper Houses, according to which the representation of constituent units for regional input in central decision-making is guaranteed.
- Different procedures, judicial or arbitration, to rule in constitutional disputes between different tiers of government and a set of bodies, committees, and procedures to facilitate or conduct their relations.

There are roughly twenty-eight countries in the world today -together representing 40 per cent of the world's population- regarded as federal, according to scholars. Typically, democracies with very large territories -the United States of America, Brazil, Australia, and Canada- and very large populations -India, Pakistan, and Nigeria- are federal. So are some small countries with very diverse populations, such as Switzerland, Germany, and Belgium, and some island States, e.g., Micronesia and Comoros.

The Spanish Constitution of 1978 deliberately omits any reference to the form of the State. That is, it does not describe it as centralized, federal or regional. The Fathers of the 1978 Constitution had before them a difficult task in setting up the new legal order, that is, to solve the "regional question". This challenge was met by not defining the new system, but by establishing a procedural framework instead. This process has given rise to a form of State that is not easily definable from an international comparative approach.

The term by which Spain is usually defined is that of "State of Autonomies". However, taking into consideration the aforementioned federal features, the broad scope of decentralization in Spain and, last but not least, the powers gained by the Autonomous Communities over the past 40 years, it is difficult not to conclude that – and this has become quite a controversial issue – Spain is, in practice if not in legal form, a federal State.

*See also:* Asymmetrical Federalism; Symmetrical Federalism

*Spanish:* Estado Federal

*Basque:* Estatu Federal

**FEE**

Under the Economic Agreement, the Basque Treasuries have the power to impose and levy fees for the special use or exploitation of Basque *foral* provincial public domain and for services rendered or activities performed under public law by the Basque provinces.

*Legal ref:* EA art.38

*Spanish:* Tasa

*Basque:* Tasa

## **FINANCIAL AUTONOMY (BASQUE COUNTRY)**

It is one of the two main aspects of the economic autonomy of the Basque Country, together with the tax autonomy. The Basque Statute of Autonomy acknowledges the financial autonomy when stating that for the proper exercise and financing of its powers the Basque Country shall have a separate and autonomous Treasury.

It also establishes that the basic principle governing the financial relationship between the Basque Country and the State is based on imposing on the Basque Country the obligation to make an overall contribution, known as Quota, to finance all State burdens that are not directly taken up neither by the Basque Autonomous Community, nor by the Basque Historical Territories. This Quota consists on an overall amount, made up of the individual payments of each Historical Territory. How to calculate this overall contribution to the State is set out in the Economic Agreement.

Tax autonomy and financial autonomy, the two main characteristics of the Basque economic autonomy, are reflected in the very structure of the Economic Agreement. In fact, Part I is devoted to defining the respective scopes of the State and the Basque provincial governments to regulate, levy and inspect taxes and to establishing the corresponding connecting factors, whilst Part II deals with the calculation of the Quota.

*Legal ref:* BSA art.40 and art.41; EA Part II

*See also:* Fiscal autonomy; Tax autonomy; Quota;

*Compare:* Financial autonomy (EU)

*Spanish:* Autonomía financiera

*Basque:* Finantza-autonomia

## **FINANCIAL AUTONOMY (EU)**

In 2006, the European Court, in the judgment of the Azores case, set three different scenarios, when determining the features of truly autonomous infra-state units from the perspective of selectivity under the EU state aid policy. An asymmetrical division of competences characterizes the third scenario -said secenario is wherein the Basque Country fits. In some areas, the local or regional authorities have certain rule-making powers that are held by the central authorities in the rest of the State territory. The

crucial factor to determine whether tax measures are selective is the level of autonomy enjoyed by the local and regional authorities in their legislative activity. If the contested measure adopted by the local authority were adopted in the exercise of sufficiently autonomous powers, the central State and the local and regional authorities would not have a common reference framework.

The Azores case required the local or regional authority to be “truly autonomous”, which meant institutionally, procedurally and economically autonomous. According to Advocate General Geelhoed’s Opinion endorsed by the European Court in its 2006 judgment, financially or economically autonomous means that the lower tax rate applicable within the region must not be cross-subsidized or financed by the central government, so that the economic consequences of these reductions are borne by the region itself. In such a situation, decisions on how much to tax lie at the core of the regional government’s policy prerogative. Such decisions will directly influence the amount of government money spent on, e.g., public services and infrastructure. Where tax cuts are not cross financed by the central government, this policy decision in turn affects the infrastructure and business environment in which undertakings with fiscal domicile in that region operate. Undertakings set in and out of the region are thus operating within different legal and economic frameworks that cannot be compared.

Two years later, in the so-called “Basque Economic Agreement case”, the Advocate General Kokott, when applying the findings from the Azores judgment to the measures adopted by the Basque Historical Territories, assumed an asymmetrical division of competences. In applying the individual criteria, particularly, in respect to the financial autonomy of the Historical Territories and their organs, Advocate General Kokott stated that it requires the infra-state authority to bear financial responsibility for shortfalls in tax revenue stemming from the rules that are more favorable than the general tax legislation.

In its 2008 September 11 judgment, the European Court of Justice stated that the financial transfers between the Spanish State and the Autonomous Community of the Basque Country are governed by the Economic Agreement and the Quota Law. The Court considered necessary, therefore, to examine those provisions first, in order to ascertain whether they may have the effect of compensation, by the State, for the financial consequences of a tax measure adopted by the Basque *foral* authorities.

In the European Court’s opinion, the complexity of the Quota system casts doubts on the concurrence of the financial autonomy in the Basque case. In any event, the European Court concluded it was for the Spanish Court to examine the effects of that process and to verify whether, because of the methodology adopted and the economic data taken into account, the calculation of the Quota may have the effect of causing the Spanish State to compensate the consequences of a tax measure adopted by the Basque authorities.

On the one hand, the European Court sets that declaring whether the Basque measures at issue constitute State aid lies within the jurisdiction of the Spanish Court. On the other hand, the European Court expresses that it has jurisdiction only to interpret the concept of State aid within the meaning of ex-Article 87(1) EC (art.107 (1)

TFUE) in order to provide the national court with the criteria which will enable it to decide the cases. Following the 2008 EU judgment, Spanish Courts confirmed that the financial autonomy concurs in the Basque case.

*Case-law:* Judgment 6 September 2006 of the Court of Justice in Case C-88/03 *Portuguese Republic versus Commission of the European Communities*; Judgment 11 September 2008 of the Court of Justice in Joined Cases C-428/06 to C-434/06 *Union General de Trabajadores de La Rioja UGT-La Rioja versus Juntas Generales del Territorio Histórico de Vizcaya and Others*. Among others, Judgment of the Basque Country High Court 2012, 29 June; Judgment of the Basque Country High Court 2012, 5 July (OV Spanish)

*See also:* Azores case (EU); Institutional autonomy; Procedural autonomy; Quota; UGT-La Rioja case (“Basque Economic Agreement” case-EU)

*Spanish:* Autonomía financiera (UE)

*Basque:* Finantza-autonomia (EB)

## **FINANCIAL CAPACITY OF THE COMMON SYSTEM**

In the common system, the resources of each region depend basically on its estimated need. In the *foral* system, they depend on fiscal capacity.

The Basque model is a system of territorial base, which assigns all sources of income to the Basque Country in order to defray the expenses of all tiers of government. The Basque Autonomous Community keeps and administers the taxes that collects and pays the State an amount -the Quota- equivalent to what the central government spends in general expenses of the Basque region, regardless of the Basque Country’s income. The higher the income is in the region, the wider the financial capacity is.

The common system is based on the financial principle of necessity. It is a financing model which aims at equalizing regions in Spain, and eighty per cent of the collected income is put into a redistributive common fund. Other complementary funds also have redistributive features.

For rich regions, such as the Basque Country or Navarre, a system based on capacity produces more resources than a system based on need. Part of the difference of resources in favor of the *foral* regions is, however, compensated by the central government with its own budget. Therefore, there are several areas in which the State spends very little or nothing in the Basque Country. This happens, for instance, in housing, social services, culture and agriculture.

One of the main instruments used by the State to make compensations is investment. In fact, the Basque Country is about 6.1% of the Spanish economy. Despite that, traditionally the Basque Country has never received much more than 2% of the total investment of the central government. The Basque Country has to compensate this difference with its own resources.

Based on different pillars, both *foral* and common financial systems, consequently, differ in structure, financial flows and results.

*See also:* Common financial system; Common territory; Equalization fund; Tax capacity of the common system

*Spanish:* Autonomía financiera del régimen común

*Basque:* Lurralde erkideko finantza-autonomia

## **FINANCIAL SUPERVISION OF MUNICIPALITIES**

The entitlement of the financial supervision of Basque local entities, both in terms of the regulatory capacity and the executive control, has been one of the most controversial issues regarding the financial system of Basque municipalities. In particular, disputes have arisen not only between the Basque provinces and the State administration but between the Basque regional government and the Basque provinces as well. Although the provincial jurisdiction over Basque municipalities in the tax scope has been always peacefully understood, it has not been so in the financial and budgetary field, to the extent that there have been contradictory judicial and administrative decisions in regard to the attribution of regulatory competence concerning supervision of municipalities in financial matters.

Article 48 of the Economic Agreement sets up the financial supervision principle and attributes to the Basque Country the same faculties of financial supervision as the ones exercised by the State concerning municipalities in the common territory. However, the Economic Agreement does not clear up which Basque administrative level -the Basque Autonomous Community or the Basque provinces- is entitled for the execution of such faculties.

In 2016, the Municipal Law enacted by the Basque Parliament finally clarified this question. To this effect, Articles 115 and 116 of said Law, on the one hand, establish that the Basque provincial *foral* norms shall regulate the indebtedness, budgetary and accounting system of the public sectors of Basque local entities, as well as the framework in which Basque municipalities and their self-governing bodies, public entities of private law, public corporations, foundations and dependent consortiums are able to conduct credit operations; on the other hand, the aforementioned articles assign the powers of financial supervision to the Basque provincial governments.

*Case-Law:* Among others, Judgments of the Basque Country High Court 1994, 15 July and 1995, 9 November; Judgments of the Spanish Supreme Court 1995, 19 July and 2002, 8 April and 26 April. (OV Spanish)

*See also:* Municipal Law; Municipalities: financial principles

*Spanish:* Tutela financiera municipal

*Basque:* Udalen gaineko finantza-zaintza

## **FINANCIAL SYSTEM OF THE BASQUE COUNTRY**

Within the framework of the 1978 Spanish Constitution, the Basque Country and Navarre have their own tax and financial regimes separate from the general tax system of the State and from the financial system of the remaining 15 Autonomous Communities or regions. The Canary Islands and the Cities of Ceuta and Melilla also present some specialties, but they do not constitute separate regimes like those of the Basque Country and Navarre.

The Basque particular regime has its origin in the 19<sup>th</sup> century, when the provinces of Araba, Bizkaia, Gipuzkoa were integrated into the general constitutional order of Spain, but retained certain historical rights, being one of the most outstanding their peculiar financial regime. Nowadays, pursuant to the First Additional Provision of 1978 Spanish Constitution, the Constitution protects and respects the historical rights of the territories with traditional *fueros*.

In the case of the Basque Country, Article 41 (1) of the Basque Statute of Autonomy states that tax relations between the State and the Basque Country are established by the traditional system named Economic Agreement.

Under the Economic Agreement, the three Basque provinces are responsible both for levying almost all taxes and for regulating the majority of the direct taxes and some indirect taxes. A share of the total tax revenues they raise is used to pay annually the Quota for the remaining centralized or non-assumed competences for which the Spanish state remains responsible. Of the remaining revenues, approximately 70 per cent are passed upwards to the Basque regional government to cover its competences, which include the most fundamental areas of public services such as health and education, while the rest are split between the provincial governments and the local or municipal authorities.

*Legal ref:* SC First Additional Provision, BSA art.41

*See also:* *Fueros*, Historical rights, Charters, Navarre

*Compare:* Common financial system

*Spanish:* Sistema financiero del País Vasco

*Basque:* Euskadiko finantza-sistema

## **FINANCIAL FLOW: BASQUE COUNTRY-CENTRAL GOVERNMENT**

The Economic Agreement model gives rise to several financial transfers between the State and the Basque Country.

The main financial flows between the Basque region and the central government under the Economic Agreement are the annual Quota paid by the Basque region to the State to cover its share of the general expenses defrayed by the State; and the adjustment for Value Added Tax paid by the State to the Basque region. The adjustment for Excise Duties is less relevant in size than the two aforementioned flows

and consists on a transfer from the Basque Country to the State. These adjustments compensate for the differences between the amount the Basque provinces collect in these particular taxes and what the fiscal residents in the Basque Country pay in regard to these taxes. These differences are generally caused by the agreed connecting factors for the distribution of tax powers between the State and the Basque Country which are based on tax criteria. Some other flows are minor and refer to direct taxation or local entities.

All the payments are established globally for the Basque Country. The division among Basque provinces of these joint payments is left to be decided by the Basque Country.

The Basque Statute of Autonomy and the Economic Agreement establish the main pillars for the tax and financial relations between the Basque Country and the State. However, they refer relevant aspects of said relations to further legislation.

Concerning the financial relations, this legal framework imposes some obligations of payment. On the one hand, it obliges the provincial governments to make financial contributions to the Basque Government in order to finance the provision of public services to Basque citizens; and, on the other, it compels the Basque region to pay the Quota to the State. Nevertheless, the Statute and the Economic Agreement do not fix how much each province has to contribute to the Basque government, and how to distribute the Quota among the territories, nor is there any indication as to how Basque municipalities have to be financed. These ambiguities called for a legal text to specify the financial relations within the Basque region. To this end, the Historical Territories Law 1983 and, later on, in 1985 the first Contributions Law established the methodology and basic principles to determine the contribution of the Basque provinces to the Basque Government, the distribution of the Quota, and the financing of the municipalities.

*See also:* Adjustment to consumption for Excise Duties; Adjustment to consumption for Value Added Tax; Contributions Law; Historical Territories Law; Quota

*Compare:* Equalization fund

*Spanish:* Flujo financiero: País Vasco-gobierno central

*Basque:* Finantza-fluxu: Euskadi-gobernu zentral

## **FIRST ADDITIONAL PROVISION (1978 SC)**

The legal framework within which the Economic Agreement is guaranteed and updated is ruled by two legal provisions: namely, the First Additional Provision of the 1978 Spanish Constitution, and the Article 41 of the Statute of Autonomy of the Basque Country.

The First Additional Provision of the 1978 Spanish Constitution states the following: “The Constitution protects and respects the historical rights of the territories with traditional *fueros*. The general updating of historical rights shall be carried out, where appropriate, within the framework of the Constitution and of the Statutes of Autonomy.”



Article 41 (1) of the Statute of Autonomy of the Basque Country stipulates that tax relations between the State and the Basque Country shall be regulated by the traditional system of the Economic Agreement.

The Economic Agreement is not the only updated historical right in force, i.e. the Basque Police Force or *Ertzaintza*, but it is the most remarkable one and its constitutional protection goes further than the tax and financial matters. Together with the Statute of Autonomy, the Economic Agreement is the main instrument of integration of the Basque Country into the Spanish State and the cornerstone of Basque autonomy.

With this provision, the Constitution sets up the legal framework for the restoration of the *foral* model in the Basque Country and Navarre. At the same time, it establishes a difference between these two Autonomous Communities and the rest of the Autonomous Communities. The constitutional First Additional Provision is, therefore, the legal basis for the asymmetric federalism in Spain, with two different financing systems for regions: the *Foral* System -applied in the Basque Country and Navarre- and the Common System -applied in the rest of the Autonomous Communities.

*See also:* Asymmetric federalism; *Fueros*; Historical right; Historical Territory; Navarre

*Spanish:* Disposición adicional primera (CE 1978)

*Basque:* Lehen xedapen gehigarri (1978ko EK)

## **FISCAL AUTONOMY**

Fiscal autonomy when applied to sub-state governments describes a high degree of freedom in raising and spending taxes but still within the boundaries of some rules set by the State level. The level of fiscal autonomy the Basque Country enjoys is currently one of the highest worldwide, being the only region in the world, along with Navarre, in whose jurisdiction the tax system of the State does not apply, with some minor exceptions. Some federal systems, i.e. Swiss cantons, the US States or the province of Quebec, have also high levels of fiscal autonomy within their respective federations but to a lesser extent.

In the case of the Basque region, fiscal autonomy and fiscal sovereignty are very close terms. In general, fiscal sovereignty is usually applied to States and suggests complete autonomy in setting fiscal policies without any outside interference. However, in the case of agreed taxes subject to autonomous legislation for which the Basque provinces hold legislative or regulatory autonomy, e.g. Corporate Income Tax, the level of sovereignty in setting tax policies is almost the same as the one held by the Spanish central government itself, only subject to some general principles and constitutional boundaries. Therefore, Basque provinces could be regarded as fiscally sovereign in relation to said taxes.

*See also:* Agreed tax subject to autonomous legislation; Financial autonomy; Tax autonomy

*Spanish:* Autonomía fiscal

*Basque:* Autonomia fiskal

## **FISCAL DOMICILE**

The criteria for the determination of fiscal domicile for corporations and entities are set up in Article 43 of the Economic Agreement, requiring necessarily for their application the precondition that the company is tax resident in the Spanish territory according to the State tax law.

A company is resident in Spain if it meets one of the following conditions:

- It is incorporated under the Spanish Law.
- Its legal seat is located in the territory of Spain; or
- Its place of effective management is in Spain.

Under the Economic Agreement, fiscal domicile for corporations is the main connecting factor to distribute tax powers between the Basque Country and the State in regard to the Corporate Income Tax, the Income Tax on Non-Residents operating through a permanent establishment in Spain, and to the Value Added Tax. Business turnover of the corporation or of the permanent establishment, and the place where transactions are carried out are the other two complementary connecting factors applicable to these tax figures.

For the purposes of the Economic Agreement, Article 43 (Four) sets that fiscal domicile for corporations and other entities subject to Corporate Income Tax is equivalent to the registered office of the corporation provided that the administrative management and direction of the business is effectively centralized therein. Otherwise, the place where said management or direction takes place applies. In cases where the place of fiscal domicile cannot be established by applying the aforementioned criterion, the place where the company's greatest fixed asset value is located applies.

For permanent establishments, civil societies and entities without independent legal status, fiscal domicile is the place where the administrative management and direction of their business takes place or, supplementary, the place where the greatest fixed asset value is located.

*Legal ref:* EA art.43

*See also:* Business turnover; Exclusive Taxation; Joint Taxation; Place of transactions

*AN:* Note that together with "fiscal domicile", the unappropriated term "address" or "business domicile" is used in English translations of Article 43.

*Spanish:* Domicilio fiscal

*Basque:* Egoitza fiskal

## **"FISCAL PEACE"**

From 1991 to 2000, Basque tax legislation, in particular the Corporate Income Tax *foral* norms in force in the three Historical Territories, was challenged in court on many occasions, mainly due to frequent disputes with the State regarding the interpretation of the tax harmonization rules laid down in Article 3 of the Economic Agreement. Litigation led to a scenario of legal uncertainty not only for tax administrations but for companies as well. This context of constant litigation in the 1980s, 1990s and early 2000s became known as the “judicialization” of the Economic Agreement.

On 18<sup>th</sup> January 2000, in order to put an end to this situation, the central government and the Basque institutions signed several agreements within the Joint Committee of the Economic Agreement. These are the so-called “fiscal peace” agreements. Under these agreements, on the one hand, the central government withdrew seventy five court cases against the Basque tax regulations and, on the other, the Basque provincial governments amended or repealed those tax regulations and measures in the Corporate Income Tax regarded as violating the tax harmonization rules in the Economic Agreement.

The “fiscal peace” was a turning point in the challenge of the Basque tax legislation in courts by the central government, on the basis of the violation of the harmonization rules by the Basque provincial governments. After these agreements, court cases challenged by the central government were significantly reduced. However, neighboring autonomous communities kept on referring Basque Corporate Income Tax legislation to court until the “ironclad” of the Basque *foral* tax norms was enacted in 2010.

*See also:* Fiscal pressure; “Ironclad” of the *foral* fiscal norms; Joint Committee on the Economic Agreement; Tax Harmonization.

*Legal ref:* BSA art.41; EA art. 2 and 3

*Spanish:* “Paz fiscal”

*Basque:* “Pake fiskal”

## **FISCAL PRESSURE**

It is one of the particular criteria to be fulfilled by the Basque tax legislation in order to meet the tax harmonization principle required by the Economic Agreement. This criterion pertains not only to tax relations between the Basque Country and Spain but to the internal relations among the three tax systems of the Basque Country as well pursuant to the Basque Statute of Autonomy.

Where Basque provinces have legislative autonomy, that is, in regard to agreed taxes subject to autonomous legislation, they are still subject to some general harmonization rules with the State legislation, which are laid out in Article 3 of the Economic Agreement. The “fiscal pressure” harmonization rule with State tax legislation stipulates that the overall effective fiscal pressure in the Basque Country must be equivalent to that in the rest of Spain. This condition applies to the whole Basque

Country, not to each province individually taken, and to the whole tax system, not to each tax individually measured.

Fiscal pressure is the relation between the total tax revenues and the Gross Domestic Product. However, this Economic Agreement harmonization criterion is inherently ambiguous and open to different interpretation. For instance, how to measure the equivalency has been one of the main sources of discrepancy. This resulted in many judicial conflicts, particularly back in the 1990s, with the Spanish State and also with neighboring regions, which ended up in 2000 with a major agreement between the Basque Country and the central government, known as the “Fiscal Peace”

Internally, within the tax systems of the Basque Country, the Tax Harmonization Law also requires a fiscal pressure condition. In Article 2, said law stresses that the obligation of the tax harmonization among the three Basque provincial tax systems will still allow different legislative provisions in each of them, “provided that, in spite of these differences, an overall equivalent fiscal pressure is guaranteed in the whole autonomous community” – without defining what it means by the ambiguous term “overall equivalent fiscal pressure”. In contrast to the scenario of tax relations with the State, how to interpret and apply this criterion internally has been controversial mainly in theory and has never given rise to judicial disputes.

*Legal ref:* BSA art.41; EA art. 2 and 3

*See also:* “Fiscal peace”; General Tax Law; Tax harmonization; Tax Harmonization Law

*Case-law:* Among others, Judgment of the Spanish Supreme Court 1991, 19 July, on how to interpret the term overall effective fiscal pressure (OV Spanish)

*Spanish:* Presión Fiscal

*Basque:* Presio fiskal

## **FISCAL RESIDENCE**

The criteria for the determination of fiscal residence for individuals are set up in Article 43 of the Economic Agreement, requiring necessarily for their application the precondition that the taxpayer is tax resident in the Spanish territory according to the State tax law.

An individual is resident in Spain for tax purposes if:

- The individual stays in Spain for more than 183 days -consecutive or not- in any calendar year, -personal residence test- or
- His/her center of vital interests, i.e. his economic interest or business or professional activities, is in Spain, -economic residence test-

A married individual is deemed to be a tax resident in Spain if her or his spouse and dependent minor children are tax residents in Spain, according to the aforementioned criteria.

Under the Economic Agreement, fiscal residence for individuals is the connecting factor to distribute tax powers between the Basque Country and the State in regard to all taxes. Once an individual is resident in Spain in accordance with the aforementioned criteria, Article 43 (One to Three) sets the criteria to determine residence in the Basque Country. In general, the personal residence test and the economic residence test used in international taxation are applicable.

The Economic Agreement set some particular rules for the application of the personal residence test. To this end, the Economic Agreement takes into account different periods of time, depending on the tax, the taxpayer must remain in the Basque Country in order to determine tax residence; namely, for more days of the tax period in the case of the Personal Income Tax; of the previous year counting up to the day prior to the accrual for the purposes of Inheritance and Gift Tax, the Transfer Tax and Stamp Duty and the Excise Duty on Certain Means of Transport. For the remaining taxes, fiscal residence is the same as for the Personal Income Tax at the date of accrual of said taxes.

In order to determine the period of stay, temporary absences from the Basque Country are irrelevant. Unless there is evidence to the contrary, an individual is considered to remain in the Basque territory when his or her dwelling is located in this territory.

Article 43 (One, Second) also presumes that an individual stays in the Basque territory if this is the location of his/her main center of interests, that is, the territory where the taxpayer obtains most of the taxable income for Personal Income Tax purposes. Finally, there is a presumption in favor of the last declared residence for Personal Income Tax purposes.

The economic residence test is applicable to individuals resident in the Spanish territory who do not remain in said territory for more than 183 days of the calendar year. In such cases, they may be considered residents of the Basque Country when they have their main center or base of business or professional activity, or of their economic interests, in said territory.

Finally, when a married individual is deemed to be a resident in Spain because her or his spouse and dependent minor children are resident in Spain, he/she is regarded as resident in the Basque territory when the spouse and children have their residence in the Basque territory in accordance with the general criteria.

*Legal ref:* EA art.43

*See also:* Anti-avoidance clause: fiscal residence; Family unit: fiscal residence; Personal Income Tax

*AN:* Note that instead of the English tax term “fiscal residence”, the term “habitual residence”, a direct translation of the Spanish term “residencia habitual”, is commonly used.

*Spanish:* Residencia habitual

*Basque:* Egoiliartasun fiskal

## **FISCAL SOVEREIGNTY**

*See:* Fiscal autonomy

*Spanish:* Soberanía fiscal

*Basque:* Subiranotasun fiskal

## **FORAL**

A specific term to the Basque history and context, which has no direct equivalent in English. The adjective *foral*, in reference to the *fuero*, is usually used in connection with the institutions, organs and regulations of the Basque Historical Territories.

*Legal ref:* SC First Additional provision; BSA art.41

*Spanish:* Foral

*Basque:* Foru

## **FORAL FINANCIAL SYSTEM**

A concept unique to the 1978 Spanish State of Autonomies. It refers to one of the two financial systems in effect at the regional level in Spain.

One of the main features of the 1978 Spanish Constitution decentralization model is the radical asymmetry between the two different coexisting tax and financial models. One, the so-called “*foral* or *Quota* system”, is applicable to two autonomous communities -the Basque Country and Navarre- whereas the other, known as the “common system”, is applied to the other fifteen autonomous communities. Strictly, within the “common system” there are three other jurisdictions with special tax regimes: the Canary Islands and the autonomous cities of Ceuta y Melilla, which are a hybrid between municipalities and autonomous communities.

Each system is grounded on a different rationale. In the “common system”, the resources of each autonomous community depend on its estimated need. In the “*foral* system”, the resources of the Basque Country and Navarre depend on fiscal capacity.

The origins of the Basque “*foral* system” go back to medieval financial arrangements established between the Kingdom of Castile and new annexed territories. Essentially, territories would have the responsibility for collecting taxes and, in exchange for military protection and other less important services, would pay an exaction to Castile. By the XVIII century, the only territories where these arrangements still prevailed were the provinces of Araba, Gipuzkoa and Bizkaia and the Old Kingdom of Navarre.

In 1937, during the Spanish Civil War, these *foral* rights were abolished in Gipuzkoa and Bizkaia, and were retained in Araba and Navarre. After the Franco regime, a new financial *foral* system, based on those precedents, was set up in the two *foral* autonomous communities through the Economic Agreement for the Basque Country and the Economic Covenant for Navarre.

Nowadays, the legal foundations of the *foral* financial system are as follows. First, the First Additional Provision of the 1978 Spanish Constitution, which protects and respects these traditional financial systems for the Basque Country and Navarre. Second, the Statute of Autonomy of the Basque Country, the basic legal framework that determines the tax and expenditure responsibilities of the Basque Country and sets the principles for, among other matters, the economic relations with the central administration of the Spanish State. Third, the Economic Agreement, the legal instrument for the distribution of tax powers between the Basque Country and the State and for the establishment of the Quota.

The basic elements of the *foral* system are set out in the Economic Agreement, which defines precisely the tax powers and responsibilities of the Basque Country and refers to a further law to concrete the procedure to calculate the Quota. In particular, in the Basque Autonomous Community, Araba, Bizkaia and Gipuzkoa have the powers, subject to some restrictions, to regulate, administer, levy, collect, and inspect all taxes comprising their tax systems.

The final piece of legislation is the law that establishes the calculation procedure and the actual amount of the Quota. In particular, the Quota is meant to measure the cost of services that the State provides to the Basque Autonomous Community. To that end, the procedure adopted is to apply a fraction representative of the relative size of the Basque Country to the items within the Spanish budget associated to those responsibilities that have not been transferred to the Basque Country.

*See also:* Asymmetrical federalism; Symmetrical federalism; *Foral* territory.

*Compare:* Common system; Common territory

*Spanish:* Regimen foral de financiación

*Basque:* Foru finatza-sistema

### **FORAL TAX NORM**

From an international tax perspective, “*Foral* tax norm” is a specific term to the Basque historical and legal context with no direct equivalent in English. It refers to the provincial regulations in taxation approved by each of the Basque provincial parliaments or General Assemblies.

*See also:* “*Ironclad*” of *foral* tax norms; Provincial tax norm

*Spanish:* Norma fiscal foral

*Basque:* Foru arau fiscal

### **FORAL TERRITORIES**

*See:* Historical Territory

*Compare: Foral territory*

*Spanish: Territorios forales*

*Basque: Foru lurraldeak*

### **FORAL TERRITORY**

A term unique to the 1978 Spanish State of Autonomies. It is the territory of Spain where the *foral* financial system –one of the two financial systems in the State- is applicable at the regional level. Generally speaking, it comprises the Basque Country and Navarre. However, in the scope of the Economic Agreement, it refers to the whole territory of the Basque Country, excluding Navarre. Vice versa, in the scope of the Economic Covenant, it refers to the whole territory of Navarre, excluding the Basque Country.

This term should not be mistaken with the plural term “*foral territories*”, which addresses the three Basque Historical Territories. The differentiation of both terms is essential to correctly understand the distribution of the power to tax between the Basque Country and the State central government.

*See also: Common system; Foral financial system; Historical Territory.*

*Compare: Common territory*

*Spanish: Territorio foral*

*Basque: Foru lurralde*

### **FORAL TREASURY**

The *foral* Treasuries are the Departments of the Basque provincial governments in charge of the tax, finance and budgetary matters.

When the Economic Agreements states that the levy, administration, settlement, inspection, revision and collection of the taxes and duties comprising the taxation system of the Historical Territories correspond to the respective *foral* governments, the reference must be understood, in particular, to the Treasuries Departments of the *foral* governments of Araba, Bizkaia and Gipuzkoa.

In fact, Article 1 of the Economic Agreement expressly acknowledges that, in order to execute and perform the aforementioned competences, the *foral* Treasuries of the Historical Territories enjoy the same powers and prerogatives as those enjoyed by the State Treasury.

*Legal ref: EA art.1*

*See also: Provincial government (Basque Country); Historical Territory*

*Spanish: Hacienda foral*



*Basque:* Foru ogasun

## **FUERO**

The Spanish legal term “*fuero*” has a wide range of meanings, depending upon the context. In regard to the Basque provinces, the Old Law or Old *Fuero* (1452) and its updated version, the New Law or New *Fuero* (1526), were their own medieval legal codes for self-organizing. As the condition for the allegiance of people from Bizkaia, upon assuming the throne of Castile, the new Monarch, in his capacity as Lord of the province had to come to Bizkaia and swear to safeguard and respect its *fueros* and customs.

The *fueros* were a set of public and private laws which regulated the basic elements of the social, economic, judicial and administrative scopes for the inhabitants of the Basque Historical Territories, ensuring a remarkable level of self-government. Their main characteristic was that they were flexible enough to apply to a wide array of situations, being as they were in constant evolution. The most outstanding rights in these medieval legal codes were the status of the Basque provinces as free trade zones and the concomitant tax exemptions, the legal status of citizenship in Bizkaia, the release from military service except to defend their territories, and, finally, their autonomous internal administration, including their particular tax figures.

According to their *fueros* or territorial statutes, Basque provinces had their own bodies for provincial representation or General Assemblies which regulated their internal tax systems. Taxes to be paid by the local inhabitants to their Lord, the King of Castile, were only the stipulated ones first in the Old Law, and later in the New Law. The Lord was not allowed to exact further tributes outside those taxes, which did not, necessarily, meant that others were not paid, for example, to uphold institutions such as the General Assemblies. Under these codes, the monarchs were powerless to change the law without the concurrence of the General Assemblies. These historical rights have been traditionally granted to the Basque territories of Araba, Bizkaia and Gipuzkoa and to Navarre and nowadays they are constitutionally protected and updated under the 1978 Spanish Constitution.

*Legal ref:* SC First Additional Provision

*See also:* Foral; Charter; Historical right; New *Fuero*; Old *Fuero*

*Spanish:* Fuero

*Basque:* Foru

# G

## **GAMING ACTIVITIES TAX**

Under the Economic Agreement, the Gaming Activities Tax is an agreed tax subject to State legislation, that is, its regulation in the Basque Country has to respect the same rules in terms of substance and form as those established by the State. Nevertheless, the Basque provinces can raise the tax to a maximum of 20 per cent with respect to the rates established by the State in relation to the activities of operators and organizers with fiscal domicile in the Basque Country. This increase shall be applied, exclusively, to the proportional part of the taxable income corresponding to the fiscal residents in the Basque region.

In addition, the Basque *foral* Treasuries are able to establish their own tax forms with the restriction of having to include at least the same information as those of the State. The Basque Treasuries are also able to fix deadlines for payment and for submission of tax returns, as long as they are not substantially different from those set by the tax administration of the State.

As a general rule, the Gaming Activities Tax is a tax subject to joint taxation for levying and collection purposes; that is, taxpayers shall pay the tax in proportion to the business turnover performed in each territory during the tax year, to the Basque provincial Treasuries and/or to central administration, regardless of where their fiscal domicile is. To this end, the proportion of business turnover shall be established according to the relative weight of the amounts spent on gaming by players with fiscal residence in the Basque territory and by players with fiscal residence in the common territory. This proportion shall also be applied to the amounts corresponding to non-resident in the Spanish territory players. This proportion is expressed as a percentage rounded to no more than two decimal numbers.

As an exception, since 2018 paid taxes on those games in relation to which the residence of the player is unknown will be assigned exclusively to the tax administration where the taxpayer has the fiscal domicile, without prejudice to due compensation between tax administrations.

A final particular rule for levying the Gaming Activities Tax concerns a particular taxable event, i.e., sport-charitable bets and horserace bets, provided that the bets are made in betting establishments own by the State and the fiscal residence of the player is unknown. In the aforementioned case, the Basque provinces shall collect the Gaming Activities Tax whenever the bet house is located in the Basque territory.

*Legal ref:* EA art. 37

*See also:* Agreed tax subject to autonomous legislation; Business turnover; Gaming Duties

*Spanish:* Impuesto sobre las Actividades de Juego

*Basque:* Joko Jardueren gaineko Zerga

## **GAMING DUTIES**

Under the Economic Agreement, Gaming Duties are agreed taxes subject to autonomous legislation, except for the Gaming Activities Tax that is subject to State legislation. However, there are some restrictions on the tax regulation power of the Basque provinces over Gaming Duties, as the same rules as those established by the State must be applicable to the taxable event and the liable person.

The connecting factor is related to the authorization of the game. Therefore, Gaming Duties are under the tax regulation of the *foral* provinces when the authorization of the game is given in the Basque Country.

In regard to the Duty on Games of Chance and Gambling, the Economic Agreement assigns the levying power to the Basque provinces when the taxable event is performed in any of the three provinces of the Basque Country.

Concerning the Duty on Raffles, Betting and Random Combinations, the Economic Agreement assigns the levying power to the Basque provinces when the administrative authorization must be obtained in the Basque Country.

*See also:* Agreed tax subject to autonomous legislation; Gaming Activities Tax

*Legal ref:* EA art. 37

*Spanish:* Tributos sobre el Juego

*Basque:* Jokoaren gaineko Tributuak

## **GENERAL ASSEMBLIES (BASQUE COUNTRY)**

*See:* Provincial Parliaments (Basque Country)

*Spanish:* Juntas Generales (País Vasco)

*Basque:* Batzar Nagusiak (Euskadi)

## **GENERAL PRINCIPLES**

The fundamental rules applicable to the Basque tax and financial system are called general principles. The Economic Agreement lays them out in Article 2 for tax relations, and in Article 48 for financial relations.

In respect to tax relations, the Economic Agreement establishes several fundamental principles that can be classified into two big groups. On the one hand, principles already imposed by the 1978 Spanish Constitution or the Basque Statute of Autonomy - i.e., solidarity or submission to International Treaties-. On the other, principles strictly

linked to the powers within the Economic Agreement, being one of them even of exclusive application to the relations among the Historical Territories of the Basque Country; that is, coordination, fiscal harmonization and mutual cooperation pursuant to the regulations enacted by the Basque Parliament for these purposes.

Among the principles in the second group, the following ones can be highlighted:

- Attention to the general structure of the taxation system of the State.
- Some harmonization rules with the State tax system the Historical Territories must respect when drafting their tax legislation. Among them, the maintenance of an overall effective fiscal pressure equivalent to that in force in the rest of the State and the non-distortion principle stand out.
- Some cooperation rules between the tax administrations of the Historical Territories and the State tax Administration. These rules affect three main scopes: exchange of legislative drafts, participation of the Basque Country in the negotiation and application of International Agreements related to taxation, and exchange of information regarding levy, collection and inspection of taxes.

In regard to financial relations, the Economic Agreement sets up the general principles applicable to the financial and budgetary flows between the Basque Country and the State. Together with the constitutional principle of solidarity, the most outstanding principles concerning financial relations are:

- Fiscal and financial autonomy of the Basque Country.
- Coordination and cooperation with the State in matters of budgetary stability.
- Contribution by the Basque Country to the State's expenses concerning non-assumed competences, by means of the payment of the Quota.

*Legal ref:* BSA art.41; EA art. 2; EA art. 48

*See also:* Cooperation principle; Solidarity principle; State tax structure; Tax harmonization; Quota

*Spanish:* Principios generales

*Basque:* Printzipio orokorrak

## **GENERAL TAX LAW**

The respect for the General Tax Law is one of the particular criteria to be fulfilled by the Basque tax legislation in order to meet the tax harmonization principle required by the Economic Agreement. This criterion pertains to tax relations between the Basque Country and Spain.

Where the Basque provinces have legislative autonomy, that is, in regard to agreed taxes subject to autonomous legislation, they are still subject to some general harmonization rules within the Spanish State, which are laid out in Article 3 of the Economic Agreement. The General Tax Law harmonization rule that the Basque tax systems must respect the General Tax Law in matters of terminology and concepts,

without prejudice to the peculiarities established in the Economic Agreement. The so-called General Tax Law is the Law 58/2003 (SP), December 17, establishing the General Law on Taxation. It regulates the principles, general concepts and tax procedures for the tax system in the common territory.

This harmonization rule aims at harmonizing the basic concepts and fundamental elements of the procedural legal framework in Basque taxation, set out by the Historical Territories, with the ones in force in the common territory.

In the 1990s, legal controversies arose from identifying which terms and concepts in the General Tax Law are to be respected by tax regulations of Araba, Bizkaia and Gipuzkoa. To this end, case-law of the Supreme Court from 1994 to 2004 made a restrictive interpretation of this harmonization rule. In accordance with this settled judicial interpretation, this harmonization rule guarantees a minimum legal tax framework common to all tax systems within the Spanish State. As a result, terminology and concepts *stricto sensu* must be respected, leaving plenty of room for maneuver for the Historical Territories when regulating their general tax framework and procedures.

In compliance with an agreement reached in 2002 between the Basque Country and the central government, in the Joint Committee of the Economic Agreement, Article 1(1) of the Spanish General Law on Taxation acknowledges the Economic Agreement between the State and the Basque Country and the Economic Covenant between the State and Navarre, and leaves these *foral* systems out of the scope of said Law.

Finally, Article 2 (1) of the Economic Agreement implements an interpretation clause, which refers to the General Tax Law for the interpretation of the articles and regulations in the Economic Agreement.

*Legal ref:* BSA art.41; EA art. 2 and 3

*See also:* Common Territory; Fiscal pressure; Non-distortion principle; Tax harmonization

*Case-law:* Among others, Judgment of the Spanish Supreme Court 1999, 30 October, on how to interpret the respect to the General Tax Law (OV Spanish)

*Spanish:* Ley General Tributaria

*Basque:* Tributuen Lege Orokorra

## **GIFT TAX**

*See:* Inheritance and Gift Tax

*Spanish:* Impuesto sobre las Donaciones

*Basque:* Dohaintzen gaineko Zerga

## **GIPUZKOA**

It is one of the three Historical Territories or Basque *foral* provinces, which makes up the Autonomous Community of the Basque Country. By virtue of the Law 19/2011 (SP), July 5, Gipuzkoa is the official name of a Basque province, formerly officially named "Guipúzcoa".

*Spanish:* Guipúzcoa

*Basque:* Gipuzkoa

# H

## HISTORICAL BACKGROUND (1200-1812)

The political structure of the Basque Country and the current special financial and fiscal relations with the Government of Spain are the continuation of a historical tradition that dates back to the 13<sup>th</sup> century.

During the 12<sup>th</sup> century the territories of Araba, Bizkaia and Gipuzkoa fluctuated under the influence of the Kingdoms of Castile, and of Navarre. Araba and Guipuzkoa were definitely integrated into the Kingdom of Castile in the year 1200. The integration of Bizkaia to Castile took place in 1379 when Juan I, who had inherited the title of “Lord of Biscay”, became King of Castile. Since then, first the Kings of Castile and later the Kings of Spain were the “Lords of Biscay”, and had the obligation to go to Bizkaia to swear allegiance to the *fueros* or charters of the province.

Once integrated in Castile, the three Basque territories maintained their traditional *fueros*. In essence, the *fueros* guaranteed the Basque Territories a strong respect for their traditional Laws, a considerable administrative autonomy, and, subject to some limitations, exemption from conscription and payment of taxes to the King. In each territory, a provincial assembly of representatives of the towns and districts adopted public decisions and a provincial *foral* government carried them out. Powers of the Basque provinces included road construction, settlement of conflicts among towns, and approval of the budget -revenue and expenditure- of the territory.

Nevertheless, the King took all the major political decisions, legislated on matters not covered by the *fueros*, and supervised the application of Justice, and the decisions of the municipalities. All the same, the Historical Territories always had the right to veto any royal mandate, if they thought it was contrary to the *fueros*.

The *fueros* conveyed a high degree of economic independence from the rest of Spain. Inland customs borders were established in the frontier between Castile and the Basque territories. As a result, imported goods entered the Basque territories free of taxes. Almost all taxes were levied by the provinces, and the collection was used to finance their expenditure in roads and, when necessary, in the army.

Despite their economic autonomy, the Basque Territories contributed some money to finance the Kingdom either by small taxes levied by the Crown, or by voluntary contributions required by the king to finance special expenditures. In comparison to other regions in Spain, the contributions of the Basque Territories to the Crown were low, particularly during the 16<sup>th</sup> and 17<sup>th</sup> centuries, and, therefore, the Basque territories were known as exempt provinces.

In the 18<sup>th</sup> century, the Bourbons, a centralist monarchy, were not too keen on the Basque *fueros*. Since the beginning of the 18<sup>th</sup> century, the Kings of Spain tried to limit the extent of the *foral* rights. For instance, in 1717 the King Philip V moved the

customs to the coast. The subsequent riots forced the King to restore the inland customs in 1723. At the end of the 18<sup>th</sup> century, Charles III tried unsuccessfully again to move the customs to the shore.

*See also:* Historical background (1812-1876); *Fuero*; *New Fuero*; *Old Fuero*

*Spanish:* Antecedentes históricos (1200-1812)

*Basque:* Aurrekari historikoak (1200-1812)

## **HISTORICAL BACKGROUND (1812-1876)**

The advance of liberalism in Spain with the approval of the 1812 Constitution undermined the position of the Basque *fueros* within a legal framework in favor of a unitary and uniform idea of Spain. In 1814, Ferdinand VII abolished the Constitution and reestablished the traditional autocratic monarchy. During his reign, which ended in 1833, the *fueros* were unquestioned. After his death, a dynastic conflict ultimately led to the abrogation of the *foral* system.

The conflict consisted in the opposition of the supporters of Ferdinand's daughter, Isabella II, to the defenders of Ferdinand's brother, Carlos María Isidro, and resulted in a Succession War called the First Carlist War (1833-1840). The War was also a confrontation between the traditionalism -absolute monarchy and respect for traditions-, of Carlos Maria Isidro, and the liberalism of Isabella II. The majority of the Basque Country supported the Carlists because the Carlism defended the traditional values, including the catholic religion and the *fueros*.

The Carlists were defeated and the generals Espartero, commander in chief of the liberal army, and Maroto, commander of the Carlist army, signed a peace treaty known as the Vergara Convention. By this agreement, Espartero vaguely agreed to the commitment to defend the *fueros* before the Spanish Government. In 1839, the Spanish Parliament approved a law endorsing the *fueros* as long as they did not collide with the unity of the Constitutional monarchy.

On this premise, the government tried to limit the *fueros* several times, but the Basque provinces rejected any changes. In this context, there was a revolt in the Basque Country questioning the authority of Espartero, at the time regent of Spain. Espartero's response was to abolish by Decree almost all the *fueros* in 1841. Among other things, said Decree unified the system of justice, terminated with the right to veto, and established the customs of Spain on the shore. The only *foral* rights left were the fiscal and military exemptions.

In 1844, Espartero's Decree was partially repealed by a moderate liberal government and both the *foral* governments and the parliamentary assemblies recovered some of their traditional functions, such as the control of the expenditure and revenue of municipalities. The ousting of Queen Isabella II in 1869 by progressive liberals was the start of the decline of the *foral* system. The progressive liberals appointed Amadeo of Savoy as King in 1870. After a short reign without almost any support, he abdicated in 1873. Then, there was a new Carlist uprising, claiming the throne for Carlos María de



Bourbon. After the defeat of the Carlists in 1876, the King of Spain, Alfonso XII, definitively abolished the *fueros*.

*See also:* Historical Background (1200-1812); *Fuero*; New *Fuero*; Old *Fuero*

*Spanish:* Antecedentes históricos (1812-1876)

*Basque:* Aurrekari historikoak (1212-1876)

## **HISTORICAL RIGHT**

A term unique to the 1978 Spanish and Basque constitutional order. From today's approach, historical rights have their origin in the 19<sup>th</sup> century, when the provinces of Araba, Bizkaia, Gipuzkoa, and Navarre were integrated into the general constitutional order of Spain, but retained certain self-governing historical rights, one of the most outstanding being their peculiar fiscal regime.

In accordance with the First Additional Provision of 1978 Spanish Constitution, the Constitution protects and respects those historical rights of Araba, Bizkaia, Gipuzkoa and Navarre, since they are territories with traditional *fueros*. However, there is no constitutional definition or enumeration of the so-called historical rights in the current Spanish legal order. To this purpose, the Spanish Supreme Court and the Spanish Constitutional Court have interpreted and updated the concept of historical rights, within the *fuero*, to which the Basque provinces are entitled to nowadays.

The Constitution itself and the Statutes of Autonomy have updated said Basque historical rights. As recognition of the historical rights, Article 3 of the Statute of Autonomy of the Basque Country states that Araba, Bizkaia and Gipuzkoa may "preserve or, as appropriate, re-establish and update their organization and exclusive institutions of self-government".

Pursuant to Article 41 (1) of the Basque Statute of Autonomy, tax relations between the State and the Basque Country are established by the traditional foral system of the Economic Agreement

*Legal ref:* SC First Additional Provision; BSA art.3; BSA art.41

*Case-law:* Judgment of the Constitutional Court 1988, April 26; Judgment of the Supreme Court 2002, 5 October (OV Spanish)

*See also:* Historical Territory; *Fuero*; Historical Territories Law, Navarre

*Spanish:* Derecho histórico

*Basque:* Eskubide historiko

## **HISTORICAL TERRITORY**

A term unique to the 1978 Spanish and Basque constitutional order. Historical rights, protected by the Spanish Constitution, belong to the Basque provinces of Araba,

Bizkaia and Gipuzkoa and to Navarre, as stated in the Basque Statute of Autonomy and the Statute of Autonomy of Navarre. This is the reason why these territories are called the Historical Territories. According to the Basque Statute of Autonomy, the territory of the Basque Autonomous Community shall comprise the Historical Territories, which coincide with the provinces of Araba, Bizkaia and Gipuzkoa, respecting their present boundaries.

In setting the Spanish State of Autonomies, the three Basque provinces were joined in the Autonomous Community of the Basque Country. Under this new political setup, the institutions of the Autonomous Community coexist with those of the old provinces regulated by their traditional legal codes or *fueros*. Pursuant to their traditional codes, nowadays the Basque provinces retain elected governments and parliaments together with some remarkable power, e.g. taxation, under the Basque Statute of Autonomy, in contrast with provinces elsewhere in Spain which are more purely administrative levels of authority. The Basque Provinces or Historical Territories are, thus, endowed with far more substantial powers than the any other provinces in Spain.

This creates a complicated pattern of institutional relationships between the Basque region or Autonomous Community and the Basque provinces or Historical Territories. These relationships are basically governed, first, by the Statute of Autonomy of the Basque Country, approved by Organic Law 3/1979 (SP), December 18, and, second, by the Law 27/1983 (BP), November 25, governing relations between the common institutions of the Basque Country and the *foral* institutions of the Historical Territories, shortened to the “Historical Territories Law”.

*Legal ref:* SC First Additional Provision, BSA art.3

*See also:* Historical right; Historical Territories Law; General Assemblies; Navarre; Provincial Government (Basque Country)

*Spanish:* Territorio Histórico

*Basque:* Lurralde Historikoa

## **HISTORICAL TERRITORIES LAW**

The Law 27/1983 (BP), November 25, known as the “Historical Territories Law” is, together with the Basque Statute of Autonomy and the Economic Agreement, one of the legal pillars on which the Basque Autonomous Community is established and developed. It regulates the new political and administrative organization, a government and a parliament common to the Basque Country as a whole, while respecting the exclusive legal systems, governing bodies, and historical powers of each of the three Basque provinces.

The purpose of this Law is to harmonize and balance the relationships between both sub-state levels. The Statute of Autonomy and the Economic Agreement arrange the division of expenditure and revenue competences between the State and the Basque Country. However, they leave undefined several elements of the institutional design within the Basque Country. First, there is not a clear division of expenditure

responsibilities between the Basque government and the Basque provinces. Second, there are some aspects of the financial relations that require further clarification. The Historical Territories Law came to fill this legal gap.

In particular, the Historical Territories Law allocates the expenditure powers either to the Autonomous Community or to the Historical Territories, taking into account the traditional codes of rights expressly recognized in the Basque Statute. That is, it determines the expenditure responsibilities of each level of government.

On the revenue side, it organizes the General Treasury of the Basque Country and the provincial Treasuries of the Historical Territories, and how to distribute the resources between these two tiers of government. To this end, said Law establishes the methodology and basic principles to determine the financial contribution of the provinces to the Basque government, and how to distribute this contribution among the three *foral* territories. The Historical Territories Law also establishes that Basque provinces have to fund Basque municipalities with at least the same level of resources as municipalities receive in the common territory.

*See also:* Historical right; Historical Territory

*Spanish:* Ley de Territorios Históricos

*Basque:* Lurralde Historikoen Lege

## **HORIZONTAL COEFFICIENT**

In the scope of the Basque intra-regional financial relations, once the annual Quota has been paid to the central government, the remaining income raised by the Basque provinces provide the common resources to be shared between the different levels of government in the Basque region to cover their competences. Said resources are distributed according to some vertical and horizontal coefficients, and are subject to some final adjustments. Once the resources are vertically distributed between the regional and provincial level and horizontally among the three Historical Territories, a proportion of the resources that remain under the control of the provinces also goes to the municipalities or local governments.

The so-called Horizontal Coefficients of Contribution determine what proportion of the general contribution to the Basque government is covered by each of the three provinces, as well as what proportion of the Quota payment to the central government they each pay.

In principle, it may seem reasonable that each province pays a share of this contribution equal to its relative collection of agreed revenues. However, this would mean that as the tax collection of one of the three Basque provinces decreases, so does the share of the expenditures of the Basque Government the province pays. This would introduce incentives to lower effective taxation either by reducing the nominal tax rates, or by a poor management of tax administration. To avoid this scenario, the share of the contribution paid by each province is determined using indicators of tax capacity instead of the actual tax collection.

Therefore, 70 per cent of the horizontal coefficient of each province is based on its income - average provincial Gross Domestic Product relative to that of the region over the prior four years - while 30 per cent is based on its tax capacity relative to that of the other provinces. The horizontal coefficients are calculated each year under the methodology approved in the Contributions Law. As a result, on average, Bizkaia, the largest province, is entitled to the largest share of payment from 50 to 52 per cent, followed by Gipuzkoa from 32 to 34 per cent, and then Araba from 14 to 16 per cent.

Horizontal coefficients are used not only to pay the contributions to the Basque Government but also to distribute the share of the Quota payment among the Historical Territories.

*See also:* Contributions Law; Intra-regional financial relations; Shared risk: intra-regional financial system; Quota; Vertical coefficient

*Spanish:* Coeficiente horizontal

*Basque:* Koefiziente horizontal

## IMPUTATION INDEX

In accordance to the Economic Agreement, the imputation index is the percentage of the non-assumed charges paid by the Basque Country to the central government. That is, the share of State expenditures in non-assumed competences that the Basque Country pays. The imputation index is also applicable to the different compensations to be subtracted from the Quota; namely, the non-transferred taxes, the non-transferred income and the deficit in the State General Budget.

The contribution of the Basque Country to State expenditures is determined progressively, that is, the contribution of the Basque Country is proportional to its wealth, and the imputation index should be the relative income of the Basque Country to the total of Spain's income. Article 57 of the Economic Agreement establishes so when stating that that the imputation index "shall be determined basically in accordance with the income of the Historical Territories relative to that of the State".

In practice, however, the imputation index has been a political agreement and not the result of any formula. The most obvious evidence of this is that the value of the imputation index has never been changed in the almost 40 years of application of the Economic Agreement under the 1978 constitutional legal order. It was set at 6.24 per cent in 1981 and that value has not been altered since then.

The exact reason for the choice of 6.24 per cent for the imputation index under the 1981 Economic Agreement was unknown until very recently, since the figure was agreed during political negotiations between the Spanish and Basque delegations at the time. In 1981, the relative income of the Basque Country was around 7.5 per cent and the relative population 5.6 per cent. The imputation index chosen was 6.24 per cent, which is somewhere in between them. It was generally assumed to have been a compromise between the Basque position -that the imputation index should reflect the Basque share of the Spanish population- and the Spanish position -that it should reflect the Basque share of the Spanish GDP.

A member of the Basque delegation that negotiated the 1981 Economic Agreement finally explained the logic behind the 6.24 per cent figure. According to him, a political compromise was reached to base the imputation index at the time on the relative Basque GDP measured at factor cost -rather than market prices, the more usual method-, with a slight reduction bearing in mind the depth of the economic crisis in the Basque region, and the unreliability of official figures at the time. Therefore, the imputation index is equal to the relative income of the Basque Country. This means that the Basque Country contributes to the expenditure of the State according to its ability to pay. The imputation index is then progressive and includes a contribution to the solidarity -a non-assumed competence- among regions in Spain.

The Basque region's relative GDP declined from 7.5 per cent in 1981 to approximately 6.24 per cent in 1991. Since then, the relative income has fluctuated around 6.24 per cent. In 2016, the relative income of the Basque Country was 6.10 per cent, and the relative population 4.7 per cent.

*Legal ref:* EA art.52, EA art.56 and art. 57; QL art.4, QL art.6 and art.7

*See also:* Non-assumed competence; Quota: legal concept; Quota Law; Quota methodology

*Spanish:* Índice de imputación

*Basque:* Egozpen-indize

## **INFORMATION OBLIGATIONS FOR TAXPAYERS**

Worldwide, best practices for tax levying are based on imposing obligations of information on economic stakeholders and on taxpayers in order to guarantee a more effective administrative tax activity, and successful anti-tax avoidance fight. The Basque provincial and the State tax administrations are not an exception. Therefore, the Economic Agreement establishes the criteria for economic stakeholders and for taxpayers to provide relevant information for tax purposes to the competent Basque or State tax administration. These criteria vary depending on the sort of information to be provided.

Regarding information returns of withholding taxes on remuneration in cash or in kind, the Economic Agreement establishes several rules. In general, said returns must be submitted to the tax administration *-foral* Treasuries or the State Treasury- which is competent for the levying of the withholding taxes the provided information is related to.

However, when the withholder is a depository entity or an administering entity of securities, the information returns shall be submitted to the tax administration *-foral* Treasuries or the State Treasury- responsible for the inspection of said entities, in accordance with the connecting factors laid down in the Economic Agreement for the Corporate Income Tax.

In regard to withholding taxes on dividends and on payments to members of boards of directors of companies, entities, under joint taxation for Corporate Income Tax purposes, must include the total income and the total withholding taxes in the information returns submitted to each tax administration competent for the levying of the tax.

In respect of information returns, with the aim of fulfilling different legal obligations for providing general tax information, the following specific criteria are set.

First, in the case of taxpayers performing business activities, the information returns must be submitted to the competent tax administration for the inspection of said activities. In any other case, the information returns must be submitted to the tax

administration, common or Basque, corresponding to the fiscal residence of the taxpayer.

Second, regarding inheritances in abeyance, communities of property or community estates or other entities with no legal personality, said information returns must be submitted to the tax administration corresponding to the fiscal residence of the members or partners of the aforementioned entities.

Concerning tax register returns, they must be submitted to the tax administration corresponding to the fiscal domicile of the taxpayer; and, where appropriate, also to the tax administration to which the taxpayer must submit one or more of the following tax returns: tax returns for withholding taxes on remuneration in cash or in kind; tax returns for Value Added Tax; tax returns for Corporate Income Tax; and/or tax returns for Tax on Economic Activities.

*Legal ref:* EA art. 46

*Spanish:* Obligaciones de información de los contribuyentes

*Basque:* Zergadunen informazio-betebeharrak

## **INHERITANCE AND GIFT TAX**

Under the Economic Agreement, the Inheritance and Gift Tax is an agreed tax subject to autonomous legislation. It is a direct tax and as such few restrictions for the tax powers of the Basque provinces are imposed pursuant to the Economic Agreement. The modification of the Economic Agreement, pursuant to the Law 10/2017, December 28, in effect from 2018, has removed some of these restrictions, particularly in regard to non-residents.

Two taxable events comprise the Inheritance and Gift Tax, that is, *mortis causa* transfers and *inter vivos* transfers. Connecting factors to distribute competence between the Basque Country and the State concerning both taxable events are different but have some elements in common. It is also to be noted that the connecting factors for this tax differ depending on the taxpayer being a resident or a non-resident in Spain. For a better understanding of the Inheritance and Gift Tax under the Economic Agreement, it is relevant to point out that the Inheritance and Gift Tax in the common territory is a fully ceded tax to the Autonomous Communities by the State.

Regarding taxpayers with fiscal residence in Spain, as a general rule, Article 25 of the Economic Agreement establishes that the Inheritance and Gift Tax *foral* norms of Araba, Gipuzkoa and Bizkaia are applicable in two cases: *mortis causa* – after death-transfers and income received by life insurance beneficiaries when, at the date of the tax accrual, the deceased individual's fiscal residence is in any of the three Basque provinces; and *inter vivos* transfers or donations of movable property when, at the date of tax accrual, the donee's fiscal residence is in any of the three Basque provinces. A particular rule is also established for donations of immovable property, in which case

the aforementioned *foral* norms are applicable when the property is located in the Basque Country, regardless of the fiscal residence of the donee.

In all the aforementioned cases, except for donations of immovable property, the Economic Agreement restricts the application of the Basque provincial Inheritance and Gift Taxes whenever the deceased individual or the donee remain in the common territory for a longer period than in the Basque Country within the 5 year-period prior to the date of accrual of the tax. This rule is not applicable to persons who have retained the political status of Basque. In said cases, the provincial Treasuries of the Historical Territories must apply the Inheritance and Gift Tax regulations of the pertinent Autonomous Community –as the Inheritance and Gift Tax is a fully ceded tax in the common territory- in the levying of the tax.

Since 2018, the respect for the fundamental freedoms and the non-discrimination principle, in compliance with the Treaty of Functioning of the European Union, has given rise to the agreement of some new competences for the Basque Country. In particular, the Inheritance and Gift Tax of the Basque provinces is applicable in the case of non-resident deceased individuals, when the taxpayers are fiscal residents in the Basque Country; and in the case donations of immovable property sited abroad, when the donee is a fiscal resident of any of the three Basque provinces.

Regarding taxpayers with fiscal residence abroad, as a general rule, Article 25 of the Economic Agreement establishes that the Inheritance and Gift Tax *foral* norms of Araba, Gipuzkoa and Bizkaia are applicable when the greatest value of all the assets and rights in the Spanish territory lies in the Basque territory; and in the case of receipt of sums from life insurance policies when the contract is signed with insurance entities with fiscal domicile in the Basque Country, or when the contract is signed in the Basque Country with foreign entities operating therein.

*Legal ref:* BSA art.7; EA art.25.

*See also:* Agreed tax subject to autonomous legislation; Political Status of Basque

*Spanish:* Impuesto sobre Sucesiones y Donaciones

*Basque:* Oinordetza eta Dohaintzen gaineko Zerga

## **INSTITUTIONAL AUTONOMY (EU)**

In 2006, the European Court, in the judgment of the Azores case, set three different scenarios, when determining the features of truly autonomous infra-state units from the perspective of selectivity under the EU state aid policy. The third scenario is characterized by an asymmetrical division of competences and said scenario is wherein the Basque Country fits. In some areas, the local or regional authorities have certain rule-making powers which are held by the central authorities in the rest of the State territory. The crucial factor to determine whether tax measures are selective is the level of autonomy enjoyed by the local and regional authorities in their legislative activity. If the contested measure were adopted by the local authority in the exercise



of sufficiently autonomous powers, the central State and the local and regional authorities do not have a common reference framework.

The Azores case required that the local or regional authority were “truly autonomous”, which meant institutionally, procedurally and economically autonomous. According to Advocate General Geelhoed’s Opinion endorsed by European Court in its 2006 judgment, institutionally autonomous means that the tax measure must be taken by a regional or local authority with its own constitutional, political and administrative status separate from that of the central government.

Two years later, in 2008, in the so-called “Basque Economic Agreement case”, when applying the findings from the Azores judgment to the measures adopted by the Basque Historical Territories, the Advocate General Kokott assumed an asymmetrical division of competences along the lines of scenario 3 in the case of the Basque *foral* provinces. In applying each of the individual criteria, particularly, in respect to the institutional autonomy of the Historical Territories and their organs, Advocate General Kokott recalled that it is beyond doubt for the referring Court and all the parties, being the objections raised by the applicant in the main proceedings, and by the Commission, directed only at the procedural and financial autonomy of the Historical Territories. She concluded that, therefore, there was no need for further consideration of that criterion. In its 2008 September 11 judgment, the European Court of Justice stated that it is apparent from an examination of the Spanish Constitution, the Basque Statute of Autonomy and the Economic Agreement that infra-state bodies such as the Basque Historical Territories and the Autonomous Community of the Basque Country, since they have a political and administrative status which is distinct from that of the central government, satisfy the institutional autonomy criterion.

*Case-law:* Judgment 6 September 2006 of the Court of Justice in Case C-88/03 Portuguese Republic versus Commission of the European Communities; Judgment 11 September 2008 of the Court of Justice in Joined Cases C-428/06 to C-434/06 *Union General de Trabajadores de La Rioja UGT-La Rioja versus Juntas Generales del Territorio Histórico de Vizcaya and Others*. Judgment of the Basque Country High Court 2012, 29 June; Judgment of the Basque Country High Court 2012, 5 July (OV Spanish)

*See also:* Azores case (EU); Financial autonomy (EU); Procedural autonomy (EU); UGT-La Rioja case (“Basque Economic Agreement” case-EU)

*Spanish:* Autonomía institucional (UE)

*Basque:* Erakunde-autonomia (EB)

## **INSTITUTIONS OF THE BASQUE COUNTRY**

Strictly speaking, Institutions of the Basque Country are the ones of the Autonomous Community of the Basque Country; namely, the Basque Parliament and the Basque Government.

At times, the Economic Agreement, legal instrument for tax and financial relations between the Basque Country and the State, nevertheless, uses this term in a wider

sense. On these occasions, the term “Institutions of the Basque Country” may comprise the institutions of the Basque provincial level as well, namely, the General Assemblies and the Provincial Government of each Historical Territory.

A good example is Article 4 (2) when referring to the Institutions of the Basque Country to collaborate in any International Agreements affecting the application of the Economic Agreement, without determining which level, the regional, the provincial or both, should collaborate. In the financial scope, another example would be Article 48 (First), when acknowledges the fiscal and financial autonomy of the Institutions of the Basque Country in the development and implementation of their powers.

To this end, an agreement between the Basque Autonomous Community and the Basque provinces must be reached in order to determine which the referred institutions are. In the aforementioned examples, an agreement on including the institutions of both levels, the regional and the provincial, was easily reached. Notwithstanding, other cases -for instance, Article 48 (Fifth) in relation to financial supervision concerning the Basque local level or municipalities- have given rise to internal disputes within the Basque Country.

*Legal ref:* EA art. 4; EA art. 48

*See also:* Basque Parliament; Financial supervision of municipalities; Institutions of the Historical Territories; Participation in tax parties (EU)

*Spanish:* Instituciones del País Vasco

*Basque:* Euskadiko erakundeak

## **INSTITUTIONS OF THE HISTORICAL TERRITORIES**

Institutions of the Historical Territories are the provincial General Assemblies and the provincial Governments of Araba, Bizkaia and Gipuzkoa. On the Basque part, they are the main actors in the tax and financial relations between the Basque Country and the State. The reason for this is Basque provinces, not the Basque region, are the ones entitled to tax power by virtue of the *foral* rights. Therefore, when the Economic Agreement distributes the power to tax, the reference to the competent institutions of the Historical Territories is a constant.

In some cases, for example, in Article 1 (One), the reference to the institutions of the Historical Territories comprises both the Basque provincial assemblies and the Basque provincial governments. In other cases, for instance, in Article 33 (3), the reference comprises only the Basque provincial assemblies. However, in most cases the reference comprises only the Basque provincial governments e.g., Article 4 (1) of the Economic Agreement. The determination of which institution is being referred to depends on the tax power the Economic Agreement is distributing on each occasion; namely, regulatory, levying or inspection powers.

*Legal ref:* EA art. 1; EA art. 4; EA art. 33

*See also:* Institutions of the Basque Country; Provincial assembly (Basque Country); Provincial government (Basque Country).

*Spanish:* Instituciones de los Territorios Históricos

*Basque:* Lurralde Historikoen erakundeak

## **INTERNATIONAL AGREEMENT**

The fundamental rules applicable to the Basque tax system are called general principles. The Economic Agreement lays them out for tax relations in Article 2.

The submission of the Basque taxation systems to the International Treaties or Agreements signed and ratified by the Spanish State is laid out in Article 2 (1 Fifth) of the Economic Agreement. This principle is a constitutional principle already imposed by the 1978 Spanish Constitution. In addition, Article 1 of the Spanish Civil Code states that legal rules included in international treaties shall have direct application, once they become part of the domestic legal system by full publication in the Spanish Official State Gazette.

In regard to taxation, Article 2 (1 Fifth) of the Economic Agreement imposes a particular obligation for the Basque tax systems. Specifically, they must comply with the provisions laid out in the International Agreements signed by Spain to avoid double taxation, as well as with the fiscal harmonization regulations of the European Union.

Moreover, this article sets a competence rule in accordance with which the Basque tax administrations are responsible for the refunds to non-residents that derive from the application of the Double Taxation Treaties and the aforementioned European Union regulations.

*Legal ref:* BSA art.41; EA art. 2

*See also:* Cooperation principle; Coordination principle; General principles; Solidarity principle; State tax structure.

*Spanish:* Tratado Internacional

*Basque:* Nazioarteko Itun

## **INTERNATIONAL COOPERATION**

Cooperation or collaboration is one of the fundamental principles underlying the Basque tax and financial system. Article 2 of the Economic Agreement states that the taxation system established by the Historical Territories shall respect the cooperation principle with the State, in accordance with the rules laid down in the Economic Agreement. To this purpose, Article 4 of the Economic Agreement sets the three different scenarios for cooperation; namely the regulatory scope, the international scenario and the tax levy, collection and inspection field.

In respect to the international cooperation, Article 4 (2) compels the State to set out the procedures for the Institutions of the Basque Country to collaborate in any International Agreements affecting the application of the Economic Agreement.

For more than 20 years, said procedures for international cooperation were inexistent due to the State's reluctance to allow the Basque Country to participate in the international scope. During the 2002 Economic Agreement negotiations, this issue became one of the main obstacles to reach an agreement between the Basque representatives and the State representatives on time before the end of 2001, when the 1981 Economic Agreement was due to expire. Ultimately, it was the Basque side that gave up the issue of representation in the Europe Union. The Basque part, nevertheless, still requested the Joint Commission on the Economic Agreement to reach a bilateral agreement within six months in order to establish the effective participation of Basque representatives in all international spheres which impact the Economic Agreement.

The agreement was actually achieved almost nine years later when international cooperation procedures were adopted. Within the Joint Committee on the Economic Agreement, the central government agreed with the Basque Country on the procedures, and determined the European Union working groups to which the Basque representatives could attend from that moment onwards. The first European Council tax working committee to be attended to was the Code of Conduct on Business Taxation in 2011. Since then, international cooperation at the EU level has been actually effective.

Nevertheless, the State has not implemented any procedures yet on how to cooperate in some other relevant international tax organizations, for instance, the Forum on Harmful Tax Practices of the OECD. This Forum, operating under the auspices of the Committee on Fiscal Affairs, plays an important coordination and knowledge-gathering role within the OECD with regard to countering preferential tax regimes. In particular, the contribution to the Base Erosion and Profits Shifting Plan (BEPS-2015) of this Forum was remarkable.

On 7<sup>th</sup> June 2017, representatives from 68 countries, including Spain, signed the OECD's multilateral tax agreement, -Action 15 of the BEPS Plan- with the aim of closing loopholes in thousands of tax treaties worldwide. However, the Basque Country did not take part in the negotiations of said multilateral tax agreement.

*Legal ref:* BSA art.41; EA art.4.

*See also:* Coordination principle; Exchange of tax regulations; Exchange of tax information; International cooperation; Participation in tax parties (EU)

*Spanish:* Colaboración internacional

*Basque:* Nazioarteko Lankidetzeta

## **INTRA-REGIONAL RELATIONS: FRAMEWORK**

The Economic Agreement is the tax and financial system of the Basque Country, by virtue of which the financial and tax relations between the Basque Country and the Spanish central government are set up.

Therefore, the Economic Agreement has a bilateral dimension but an intra-regional impact as well, since the Basque Statute of Autonomy grants tax powers to each of the three Basque provinces for historical reasons, rather than to the Basque regional government.

Each *foral* province raises tax revenues in its territory, which, after payment of the annual Quota to the central Spanish government, are distributed among the three levels of public administration -that is, regional, provincial and municipal- responsible for different areas of spending within the region.

In the tax internal scope, the distribution of tax powers among the three Basque provinces is also established using connecting factors. These connecting factors are almost identical to the ones in the Economic Agreement to distribute tax powers between the Basque Country and the State. Nevertheless, in the case of internal distribution, there is not a legal instrument that lays down the connecting factors in order to distribute tax powers among the three Historical Territories. In fact, after reaching an agreement in the Basque Tax Coordination Committee, each Basque province sets this distribution of tax powers when determining the scope of the provincial *foral* tax norms regulating each tax figure.

For instance, in accordance with the Economic Agreement, fiscal residence in the Basque Country is the connecting factor to distribute competence between the Basque Country and the State for Personal Income Tax purposes. Internally, each Basque province holds tax powers over personal taxation of an individual depending on wherein his or her fiscal residence is located: Araba, Bizkaia and Gipuzkoa.

On the financial scope, basic principles and procedures to be followed in order to decide how the tax revenues raised by the three Basque provinces should, then, be distributed between the regional government and the provinces to finance their respective competences are stipulated in the Historical Territories Law. The exact methodology for the distribution of resources and contribution of each province to the regional government is decided in meetings of the Basque Council of Public Finances, in accordance with the criteria stipulated in Article 22 of the HTL, and then set in the so-called Contributions Law by the Basque Parliament. The Contribution Laws determines how much each province must transfer to the Basque regional government, as well as how much of the Quota to the central government each must pay. It also recommends a minimum share of revenues each *foral* province should give to the municipalities in its territory.

*Legal ref:* BSA art.41; HTL art.22.

*See also:* Basque Council of Public Finances; Contributions Law; Intra-regional financial relations

*Spanish:* Relaciones intrarregionales: marco general

*Basque:* Eskualde barneko harremanak: esparru orokor

## INTRA-REGIONAL FINANCIAL RELATIONS

Financial relations among the three different levels of government within the Basque region are based on the principle of shared risk.

In accordance with the Historical Territories Law, the Basque regional government has by far the most spending competences within the region and yet raises almost no revenues of its own. The Basque Government is actually the regional government with the least revenue-raising powers in Spain, even though the Basque Autonomous Community as a whole has far greater revenue-raising powers than any other region. The reason for this is that the Basque Statute of Autonomy and the Economic Agreement entitle the Basque provinces, and not the Basque region, with tax power, including the revenue-raising powers.

The Historical Territories Law also stipulates the basic principles and procedures that must be followed to decide how the tax revenues raised by the three Basque provinces should then be distributed between the regional government and the provinces to finance their respective competences. Municipalities also receive payments from each of the three provinces they belong to. The exact methodology for the distribution of resources and for the contribution of each province to the regional government is decided in the bilateral meetings of the Basque Council of Public Finances, in accordance with the criteria stipulated in Article 22 of said law, and then set in the Contributions Law, to be approved by the Basque Parliament.

The total resources of the Basque Autonomous Community comprise the tax revenues raised by the foral provinces and, some minor additional financing for certain specific competences provided directly to the Basque regional government by the central Spanish government. These include funds to contribute to the additional costs of the Basque Police Force, the *Ertzaintza*, and special financing for specific expenditure policies, such as those aiming to promote economic development and stability of the Basque region.

Once the annual Quota has been paid to the central government, the remaining income raised by the Basque provinces provide the common resources to be shared between different levels of government in the Basque region to cover general competences. Said resources are distributed according to some vertical and horizontal coefficients subject to some final adjustments. Lastly, of the common resources that remain in the hands of the *foral* provinces after they have paid the contribution to the Basque government, a proportion also goes to the municipalities or local governments.

*See also:* Contributions Law; Horizontal coefficient; Intra-regional relations: framework; Shared risk: intra-regional financing system; Vertical coefficient

*Spanish:* Relaciones financieras intrarregionales

*Basque:* Erregio barneko finantza-harremanak

## **“IRONCLAD” OF THE FORAL TAX NORMS**

The “ironclad” of the *foral* tax norms or the “ironclad making” of the Economic Agreement is a made-up term which conjures the jurisdictional protection of the Basque tax regulations up. It is quite a misleading expression with no legal meaning out of the context of the permanent challenge of the Basque provincial *foral* tax norms in courts during decades. The “shielding” of the Economic Agreement or the “armoring” of the Economic Agreement are other made-up synonyms used.

When the expression making the Economic Agreement “ironclad” started to be used by politicians and the media, the intention behind was to start a discussion as to whether it was legally acceptable that a system of tax regulations, such as the Personal Income Tax, the Corporate Income tax or the Inheritance Tax, applicable to all citizens could be subject to challenge on the part of any individual, union, or business association in ordinary administrative courts.

On 20<sup>th</sup> February 2010, the Organic Law 1/2010 (SP), February 19, which amended the Organic Laws of the Constitutional Court and the Judiciary, was published in the Spanish Official State Gazette. This law entered in force as of 12<sup>th</sup> March 2010 and has since come to be known as the “ironclad law” of the Economic Agreement.

This reform enacts the proper jurisdiction of courts to hear appeals and challenges to the provincial *foral* tax norms, removing the jurisdiction from the ordinary administrative courts that had until then ruled on such issues, and instead entrusting the Spanish Constitutional Court with hearing direct and indirect appeals against said regulations. Politicians and the media termed this legal amendment the “armor” or the “ironclad” of the *foral* tax norms, the purpose of which was to adjust the channels of jurisdictional challenges to the nature of those regulations.

The fact of the matter is that, given the particular institutional configuration of the Basque Autonomous Community, the three Historical Territories that comprise said community have competences based on historical rights that are being executed by their corresponding institutions. However, it is paradoxical that these institutions only enjoy regulatory capacity, despite the fact that issues such as tax matters ought properly to be regulated by formal laws. This contradiction in the nature of the *foral* tax norms, i.e., the fact that they are defined formally as regulations, while being materially laws, provoked that those regulations of particular taxes were subject to appeal before administrative law courts, while the tax regulations of the rest of the State and of the *Foral* Community of Navarre, laws in both the formal and material sense, could only be challenged in the Constitutional Court, and only by a relatively small number of parties entitled to do so.

In this regard, Organic Law 1/2010, entrusted the Constitutional Court to hear matters involving appeals and challenges against the *foral* tax norms of the three Historical Territories, thus preventing administrative law courts from hearing and judge on direct and indirect appeals against those tax regulations in the future.

What the legislative change was therefore attempting to do was to repair an inappropriate legal order to this extent and generate the legal security needed by economic and social agents.

However, this legal reform was challenged in the Constitutional Court after entering into force. On June 2016 the Constitutional Court confirmed the constitutional validity of said Organic Law, thus dismissing in full the supposed breaches of different articles of the Constitution, alleged by the appellants, that is, the Autonomous Communities of *La Rioja* and *Castilla y León*.

*Case-law:* Spanish Constitutional Court 2016, 26 June (OV Spanish)

*See also:* Basque Parliament; *Foral* tax norm; Provincial Assembly (Basque Country)

*Spanish:* Blindaje de las Normas Forales fiscales

*Basque:* Foru Arau fiskalen “Blindajea”



# J

## JOINT COMMITTEE ON THE ECONOMIC AGREEMENT

The Joint Committee on the Economic Agreement is the highest committee for relations between the central administration of the State and the Basque administration. In general, it adopts all agreements involving tax and finance matters deemed necessary at any given time for the correct application and development of the provisions included in the Economic Agreement.

The Joint Committee is made up of twelve members, six representatives of the State administration and the same number of representatives of the Basque administration. Within the Basque representatives, there is one from each provincial government and other three from the regional government. In practice, the representatives of the *foral* provinces are the provincial Prime Ministers. The representatives of the Basque Government are the Minister of Treasury and Finance, who is the head of the Basque delegation, another Minister of the Basque Government appointed *ad hoc* and the Vice-minister of Treasury and Finance, who acts as co-secretary of the Committee with the appointed representative of the State's delegation. On the other hand, the central administration representatives are the Minister of Finance, head of the State delegation, High Officials of this Ministry and Ministers of some other areas appointed *ad hoc* for the Committee meetings.

Agreements within the Joint Committee on the Economic Agreement require unanimity of all its members. Without prejudice to other duties which are specifically assigned in the Economic Agreement or in any other legal dispositions, the Joint Committee adopts agreements concerning the following scopes:

- Amendments to the Economic Agreement.
- Coordination and cooperation commitments in matters of budgetary stability.
- Methodology to be used in setting the Quota for each five-year period.
- Appointment and regime of the members of the Arbitration Board, its functioning, call for meetings, and system for adopting agreements.

*Legal ref:* EA art.61 and art. 62

*See also:* Arbitration Board; Committee; General principles; Quota methodology

*Spanish:* Comisión Mixta del Concierto Económico

*Basque:* Ekonomia-Itunaren Batzorde Mistoa

## JOINT TAXATION

The Economic Agreement determines the cases in which a company must pay taxes exclusively to one administration, and the cases in which it must pay taxes jointly to both the Basque tax administrations and the State tax administration. This latter case is known as joint taxation. The general rule in the Economic Agreement is the exclusive taxation rule. However, joint taxation may occur in regard to the Corporate Income Tax, to the Income Tax on Non-Residents, for individuals or companies operating through permanent establishments in Spain, and to the Value Added Tax. In order to set the proportion corresponding to each tax administration, the application of the agreed connecting factors set the percentage of the tax liability that must be paid in each territory.

In the Corporate Income Tax, the determination of the tax liability is based on the principle of simplicity. Therefore, exclusive taxation is the rule applicable to small firms. Basically, small Basque firms with fiscal domicile in the Basque Country pay taxes only to one of the three provincial Basque tax administrations, e.g., that wherein the fiscal domicile is located. Regardless of the territory wherein their fiscal domicile is, large firms apply the joint taxation rule. The proportion of their tax liability to each tax administration depends on the amount of business turnover performed in each territory in accordance with the connecting factors in the Economic Agreement. Concerning the Income Tax on Non-residents, persons or entities operating through a permanent establishment also pay taxes following the aforementioned rules for the Corporate Income Tax.

Under the Economic Agreement, the Value Added Tax is paid in accordance with the origin principle. That is, Basque provinces collect the Value Added Tax levy on the production of the Basque Country. In order to assign such production, there are some specific connecting factors. The determination of the tax liability is based on similar rules to the aforesaid ones for exclusive taxation and for joint taxation under the Corporate Income Tax. This gives rise to an *ex post* adjustment for the differences between what the Basque Country collects, that is, the Value Added Tax on the value added created in the Basque Country, and what it should collect; namely, the Value Added Tax on the consumption of the residents in the Basque Country.

*Legal ref:* EA art.15; EA art. 22; EA art. 27

*See also:* Business turnover; Corporate Income Tax, Fiscal domicile; Place of transactions; Value Added Tax

*Compare:* Exclusive taxation

*Spanish:* Tributación en volumen de operaciones

*Basque:* Eragiketa kopuruaren arabera zergak ordaintze

# M

## **MANUFACTURING EXCISE DUTIES**

*See:* Excise Duties

*Spanish:* Impuestos Especiales de Fabricación.

*Basque:* Fabrikazioaren gaineko Zerga Bereziak

## **MUNICIPALITIES: FINANCIAL PRINCIPLES**

The fundamental rules applicable to the Basque tax and financial system are called general principles. The Economic Agreement lays them out in Article 2 for tax relations, and in Article 48 for financial relations, including the latter two principles exclusive to Basque municipalities.

The Basque Country legislation did not contain a global regulation for Basque municipalities until the Law 2/2016 (BP), April 7, on Local Institutions of the Basque Country, was enacted. In reference to the municipal level in the Basque Country, Article 10 (4) of the Basque Statute of Autonomy stipulates generically that the authority over the municipal system is exclusive to the Basque Country and then, depending on the kind of competence, the Statute makes some particular references to the municipalities. Municipalities in the Basque Country are also part of the Economic Agreement as the financial and tax relations of all the Basque tiers of government are under the Agreement system pursuant to Article 41 of the Basque Statute of Autonomy. The principle of “shared risk” between the Basque provinces and the Basque municipalities determines the share of the latter in the financial resources of the Basque Country.

As far as the financial autonomy of Basque Municipalities, the Historical Territories Law also has a specification in the Second Additional Provision that obliges the Basque provincial governments to guarantee a minimum level of autonomy for Basque municipalities. In addition, said provision establishes that the Basque provincial governments are in charge of the distribution of resources to the municipal level in accordance with the criteria adopted freely by them.

Article 48 (Fifth) of the Economic Agreement, together with the general financial principles, stipulates two other principles applicable exclusively to the local entities of the Basque Country. One of them affects their level of autonomy and the other their participation in the State collection of non-agreed taxes, which is developed in Article 51 of the Economic Agreement.

In concern with the financial autonomy, the Economic Agreement stipulates, in a paragraph similar to the one in the Historical Territories Law, that the faculties of

financial supervision exercised by the State at any time concerning municipalities correspond to the Basque Country, which at the same time is responsible for the guarantee of a minimum level of autonomy for Basque municipalities which is that entitled by the State to the municipalities under the common regime.

Obviously, the Economic Agreement does not stipulate anything concerning the participation of Basque municipalities in agreed taxes as said participation is a competence exclusive to the Basque Country. The Basque Contributions Law and the Municipal Law regulate such participation.

*Legal ref:* BSA art.41; EA art. 48; EA art. 51

*See also:* Contributions Law; Municipal Law; Municipal share in agreed taxes; Municipal share in non-agreed taxes

*Spanish:* Municipios: principios financieros

*Basque:* Udalak: finantza-printzipioak

## **MUNICIPALITIES: TAX PRINCIPLES**

The Economic Agreement, legal instrument that regulates the financial and tax relations between the Basque Country and the State, includes in its first part devoted to tax relations, a section for Municipal Treasuries. In said section, Articles 39, 40 and 41 establish the connecting factors, by virtue of which tax powers are attributed to the Basque provinces in the three mandatory taxes: the Tax on Immovable Property, the Tax on Economic Activities, and the Tax on Motor Vehicles. *Foral* provinces have full powers to regulate municipal taxes.

In addition to the foregoing, Article 42 attributes to the *foral* assemblies and *foral* governments of the Historical Territories the capacity to maintain, establish and regulate, within their respective territory, the tax regime of other taxes specific to local entities, according to two rules.

First, there is an obligation for the Basque provinces, when designing the local tax system, to pay attention to the general structure of the municipal tax system under the common regime, and to the principles on which said structure is based, respecting any of the harmonization rules envisaged in the Economic Agreement that are applicable to local taxes. This criterion makes the general principles established in Article 2 of the Economic Agreement applicable to the local scope. The reference to the harmonization rules only makes sense in relation to two rules. One is the harmonization rule provided in Article 3 (d), which imposes on the Basque tax systems the same system for classifying industrial, commercial, professional and artistic activities as well as services, as in the common territory, without prejudice to further disaggregation, applicable in the scope of the Tax on the Economic Activities.

The second rule is the non-distortion principle, in accordance with which it is forbidden for the Basque provinces to establish taxes of an indirect nature, other than those in force in the common system, whose revenue may be transferred or shifted outside the territory of the Basque Country. This criterion is also similar to the general non-

distortion harmonization rule in Article 3 (c) of the Economic Agreement. This rule obliges the tax systems of the Historical Territories to respect and guarantee the freedom of movement and establishment of persons and the free movement of goods, capital and services throughout the territory of Spain, without giving rise to discrimination or a lessening of the possibilities of commercial competition or to distortion in the allocation of resources.

*Legal ref:* BSA art.41; EA art. 42; EA art. 48

*See also:* Economic Activities Classification; General Principles; Non-distortion principle; Municipal taxes

*Spanish:* Municipios: principios tributarios

*Basque:* Udalak: tributu-printzipioak

## **MUNICIPAL LAW**

The Basque Country legislation did not contain a global regulation for Basque municipalities until recently, when the Law 2/2016 (BP), April 7, on Local Institutions of the Basque Country, -known as the Municipal Law- was enacted. The Municipal Law provides Basque municipalities with their own legal framework for stability and allows them to exercise their self-government with full guarantees.

In regard to resources of the municipal level, the Municipal Law devotes its final part entirely to the regulation of the municipal financial framework. The first block of articles of this final part includes several general provisions in which the principles of the Basque local Treasuries are stipulated. Rules relating to, among others, the budgetary regime, the indebtedness regime and accounting are also incorporated.

The second block deals with the regulation of the financial municipal model and establishes the principles that should inform the local financial structure, ensuring the presence and participation of municipalities in those decision processes that may directly affect them. Thus, the Basque Municipal Law guarantees the participation of the representatives of the Basque municipalities in the adoption of a broad list of agreements of the Basque Council of Public Finances. As a complement to this regulation, the First Final Provision of the Law amends the Historical Territories Law, precisely to foresee the incorporation of the representatives of the municipal level to the Council and to determine the regime of adoption of agreements in all those cases in which the particular interests of the municipalities may be affected. Likewise, the Third Final Provision of the Law amends the Tax Harmonization Law in order to incorporate municipal representatives to the meetings of the Basque Tax Coordination Committee, when issues affecting municipalities are in the meeting agenda.

Although the framework wherein the economic and financial activity of the Basque municipalities operate has been clarified by said Law, the transposition of its principles into the financial legal framework is subject to further development, by means of their incorporation, in particular, into the Contributions Law and into the Basque provincial *foral* norms regulating these matters in each Historical Territory.

*Legal ref:* BSA art.41; EA art. 48

*See also:* Basque Council of Public Finances; Basque Tax Coordination Committee; Contributions Law; Municipal share in agreed taxes; Municipal share in non-agreed taxes

*Spanish:* Ley Municipal

*Basque:* Udal-Lege

## **MUNICIPAL TAXES**

The Economic Agreement, legal instrument that regulates the financial and tax relations between the Basque Country and the State, includes in its first part devoted to tax relations, a section for Municipal Treasuries. In said section, Articles 39 to 41 establish the connecting factors, by virtue of which the tax powers are attributed to the Basque provinces in the three mandatory taxes: the Tax on Immovable Estate, the Tax on Economic Activities, and the Tax on Motor Vehicles. Basque provinces have full powers to regulate municipal taxes.

Article 39 states that the Tax on Immovable Property is regulated by the Basque *foral* norms and the levying power corresponds to the Basque Country when the urban or rural real estate is located in any of the three Basque Historical Territories.

In regard to the Tax on Economic Activities, Article 40 establishes the tax regulatory power of the Basque provinces. Concerning the levying power, the Basque provincial Treasuries are the competent authorities when the economic activities are performed in the Basque territory, in accordance with three different rules:

- in cases of tax liability for the municipal scope, when they are accrued in any of the municipalities of the Historical Territory;
- in cases of tax liability for the provincial scope, when the activity is exercised in the corresponding Historical Territory;
- in cases of tax liability entitling the taxpayers to perform economic activity in more than one province, when their fiscal residence or fiscal domicile is in the Basque Country.

Payment of said tax to the pertinent tax administration, common or Basque, entitles the taxpayer to exercise the activity in both territories.

Article 41 states that the Motor Vehicle Tax is regulated by the Basque *foral* norms and the levying power corresponds to the Basque Country when the domicile on the driver's license corresponds to a town or city in the Basque territory.

*Legal ref:* EA from art. 39 to art.41

*See also:* Municipalities: tax principles

*Spanish:* Impuestos municipales

*Basque:* Udal zergak

## **MUNICIPAL TREASURIES**

*Legal ref:* EA from art. 39 to art.42

*See:* Municipal taxes

*Spanish:* Haciendas municipales

*Basque:* Udal ogasunak

## **MUNICIPAL SHARE IN AGREED TAXES**

The principle of shared risk between the Basque provinces and the Basque municipalities implies the share of the latter in the financial resources of the Basque Country. Once the Quota and the contributions are paid, the remaining resources are divided between the provinces and the municipalities of each territory. In principle, each province can decide freely how much to assign to the municipalities on the whole, and how to distribute this amount among the municipalities in each territory.

Nevertheless, the Fourth Additional Provision in the Contributions Law recommends a minimum share of Basque Municipalities in the resources of the Territories. So far, this recommendation has always been accepted by the Basque provinces. According to the current Contributions Law, the recommended minimum is 54.7 per cent of the resources of the province. That is, 54.7 per cent of the amount left after paying the so-called Institutional Obligations, namely, the Quota and the contributions.

The amounts assigned to the municipalities in each territory are known as the *Foral* Municipal Fund. The distribution of each *Foral* Municipal Fund among municipalities in the territory is decided by each province, and the criteria used are very different. That is one of the reasons why similar municipalities in different Basque provinces may receive different resources, being the other reason that the three *foral* territories have different resources in terms of per capita and of percentage of Gross Domestic Product.

In practice, Basque provinces assign to the municipalities more than the minimum. In 2016, for instance, Araba and Bizkaia endowed their funds with 56 percent of the resources of each territory and Gipuzkoa with 58 per cent.

From 2016, the Municipal Law clearly stipulates the undoubted competence of the Basque Historical Territories for the distribution of resources to municipalities in each Basque province that, consequently, will be exercised freely by each provincial government. However, the Basque Council of Public Finances is expected to establish a minimum level of municipal participation in the agreed taxes, as well as the criteria for the aforementioned distribution.

*Legal ref:* BCL Fourth Additional Provision

*See also:* Contributions Law; Horizontal coefficient; Intra-regional financial relations; Shared risk: intra regional financial system

*Compare:* Municipal share in non-agreed taxes

*Spanish:* Participación municipal en tributos concertados.

*Basque:* Udalen parte-hartzea itundutako tributuetan

## **MUNICIPAL SHARE IN NON-AGREED TAXES**

The Economic Agreement model gives rise to several financial transfers between the State and the Basque Country.

The main financial flows between the Basque region and the central government under the Economic Agreement are the annual Quota paid by the Basque region to the State to cover its share of the general expenses defrayed by the Spanish State, and the adjustments for Value Added Tax paid by the State to the Basque region. The adjustment for Excise Duties is less relevant in size than the two aforementioned flows and consists on a transfer from the Basque Country to the State. These adjustments compensate for the differences between the amount the Basque province collects in these particular taxes and what the residents in the Basque Country pay in regard to these taxes. Most of these transfers are from the State to the Basque Country. These differences are generally due to the agreed connecting factors for the distribution of tax powers between the State and the Basque Country. There are also some other minor flows; one of them refers to Basque municipalities.

Under the financial system of the common territory, one of the resources of the municipalities is a share on the taxes of the State. In parallel, in the Basque region the Contributions Law of the Basque Parliament imposes the obligation to pay the share of Basque municipalities in the agreed taxes on the provincial governments. There are, however, some fiscal revenues that have not been agreed and, therefore, the State makes a small transfer to Basque Municipalities, through the *foral* governments, for their share on those non-agreed fiscal revenues. In accordance with Article 51 of the Economic Agreement, each provincial government is responsible for the distribution of the corresponding amounts in their respective territory following the general rules of internal distribution of income.

*Legal ref:* EA art.51.

*See also:* Financial flow: Basque Country-Central Government; Municipalities: financial principles.

*Compare:* Municipalities share in agreed taxes.

*Spanish:* Participación municipal en tributos no concertados.

*Basque:* Udalen parte-hartzea itundu gabeko tributuetan



# N

## NAVARRRE

Together with Araba, Bizkaia and Gipuzkoa, Navarre is one of the territories with historical rights due to its *fueros* dating back to the Middle Ages, which are currently safeguarded and updated by the 1978 Spanish Constitution and the Statute of Autonomy of Navarre. Among said rights, a tax and financial regime separate from the State tax system and from the financial system of the remaining fifteen autonomous communities or regions stands out. Parallel to the Basque case, an economic agreement, known as Covenant, based on the traditional *foral* system, establishes tax and financial relationships with the central government.

The 1978 Constitution, when establishing a quasi-federal State by setting up the Autonomous Communities, introduced some relevant differences between Navarra and the Basque Country. While the old *foral* province of Navarre became an Autonomous Community on its own, the other three *foral* territories were joined in the Autonomous Community of the Basque Country. Hence, Navarre has a simpler internal structure: the political and administrative bodies of the previous province were transformed into those of the new regional government. In contrast, in the Basque case, the institutions of the new Autonomous Community coexist with those of the old provinces or Historical Territories. Therefore, owing to the dual nature of Navarre, when setting up the State of the Autonomies under the 1978 Constitution, Navarre's only solution was to be set as the *Foral* Community of Navarre, instead of an Autonomous Community, as in the case of the Basque Country, in which the *foral* substance lies in each of the three old provinces.

Navarre's basic legal framework is the Organic Law 13/1982 (SP), August 10, of reintegration and improvement of the *Foral* regime of Navarre, known as the "Betterment Law of the *foral* regime", which is the equivalent to the Statute of Autonomy of Navarre, and the Law 28/1990 (SP), December 26, passing the Covenant, or Economic Agreement, between the State and the *Foral* Community of Navarre, which regulates the tax and financial system of Navarre and determines the way to calculate the contribution that Navarre has to pay the central administration.

*Legal ref:* SC First Additional Provision, NSA art.45

*See also:* Charter; Economic Agreement (Navarre); *Fuero*; Historical right

*AN:* Most of the terms and concepts within this Glossary are also applicable to the tax and financial system of the *Foral* Community of Navarre.

*Spanish:* Navarra

*Basque:* Nafarroa

## **NEW FUERO**

Many provisions of the 1526 New *Fuero* or Law are an almost exact copy of the 1452 Old *Fuero*. As in the old law, the main rationale of the Code is the control of the Lord's power.

The New *Fuero* of Bizkaia established the taxes to be paid by the local residents to their Lord, who had been the King of Castile since 1379. The Lord was not allowed to exact further tributes outside those taxes, which did not, necessarily, mean that other taxes were not paid, for example, to uphold institutions such as the provincial assemblies. The province covered its expenses by imposing proportional distributions of taxes on the residents of each village, registered by households, in order to pay the total amount. This system gradually disappeared and was replaced by the collection of excise taxes. This system, with its ups and downs, remained in place until the end of the *foral* system after the Second Carlist War and the subsequently approval of the first Economic Agreement in 1878.

*See also:* Charter; *Fuero*; Historical Background (1200-1812); Historical Background (1812-1876); Old *Fuero*

*Spanish:* Fuero Nuevo

*Basque:* Foru Berri

## **NON-AGREED TAX**

From an international tax perspective, it is a term unique to the Basque tax and financial system under the category of non-agreed income. It refers to taxes of exclusive State competence. In regard to them, the Basque tax administrations do not even have the collection power in the Basque territory. Since the 2002 Economic Agreement, all taxes are agreed taxes with only three exceptions. First, withholding taxes on the wages of some employees of the central government; second, withholding taxes on the interest of assets issued by the State or any other region or municipality of the common territory; and, third, Custom Duties, i.e., import duties and import levies included under the Excise Duties and the Value Added Tax, which as in the rest of the EU countries, are a resource of the European Union.

In conclusion, the central government almost does not collect taxes in the Basque region. From a comparative approach, the Basque region is one of the regions in the world with highest level of fiscal autonomy. Paradoxically, it is the only region in the world -even in comparison with some of the most autonomous regions such as the Swiss Cantons, the US States and the province of Quebec in Canada- in which the central government hardly collects any tax.

To complete the tax income scenario, it is important to keep in mind that the State collects Social Security contributions in the Basque Country. The reason for this is that,

under the Spanish legal framework, Social Security contributions finance exclusively pensions and unemployment benefits and they are not part of the tax system. Since the State provides in the Basque region both, pensions and unemployment benefits, it also collects the Social Security contributions. Obviously, the Basque Country would only collect the Social Security contributions if it assumed the responsibility to provide pensions and unemployment benefits. That is, if the Basque Country had a Social Security financially independent from that of the rest of the State.

*Legal ref:* BSA art.41; EA art.5; EA art. 9; EA art. 7 (2)

*See also:* Competence exclusive to the State; Quota compensation: non agreed-income

*Compare:* Agreed tax

*Spanish:* Impuesto no concertado

*Basque:* Itundu gabeko tributu

#### **NON-ASSUMED CHARGE**

*See:* Non-assumed competence

*Compare:* Assumed charge

*Spanish:* Carga no asumida

*Basque:* Bereganatu gabeko zama

#### **NON-ASSUMED COMPETENCE**

When determining the Quota concept, Article 49 of the Economic Agreement refers to the contribution of the Basque Country to the State in order to finance its share in all the *“cargas del Estado que no asuma la Cominidad Autonoma del País Vasco”* –in the Spanish original version- or, in short, *“cargas no asumidas”*.

The annual Quota aims at defraying the Basque share of the Spanish state expenditure on the competences fulfilled by the central government on behalf of the whole of Spain. In most of the English versions of the Economic Agreement, the term *“carga no asumida”* is usually translated literally as “non-assumed charge”. However, for a better understanding in English, the use of the term “non-assumed competences” is recommended.

In fact, Article 52 of the Economic Agreement and Article 4 of the Quota legislation, as determined by the Law 11/2017 (SP), December 28, stipulate that the charges of the State not assumed by the Basque Autonomous Community are those which correspond to competences which have not been actually assumed by the latter.

Some of this State expenditure is incurred out of the Basque territory in providing general services, for instance, the funding of the Royal Household, the Congress, the Senate, the Army, Foreign Affairs or the contribution to the European Union. Some

other expenses, which are the exception, are made in the territory of the Basque Country, for instance, expenses in ports and airports of general interest or in the High Speed Train.

Both said articles also enumerate some of the non-assumed competences. Among others, the sums allocated in the General State Budget to the Inter-territorial Compensation Fund, which aims at ensuring solidarity among regions in Spain, and the State debt repayments, including interest.

The Quota Law determines the methodology to calculate the total amount of the non-assumed charges, by deducting the net budget allocation corresponding to the assumed competences by the Basque Autonomous Community from the total expenditure allocated in the State budget. In other words, the value of the expenditure of the State in competences not assumed by the Basque Country is determined as the difference between the total State expenditure in the State General Budget and the expenditure of the State in competences assumed by the Basque Country. More specifically, the Basque Country contributes to the expenditure on non-assumed competences financed exclusively by the central government with tax revenues –not including the financed ones via deficit- which are not covered by any revenues the central government collects in the Basque region, fundamentally, the non-agreed taxes. The Quota does not include a contribution towards the part of the State expenditure on non-assumed competences that is financed by deficit because that would require the Basque region to use revenues to pay upfront for expenditure that the central government is deferring by issuing debt; namely bonds and loans.

In accordance with the Economic Agreement and with the Quota legislation, the apportionment of the Basque Country's share of non-assumed competences should basically reflect the region's share of Spanish GDP, determined by a percentage known as the "imputation index".

*Legal ref:* EA art.52; EA art. 57; QL art.4; QL art.7

*See also:* Quota; Quota: legal concept; Quota compensations: non-agreed income; Quota Law; Quota methodology

*Compare:* assumed competence.

*Spanish:* Carga no asumida

*Basque:* Bereganatu gabeko eskumen

## **NON-DISTORTION PRINCIPLE**

It is one of the particular criteria to be fulfilled by the Basque tax regulations in order to meet the tax harmonization requirement pursuant to the Economic Agreement. This criterion pertains to tax relations between the Basque Country and the State.

Where the Basque provinces have legislative autonomy, that is, in regard to agreed taxes subject to autonomous legislation, they are still subject to some general harmonization rules, which are laid out in Article 3 of the Economic Agreement. The

present harmonization rule stipulates that the Basque tax systems must not distort competition among firms or free movement among Spanish regions. To this effect, the Basque tax systems must respect and guarantee freedom of movement and establishment of persons and the free movement of goods, capital and services throughout the territory of Spain, without giving rise to discrimination or a lessening of the possibilities of commercial competition or to distortion in the allocation of resources.

Together with the fiscal pressure harmonization rule, this criterion is inherently ambiguous and open to different interpretation. In this case, the Economic Agreement requires a difficult equilibrium between the wide regulatory powers the Historical Territories hold in respect of the Corporate Income Tax and the mandate not to distort competition and free movements among Spanish regions.

How to reach this equilibrium has been at the core of many judicial conflicts between the State and the Historical Territories. In fact, Basque Corporate Income Tax incentives have been challenged to courts on many occasions particularly by the neighboring regions.

In the common territory system, respect for a similar principle is also required by the Organic Law 8/1980 (SP), September 22, on the Financing of the Autonomous Communities. As a result, there is a consolidated case-law by the Spanish Constitutional Court on how to interpret the non-distortion principle, which the Spanish Supreme Court and the High Courts of the Autonomous Communities apply when issuing their sentences.

From an economic perspective, distortion is a matter of degree and any tax difference between the Basque Country and the rest of Spain, no matter how small, it will cause some distortion. Plainly, any tax difference will introduce some discrimination, somewhat reduce free competition and, and as long as productive factors are mobile, give rise to some changes in the allocation of resources. The fact that distortion is a matter of degree, introduces subjectivity in the decision about whether or not a tax measure is distortionary. The problem is further complicated because there is not a clear method to measure the level of distortion created by a tax difference.

From a legal perspective, the Spanish Constitutional Court understands that this harmonization rule is not violated when the adopted tax measures comply with the principle of proportionality to the pursued target, although they unintentionally cause the side-effect of market distortion.

Therefore, difficulties in interpreting this harmonization rule as well as the complexity of analyzing the effects of tax incentives on business decisions and on the economic market in each particular case have given rise to some contradictory sentences by the Courts.

*Legal ref:* BSA art.41; EA art. 2 and 3

*Case-law:* Among others, on how to interpret the principle of non-distortion: Judgment of the Spanish Constitutional Court 1987, 1 July; Judgment of the Spanish Supreme Court 1998, 13 October; Judgment of the Spanish Supreme Court 1999, 14 December;

Judgment of the Spanish Supreme Court 2009, 22 January; Judgment of the Spanish Supreme Court 2012, 22 July (OV Spanish).

*See also:* Common Territory; Fiscal pressure; General Tax Law; Tax harmonization

*Spanish:* Principio de no distorsión

*Basque:* Distortsiorik ezaren printzipio

## **NON-RESIDENTS INCOME TAX**

Under the Economic Agreement, the Non-residents Income Tax is an agreed tax subject to State legislation, that is, to the same rules in terms of substance and form as those established by the State.

Notwithstanding, permanent establishments of non-resident taxpayers with fiscal domicile in the Basque Country are subject to the Income Tax on Non-residents of the Basque provinces in accordance with the connecting factors for the distribution of regulatory, levying and inspection powers laid down in the Economic Agreement for the purposes of the Corporate Income Tax. A non-resident taxpayer operating through a permanent establishment subject to the Basque Income Tax on Non-Residents pays this tax in respect of all Spanish and foreign source income attributable to such permanent establishment.

The Economic Agreement establishes the concept of permanent establishment in accordance with the OECD definition. To this effect, persons or companies operate through a permanent establishment in the Spanish territory when they hold in any way installations or work premises of any kind, in which they carry out all or part of their activity, or act in it through an agent authorized to hire, in the name and on account of the non-resident, using these powers regularly.

More specifically, the premises that constitute a permanent establishment are: executive headquarters, branch offices, offices, factories, workshops, warehouses, shops or other establishments, mines, petroleum or gas wells, quarries, farm, forest, livestock or other holdings or any other place used for the survey or extraction of natural resources, as well as construction, installation or assembly work with a duration of more than 6 months.

If the non-resident taxpayers do not operate through a permanent establishment in Spain, they are subject to be taxed separately by the Basque Treasuries in respect of each payment of Basque-source income, in accordance with the criteria laid down in Article 22(2) of the Economic Agreement. By way of example, the following rules can be mentioned: income from economic transactions when produced in Basque territory; income from the provision of services, such as technical assistance, management support services and professional services, when the service is performed or used in the Basque territory; earning from work performed in the Basque Country; and, finally, income from real estate when located in the Basque territory.

A special rule affects dividends and similar income paid by private entities or permanent establishments. In this case, if the paying entity is subject exclusively to a Basque *foral* tax administration, according to the rules in the Economic Agreement, the total amount of the income paid is regarded to be Basque-source income. In the case that the paying entity is subject to joint taxation, the portion of the income paid in proportion to the business turnover performed in the Basque Country is regarded to be Basque-source income. However, the competent administration for taxing the total amount of the earnings shall be the tax administration competent for the tax inspection of the representative that submits the tax returns on behalf of the non-resident, without prejudice to compensation between tax administrations according to the business turnover performed in each territory.

In compliance with the respect for the EU fundamental freedoms, the Economic Agreement includes an option for non-resident individuals. In the event of non-residents in Spain who are resident in other Member State of the European Union, said taxpayers have the option, as long as they meet the conditions required in the Non-Residents Income Tax legislation, to submit their tax returns in accordance with the Personal Income Tax. In this situation, provided a majority of the total income obtained in Spain comes from Basque-source income, the Basque Personal Income Tax *foral* norms are of application to the non-resident taxpayer. In case the non-resident taxpayer is entitled to a refund, the competent Basque provincial Treasury is also responsible for the payment of said refund.

*Legal ref:* EA art.21 and art. 22

*See also:* Business turnover; Corporate Income Tax; Fiscal Domicile; Permanent Establishment; Place of transactions

*Spanish:* Impuesto sobre la Renta de No Residentes

*Basque:* Ez-egoiliarren Errentaren gaineko Zerga

# O

## **OLD FUERO**

In 1452, the Old *Fuero* was the first text to record the set of institutions of the Lordship of Bizkaia, the individual guarantees of the people of Bizkaia, and the way of participation in public life.

The Old *Fuero* was equivalent to a general code, a compilation of different kind of legal instruments, including constitutional law, civil law, criminal law and procedural law. Its origin lies in the network of customs and usages developed over the years.

The following characteristics differentiate it radically from municipal jurisdictions of the XV century. First, it stated that all civilians living in and neighboring Bizkaia were equal. This had a notable consequence in the prohibition of torture and the exemption of taxes as well as in the right to carry sword. Likewise, military service was not compulsory but subject to certain conditions.

Moreover, the Old *Fuero* included some control mechanism to the lordly power: the *pase foral* and the *contrafuero*. These mechanisms restrained the arbitrariness that could arise by guaranteeing respect for the law and placing it above the Lord. The *pase foral* was a veto that the General Assemblies could oppose to the application of the Castilian-Spanish law in the Basque provinces. The *contrafuero* invalidated any resolution of the Lord or King that was against the Bizkaia Old *Fuero*. The reason for this is that the first act of each Lord of Bizkaia was to swear the *fueros* – “the Oath of the Lord” -. In doing so, he showed respect for the set of laws that governed Bizkaia. The Oath, very widespread in the Middle Ages, was the way of guaranteeing the principle of the rule of law. Therefore, had the Lord or King not taken the Oath, nor taxes would have been paid to him nor obedience would have been given.

*See also:* Charter; *Fuero*; Historical Background (1200-1812); Historical Background (1812-1876); New *Fuero*

*Spanish:* Fuero Viejo

*Basque:* Foru Zahar



# P

## **PARTICIPATION IN TAX PARTIES (EU)**

From 2011, pursuant to Article 4 of the Economic Agreement, representatives of the Basque Country alongside their central government's counterparts started to participate in two key Ecofin working parties addressing fiscal questions relevant to the competences acknowledged for the Basque provinces by the Economic Agreement; namely D4 on Tax Issues and D5 on the Code of Conduct. Representatives of the Basque Country and Navarre are the only ones from a regional level with full competences in direct taxation in these European Union working parties. In each of these groups, the State representative is still the one to express the Spanish position, but a Basque representative is allowed to attend as part of the Spanish delegation and to express the Basque position within the delegation. Within the Basque Tax Coordination Committee, it was agreed that a representative from each of the three provincial Treasuries would participate in both working parties, but in practice the provincial governments of Araba and Gipuzkoa delegated their respective representation to Bizkaia and the Basque government, thus, they represent the Basque perspective in both groups.

The measures taken in these working groups primarily affect the regulatory power of the Basque provinces over direct taxes. For example, the D5 group "Code of Conduct group on corporate taxation" dates back to 1 December 1997, when an Ecofin resolution approved to create such a group to evaluate corporate tax measures that provoke harmful competition between member states, as one of various measures to reduce such practices. The resolution was not legally binding -since sovereignty for direct taxation lies with the member states-, but nevertheless it was a formal political commitment entered into by member state governments. In late 1999, the group's first final report about potentially harmful measures - with sixty six identified in the EU in total- included reference to one Basque tax measure, which was finally repealed under the "Fiscal Peace" agreement. This working party has remained in operation since then, with Basque representatives joining the Spanish delegation for the first time in April 2011. Most recent works within the Code of Conduct are those related to the implementation of the actions under OECD Base Erosion and Profit Shifting Plan (BEPS-2015) in the European Union, via the proposal of EU Directives to the European Council; in particular, the Directive 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, passed by the Council on 12<sup>th</sup> July 2016.

One of the most significant efforts underway within the EU towards some degree of harmonization, in which the Basque Treasury representatives now participate via working party D4 on Tax Issues, is the work towards a Common Consolidated Corporate Tax Base which, while member states would retain their national

competence over setting corporation tax rates, it would develop a set of common rules to determine the tax base of companies with operations in several member states.

*Legal ref:* BSA art.41; EA art.4.

*See also:* Coordination principle; Exchange of tax regulations; Exchange of tax information; General principles; International cooperation

*Spanish:* Participación en grupos de fiscalidad (UE)

*Basque:* Zergei buruzko taldeetan parte hartze (EB)

## **PAYMENT ON ACCOUNT**

Pursuant to the General Tax Law of the common territory and the General *Foral* Tax Norms of Araba, Bizkaia and Gipuzkoa, payments on account comprise withholding taxes on remuneration in cash and in kind, and advanced tax payments.

Under the Economic Agreement, most of the rules for the determination of which tax administration, Basque or common, is entitled for the levying of withholding taxes are common for the purposes of the Personal Income Tax, the Corporate Income Tax and the Non-Residents Income Tax for taxpayers operating through a permanent establishment. In relation to which tax regulation is of application, some restrictions are imposed on the Basque provinces that, in regard to some sort of withholding taxes, i.e. income from capital or from prizes, must apply the same rules as in the common territory, even though said provinces may have the power to levy the withholding tax in accordance with the agreed connecting factors.

Connecting factors for levying vary depending on the kind of income subject to withholding taxes. For certain income, i.e., earnings from prizes or most income from capital, the competence for the levying of the withholding tax is assigned to the tax administration of the withholder, that is, the payer of the income. For other income, i.e. pensions or any passive income from work or income derived from capitalization or insurance transactions, the competence for levying of the withholding tax is assigned to the tax administration of the taxpayer whose income is subject to the withholding tax, in short, of the recipient of the payment.

In the case of advanced tax payments required to companies, permanent establishments and individuals engaged in economic activities, the Basque provincial tax regulations are applicable when the company, the permanent establishment or the individual are subject to the Basque provincial Corporate Income Tax *foral* norms or Personal Income Tax *foral* norms, respectively. However, in the case of individuals engaged in economic activities, the Basque provinces lack the power to regulate the withholding tax and, therefore, must apply the same legislation as the one in force in the common territory.

Articles from 7 to 11 of the Economic Agreement are devoted to the connecting factors for withholding taxes on different kinds of income. These are common rules for the Personal Income Tax, the Corporate Income Tax and the Non-residents Income Tax operating through permanent establishments. Article 17 of the Economic Agreement

lays down a specific rule for advanced tax payments for companies and permanent establishments and, in particular, for those subject to joint taxation in the Corporate Income Tax. Finally, in regard to the Non-Residents Tax for taxpayers operating without a permanent establishment, Article 23 states some additional rules.

In respect of the three aforementioned taxes, a safeguard clause is also established to guarantee the validity of the withholding taxes effectively born by the income of the taxpayer. Even if the tax administration that receives the withholding tax is not the competent one in accordance with the criteria laid down in the Economic Agreement, the withholding tax is deemed valid, regardless of compensation between tax administrations.

*Legal ref:* EA from art.7 to art.12; EA art. 17; EA art 23

*See also:* Payment on account: economic activity of individuals; Payment on account: particular rules; Withholding tax on income from employment; Withholding tax on income from capital; Withholding tax on income from certain capital gains

*Spanish:* Pago a cuenta

*Basque:* Konturako ordainketa

#### **PAYMENT ON ACCOUNT: ECONOMIC ACTIVITY OF INDIVIDUALS**

Article 8 of the Economic Agreement stipulates the criteria for the regulation, levying and inspection of withholding taxes and of advanced tax payments on income from economic activities performed by individuals on account of the Personal Income Tax. According to the Personal Income Tax in force, under the category of economic activities, just professional activities carried out by individuals are subject to withholding taxes.

In regard to withholdings on remuneration in cash and in kind from economic activities, performed by individuals, the Basque provinces have a regulatory restriction as they have to apply the same rates as the ones in the State legislation. The levying and inspection of the withholding taxes correspond to the *foral* tax authorities when the fiscal domicile or residence of the withholder is, that is, the payer of the income is in the Basque Country. This rule has an exception for payments made by the State administration or by the Basque administration in which case each administration is always the only competent authority over the withholding tax.

Concerning advanced tax payments on account of the Personal Income Tax made by taxpayers who perform economic activities, the Basque provinces have the power to regulate, levy and inspect them provided that the fiscal residence of the taxpayer is in the Basque Country.

*Legal ref:* EA art. 8

*See also:* Payment on account

*Spanish:* Pago a cuenta: actividad económica de personas físicas

*Basque:* Konturako ordainketa: pertsona fisikoen ekonomia-jarduera

#### **PAYMENT ON ACCOUNT: PARTICULAR RULES**

In addition to the general connecting factors for the levying of the withholding taxes and the advanced tax payments, the Economic Agreement establishes some particular rules concerning the following: advanced tax payments under joint taxation in the Corporate Income Tax; withholding taxes on the income of non-residents taxpayers operating without permanent establishments; and groups of entities.

First, Article 17 (2) of the Economic Agreement states that taxpayers subject to joint taxation in the Corporate Income Tax have to make the advanced payment of the tax in accordance with the business turnover generated in each territory, determining the proportion with the business turnover of the previous fiscal year. Advanced tax payments effectively made to each tax administration are to be deducted from the final tax debt corresponding to said administrations.

However, upon prior notice to the Coordination and Legislative Evaluation Committee a different proportion may be applied in the following cases: mergers, divisions, transfer of assets, and exchange of securities, or inception, termination, increase or reduction of activity in common or Basque territory which gives rise to a significant variation in the business turnover. The variation is considered significant when it entails a difference of 15 or more points in the proportion applicable to any of both territories.

Second, Article 23 (2) sets that withholding taxes on income of taxpayers operating without a permanent establishment shall be levied and inspected by the Basque provincial tax administrations when they are regarded to be Basque-source, pursuant to the criteria laid down in Article 22 (2) of the Economic Agreement. In the cases of withholding taxes on dividends and similar income of non-residents taxpayers operating without a permanent establishment, the levying and inspection correspond to the Basque tax administrations or to the State tax administration in proportion to the business turnover of the withholder or payer of the income.

Third, from 2018, a new paragraph in Article 20 establishes that the levying of the withholding taxes paid by groups of entities shall be made proportional to the business turnover of the group in each territory, instead of proportional to the business turnover of the entity of the group paying the income as it had been up to said year.

*Legal ref:* EA art. 17 ; EA art 20; EA ar.22 and 23

*See also:* Payment on account

*Spanish:* Pago a cuenta: reglas específicas

*Basque:* Konturako ordainketa: arau berezi

#### **PERMANENT ESTABLISHMENT**

The term permanent establishment is generally used to refer to a non-resident business presence in a particular jurisdiction which is of a sufficient level to justify the tax power of such jurisdiction over the attributable profits of the non-resident. The term is most commonly used in tax treaties.

Article 5 (1,2,3) of the OECD Model Tax Convention on Income and on Capital establishes the following definition of Permanent Establishment: “(1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. (2) The term "permanent establishment" includes especially: a) a place of management; b) a branch; c) an office; d) a factory; e) a workshop, and f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources. (3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.” This definition is under revision by virtue of Action 7 “Preventing the artificial Avoidance of the Permanent Establishment Status” of the Base Erosion and Profits Shifting Plan (BEPS-2015).

Article 21 of the Economic Agreement, devoted to the Non-Residents Income Tax, includes almost the same definition of permanent establishment as that of the Model Tax Convention. Pursuant to the Economic Agreement, non-resident taxpayers operating through a permanent establishment in Spain are under the tax authorities of the Basque Country, in accordance with the connecting factors agreed for the purposes of the Corporate Income Tax.

Being the Non-Residents Income Tax an agreed tax subject to State legislation, in 2018 a small adjustment has been made to the definition of permanent establishment as to get it in line with the definition within the State legislation on the Non-Residents Income Tax.

*Legal ref:* EA art. 21

*See also:* Agreed tax subject to State legislation; Non-Residents Income Tax

*Spanish:* Establecimiento permanente

*Basque:* Establezimendu iraunkor

## **PERSONAL INCOME TAX**

Under the Economic Agreement, the Personal Income Tax is an agreed tax subject to autonomous legislation. In fact, the Basque provinces have full capacity to regulate said tax with few restrictions, which are basically related to withholding taxes on income from capital, and advanced tax payments made by individuals who perform economic activities.

The general rule is that the Basque provinces have regulatory, levying and inspection powers when the taxpayers have their fiscal residence in the Basque Country. In the event of taxpayers who opt to submit their tax return as a family unit and they have fiscal residences in different territories, Basque or common, the competent tax authority for the joint taxation of the family unit is the corresponding one to the fiscal

residence of the family member having the largest net tax base, calculated according to his or her own tax regulations.

Under some special circumstances, some non-resident individuals are subject to the Basque Personal Income Tax *foral* norms. In particular, Spanish nationals, their not legally separated spouse and their under-age children, who had their last fiscal residence in the Basque Country and changed their fiscal residence to a foreign jurisdiction, will continue to be considered Personal Income Tax taxpayers provided that they are:

- Members of Spanish Diplomatic Missions, including both the head of the mission and the members of the diplomatic, administrative, technical or service staff.
- Members of Spanish Consular Offices, including both the head of the office and the civil servants or service staff with the exception of honorary vice-consuls or honorary consular agents and the staff under them.
- Holders of State official positions or employment as members of delegations and permanent representatives accredited to international organizations or who take part in delegations or missions of observers abroad.
- Working civil servants exercising an official position or job abroad, which is not diplomatic or consular in nature.
- Working civil servants exercising an official position or job working in the delegations of the Basque Country abroad.

However, this consideration will not apply when: a) the individuals listed above are inactive civil servants or holders of official positions or employment and had their fiscal residence abroad prior to the acquisition of any of the circumstances listed above; b) in the case of not legally separated spouses or under-age children, when their fiscal residence was abroad prior to the acquisition by the spouse, father or mother of any of the aforementioned circumstances.

Finally, Spanish nationals who prove their new fiscal residence in a tax haven will continue to be subject to the Spanish tax authorities for the purpose of the Personal Income Tax, both in the taxable period in which they change their residence as well as in the four following tax periods. In such a case, the Basque provincial Personal Income Tax *foral* norms are applicable to those taxpayers whose previous fiscal residence in Spain before moving to a tax haven was in the Basque Country pursuant to the Economic Agreement.

*Legal ref:* EA art. 6; EA art 43

*See also:* Anti-avoidance clause: fiscal residence; Family Unit: fiscal residence; Fiscal residence; Residence principle of taxation

*Spanish:* Impuesto sobre la Renta de las Personas Físicas

*Basque:* Pertsona Fisikoen Errentaren gaineko Zerga

## **PLACE OF TRANSACTIONS**

For the purposes of the Corporate Income Tax, the Income Tax on Non-Residents with permanent establishments in Spain, and of the Value Added Tax, the distribution of tax powers between the Basque Country and the State is made in accordance with three connecting factors; namely, fiscal domicile, business turnover and place of transactions.

Business turnover is a connecting factor to determine the size of the company in order to distribute tax liability between the Basque Country and the State. The Economic Agreement sets a maximum amount of business turnover over which the size of the company is big enough as to involve the taxpayer with the different tax administrations wherein the company operates. In this case, the joint taxation rule applies.

The current business taxation figure is 10 million euros in a fiscal year, in line with the European Commission Recommendation 2003 May, concerning the definition of small-sized enterprises.

The rules to determine when the supplies of goods or services are performed in the Basque Country, in order to calculate the proportion of business turnover performed in each territory during the fiscal year, are laid down in Article 16 of the Economic Agreement for the Corporate Income Tax and for the Income Tax on Non-Residents with permanent establishments, and in Article 27 of said Agreement for the Value Added Tax. The main criteria are as follows.

In the case of supplies of movable goods, the performance in the Basque Country requires that the delivery to the purchaser is carried out from the Basque territory. When the goods must be transported to be delivered to the purchaser, the supply of goods is regarded to be performed in the place where the goods are located at the moment of initiating the transport. This rule has some exceptions concerning supply of goods processed by the supplier, and supplies involving the installation of industrial facilities outside the Basque Country. Some specific rules also apply to supplies made by electric power producers, and to supplies of immovable property. The connecting factors in the latter cases require that the power generation plants are located in the Basque territory, and that the properties are located in the Basque territory, respectively.

In the case of supplies of services, they are deemed to be performed in the Basque territory when they are provided from that territory, being the exception services directly related to immovable property which are considered to be provided in the Basque Country when said real-state lie in the Basque territory.

Three particular groups of supplies; namely, supplies made by agricultural, forestry, livestock or fishing operations; transport services, including removals, towing and crane operations; and lease or rental of means of transport require that the taxable persons performing them have their fiscal domicile in Basque territory.

The transactions which, in accordance with the aforementioned criteria, are considered to be performed abroad are assigned to one or the other tax administration in the same proportion as the rest of the taxpayer's operations.

*Legal ref:* EA art.16; EA art. 27

See also: Business turnover; Corporate Income Tax; Joint Taxation, Non-Residents Income Tax; Value Added Tax

*Spanish:* Lugar de realización de las operaciones

*Basque:* Eragiketen leku

#### **POINT OF CONNECTION**

Direct translation of the Spanish term “puntos de conexión” which is frequently used by Spanish native speakers in legal texts and in literature about the Basque tax and financial system in English.

*See:* Connecting factors

*Spanish:* Punto de conexión

*Basque:* Lotura-gune

#### **POLITICAL STATUS OF BASQUE**

Pursuant to Article 7 of the Statute of Autonomy of the Basque Country, individuals who are officially residents, in accordance with the general legislation of the State, in any of the municipalities of the Basque region hold the political status of Basque. Under specific request, individuals with residence abroad, and their descendants, shall enjoy the same political rights as those residing in the Basque Country as long as their last legal residence in Spain was in the Basque Autonomous Community, and they retain their Spanish nationality.

In addition to the political rights granted to the aforementioned individuals residing abroad, the Economic Agreement stipulates some specific tax rules for them in relation to the Inheritance and Gift Tax.

In regard to this tax, the connecting factors in the Economic Agreement to distribute regulation power between the Basque Country and the State establish some limitation for the Basque legislation to be applicable.

As a general rule, Article 25 of the Economic Agreement establishes that the Inheritance and Gift Tax *foral* norms of Araba, Gipuzkoa and Bizkaia are applicable in two cases: *mortis causa* – after death- transfers when, at the date of the tax accrual, the deceased individual’s fiscal residence is in any of the three Basque provinces; and *inter vivos* transfers or donations of movable property when, at the date of tax accrual, the donee’s fiscal residence is in any of the three Basque provinces.

However, as an exception, the provincial Treasuries of the Historical Territories must apply the Inheritance and Gift Tax regulations of the common territory, when the deceased individual or the donee have remained in the common territory for longer period of time than in the Basque Country during the 5 year-period prior to the date of the decease or the donation, respectively.



In accordance with Article 25 of the Economic Agreement, in the case of individuals who have been living abroad and have retained the political status of Basque under Article 7 of the Statute of Autonomy, the aforementioned exception is not applicable and, consequently, the Inheritance and Gift Tax *foral* norms of Araba, Gipuzkoa and Bizkaia are applicable as long as the requirements of the general rule are met, without being required a minimum period of stay in the Basque Country.

*Legal ref:* BSA art.7; EA art.25.

*See also:* Inheritance and Gift Tax

*Spanish:* Condición política de vasco

*Basque:* Euskaldunen kondizioa politiko

## **PROCEDURAL AUTONOMY (EU)**

In 2006, the European Court, in the judgment of the Azores case, set three different scenarios, when determining the features of truly autonomous infra-state units from the perspective of selectivity under the EU state aid policy. The third scenario is characterized by an asymmetrical division of competences and said scenario is wherein the Basque Country fits. In some areas, the local or regional authorities have certain rule-making powers which are held by the central authorities in the rest of the national territory. The crucial factor to determine whether tax measures are selective is the level of autonomy enjoyed by the local and regional authorities in their legislative activity. If the contested measure adopted by the local authority were adopted in the exercise of sufficiently autonomous powers, the central State and the local and regional authorities do not have a common reference framework.

The Azores case required that the local or regional authority were “truly autonomous”, which meant institutionally, procedurally, and economically autonomous. According to Advocate General Geelhoed’s Opinion, endorsed by the European Court in its 2006 judgment, procedurally autonomous means that the decision must be taken by the local authority pursuant to a procedure of setting the tax policy wherein the central government does not have any power to intervene directly, and without any obligation on the part of the local authority to take the interest of the central state into account in setting this tax policy.

In the so-called “Basque Economic Agreement case”, the Advocate General Kokott, when applying the findings from the Azores judgment to the measures adopted by the Basque Historical Territories, assumed an asymmetrical division of competences in the case of the Historical Territories. In applying the individual criteria, particularly, in respect to the procedural autonomy of the Basque provinces and their organs, Advocate General Kokott drew a distinction between procedural organizational autonomy, where the central State cannot have decisive influence in the procedure leading to the adoption of the infra-state tax rules, and substantive organizational autonomy, where the infra-state authority has sufficiently wide discretion in organizing its tax rules, which allow it to pursue independent finance policy aims.

In its 2008 September 11 judgment, the European Court of Justice stated that such procedural autonomy does not preclude the establishment of a conciliation procedure in order to avoid conflicts, provided that the final decision taken at the conclusion of that procedure is adopted by the infra-state authority and not by the central government. To this regard, in the Court's opinion, it is apparent from Article 4 (1) of the Economic Agreement that the Basque provincial governments notify the State administration of drafts of *foral* norms in the area of taxation, and that the State administration does likewise in respect of those authorities. In addition, the Coordination and Legislative Evaluation Committee may examine draft *foral* tax norms and seek, by negotiation, to eliminate any divergences between those draft laws. The Court concludes that it is apparent from the applicable national provisions that it does not appear that the central government is able to intervene directly in the process of adopting Basque tax norms in order to ensure compliance with principles such as the principle of solidarity, that of fiscal harmonization or any other principles.

However, the European Court refers to the Spanish courts, which have jurisdiction to identify the national law applicable and to interpret it, to determine whether the procedural autonomy criterion is satisfied in the Basque case. Following the EU judgment, Spanish courts confirmed that the procedural autonomy concurs in the Basque case.

*Case-law:* Judgment 6 September 2006 of the Court of Justice in Case C-88/03 Portuguese Republic versus Commission of the European Communities; Judgment 11 September 2008 of the Court of Justice in Joined Cases C-428/06 to C-434/06 *Union General de Trabajadores de La Rioja UGT-La Rioja versus Juntas Generales del Territorio Histórico de Vizcaya and Others*. Judgment of the Basque Country High Court 2012, 29 June; Judgment of the Basque Country High Court 2012, 5 July (OV Spanish)

*See also:* Azores case (EU); Coordination and Legislative Evaluation Committee; Financial autonomy (EU); Institutional autonomy (EU); UGT-La Rioja case ("Basque Economic Agreement" case-EU)

*Spanish:* Autonomía procedimental (UE)

*Basque:* Prozedura-autonomia (EB)

## **PROVINCIAL ASSEMBLY (BASQUE COUNTRY)**

The provincial assemblies -so-called General Assemblies- are the representative bodies in the provinces of that Basque Country whose origin date back to the 14th century. The three assemblies were, and still are, General Assembly of Araba, General Assembly of Bizkaia and General Assembly of Gipuzkoa. There was an equivalent institution in Navarre to become the present-day Parliament of Navarre.

They were part of an early form of democratic institutions at the provincial level and are at the core of the historical rights protected by the First Additional Provision of the 1978 Spanish constitution. Together with the provincial governments, they were restored pursuant to the Basque Statute of Autonomy. According to Article 3 in the

Statute, self-government power is granted to each of the Basque Historical Territories in order to re-establish and bring their political organization up to date, that is, their assemblies and their provincial governments. The three Basque provincial parliaments are known as General Assemblies.

Under the Spanish constitutional framework, legislative measures passed by provincial parliaments or general assemblies have the legal status of regulations while regional parliaments and the Spanish parliament pass formal laws. The Basque provincial regulations are called provincial *foral* “norms” and not “laws”.

Basque General Assemblies play a major role in the Basque tax system. According to the Basque Statute of Autonomy and to the Economic Agreement, Basque provincial assemblies and governments have the power to maintain, establish and regulate their taxation system. Tax matters constitute 90 percent of the regulations passed by the provincial assemblies.

While regulations can be challenged in administrative courts by any natural or legal person whose interests are affected by the regulation, laws can only be challenged in Spain’s Constitutional Court by the limited number of institutions and officials listed in Article 162 of the Spanish Constitution. In large part due to this situation, fiscal and tax rules passed by the Basque provincial parliaments, which at the time only had the status of regulations, became subject to continuous litigation in the administrative courts on the grounds of violating the harmonization rules stated in the Economic Agreement. This context of constant litigation mainly in the 1990s ended when the so-called “Fiscal Peace” agreement was signed.

In 2010, the Basque provincial tax legislation was finally bolstered by the Organic Law 1/2010 (SP), February 19, known as the “ironclad” of the *foral* tax norms, which upgraded Basque provincial tax legislation to the same judicial status as regional tax laws for the first time, thus making it harder for said legislation to be challenged in courts.

*Legal ref:* SC First Additional Provision; SC art. 162; BSA art.3; BSA art.41

*See also:* First Additional Provision; Historical Territory, “Fiscal Peace”; “Ironclad” of the *Foral* tax norms; Provincial tax norm

*Spanish:* Juntas Generales

*Basque:* Batzar Nagusiak

## **PROVINCIAL COUNCIL (COMMON TERRITORY)**

*See:* Deputation; Provincial government

*Spanish:* Diputación provincial

*Basque:* Probintzial diputazio

## **PROVINCIAL GOVERNMENT (BASQUE COUNTRY)**

The provincial governments of Araba, Bizkaia and Gipuzkoa are the governing bodies of the Basque provinces or Historical Territories. In addition to the ordinary powers exercised by the provincial governments of the other provinces in Spain, these provinces have specific powers derived from their historical rights pursuant to the First Additional Provision of the Spanish Constitution, by virtue of its Statute of Autonomy and the Historical Territories Law. The provincial governments are elected and depend on the provincial General Assemblies of each territory.

Together with the General Assemblies, Basque provincial governments were restored pursuant to the Basque Statute of Autonomy. According to Article 3 of the Statute, self-government power is granted to each of the Basque Historical Territories in order to re-establish and bring their political organization up to date, that is, their *foral* parliaments and their *foral* governments.

According to the Basque Statute of Autonomy and to the Economic Agreement, Basque provincial governments play a major role in the Basque tax and financial system.

In respect to taxation, the Basque assemblies and provincial governments have the power to maintain, establish and regulate their taxation system. In particular, Basque *foral* governments are the ones entitled to levy, settle, inspect, and collect the taxes and duties comprising the taxation systems of the Historical Territories. In order to do so, said governments have the same powers and prerogatives as the State tax administration.

In the financial scope, the provincial governments also play a remarkable role. The Basque Country's transfer to the State consists of an overall Quota, made up of the individual Quotas of each of the three Basque provinces, as a contribution towards all State burdens that are not directly taken up by the Basque Autonomous Community. Basque provincial governments and their Treasury Departments are the ones entitled to the collection of the whole tax income for the payment of the Quota, and for the payment of the contribution to the regional level. In order to determine the Quota, a Joint Committee comprising, on the one hand, one representative of each *Foral* Government and three representatives of the Basque Government and on the other, six representatives of the State Administration is set out in the Economic Agreement. In the internal scope, the Basque Council of Public Finances is the parity committee - three members of the Basque *foral* treasuries and three member of the Basque government- in charge of determining how the tax revenues raised by the three Basque provincial governments should be distributed between the regional government and the provinces in order to finance their respective competences.

*Legal ref:* BSA art.3

*See also:* Deputations; First Additional Provision; General Assemblies; Historical Territory, Quota

*Spanish:* Diputación Foral

*Basque:* Foru Aldundi

## PROVINCIAL PARLIAMENTS (BASQUE COUNTRY)

See: Provincial Assemblies

*Spanish:* Juntas Generales

*Basque:* Batzar Nagusiak

## PROVINCIAL TAX NORM (BASQUE COUNTRY)

Within the Spanish legal order, provincial tax norms or *foral* tax norms belong to a specific category of tax legislation granted exclusively to Araba, Bizkaia and Gipuzkoa - the three Basque provinces. Pursuant to the First Additional Provision of the 1978 Spanish Constitution, to the Statute of Autonomy and to the Economic Agreement, each Basque territory has its own tax system separate from the others. In each of the three systems, it is the General Assembly -provincial parliament directly elected by the people- the competent to establish and regulate each particular tax. The tax regulations – the so-called *Foral* Tax Norms- passed by the provincial parliament are formally of administrative nature and not of legislative nature or formally laws. The reason for this is that, according to the Basque Statute of Autonomy and to the Historical Territories Law, the power to pass by regulations that have the status of law within the Basque Country belongs exclusively to the Basque Parliament.

Consequently, in the Basque tax systems, taxes are created and their main elements are defined by legal dispositions of administrative nature in form approved by the provincial parliaments but of legislative nature in substance. During decades, the administrative nature of Basque tax regulations allowed almost any group or institution (trade unions, governments of other regions, etc.) to bring an action in ordinary administrative courts against them. As a result, Basque tax legislation, particularly the one related to the Corporate Income Tax, was frequently challenged in court.

The ease of appealing the Basque fiscal regulations presented two problems. First, it multiplied the number of possible appeals and, therefore, contributed to insecurity surrounding the Basque tax systems. Second, it was discriminatory vis-à-vis the situation in the *foral* system of Navarre. The fiscal laws of Navarre are approved by the regional parliament. For this reason, in contrast with the tax regulations of the Basque Country, those of the other *foral* region could only be appealed before the Constitutional Court.

In 2010, the Spanish Parliament finally approved the necessary legal changes in order to upgrade the judicial status of the Basque provincial tax legislation to the same legal status as the rest of the tax legislation in Spain, thus making it harder for said legislation to be challenged. This is what became known as the “ironclad”, “shielding” or “armouring” of the *foral* tax norms. The idea was to consolidate the legislative autonomy of the Basque provinces in fiscal matters and to grant the tax regulations of the Historical Territories the same legal status as that of the tax legislation passed by the State or by Navarre.

*Legal ref:* BSA art.6; BSA art.41

*See also:* Basque Parliament; General Assembly; “Ironclad” of the *Foral* Tax Norms

*Spanish:* Norma Foral fiscal

*Basque:* Foru Arau Fiskal

## **PUBLIC SECTOR (BASQUE REGION)**

The analysis of the OECD (2017) about the welfare of 396 regions worldwide shows the high quality of the public services provided in the Basque Country. According to the OECD and taking into account nineteen regions in Spain; namely the seventeen Autonomous Communities and the two Autonomous Cities, the Basque Country is second best in education and fifth best in health and safety. The sum of the 11 indicators taken into account by the OECD situates the Basque Country (with 80.2 points out of 110) among the top three within the Spanish regions in the well-being ranking.

Compared across all OECD regions, the Basque region is in the top 5 per cent in health; in the top 14 per cent in security, and in the bottom 35 per cent in education.

According to the Spanish National Statistics Institute (INE), the Basque Country registered in 2015 the second greatest value in Gross Domestic Product per capita in Spain. In light of the Eurostat regional yearbook 2017, the Basque Country is also a rich region in the context of the European Union. The Gross Domestic Product per inhabitant in terms of purchasing power standards (PPS) was almost 125 percent of the EU-28 average in 2015.

In the Basque Country there are four tiers of government; namely, central government, Basque Government, provincial governments, and municipalities. All of them spend, but just provincial governments levy most of the taxes. Despite their limited expenditure powers, Basque provincial governments collect almost all taxes pursuant to the Economic Agreement. They, however, transfer the largest part of what they collect to the other levels of government via Quota or via contributions. This leads to a complex scheme of transfers which redistributes tax revenue from the provincial level to the other tiers of government.

The distribution of total revenues among different governmental levels has remained broadly consistent since 1997, when the Basque region agreed with the State to assume wide tax-raising powers under the Economic Agreement. Approximately at least 60 per cent of the total tax income goes to the Basque government via contributions, around 18 per cent to the three Basque provinces, around 11 per cent to the local authorities and approximately the same to the central government via Quota.

Most of the expenditure in the Basque Country is made by the central government and the Basque government. The central government provides general government expenses, i.e, defense, foreign relations and so on, and Social Security benefits, that is, pensions and unemployment payments, while the main expenditure functions of the Basque government are education and health. The central government finances its

expenditure in the Basque Country with the Quota for general expenditure and with Social Security contributions for pensions and unemployment benefits. The Basque government is financed almost exclusively by transfers or contributions from the *foral* provincial governments. Provincial governments spend on social services, on means of transports, and on roads and highways. Basque municipalities make around 11 per cent of the expenditure and finance it with local taxes, user fees and transfers from the provincial governments.

*Spanish:* Sector público

*Basque:* Sektore publiko

# Q

## QUOTA

From an international tax perspective, Quota is a term unique to the Basque tax system. Enshrined by tradition, the term Spanish “cupo”, and its usual English translation, “quota”, may be, to some extent, misleading as both terms imply that the State has a share of the tax revenues raised in the Basque Country; an assumption that is incorrect. The Spanish term used in the Economic Covenant of Navarre “aportación” or “contribution” in English is more precise, as it indicates a payment to the common expenditure of the State. Despite using different traditional terms, the methods for determining the Basque Quota and the Navarre Contribution are based on the same principles.

One of the main financial flows between the Basque region and the central government under the Economic Agreement is the Quota paid by the Basque region to the State.

It is important, therefore, to stress, that the Basque Quota is not the State’s share in the tax revenues collected in the Basque Country. Quite the contrary, it is a contribution by the Basque Country to the State expenditure in general services not assumed by the Basque region. The proportion in which the Basque Country shares in such expenditure is not linked in any way to the level of taxes collected by the region. Said proportion is based on the relative weight of the Basque Country’s economy in the Spanish economy as a whole. Neither is the contribution linked to the precise benefit that the Basque Country receives from State expenditure. Therefore, the Quota is a contribution to the State’s general expenditure, regardless of whether the expenditure benefits the Basque Country more or less than other territories.

The legal definition of the Quota, laid down in Article 49 of the Economic Agreement, which literally reproduces Article 41 (2d) of the Basque Statute of Autonomy, is as follows: “The contribution of the Basque Country to the State shall consist of an overall Quota, comprising the Quotas from each of the Historical Territories, as the Basque Country’s share of all the charges of the State not assumed by the Autonomous Community of the Basque Country.”

Since the Economic Agreement assigns most of the capacity to obtain income to the Basque Country but not the whole of the expense competences to be executed, there is an unbalance in the financing of the different levels of administration involved. The Quota is the mechanism which equalizes the negative balance of the State, caused by the legal finance framework laid down in the Statute of Autonomy of the Basque Country and in the Economic Agreement, which assigns a full financing capacity to the Basque Country but retains some competences under the State’s authority.



The Quota is just the flow which equalizes this unbalance, that is, the payment the Basque Country makes to the central government in order to finance the competences the State still executes.

*Legal ref:* BSA art.41; EA art 49

*See also:* Financial flow: Basque Country-central government; Quota: legal concept; Quota Law; Quota methodology; Quota settlement

*Spanish:* Cupo

*Basque:* Kupo

## **QUOTA: LEGAL CONCEPT**

The legal definition of the Quota is laid down in Article 49 of the Economic Agreement, which literally reproduces Article 41 (2d) of the Basque Statute of Autonomy, as follows: “The contribution of the Basque Country to the State shall consist of an overall quota, comprising the quotas from each of the Historical Territories, as the Basque Country's share of all the charges of the State not assumed by the Autonomous Community of the Basque Country.”

In accordance with article 52 of the Economic Agreement, the charges of the State not assumed by the Autonomous Community are those which correspond to competences which have not been actually assumed by the latter.

However, this theoretical concept is adjusted by two factors pursuant to article 56 of the Economic Agreement and the Quota Law.

First, the central government obtains some income in the Basque Country, which includes non-agreed taxes, charges, user fees and the non-tax revenue, i.e. income from property. This income which, for the purposes of the Quota, is known as non-agreed income has to be assigned to the Basque Country. The non-agreed income shall be subtracted, therefore, from the amount the Central State expends yearly in non-assumed competences.

Second, the Central Government does not finance its expenses only with tax income or with any other non-tax revenue. In fact, some of them are paid with deficit, that is, the State's delay for the future payment of the incurred expenses. The part of the non-assumed charges financed with deficit is also subtracted from the Quota. The reason is that if the deficit was not subtracted from the Quota, the Basque Country would be paying with taxes what the Central Government is paying with debt. Should that be the case, the Basque Country would bear the economic cost of the deficit of the State, that is, inflation or rising interest rates, without obtaining the benefit of delaying the payment of expenditures.

With these subtractions, the Quota is, ultimately defined as follows: the expenditure of the Central Government in non-assumed competences by the Basque Region minus the non-agreed revenue of the Central Government minus the central government deficit. According to the Economic Agreement, the assignment of the central

government expenditure and income to the Basque Country is made using an imputation method.

*Legal ref:* EA art.52 and art. 56; QL. Art.4 and art.6

*See also:* Imputation index; Non-assumed competence; Quota; Quota Law

*Spanish:* Cupo: definición legal

*Basque:* Kupo: legezko definizio

## **QUOTA COMPENSATION: ARABA**

Quota is a term unique to the Basque tax and financial system. The legal definition of the Quota is laid down in Article 49 of the Economic Agreement, which literally reproduces Article 41 (2d) of the Basque Statute of Autonomy, as follows: “The contribution of the Basque Country to the State shall consist of an overall quota, comprising the quotas from each of the Historical Territories, as the Basque Country's share of all the charges of the State not assumed by the Autonomous Community of the Basque Country.”

In accordance with article 52 of the Economic Agreement, the charges of the State not assumed by the Autonomous Community are those which correspond to competences which have not been actually assumed by the latter.

However, this theoretical concept is adjusted by two compensations pursuant to article 56 of the Economic Agreement and the Quota Law. One of them is the deficit and the other is the non-agreed income.

In the case of the Historical Territory of Araba, the Fourth Transitional Provision stipulates an additional compensation. Consequently with its historical tradition, the province of Araba bears some additional competences compared to the other two Basque provinces. In provinces in the common territory, the central government is responsible for these competences. These competences are of little relevance in quantity and the compensation does not affect the calculation and methodology of the Quota. However, the compensation is subtracted from the net quota and then deducted from the quota payment corresponding to Araba.

*Legal ref:* EA Fourth transitional provision; QL art.8.

*See also:* Non-agreed tax; Non-assumed competence; Quota: legal concept; Quota compensation: non agreed-income; Quota compensation: deficit

*Spanish:* Compensacion de cupo: Álava

*Basque:* Kupoaren Konpesazio: Araba

## **QUOTA COMPENSATION: DEFICIT**

Quota is a term unique to the Basque tax and financial system. The legal definition of the Quota is laid down in Article 49 of the Economic Agreement, which literally reproduces Article 41 (2d) of the Basque Statute of Autonomy, as follows: “The contribution of the Basque Country to the State shall consist of an overall quota, comprising the quotas from each of the Historical Territories, as the Basque Country's share of all the charges of the State not assumed by the Autonomous Community of the Basque Country.”

In accordance with article 52 of the Economic Agreement, the charges of the State not assumed by the Autonomous Community are those which correspond to competences which have not been actually assumed by the latter.

However, this theoretical concept is adjusted by two compensations pursuant to article 56 of the Economic Agreement and the Quota Law. One of them is the deficit and the other is the non-agreed income.

The percentage of income from deficit corresponding to the Basque Autonomous Community has to be imputed to the Basque Country, in order to guarantee that the Basque region finances the non-assumed charges in the same way as the State does. Therefore, the portion of deficit attributed to the Basque Country in accordance with the amounts allocated in the State General Budget is subtracted from the Quota and the payment of interest and the State debt redemption is included as non-assumed charges.

If the deficit was not subtracted from the Quota, the Basque Country would be paying with taxes what the central government is paying with debt. As a consequence, the Basque Country would bear the economic cost of the deficit of the State, i.e. inflation or rising interest rates, without obtaining the benefit of delaying the payment of expenditures. Since the deficit on the non-assumed charges is subtracted from the Quota, the Basque Country has to pay the interest and repayment of the debt and loans taken to finance that deficit. Both items are considered non assumed charges and, therefore, increase the quota of the subsequent periods.

The relevant deficit is again estimated by the application of the imputation index- 6.24 per cent- to the total deficit resulting from the State Budget.

*Legal ref:* EA art.49 and art. 56; QL art.4 and art.6

*See also:* Imputation index; Non-agreed tax; Non-assumed competence; Quota: legal concept; Quota compensation: non agreed-income;

*Spanish:* Compensacion de cupo: deficit

*Basque:* Kupoaren Konpesazio: defizit

## **QUOTA COMPENSATION: NON-AGREED INCOME**

Quota is a term unique to the Basque tax and financial system. The legal definition of the Quota is laid down in Article 49 of the Economic Agreement, which literally reproduces Article 41 (2d) of the Basque Statute of Autonomy, as follows: “The

contribution of the Basque Country to the State shall consist of an overall quota, comprising the quotas from each of the Historical Territories, as the Basque Country's share of all the charges of the State not assumed by the Autonomous Community of the Basque Country.”

In accordance with article 52 of the Economic Agreement, the charges of the State not assumed by the Autonomous Community are those which correspond to competences which have not been actually assumed by the latter.

However, this theoretical concept is adjusted by two compensations pursuant to article 56 of the Economic Agreement and the Quota Law. One of them is the non-agreed income and the other is the deficit.

The central government obtains some income in the Basque Country, which includes non-agreed taxes, charges, user fees and the non-tax revenue, i.e. income from property. For the purposes of the Quota, this income is known as non-agreed income and has to be assigned to the Basque Country. The non-agreed income shall be subtracted, therefore, from the amount the State expends yearly in non-assumed competences.

In regard to non-agreed taxes, all taxes have been agreed with only three exceptions. First, withholding taxes on the wages of some employees of the central government; second, withholding taxes on the interest of assets issued by the State or any other region or municipality of the common territory; and, third, Custom Duties, which as in the rest of the EU countries, are a resource of the European Union.

As for withholding taxes collected by the State, Article 55 (One) of the Economic Agreement establishes an adjustment to direct taxation to compensate the loss of revenue.

Other non-agreed fiscal revenues include user fees and public prices. That is, what the State charges for services provided in the Basque Country. Again, these resources obtained by the State in the Basque Country are subtracted from the Quota.

The non-agreed tax income is allocated in Chapters 1 to 3 of the State Budget. The most relevant entry in this group is the Custom Duties. They are, therefore, the sums collected by the State and used to finance non-assumed charges. The quantity of the non-agreed taxes is estimated by the application of the imputation index of 6.24% to the total amount obtained in the whole of the Spanish territory by the State from the aforementioned concepts.

Finally, the non-tax income collected by the State but attributed to the Basque Country are the figures allocated in Chapters 4 to 8 of the State budget; namely, current and capital transfers, real state income, sales of investments and variation in financial assets. Their value is again estimated by the application of the imputation index to the total income obtained by the State from these concepts.

*Legal ref:* EA 9; EA art. 7; EA art.49 and art. 56; QL art.4 and art.6

*See also:* Imputation index; Non agreed income: deficit; Non-agreed tax; Non-assumed competence; Quota compensation: deficit

*Spanish:* Compensacion de cupo: ingresos no concertados  
*Basque:* Kupoaren Konpesazio: itundu gabeko diru-sarrerak

## **QUOTA LAW**

Since 1981, the Economic Agreement stipulates that the Quota should be governed by five-yearly Quota Laws negotiated bilaterally in the Joint Committee on the Economic Agreement, between the central state and the Basque delegations. As well as the Economic Agreement, the Quota Law must comprise a single article, thus, it is not subject to partial amendment by the political parties in the Spanish Parliament. The first Quota Law for 1982-1986 was finally approved in 1988 and the provisional Quotas from 1982 to 1986 were settled, retrospectively.

The fact is that traditionally disputes over the main matters of the calculation of the Quota have beset fiscal and financial relations between the central State and the Basque Country. This is the reason why the methodology for the calculation of the Quotas corresponding to the 1982-1986 period was finally settled after long and difficult political negotiations by the Law 43/1988 (SP), December 28.

The subsequent Quota Laws under the 1981 Economic Agreement were as follows: Law 44/1988 (SP), December 28 (1987-91); the Law 7/1993 (SP), April 16 (1992-1996); and the Law 37/1997 (SP), August 4 (1997-2001).

Article 50 of the 2002 Economic Agreement stipulates that every five years, the methodology to be used in setting the Quota in the five-year period shall be determined, and the Quota for the first year of such period shall be approved. The net quota payable for the following four years is calculated by applying an updating index to the net quota of the base year and then deducting the relevant compensations, which are agreed during the Quota law negotiations.

In accordance with Article 62 of the Economic Agreement, the Joint Committee on the Economic Agreement is in charge of determining the methodology to be used in setting the Quota for each five-year period.

Under the 2002 Economic Agreement, the first Quota Law - Law 13/2002 (SP), May 23- was approved for the period 2002-2006. The methodology corresponding to the years 2007 to 2011, was passed by the Law 29/2007 (SP), October 25, and rolled over until 2016 due to the impossibility of reaching an agreement. Until May 2017, none of the provisional Quotas since 2007 had been settled due to continuing discrepancies between the Basque and the Spanish government over the amount due to be paid by the Basque region, and no agreement had been reached on a new Quota law for the period from 2012 onwards.

On 17<sup>th</sup> May 2017, the Joint Committee on the Economic Agreement brought an end to a period of financial uncertainty and disputes that had affected bilateral relations over the last 10 years. At the meeting, eleven agreements were signed, including the approval of figures and amounts needed for the final settlement of the Quotas from 2007 to 2015, along with the provisional Quota for 2016.

Once the discrepancies had been overcome, the Joint Committee also agreed on the figures for the 2017 provisional Quota, which will act as the basis for the contribution of the Basque Country to the general charges of the State during the 2017-2021 five-year period. On 19<sup>th</sup> July 2017, the Joint Committee on the Economic Agreement settled the Quota for 2016 and ratified the proposal for the said five-year period Quota Law, finally enacted as the Law 11/2017 (SP), December 28. This new Quota Law brings financial stability for the Basque Country until 2021 and ends the process to adjust and settle the Quota discrepancies since 2007.

On 17<sup>th</sup> November 2022, the Joint Committee on the Economic Agreement settled the Quota for 2022 and ratified the proposal for the 2022-2026 five-year period Quota Law, finally enacted as the Law 10/2023 (SP), April 3.

*See also:* Quota: legal concept; Quota methodology; Updating index

*Spanish:* Ley de Cupo

*Basque:* Kupoaren Lege

## **QUOTA METHODOLOGY**

The Economic Agreement lays down that every five years, a law passed by the Spanish Parliament, subject to the prior agreement of the Joint Committee on the Economic Agreement, shall determine the methodology to set the Quota, for the upcoming five-year period, and the Quota for the first year of such period -base-year- shall be approved. In each of the subsequent years after the base-year, the Joint Committee on the Economic Agreement is in charge of bringing the quota up to date by applying the methodology approved in the abovementioned law. Under this system, the net quota is not calculated from scratch each year but rather for the first year of each five-year period.

Due to the impossibility of reaching an agreement, the methodology in force until 2016 was exceptionally the corresponding to the years 2007 to 2011, passed by the Law 29/2007 (SP), October 25, which was rolled over.

The Law 11/2017 (SP), December 28, determined the formula to calculate the Quota for the base year and the formula to update the quota for the subsequent years for the period 2017-2021.

Once the abovementioned five-year period was over, a new agreement on the Quota was reached by the Joint Committee on the Economic Agreement, which was enacted by the Spanish Parliament as a new Quota Law. The Law 10/2023 (SP), April 3, settles the formula to calculate the Quota for the base year and the formula to update the quota for the subsequent years for the period 2022-2026.

Article 50 of the Economic Agreement states that the net quota for the base year shall be determined by applying the imputation index to the total amount of the competences not assumed by the Basque region by making the relevant adjustments and compensations.

In order to calculate the Quota of any of the subsequent years of the period, the Quota legislation states that an updating index must be applicable to the net Quota. Once the provisional net quota is obtained, compensations in the quota amount corresponding to the particular year shall be subtracted in order to obtain the payable net Quota amount.

Article 56 stipulates these compensations, that is, the imputed amount of non-transferred taxes; the imputed amount of budgetary income, except taxes, and the imputed amount of deficit allocated in the State General Budget.

*Legal ref:* EA art. 49 and 50; EA art 56; QL art. 6; QL art.9 and art. 10

*See also:* Assumed competence; Imputation index; Non-assumed competence; Quota: legal concept; Updating index

*Spanish:* Metodología de cupo

*Basque:* Kupoaren metodologia

## **QUOTA SETTLEMENT**

Initially, the Quota is set provisionally using the initial State Budget data on expenditure and revenue. The Quota is called provisional Quota. This initial Quota is settled once the actual revenue and expenditure of the State become known. The resulting quota is called definitive Quota.

The Economic Agreement states that the Quota and the required compensations shall be determined initially and provisionally taking into account the figures allocated in the State Budget approved for the corresponding tax year. Once the accounting year is finished and the State Budget is finally settled, the net Quota set provisionally for said year must be corrected and the final settlement is due in May of the following year. The differences, positive or negative, which result after the corrections must be added to the provisional quota corresponding to the year subsequent to the one in which the corrections are made.

The final amount to be paid by the Autonomous Community of the Basque Country in each tax year shall be paid to the State Treasury in three equal instalments in the months of May, September and December of each year.

Article 58 of the Economic Agreement also regulates the effects on the provisional Quota of a variation in the assumed competences of the Basque Country. If, during the annual validity period of the quota, the Basque region assumes competences whose annual cost at State level had been included in the competences of the State used as the basis for determining the provisional amount of the quota, said annual cost shall be reduced proportionally to the portion of the year during which the Basque Country has assumed said competences, with the Quota being reduced accordingly. The same methodology would be applicable in the case the Autonomous Community stopped exercising competences already assumed at the time of setting the provisional Quota, increasing the latter by the appropriate amount.

The Fifth Additional Provision of the Quota legal text also foresees the event of a reform of the State tax transfer system or a substantial modification to the General State Budget, as a result of amendments to the common finance system, in which case the Joint Committee on the Economic Agreement must decide on the effect on the Quota and, if applicable, on the revision of the net quota for the base year of the five year period and/or a revision of the updating index to the net quota.

*Legal ref:* EA art. 58 and art.59; QL art.11 and art. 12; QL Fifth Additional Provision

*See also:* Assumed competence; Imputation index; Non-assumed competence; Quota methodology; Quota Law

*Spanish:* Liquidación de cupo

*Basque:* Kupoaren likidazio



# R

## **REGIONAL TAX STATE AID**

On 2008 September 11, the European Court of Justice ruled on the joint cases C-428/06 through C-434/06, in a decision regarding the Economic Agreement. This judgment, in conjunction with the Azores case, set a precedent on how to assess the status of other regions in the European Union that have their own tax regimes pursuant to the European law.

The judgment includes important guidelines on when tax advantages granted by a regional entity can be deemed illegal state aid, pursuant to article 107 in the Treaty of the Functioning of the European Union.

The importance of this judgment, besides the deeper interpretation of the concept of tax state aid, lies in the confirmation of the criteria set by the Azores case. The conditions established in this case can, therefore, apply to any infra-state body of any Member State, which opens a wide range of possible developments in other highly decentralized countries regarding taxation, especially tax rates.

Though the final decision belonged to the Spanish Courts, which confirmed the status of truly autonomous of the Basque region, the European Court of Justice further clarified its position on the tax autonomy of the three Basque provinces, removing any obstacle based on European law. The 2008 judgment refers to the Basque Country, but its conclusions may be also valid for Navarre, which shares the same characteristics in its tax and financial system.

*See also:* Azores case (EU); UGT-La Rioja case (“Basque Economic Agreement” case-EU)

*Spanish:* Ayudas de estado regionales

*Basque:* Erregio-helburuko estatu-laguntza fiscal

## **RESIDENCE PRINCIPLE OF TAXATION**

The State and Basque tax systems are ruled by the residence principle of taxation, according to which residents of a country or jurisdiction are subject to tax on their worldwide income, and non-resident are only subject to tax on domestic-source income. Worldwide taxation includes income from all sources, i.e. irrespective of their geographical situation.

In addition, an equivalent principle to the territoriality principle in international tax law also applies in some cases in the relations between the State and the Basque provincial tax systems. Concerning the Corporate Income Tax, the Value Added Tax and the Income Tax on Non-Residents with permanent establishments in Spain, the Economic

Agreement lays down some specific connecting factors, that is, business turnover and place of transactions, which are applicable to some taxpayers under certain circumstances. The application of these connecting factors give rise to the levying of these taxes by each administration in proportion of the economic activities performed in each territory; namely, the Basque or *foral* territory and the common territory.

Notwithstanding, from a financial approach the Economic Agreement is a territorial financing system. Therefore, several financial adjustments, in particular in indirect taxation, correct the deviations in the assignment of tax income to the Basque Country caused by the agreed connecting factors which are based on taxation criteria.

*See also:* Fiscal domicile; Fiscal Residence

*Compare:* Source principle of taxation

*Spanish:* Principio de imposición en función de la residencia

*Basque:* Egoiliartasunaren arabera zerga ordaintzeko printzipio

# S

## SHARED RISK: INTRA-REGIONAL FINANCIAL SYSTEM

Financial relations among the different levels of government within the Basque region are based on the principle of “shared risk”.

Two absolutely opposite models of public financing are applicable to the financial relations of the Basque Country. On the one hand, the "shared risk" model, in the case of the relations between the Basque provinces and the regional level of the Basque Country, among the Basque provinces themselves and including Basque municipalities. On the other, the "unilateral risk" model, in the case of financial relations between the Basque Country and the State.

The “shared risk” principle characterizes the intra-regional model of financial relations in the Basque Country, whereby all three provinces collect revenues to provide the common resources for the Basque region as a whole.

This principle is set in Article 20 of the Historical Territories Law. According to it, the income derived from the management of the Economic Agreement; namely agreed taxes, once discounted the Quota to be paid to the State, is annually distributed among the General Treasury of the Basque Country and the *foral* provincial Treasuries, determining the contributions that the latter have to make to the first, in accordance with the rules established in the aforementioned law. It is also understood within the income derived from the management of the Economic Agreement, the interest accrued annually in favor of the provinces from the agreed tax revenue.

Therefore, regardless of which government level collects the tax income, this income is considered joint revenue of all the Basque levels of government; namely, the Basque government, the provincial governments and the municipalities.

This model requires cohesion and creates interdependence among all tiers of administration involved in the government of the Basque Country. This system of participation in the income derived from the Economic Agreement supports a common interest in the design and management of the three provincial tax systems both by the regional government, creditor of most of said income that finances approximately 90 per cent of the public expenditure of the Basque Country, as well as by the Historical Territories themselves.

*See also:* Intra-regional financial relations

*Compare:* Unilateral risk

*Spanish:* Riesgo compartido: sistema intrarregional

*Basque:* Partekatutako arrisku: erregio barneko sistema

## **SOLIDARITY PRINCIPLE**

The principle of solidarity is one of the fundamental principles underlying the Basque tax and financial system.

The Basque Statute of Autonomy in its Article 41 (2f) states that the Economic Agreement will be applied in accordance with the principle of solidarity as referred to in Articles 138 and 156 of the Constitution. On the one hand, Article 138 (1) establishes that the State guarantees the effective realization of the principle of solidarity, ensuring the establishment of a proper and fair economic balance among the various parts of the Spanish territory; and Article 138 (2) states that differences between the Statutes of the Autonomous Communities will, in no case, imply economic or social privileges. On the other, Article 156 subjects the principle of financial capacity of the autonomous communities to the principles of coordination and solidarity.

Finally, Article 158 (2) of the Spanish Constitution has a mandate to set out a compensation fund for investment expenditure, with the aim of redressing interterritorial economic imbalances and implementing the principle of solidarity.

Consequently, the Economic Agreement is grounded on the principle of solidarity. The Economic Agreement expressly refers to this principle not only regarding the tax systems of Araba, Bizkaia and Gipuzkoa but regarding the financial relations between the State and the Basque Country as well.

In respect to the tax systems of the Historical Territories, Article 2 establishes that these systems must respect the principle of solidarity in the terms laid down in the Constitution and in the Statute of Autonomy.

Within the financial scope, Article 48 establishes the same principle among the fundamental principles that govern the financial relations between the State and the Basque Country. In order to put this principle into practice, the methodology for determining the Quota includes among the non-assumed competences by the Basque Autonomous Community, the amounts allocated in the State Budget to the Interterritorial Compensation Fund, referred to in Article 158 (2) of the Spanish Constitution. The Quota Law sets up the procedure for the contribution to finance this State competence.

*Legal ref:* SC art. 2; SC, 138; SC 156 and 158; BSA art.41; EA art.2 and 48.

*See also:* General principles; Non assumed competence; Quota; Quota methodology

*Spanish:* Principio de solidaridad

*Basque:* Elkartasuna-printzipio

## **SOURCE PRINCIPLE OF TAXATION**

The State and Basque tax systems are ruled by the residence principle of taxation, according to which residents of a country or jurisdiction are subject to tax on their

worldwide income. Worldwide taxation includes income from all sources, i.e. irrespective of their geographical situation.

The opposite principle is the source principle of taxation. In accordance with it, taxing jurisdiction is allocated taking into account the country or jurisdiction wherein the source of income is located, regardless of the residence of the taxpayer. This principle is applicable in the Spanish and Basque tax systems in regard to non-residents taxpayers not operating through a permanent establishment. The Inheritance and Gift Tax and the Wealth Tax also regulate non-residents taxation based on the source principle.

*See also:* Inheritance and Gift Tax; Non-Residents Income Tax; Fiscal domicile; Fiscal residence; Wealth Tax

*Compare:* Residence principle of taxation

*Spanish:* Principio de imposición en la fuente

*Basque:* Iturriaren arabera zerga ordaintzeko printzipio

## **SPANISH STATE**

In the Economic Agreement, the State is referred to as the “Spanish State” just once in Article 2. It should be noted that the use of the adjective Spanish is absolutely necessary in this case for the correct understanding of the legal text.

Article 2 of the Economic Agreement lays down the general principles the Historical Territories must respect when setting up their tax systems. In particular, the fifth principle establishes: “Fifth. Submission to the International Agreements or Treaties signed and ratified or adhered to by the Spanish State. In particular, it shall comply with the provisions laid down in the International Agreements signed by Spain to avoid double taxation, as well as fiscal harmonization measures of the European Union, and shall be responsible for making the refunds called for, pursuant to application of said Agreements and rules.”

Within this context, the use of “Spanish” is absolutely necessary because it refers to the State as a legal international subject, and not as the central level of government like in the rest of the Economic Agreement legal text.

*Legal ref:* EA art.2

*Compare:* State

*Spanish:* Estado español

*Basque:* Estatu espainiar

## **STAMP DUTY**

*See:* Transfer Tax and Stamp Duty

*Spanish:* Impuesto sobre Actos Jurídicos Documentados

*Basque:* Egintza Juridiko Dokumentatuen gaineko Zerga

## **STATE**

In standardized federalism terminology, the term “State” is widely used in a neutral sense to distinguish between supranational, State and substate levels of government. Regarding the Basque tax and financial model, where constant reference is made to the State, this term means the Spanish central level, in order to make clear the distinction between the federal level, i.e., the State, and the constituent-unit, that is, the Basque Autonomous Community, comprising the three Historical territories.

*Compare:* Spanish State

*Spanish:* Estado

*Basque:* Estatu

## **STATE TAX STRUCTURE**

The fundamental rules applicable to the Basque tax systems -the so-called general principles- are laid down in Article 2 of the Economic Agreement. One of them establishes that the taxation systems of the Basque provinces must attend the general taxation structure of the State tax system. The Basque Statute of Autonomy also establishes this principle in Article 41 (2a).

Particularly, during the 1980s and the 1990s Basque tax regulations were challenged in court by the State on the grounds of not attending the State tax structure. As a result, there is settled case-law on how to put the application of this general principle into practice.

This principle certainly points out the State tax system is the reference system in terms of structure for the Basque provincial tax systems. In spite of the fact that there is no legal definition of State tax structure, this principle requires the Basque tax systems to have a similar structure to the one in the State.

The absence of concretion gave rise to questions about the extension of this principle and, mainly, to disputes concerning which State tax structure the Economic Agreement refers to when some taxes are devolved to a certain degree to the Autonomous Communities under the common financial system. In addition, doubts about the capability of the Basque provinces to impose new taxes different from the ones in the State tax system or the required degree of similarity between both tax systems were also controversial issues. As a result, Basque tax regulations were challenged into courts.

Courts stated that this principle must be interpreted in a way that respects the Basque tax powers to regulate their own tax systems. Therefore, they rejected the opinions in favor of interpreting that attending the State tax structure requires formal and

substantial identity in each particular tax in both systems. According to case-law, this principle requires the Basque tax systems structure, as a whole, to be similar to the State tax structure, in the sense that they must have similar taxes with comparable main characteristics and elements.

In respect to the power of the Basque provinces to impose nonexistent taxes in the State tax system, case-law is not so categorical. However, a continuous reference to the agreed taxes with the State in order to make the comparison between both tax structures may lead to confirm the absence of capability to do so.

*Legal ref:* BSA art.41; EA art.2

*Case-law:* Among others, on how to interpret the principle of regard for State tax structure Basque Country High Court 1997, 5 December; Basque Country High Court 1999, 5 May; Spanish Supreme Court 1990, 5 October (OV Spanish)

*See also:* Coordination principle; General principles; International Agreements; Solidarity principle; Tax harmonization

*Spanish:* Estructura impositiva estatal

*Basque:* Estatuaren zerga-egitura

## **STATUTE OF AUTONOMY OF THE BASQUE COUNTRY**

The Statute of Autonomy of the Basque Country is the law which organizes the political system of the Autonomous Community of the Basque Country, which includes the Historical Territories of Araba, Bizkaia and Gipuzkoa. It is also known as the Statute of Gernika, after the city of Gernika in Bizkaia. It was ratified by referendum on 25 October 1979, despite the abstention of more than 40 per cent of the electorate. The statute was finally passed by Organic Law 3/1979 (SP), December 18.

The law specifies that the Autonomous Community comprises the provinces of Araba, Gipuzkoa and Bizkaia, and also leaves the door open to the incorporation of the *Foral* Community of Navarra into the Basque Country, should the former decide to become part of Euskadi. Euskara, the Basque language, is named as one of the two official languages of the Basque Country, being the other Spanish.

Power in the Basque Country is exercised through the Basque Parliament, the Basque Government and its President -Lehendakari in Basque. The Basque Parliament, with 25 representatives from each province, is competent in legislative matters, stimulates and controls the action of the Basque Government and approves its budgets. The Parliament's 75 members are elected for a maximum period of four years and among themselves they elect one of their number as President. The President -who holds the highest representation of the Basque Country- names his autonomous government ministers, who take responsibility for the different government departments and who also make up the autonomous Executive. The Parliament also appoints Basque representatives to the Spanish Lower House, the Senate.

The Statute of Gernika also stipulates that the Basque Country should have its own Treasury in order to run its financial affairs properly. The economic relationship between Spain and the Basque Country is governed by the traditional *foral* system of the Economic Agreement, under the competences of the institutions of the Historical Territories for maintaining, establishing and regulating the Basque tax system. The Economic Agreement also sets out the contribution the Basque Country makes to the Spanish central government, known as the Quota, to cover general expenditure on areas for which the Basque Autonomous Community does not have responsibility.

The Statute defines all the competences of the Basque Country, whether exclusive to the Basque region or those acting as vehicles for basic Spanish legislation, as well as the exclusive competences of the individual systems of each of the Historical Territories. Nevertheless, some powers expressly included in the Statute still remain to be transferred to the Basque Administration. This is the case, for instance, with the management of the Autonomous Community's ports and its three airports, and with the organization and operation of prisons.

*See also:* Basque Country; Basque Parliament; Basque Government; Tax autonomy

*Spanish:* Estatuto de Autonomía del País Vasco

*Basque:* Euskadiko Autonomi Estatutua

## **SYMMETRICAL FEDERALISM**

Symmetrical federalism refers to a federal system of government in which each constituent unit to the federation possesses equal powers. In symmetrical federalism models, no distinction is made between States or regions. The USA federal system is an example of symmetrical federalism where every state has the same powers except some insular areas.

*See also:* Federal State

*Compare:* Asymmetrical federalism

*Spanish:* Federalismo simétrico

*Basque:* Federalismo simetrikoa



# T

## **TAX AUTONOMY**

It is one of the two main aspects of the traditional economic autonomy of the Basque Country, together with the financial autonomy. The Basque Statute of Autonomy acknowledges the power of Araba, Bizkaia and Gipuzkoa to establish, develop and maintain their tax systems.

It also establishes that the main principle governing the financial relationship between the Basque Country and the State is based on imposing on the Basque Country the obligation to make an overall contribution, known as Quota, to finance all State burdens that are not directly taken up neither by the Autonomous Community, nor by the Basque provinces. This contribution consists on an overall amount, made up of the individual payments of each Historical Territory. How this overall contribution to the State is set out in the Economic Agreement.

These two main characteristics of the Basque economic autonomy are reflected in the very structure of the Economic Agreement. Its first Part is devoted to defining the respective scopes of the State and the Basque provincial governments to regulate and levy taxes and to establishing the corresponding connecting factors, whilst Part II deals with the calculation of the Quota.

*Legal ref:* BSA art.41; EA Part I

*See also:* Financial autonomy; Fiscal autonomy; Quota

*Spanish:* Autonomía fiscal

*Basque:* Autonomia fiskal

## **TAX CAPACITY OF THE COMMON SYSTEM**

Articles 156 and 157 of the 1978 Spanish Constitution outline the basic principles to inform the regional financing system, establishing that the fifteen regions under the system will obtain resources primarily from two main revenue sources: (1) taxes which are fully or partially ceded from the State to the regions and (2) a contribution derived from non-ceded tax revenues.

Fiscal co-responsibility, which required a meaningful increase in regional fiscal competences, did not properly start to be introduced in the model until the major reform of 1996, increasing further in the subsequent reforms of 2001 and 2009. This was gradually achieved by increasing the legislative competences of the regions by devolving or ceding a greater share of taxes to the regions. Taxes are “partially ceded” or “fully ceded”. However, ceded taxes do not cover the whole range of taxes accrued in the territory of the respective autonomous community.

Over the decades, since the first cession of 15 per cent of Personal Income Tax in 1993, the share of taxes ceded to the regions has gradually increased, as have their legislative and administrative powers over these taxes. This has led to a proportional reduction in the share of revenue transfers to the regions derived from non-ceded tax revenues. Under the 2009 reform, the share of Personal Income Tax ceded to the regions increased to 50 per cent. Other “partially ceded” taxes under that reform include Value Added Tax up to 50 per cent and Excise Duties up to 58 per cent, though being indirect taxes the regions do not have any legislative autonomy over these shares but rather are subject to Spanish legislation.

The fully ceded taxes are generally relatively minor taxes, including, for instance, Taxes on Wealth, Inheritance and Gift Tax, Transfer Tax and Stamp Duty. It is remarkable that only the fully ceded taxes are levied by the regions themselves, while the central government remains responsible for collecting the partially ceded taxes with the obtained revenues then being transferred to the regions as part of the transfers from the central government. The regions are thus heavily dependent on the tax revenue transfers.

*See also:* Common financing system; Common territory; Financial capacity of the common system

*Spanish:* Capacidad impositiva del sistema común

*Basque:* Sistema erkidearen zerga-ahalmen

## **TAX CRIME**

According to the General Tax Law and to the Basque General *Foral* Norms, in the event that any of the Basque tax administrations or the State tax administration considers that tax administrative offenses committed by a particular taxpayer could be judged as a tax crime, pursuant to the Spanish Crime Code, said tax administration must refer the case to the corresponding criminal court.

In those cases when, according to the Crime Code, the tax administration is able to continue the tax procedure in order to levy the tax debt while the course of the judicial procedure, the Economic Agreement establishes that the tax authority responsible for said tax administrative procedure is the tax administration with legislative and inspection powers over the taxpayer pursuant to the agreed connecting factors under the Economic Agreement.

*Legal ref.:* EA art.44

*Spanish:* Delito fiscal

*Basque:* Delitu fiskal

## **TAX HARMONIZATION**

Tax harmonization is one of the fundamental principles underlying the Basque tax and financial system. In this context, tax harmonization is a complex polysemy whose targets, intensity and tools differ substantially depending on the scope wherein it applies.

The complexity is due to the *foral* Historical Territories multi-level integration into three different legal orders: the European Union, the Spanish State and the Autonomous Community of the Basque Country.

The European Union is a unique creation which gathers confederal and federal characteristics, in the sense that Member States transferred part of their powers and sovereignty to the European Institutions in order to achieve common targets. However, in accordance with the EU Treaty, tax harmonization is not a target of the Union itself. Tax harmonization is just a tool at the service of the common market and its proper functioning, the only real goal of the Treaty. Therefore, tax harmonization can be implemented just in order to prevent market distortions and double taxation.

The domestic field is the second tax harmonization scope which affects the *foral* tax systems. This level is the one related to the financial and tax relationships between the Basque tax systems and the central Spanish tax system within an asymmetric federal framework. It is laid out in Article 41 (2) of the Basque Statute of Autonomy and further regulated in Articles 2 and 3 of the Economic Agreement. In particular, Article 3 sets up four criteria to be fulfilled in order to put fiscal harmonization into effect. In this context, tax harmonization aims at giving consistency to financial and tax relationships among the different tax systems within the Spanish constitutional order.

The last field is the internal one, that is, the one referring to the tax harmonization among the three *foral* tax systems within the Autonomous Community of the Basque Country. Both the Statute of Autonomy, in Article 41 (2), and the Economic Agreement, in Article 2 refer to tax harmonization between the three *foral* tax systems, according to the rules laid down to that effect by the Basque Parliament, as one of the general principles informing the Basque tax systems.

In the constitutionally imposed update of the Basque *foral* rights complied by the Basque Statute, the tax harmonization power is assigned to the new legal entity -the Autonomous Community of the Basque Country- and, in particular, to the Basque Parliament. By means of this allocation, the *foral* Historical Territories share part of their historically exclusive tax power with the new legal territorial entity created by the 1978 Constitution and through this cession they are self-limiting their full traditional tax competence.

Another of the pillars of the Basque legal order, the Historical Territories Law, the Law 27/1983 (BP), November 25, also includes a mandatory tax harmonization, which tends to uniformity but which vanishes at the same time thanks to the transitional regime.

It was by virtue of the Law 3/1989 (BP), May 30, on Tax Harmonization, Coordination and Collaboration, that the harmonization criteria regarding each tax figure of the *foral* systems were settled. This Law also provides a harmonization tool, the Basque Tax Coordination Committee. This Committee is made up by three representatives from the Basque Government and one from each of the Basque Historical Territories.

*Legal ref:* BSA art.41; EA art. 2 and 3

*See also:* Basque Tax Coordination Committee; Tax Harmonization Law; Cooperation Principle; Coordination principle; Fiscal pressure.

*Spanish:* Armonización fiscal

*Basque:* Harmonizazio fiskal

## **TAX HARMONIZATION LAW**

The Basque Statute of Autonomy in Article 41 (2a), followed also by the Economic Agreement and the Historical Territories Law, puts the role of designing the framework for intra-regional tax coordination and harmonization in the hands of the Basque Parliament. The Historical Territories Law, under Article 14 (3), was the first piece of legislation to give an indication of the level of tax harmonization to be required in the Basque region. It stipulated that the Basque provincial parliaments, in exercising their legislative power over taxation, would regulate uniformly the main elements of the different taxes. This gave a clear mandate for inter-provincial uniformity in at least the main aspects of each tax, which would reduce provincial autonomy over taxation. Nevertheless, the Historical Territories Law did not have the final word on the matter, stating in its Third Transitory Provision that the stipulations would only be applicable once expressly provided for in the law on coordination, tax harmonization and collaboration between the Basque provinces to be drawn up and approved by the Basque Parliament.

The Basque Tax Harmonization Law eventually materialized as Law 3/1989 (BP), May 30, on Fiscal Harmonization, Coordination and Collaboration, and was later amended in 1998 under Law 4/1998, March 6, following the significant increase in tax legislative capacity afforded to the Basque provinces after the reform of the Economic Agreement in 1997. The provisions of the new Law were deliberately vague, given the difficult task of reconciling the tax-raising autonomy of the provinces with the harmonizing role of the Basque Parliament. The Law avoided prescribing what exactly must be coordinated or what extent of tax harmonization is required. Instead, the Tax Harmonization Law provided a basic framework subject to future specification and development. In Article 2, the Law echoes the stipulations in Article 14 (3) of the Historical Territories Law, stating that the provisions issued by the competent authorities of the Historical Territories “...will regulate uniformly the substantial elements of the different taxes”. Yet the same article also stresses that the level of harmonization reached will still allow different legislative provisions in each of the historical territories, “provided that these guarantee a global equivalent fiscal pressure in the whole autonomous community”, without defining what it means by the ambiguous term “global equivalent fiscal pressure”.

For most taxes, the Law lists which specific aspects of the tax should be harmonized going forward, “when appropriate”. This has lent foremost to the interpretation that the harmonization of such aspects should be prescribed *ex ante* in further laws approved by the Basque parliament, prior to the provinces approving their relevant tax

legislation in compliance. Others, however, have instead suggested the term “when appropriate” implies that the Basque parliament’s role can be *ex post* rather than *ex ante*. Under this interpretation, the Basque parliament only needs to intervene in specific cases where any provincial tax measures result in a lack of harmonization requiring correction.

Moreover, the Additional Provision of said Law specified that the Basque Parliament should approve by 1990 a series of draft laws to harmonize the aspects of the taxes listed in Articles 3, 4 and 5. In any case, the debate has been a theoretical one only. Thus, the Basque Parliament did not fulfill the mandate given in the Additional Provision of the framework law of 1989 to approve a series of harmonization laws in the following year, nor has it approved any other harmonization law since. In fact, representatives of the three provinces and the Basque regional government have usually managed instead to reach agreements within the Basque Tax Coordination Committee, also created under the provisions of the Basque Tax Harmonization Law, to ensure sufficient harmonization *ex ante* generally to avoid major controversies.

*Legal ref:* BSA art.41; HTL art. 14; BTHL art. 2; BTHL Additional Disposition

*See also:* Basque Tax Coordination Committee; Coordination principle; Cooperation Principle; Tax Harmonization

*Spanish:* Ley de Armonización Fiscal

*Basque:* Harmonizazio fiskalaren lege

## **TAX IDENTIFICATION NUMBER**

From 2018, a criterion for the distribution of tax powers between the Basque Country and the State is included in the Economic Agreement in order to assign and revoke the Tax Identification Number. This new legal provision reflects what both tax administrations were doing in practice.

The general rule is that entities, whether they have legal personality or not, must make a request to the tax administration pertinent to their fiscal domicile to obtain the Tax Identification Number.

In the event of non-resident entities not operating through a permanent establishment, they must request the Tax Identification Number to the tax administration corresponding to the territory, Basque or common, wherein they are about to carry out a transaction with tax liabilities, unless the other administration had previously assigned them said number.

The fiscal domicile rule also applies for the revocation of the Tax Identification Number. However, in those cases in which the tax authority for inspection is different from that of the fiscal domicile, the tax authority for the revocation is the competent one for tax inspection. In regard to non-resident entities operating without a permanent establishment, the tax administration responsible for the revocation of the Tax Identification Number is the same one that assigned the said number.

Coordination and exchange of information between tax administrations are required for the best functioning of the tax systems.

*Legal ref:* EA art.47a

*See also:* Coordination principle; Cooperation Principle

*Spanish:* Número de Identificación Fiscal

*Basque:* Identifikazio Fiskalaren Zenbaki

## **TAX NEXUS**

*See:* Connecting factor

*Spanish:* Punto de conexión

*Basque:* Lotura-gune

## **TAX ON CERTAIN DIGITAL SERVICES**

Internationally the current laws on corporate tax, based on physical presence, are no longer appropriate for taxing the profits generated by the digitization of the economy, when these are closely linked to value created by data and users. Therefore, they require revision. The process to revise these laws has already been taking place for years at the international level. Thus, within the Organization for Economic Cooperation and Development (OECD) and the G20, the project on Base Erosion and Profit Shifting (BEPS) has been especially relevant in recent times, especially its Action 1 Report regarding the taxation challenges of the digital economy of 5 October 2015, as well as the Interim Report on the taxation challenges resulting from digitization of 16 March 2018. At the European Union level, it was addressed in a Communication of the European Commission entitled "A fair and efficient tax system in the European Union for the Digital Single Market," adopted on 21 September 2017, and also in the package of proposals for Directives and Recommendations to achieve a fair and efficient taxation of the digital economy.

However, since the adoption and implementation of consensual measures at the international and multilateral level could take a long time, several countries have begun to adopt unilateral measures to try to tackle this problem. Both global agreements and the adoption of unilateral measures are legitimate solutions foreseen in the Interim Report of the G20/OECD on the taxation challenges derived from digitization.

In this context, Spain approved the Law 4/2020, 15 October, on the Tax on Certain Digital Services. Regarding the Basque Country, the Law 1/2022 (SP), February 8, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country, agrees on the distribution of powers regarding this new indirect tax.

The Tax on Certain Digital Services is an agreed tax subject to the same rules in terms of substance and form as those established at any given time by the State. Nevertheless, the competent Institutions of the Historical Territories are able to adopt their own tax returns, which shall contain at least the same information as those of the common territory, and are able to set the payment deadlines for each tax settlement period, which shall not be substantially different from those set by the Administration of the State.

Regardless of the location of their fiscal domicile, taxpayers shall submit their tax returns either to the Provincial *Foral* Governments, either to the Administration of the State, or jointly to both administrations, according to the proportion of digital services supply in each territory. This proportion, expressed as a percentage of no more than two decimal numbers, must be allocated to each territory on the basis of the percentage that the income corresponding to the taxable provision of digital services in the territory of each administration represents with respect to the total taxable income in the Spanish territory.

The digital services shall be deemed to be provided in the common or *foral* territory, depending on the territory where the users are located, pursuant the rules for determining the users' location laid down in the tax legislation.

Taxpayers shall submit their tax returns either to the Administration entitled to levy the tax, stating the applicable proportions and the tax amount due to each administration. Applicable refunds shall be made by the respective Administration in the proportion that corresponds to each of them.

The tax inspection shall be carried out by the competent Provincial *Foral* Government in each Historical Territory whenever the taxpayer has the fiscal domicile in the Basque Country, notwithstanding the collaboration of the other concerned tax Administrations. This tax inspection activity shall be communicated to the rest of the concerned Administrations and shall be binding on all of them, including the proportion of the tax liability corresponding to each of them.

Should the tax inspection activity result in a tax debt or in an amount to be refunded corresponding to both Administrations, the collection or refund shall be made by the inspecting Administration, without prejudice to any compensations to which the other may be entitled.

The proportions set in the tax audits made by the competent Administration shall affect the taxpayer's paid-in taxes, without prejudice to the proportions which, after the abovementioned tax audit, are definitively agreed between the competent Administrations.

*Legal ref:* EA art. 34b

*See also:* Agreed tax subject to State legislation

*Spanish:* Impuesto sobre Determinados Servicios Digitales

*Basque:* Zerbitzu Digital Zehatzen gaineko Zerga

## TAX ON DEPOSITS IN CREDIT INSTITUTIONS

The Tax on Deposits in Credit Institutions is a direct tax which was enacted at State level with effect from 1<sup>st</sup> January 2013. Up to that moment, the Autonomous Communities had the power to enact the tax and, therefore, it was a regional tax. In 2014, the tax was agreed between the State and the Basque Country with effect from the aforementioned date.

The Tax on Deposits in Credit Institutions is an agreed tax subject to State legislation, that is, to the same rules in terms of substance and form as those established by the State. Nevertheless, the Basque provinces may establish tax rates under the same restrictions and limits as the ones in force for the Autonomous Communities in common territory.

In addition, when the levying of the tax corresponds to the Basque *foral* Treasuries, the Basque provinces have the power to adopt their own tax forms, which have to include at least the same information as those of the common territory; and they may also set payment deadlines for each settlement period, which cannot be substantially different from those set by the State tax administration.

The general connecting factor for the levying of the tax is the location of the headquarters or branches of the credit institutions where the funds of third parties are deposited. Therefore, the Basque provincial Treasuries are entitled to the levying of the tax when the said headquarters or branches are located in the Basque territory.

With effect from 2018, the Basque Country and the State agreed on the connecting factor applicable to online banking and to those systems where the deposits are not susceptible of ascription to a particular territory. In said cases, the levying of the tax corresponds to the Basque provincial Treasuries in the same proportion as the one resulting of the application of the previously mentioned general rule.

The aforementioned criteria are also applicable for determining the tax competent authority for the levying of the payments on account of the Tax on Deposits in Credit institutions.

*Legal ref:* EA art. 23b

*See also:* Agreed tax subject to State legislation

*Spanish:* Impuesto sobre los Depósitos de las Entidades de Crédito

*Basque:* Kreditu-erakundeetako Gordailuen gaineko Zerga

## TAX ON ECONOMIC ACTIVITIES

*See:* Municipal Taxes

*Spanish:* Impuesto sobre Actividades Económicas

*Basque:* Ekonomia-jarduaren gaineko Zerga



## TAX ON FINANCIAL TRANSACTIONS

Since 2013, Spain is one of the group of European Union countries in the procedure of reinforced cooperation for the adoption of a Directive on the harmonised implementation of a Financial Transaction Tax, together with Germany, France, Austria, Belgium, Slovakia, Slovenia, Greece, Italy and Portugal. Over the course of these years, despite the progress made in shaping the tax, it has not been possible to reach an agreement leading to the adoption of a Directive. In view of the time that has elapsed since then, and still within the framework of the procedure for enhanced cooperation with a view to the establishment of a harmonised tax, the Financial Transaction Tax was enacted by virtue of the Law 5/2020 (SP), October 15.

The Law 1/2022 (SP), February 8, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country, agrees on the distribution of powers regarding this new indirect tax.

The Tax on Financial Transactions is an agreed tax subject to the same rules in terms of substance and form as those established at any given time by the State. Nevertheless, the competent Institutions of the Historical Territories are able to adopt their own tax returns, which shall contain at least the same information as those of the common territory, and may set the payment deadlines for each tax settlement period, which shall not be substantially different from those set by the Administration of the State.

Regardless of the location of their fiscal domicile, taxpayers shall submit their tax returns either to the Provincial *Foral* Governments, either to the Administration of the State, or jointly to both administrations, according to the business turnover allocated to each territory during the year, on the basis of the percentage that the taxable base corresponding to transactions relating to shares of companies with registered offices in common or *foral* territory represents with respect to the total taxable base of each taxpayer.

The tax inspection shall be carried out by the competent Provincial *Foral* Government in each Historical Territory whenever the taxpayer has the fiscal domicile in the Basque Country, notwithstanding the collaboration of the other concerned tax Administrations. This tax inspection activity shall be communicated to the rest of the concerned Administrations and shall be binding on all of them, including the proportion of the tax liability corresponding to each of them.

Should the tax inspection activity result in a tax debt or in an amount to be refunded corresponding to both Administrations, the collection or refund shall be made by the inspecting Administration, without prejudice to any compensations to which the other may be entitled.

The proportions set in the tax audits made by the competent Administration shall affect the taxpayer's paid-in taxes, without prejudice to the proportions which, after the abovementioned tax audit, are definitively agreed between the competent Administrations.

*Legal ref:* EA art. 34a

*See also:* Agreed tax subject to State legislation

*Spanish:* Impuesto sobre Transacciones Financieras

*Basque:* Transakzio Finantzarioen gaineko Zerga

## **TAX ON FLUORINATED GREENHOUSE GASES**

The Tax on Fluorinated Greenhouse Gases- known as the F-gas Tax- is an environmental tax which was established in Spain in 2014 to address the limited efficiency of previous levies applied on F-gases in industrial processes which generated significant emissions of these gases. In that year said tax was also agreed by the State and the Basque Country.

The Tax on Fluorinated Greenhouse Gases is an agreed tax subject to State legislation, that is, to the same rules in terms of substance and form as those established by the State. Nevertheless, when the levying of the tax corresponds to the Basque provincial Treasuries, the Basque provinces have the power to adopt their own tax forms, which have to include at least the same information as those of the common territory; and they are also able to set payment deadlines for each settlement period, which cannot be substantially different from those set by the State tax administration.

Until 2022, the Basque *foral* Treasuries had the power to levy said tax provided that the final consumers, as referred to by the State regulation of the F-gas Tax, used the taxable F-gases in installations, equipment or devices which were located in the Basque territory. When the F-gases were devoted to self-consumption, the Basque provinces were the competent authorities for the levying of the tax when the self-consumption took place in the Basque Country. In any other case different from the abovementioned ones, the levy of the tax corresponded to the Basque provincial authorities whenever the taxable event occurred in taxpayers' installations located in the Basque territory.

Refunds corresponded to the same tax administration which had collected the tax debt; said refunds were applicable under request up to a maximum limit of the paid tax.

In 2022, the Law 14/2022 (SP), July 8, amending Law 19/2013 (SP), December 9, on transparency, access to public information and good governance, in order to regulate the statistics of micro, small and medium-sized enterprises (SMEs) in public procurement, redrafted Article 5, of the Law 16/2013 (SP), October 29, which establishes certain environmental taxation measures and adopts other tax and financial measures. Said article 5 amends the Tax on Fluorinated Greenhouse Gases, modifying its structure to bring it closer to that of an Excise Duty, even though it is not technically a tax of that kind.

The Law 9/2023 (SP), April 3, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country, agrees on the distribution of powers regarding the new structure of the F-gas Tax.

The tax shall be levied by the Administration of the State or by the respective Provincial *Foral* Government in each Historical Territory according to the following rules:

First. In the case of the manufacture of the gases within the objective scope of the tax, it shall be levied by the Administration of the territory where the establishments in which the activity is carried out are located.

Second. In the case of sales or supplies and self-consumption of gases by authorized taxpayers as storekeepers in accordance to the tax legislation, the tax shall be levied by the Administration of the territory where the establishments in which the activity is carried out are located.

Third. In the case of intra-community acquisition of products within the objective scope of the tax, it shall be levied by the Administration of the territory where the fiscal domicile of the taxpayer is located, except in the case of taxpayers authorized as storekeepers wherever the second rule above will apply. Should the intra-community acquisitions be made by a non-established taxpayer, the tax shall be levied by the Administration of the territory where the fiscal domicile of its representative is located.

Any applicable refunds shall be made by the Administration of the territory where the tax liability in question was paid into. Nevertheless, in cases where it is not possible to determine in which Administration the tax liability was paid into, the refund shall be made by the Administration of the territory where entitlement to the refund arises.

The registration and the register of taxpayers must be made by the Administration of the State or by the competent Provincial *Foral* Government in each Historical Territory, pursuant to the abovementioned rules.

Verification and inspection shall be competence of the Administration entitled to levy the tax, without prejudice of the collaboration between Administrations.

*Legal ref:* EA art. 34

*See also:* Adjustment to consumption for the Tax on Fluorinated Greenhouse Gases; Agreed tax subject to State legislation.

*Spanish:* Impuesto sobre los Gases Fluorados de Efecto Invernadero

*Basque:* Berotegi-efektuko Gas Fluordunen gaineko Zerga

## **TAX ON IMMOVABLE PROPERTY**

*See:* Municipal Taxes

*Spanish:* Impuesto sobre Bienes Inmuebles

*Basque:* Ondasun Higiezinaren gaineko Zerga

## **TAX ON INSURANCE PREMIUMS**

The Tax on Insurance Premiums is an agreed tax subject to State legislation, that is, to the same rules in terms of substance and form as those established by the State.

Nevertheless, when the levying of the tax corresponds to the Basque *foral* Treasuries, the Basque provinces have the power to adopt their own tax forms, which have to include at least the same information as those of the common territory; and the said provinces are also able to set payment deadlines for each settlement period, which cannot be substantially different from those set by the State tax administration.

The general connecting factor for the levying of the tax is the location of the risk or the commitment in insurance and capitalization operations, respectively. Therefore, the Basque provincial Treasuries are entitled for the levying of the tax when the said location is in the Basque territory.

For these purposes, the Economic Agreement establishes different rules, depending on the kind of insurance, to determine when the location of risk is regarded to be in the Basque territory. To this effect, the following rules apply:

- Concerning insurance on real property, the Basque Treasuries are the competent authorities when the assets are located in the Basque territory. The same applies when the insurance refers to real property and its content as long as the latter is covered by the same insurance policy. In the event that the insurance refers exclusively to movable, goods located within premises, with the exception of goods in commercial transit, when the premises wherein the goods are kept are located in the Basque territory. If a single insurance premium covers the risk of real property located in both common and Basque territory, the location of risk shall be determined by the value of the properties situated in each of the territories.
- In regard to insurance on vehicles of any kind, when the persons or entities under whose name the vehicle is registered have their fiscal residence or fiscal domicile in the Basque Country.
- As for insurance related to risks arising during travel or outside the residence of the policyholder, for a period equal to or shorter than four months, when the policyholder signs the contract in Basque territory.
- In any other case, when the policyholder, if an individual, has his or her fiscal residence in the Basque Country, or if otherwise, when the corporate or permanent establishment has the fiscal domicile in said territory.
- In the event of insurance and capitalization operations, the location of the commitment shall be understood to be in Basque territory when, in the case of individuals, the policyholders have their fiscal residence therein or, in the case of companies or permanent establishments, when their fiscal domicile is in the Basque Country.

Finally, in absence of specific rules of location pursuant to the aforementioned connecting factors, Article 32 of the Economic Agreement states that insurance and capitalization transactions are regarded to take place in the Basque territory when the contracting party is an entrepreneur or a professional, who enters into insurance transactions in the course of economic activities and has fiscal domicile, or a permanent establishment or, otherwise, fiscal residence in the Basque Country.

*Legal ref:* EA art. 32

*See also:* Agreed tax subject to State legislation

*Spanish:* Impuesto sobre las Primas de Seguro

*Basque:* Aseguru-sarien gaineko Zerga

## **TAX ON MOTOR VEHICLES**

*See:* Municipal Taxes

*Spanish:* Impuesto sobre Vehículos de Tracción Mecánica

*Basque:* Trakzio Mekanikoko Ibilgailuen gaineko Zerga

## **TAX ON THE DEPOSIT OF WASTE IN LANDFILLS, INCINERATION AND CO-INCINERATION OF WASTE**

The Law 7/2022 (SP), April 8, on waste and contaminated soils for a circular economy, lays down some fiscal measures to boost the circular economy and incorporates into the tax system two economic instruments in the field of waste. The purpose of these new taxes is to reduce waste generation and improve the management of waste whose generation cannot be avoided, by means of taxation on treatments lower down the waste hierarchy (landfilling, incineration and co-incineration), with the aim of reducing these less favourable management options from the point of view of the waste hierarchy principle. To this end, the said law passes by two new tax figures: the Excise Duty on Non-Reusable Plastic Packaging and the Tax on the Deposit of Waste in landfilling, incineration and co-incineration of waste.

The Law 9/2023 (SP), April 3, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country, agrees on the distribution of powers regarding both taxes tax.

The Tax on the Deposit of Waste in landfilling, incineration and co-incineration of waste is an agreed tax subject to the same rules in terms of substance and form as those established at any given time by the State. Nevertheless, the competent Institutions of the Historical Territories are able to increase the tax rates within the limits and under the conditions in force at any given time in the common territory. They have also the capacity to adopt their own tax returns, which shall contain at least the same information as those of the common territory, and to set the payment deadlines for each tax settlement period, which shall not be substantially different from those set by the Administration of the State.

The tax shall be levied by the respective Provincial *Foral* Government in each Historical Territory in accordance with the location of the landfill or the incineration or co-incineration facility where the waste subject to the tax is to be deposited.

The registration and the register of taxpayers must be made by the respective Provincial *Foral* Government in each Historical Territory as long as the landfill or the

incineration or co-incineration facility where the waste subject to the tax is to be deposited is located in the Basque Country.

*Legal ref:* EA art. 34c

*See also:* Agreed tax subject to State legislation

*Spanish:* Impuesto sobre el Depósito de Residuos en Vertederos, la Incineración y la Coincineración de Residuos

*Basque:* Hondakinak Zabortegietan Uztearen, Erraustearen eta Hondakinen baterako Errausketaren gaineko Zerga

### **TAX ON THE PRODUCTION OF SPENT NUCLEAR FUEL AND RADIOACTIVE WASTE FROM THE GENERATION OF NUCLEAR ELECTRIC POWER**

The Tax on the Production of Spent Nuclear Fuel and Radioactive Waste from the Generation of Nuclear Electric Power is an environmental tax which was established in Spain in effect from 2013. The State and the Basque Country agreed said tax in 2014.

The Tax on the Production of Spent Nuclear Fuel and Radioactive Waste from the Generation of Nuclear Electric Power is an agreed direct tax subject to State legislation, that is, to the same rules in terms of substance and form as those established by the State. Nevertheless, when the levying of the tax corresponds to the Basque *foral* Treasuries, the Basque provinces have the power to adopt their own tax forms, which have to include at least the same information as those of the common territory; and they are also able to set payment deadlines for each settlement period, which cannot be substantially different from those set by the State tax administration.

The Basque provincial Treasuries have the power to levy the Tax on the Production of Spent Nuclear Fuel and Radioactive Waste from the Generation of Nuclear Electric Power provided that the plants for the production of spent nuclear fuel and for the resulting radioactive waste are in the Basque territory.

The aforementioned rule is also applicable for determining the competence of the Basque provincial Treasuries over the levy of the payments on account of said tax.

*Legal ref:* EA art. 23d

*See also:* Agreed tax subject to State legislation

*Spanish:* Impuesto sobre la Producción de Combustible Nuclear Gastado y Residuos Radiactivos Resultantes de la Generación de Energía Nucleoeléctrica

*Basque:* Energia Nukleoelektrikoa Ekoiztetik Sortutako Erregai Nuklear Agortua eta Hondakin Erradioaktiboak Egitearen gaineko Zerga

### **TAX ON THE STORAGE OF SPENT NUCLEAR FUEL AND RADIOACTIVE WASTE IN CENTRALIZED FACILITIES**

The Tax on the Storage of Spent Nuclear Fuel and Radioactive Waste in Centralized Facilities is an environmental tax which was established in Spain in effect since 2013. The State and the Basque Country agreed said tax in 2014.

The Tax on the Storage of Spent Nuclear Fuel and Radioactive Waste in Centralized Facilities is an agreed direct tax subject to State legislation, that is, to the same rules in terms of substance and form as those established by the State. Nevertheless, when the levying of the tax corresponds to the Basque *foral* Treasuries, the Basque provinces have the power to adopt their own tax forms, which have to include at least the same information as those of the common territory; and they are also able to set payment deadlines for each settlement period, which cannot be substantially different from those set by the State tax administration.

The Basque provincial Treasuries have the power to levy the Tax on the Storage of Spent Nuclear Fuel and Radioactive Waste in Centralized Facilities provided that the storage centralized facilities for spent nuclear fuel and for the radioactive waste are in the Basque territory.

The aforementioned rule is also applicable for determining the competence of the Basque provincial Treasuries over the levy of the payments on account of said tax.

*Legal ref:* EA art. 23d

*See also:* Agreed taxes subject to State legislation

*Spanish:* Impuesto sobre el Almacenamiento de Combustible Nuclear Gastado y Residuos Radiactivos en Instalaciones Centralizadas

*Basque:* Erregai Nuklear Agortua eta Hondakin Erradioaktiboak Instalazio Zentralizatuetan Biltegitratzearen gaineko Zerga

## **TAX ON THE VALUE OF ELECTRICITY GENERATION**

The Tax on the Value of Electricity Generation is an environmental tax which was established in Spain in effect since 2013. The State and the Basque Country agreed said tax in 2014.

The Tax on the Value of Electricity Generation is an agreed direct tax subject to State legislation, that is, to the same rules in terms of substance and form as those established by the State. Nevertheless, when the levying of the tax corresponds to the Basque *foral* Treasuries, the Basque provinces have the power to adopt their own tax forms, which have to include at least the same information as those of the common territory; and they are also able to set payment deadlines for each settlement period, which cannot be substantially different from those set by the State tax administration.

The Basque provincial Treasuries have the power to levy the Tax on the Value of Electricity Generation provided that the electricity generation plants are in the Basque territory.

The aforementioned rule is also applicable for determining the competence of the Basque provincial Treasuries over the levy of the payments on account of said tax. Refunds correspond to the same tax administration which had collected the tax debt.

*Legal ref:* EA art. 23c

*See also:* Agreed tax subject to State legislation

*Spanish:* Impuesto sobre el Valor de la Producción de la Energía Eléctrica

*Basque:* Energia Elektrikoa Ekoizte Balioaren gaineko Zerga

## **TAX ON THE VALUE OF EXTRACTION OF GAS, OIL AND CONDENSATES**

The Tax on the Value of Extraction of Gas, Oil and Condensates is an environmental tax which was established in Spain with effect from 2015. Since 2018, the State and the Basque Country agreed said tax.

The Tax on the Value of Extraction of Gas, Oil and Condensates is an agreed direct tax subject to State legislation, that is, to the same rules in terms of substance and form as those established by the State. Nevertheless, when the levying of the tax corresponds to the Basque *foral* Treasuries, the Basque provinces have the power to adopt their own tax forms, which have to include at least the same information as those of the common territory; and they are also able to set payment deadlines for each settlement period, which cannot be substantially different from those set by the State tax administration.

The Basque provincial Treasuries have the power to levy the Tax on the Value of Extraction of Gas, Oil and Condensates provided that the area included within the perimeter for the exploitation of the concession of the deposit of hydrocarbons is in the Basque territory. In case said area is in both common and Basque territory, the levy of the tax is distributed proportionally between both tax administrations.

The aforementioned rule is also applicable for determining the competence of the Basque provincial Treasuries over the levy of the payments on account of said tax. Refunds correspond in proportion to the paid tax to the tax administrations.

*Legal ref:* EA art. 23e

*See also:* Agreed tax subject to State legislation

*Spanish:* Impuesto sobre el Valor de la Extracción de Gas, Petróleo y condensados

*Basque:* Gasa, Petrolio eta Kondentsatuak Erauzte Balioaren gaineko Zerga

## **TAX RELATIONS**

Part I of the Economic Agreement stipulates the general principles which rule tax relations between the Basque Country and the State and distributes tax powers between the Basque Country and the central government. The distribution affects the



regulatory, the tax inspection, and the levying powers concerning each of the agreed tax figures within the tax systems of the Basque provinces.

The Economic Agreement acknowledges full faculties to the competent Institutions of the Historical Territories in order to establish and administer, within their territories, their own taxation system, with the only exception of the competences specifically assigned exclusively to the Spanish state.

The Basque distribution model of tax competences is based on the classic criteria of fiscal residence –for individuals- and fiscal domicile –for corporations-, as used and determined in the OECD Model Tax Convention to prevent double taxation, in order to distribute tax powers between different jurisdictions. In general, the residence principle of taxation applies.

In addition and in the case of the Corporate Income Tax, the Value Added Tax and the Income Tax on Non-Residents with permanent establishments in Spain, the Economic Agreement lays down some specific connecting factors, that is, business turnover and place of transactions, which are applicable to some taxpayers under certain circumstances. The application of these connecting factors give rise to the levying of these taxes by each administration in proportion of the economic activities performed in each territory; namely the Basque or *foral* territory and the common territory. Both criteria respond to a principle equivalent to the territoriality principle in international tax law.

*See also:* Fiscal domicile; Fiscal residence; General principles; Residence principle of taxation; Source principle of taxation

*Spanish:* Relaciones tributarias

*Basque:* Tributur-harremanak

## **TEMPORARY SOLIDARITY TAX ON LARGE FORTUNES**

The Law 38/2022 (SP), December 27, for the establishment of temporary duties on energy and on credit institutions and financial credit establishments, and for the creation of the temporary solidarity tax on large fortunes, and amending certain tax rules, establishes the Temporary Solidarity Tax on Large Fortunes as a direct tax supplementary to the Wealth Tax.

The Preamble to the Law states that the purpose of the new tax is to harmonise to reduce differences in the taxation of wealth among Autonomous Communities. The new tax tries to equalize the tax burden between taxpayers resident in the Autonomous Communities that have totally or to a great extent reduced the Wealth Tax, and taxpayers resident in the Autonomous Communities where the tax burden has been maintained. It should be borne in mind that under the Spanish common financing system of the Autonomous Communities, the Wealth Tax is a tax fully transferred to the Autonomous Communities.

However, none of these arguments can be extended to the Historical Territories of the Basque Country where the Wealth Tax has maintained a constant tax burden, under the Economic Agreement system.

The said Law states that the new tax is applied throughout the Spanish territory, without prejudice to the foral tax regimes of the Basque and the Navarrese Economic Agreements. Regarding the Basque Country, the Law 9/2023 (SP), April 3, amending Law 12/2002 (SP), May 23, which approves the Economic Agreement with the Autonomous Community of the Basque Country, agrees on the distribution of powers of this new tax, following the same criteria as the Wealth Tax.

Moreover, at the meeting of the Joint Committee on the Economic Agreement on December 27, the State administration and the Basque administrations agrees on the need to maintain the current taxation framework in relation to the Wealth Tax during the period the Temporary Solidarity Tax on Large Fortunes is in force.

*Legal ref:* EA Fifth Additional Provision

*See also:* Personal Income Tax; Residence principle of taxation; Source principle of taxation; Wealth Tax

*Spanish:* Impuesto Temporal de Solidaridad de las Grandes Fortunas

*Basque:* Fortuna Handien aldi baterako Elkartasun-Zerga

## **TERRITORIAL GOVERNMENT**

Term frequently used in the English version of the Economic Agreement. However, its usage can lead to misinterpretation due to the fact that in well-known federal models, i.e. the USA or Canada, the meaning and implications of the term “territorial government” are quite different from the ones intended in the Basque context.

The original version of the Economic Agreement includes the term “*Diputaciones forales*”. This is a term unique to the 1978 Spanish and Basque constitutional order and “provincial government” is its closest generic equivalent in English.

However, the use of “provincial” to refer to the Basque governments and parliaments at provincial level risks confusion with other provinces in Spain which have fewer powers, and thus there is a tendency for Spanish speakers to use “foral” or “historical” when they speak in English instead. Since “foral” and “historical” are specific to the Basque history and context and have no direct equivalent in English, it is advisable to use “provincial” in English wherever possible, while bearing in mind the specific characteristics of the Basque provinces.

*See also:* Provincial government; Deputation

*Spanish:* Gobierno territorial

*Basque:* Lurraldeetako gobernu

## **TRANSFER TAX AND STAMP DUTY**

In the Spanish legal order, the Transfer Tax and Stamp Duty is a complex tax because it taxes three completely different taxable events; namely, capital transfers, documented legal acts and corporate operations.

The Transfer Tax and Stamp Duty is an agreed tax subject to Basque legislation, except for the corporate operations taxable event, and for certain cases within the documented legal acts taxable event such as bills of exchange, documents which substitute these or are used for draft purposes. In regard to said exceptions, the taxable events are subject to State legislation and when the levying of the tax corresponds to the Basque *foral* Treasuries, the Basque provinces have the power to adopt their own tax forms, which have to include at least the same information as those of the common territory; and said provinces are also able to set payment deadlines for each settlement period, which cannot be substantially different from those set by the State tax administration.

Connecting factors differ depending on the taxable event regarding which the distribution of the levy in tax power between the Basque Country and the State is made.

In relation to transfers for good and valuable consideration and leases of real property, the Basque provincial treasuries have the tax power for regulation, levy and inspection when the assets are located in the Basque territory.

When the transfers concern movable goods, livestock and loans, the agreed connecting factor is the territory, Basque or common, wherein the fiscal domicile or residence of the purchaser is located. However, two special rules are established: one, for transfers of shares and similar securities, in which case the place of formalization of the transaction applies; the other, for the constitution of chattel mortgages or pledges without transfer of possession, or mortgages concerning vessels or aircrafts, in which cases the territory where such acts are to be registered applies.

As for the constitution of simple loans, guarantee deposits, movable leases and pensions, the Basque *foral* Treasuries are the competent authorities when the fiscal residence or domicile of the borrower, lessee, receiver of guarantee or pensioner is in the Basque Country.

With regard to administrative concessions of assets and the execution of public works or services, the place of location or of execution is the agreed rule to distribute tax power.

In relation to the corporate operations taxable event, the Basque provincial treasuries are the competent authorities for levying the tax when the entity has its fiscal domicile in the Basque Country; or when the entity has its corporate domicile in the Basque Country or performs business transactions in the Basque Country, provided that the effective seat of management is not located in another EU Member State, or if so located, said State does not impose a similar tax on such corporate operations.

In respect of notarial documents, deeds and certificates, the Basque provincial treasuries have the tax power for regulation, levying and inspection provided that said documents are authorized or issued in Basque territory. However, in cases subject to the progressive tax rates of the Stamp Duty, the rule refers to the territory, Basque or

common, wherein the Registry where the assets or transactions are to be registered is located.

Concerning bills of exchange and documents which substitute these or which are used for draft purposes, and on promissory notes, bonds, debentures and similar securities, Basque provinces are the competent tax authorities when said securities are issued in the Basque Country. In the event that their issue occurs abroad, Basque *foral* Treasuries are the competent authorities, when their first holder has his or her fiscal residence or fiscal domicile in said territory. As for preventive annotations, Basque provinces are the competent tax authorities, when they are registered in the Public Registries of the Basque Country.

*Legal ref:* EA art. 31

*See also:* Agreed tax subject to autonomous legislation; Agreed tax subject to State legislation

*Spanish:* Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados

*Basque:* Ondare Eskualdaketen eta Egintza Juridiko Dokumentatuen gaineko Zerga

#### **TURNOVER FIGURE**

*See:* Business turnover

*Spanish:* Cifra de operaciones

*Basque:* Eragiketen zenbateko

# U

## **UGT-LA RIOJA CASE (“BASQUE ECONOMIC AGREEMENT” CASE-EU)**

The 2008 September 11 judgment of the Court of Justice in Joined Cases C-428/06 to C-434/06, *Union General de Trabajadores de La Rioja UGT-La Rioja versus Juntas Generales del Territorio Histórico de Vizcaya and Others* is known as the “Basque Economic Agreement” case.

In 2005, each of the three Basque *foral* authorities adopted a tax measure which set the tax rate of the Corporate Income tax at 32.5 per cent, and introduced a series of tax deductions. In the common territory, the Corporate Income Tax rate was set at 35 per cent and did not provide for such deductions. In view of the adoption of those measures in the Basque tax systems, a trade union -UGT-La Rioja, General Union of Workers of La Rioja- and two neighboring Autonomous Communities -La Rioja and Castilla y León- brought proceedings before the High Court of Justice of the Basque Country for annulment of those Basque *foral* tax measures.

The High Court of Justice, by means of a preliminary ruling, asked the EU Court whether the *foral* tax measures were to be considered to be selective measures, conferring an advantage on certain undertakings or on the production of certain goods and, accordingly, to be State aid incompatible with the European common market on the sole ground that they did not apply to the whole territory of the Member State concerned.

In the proceedings, the Opinion of Advocate General J. Kokott was delivered on 8<sup>th</sup> May 2008. The Advocate General as well as the Court took the opportunity to develop further the case-law initiated in the Azores judgment in 2006.

In its judgment, first, the Court indicates that it is both to the Historical Territories and to the Basque Autonomous Community that reference must be made for the purpose of determining whether the infra-state body, comprising both provincial and regional levels, enjoys sufficient autonomy to constitute the reference framework, in the light of which the selectivity of a measure adopted by one of those Historical Territories should be assessed.

Next, the Court declares that, in order to determine whether laws adopted by an infra-state body constitute selective State aid, it is necessary to establish whether that body has sufficient institutional, procedural and economic autonomy for the adoption of the legislative measure, within the limits of the powers conferred on it, to be considered as being of general application within that territorial scope and, therefore, as being non-selective. The European Court, following the Advocate General’s Opinion, regards the Basque Country as institutionally and procedurally autonomous and poses some doubts about financial autonomy due to the complexity of the Basque Quota system.

The European Court, finally, concludes that it is for the Spanish Court, which alone has jurisdiction to identify the national legal order and to interpret it, as well as to apply European law to the cases before it, in order to determine whether the Historical Territories and the Autonomous Community of the Basque Country have such autonomy, which, if so, would have the result that the tax regulations adopted within the limits of the areas of competence granted to those infra-state bodies by the Constitution and the rest of the Spanish legal order are not of a selective nature within the meaning of the concept of State aid as referred to in ex- Article 87(1) EC (Article 107 (1) TFUE). Following the rationale of the judgment, the Spanish courts confirmed the non-selective nature of the tax regulation of the Basque provinces, and consequently, of the competences granted by the Economic Agreement.

*Case-law:* Judgment 6 September 2006 of the Court of Justice in Case C-88/03 Portuguese Republic v. Commission of the European Communities; Judgment 11 September 2008 of the Court of Justice in Joined Cases C-428/06 to C-434/06 *Union General de Trabajadores de La Rioja UGT-La Rioja versus Juntas Generales del Territorio Histórico de Vizcaya and Others*. Among others, Judgment of the Basque Country High Court 2012, 30 November and Judgement of the Supreme Court 2014, 17 November.

*See also:* Azores case (EU); Institutional autonomy; Financial autonomy (EU); Procedural autonomy; Regional tax state aid

*Spanish:* Caso UGT-La Rioja ( “Concierto Económico Vasco” Caso UE)

*Basque:* UGT-La Rioja Kasu (“Euskal Ekonomia Ituna” EB Kasu)

## **UNILATERAL EXTENSION**

A unilateral extension of the Economic Agreement by the State without the participation or consent of the Basque Country happened once in 2001.

Article 1 of the Economic Agreement approved by Law 12/1981 (SP), May 13, stated that it would expire on 31<sup>st</sup> December 2001, without expressly foreseeing the possibility of its extension beyond this date. During 2001, the representatives of the State administration and of the Basque Country were carrying out the work of assessment and evaluation of the terms of the new Economic Agreement applicable as of 2002. However, differences between both parts blocked an agreement on time, being one of the most remarkable the participation of the Basque Country in the international tax fora wherein tax matters of the competence of the Historical Territories are dealt with.

In these circumstances, the State unilaterally considered appropriate to approve a Law establishing a temporary extension, during 2002, of the Economic Agreement enacted by Law 12/1981 (SP), December 13, in all terms, until the date the State and the Basque Country reached an agreement on a new legal text. The Basque Country never accepted the legal validity of this unilateral extension without the participation of the Basque authorities. After long negotiations, this agreement was reached on 2002

March 6 by the Joint Committee on the Economic Agreement and the current Economic Agreement, was, finally, enacted by Law 12/2002 (SP), May 23.

*See also:* Bilaterality; Economic Agreement (1981-2002)

*Spanish:* Prórroga unilateral

*Basque:* Alde bakarreko luzapen

## **UNILATERAL RISK**

The so-called unilateral risk is together with the accountability and solidarity one of the main financial principles the Economic Agreement is based upon. Under the Spanish legal order, it is a principle exclusive to the *foral* systems, namely, Basque Country and Navarra, and opposite to the shared risk principle of the other fifteen regions – autonomous communities- in Spain, which are comprised under the common financing system.

The Economic Agreement assigns the authority over all taxes, with very few exceptions, to the Basque provinces. Generally speaking, said provinces regulate all direct taxes and some minor indirect taxes and administer and collect all of them in accordance with the connecting factors agreed between the State and the Basque Country. In applying this model, unilateral risk means that the Basque provinces bear the cost of any tax decrease and benefit from any tax increase. The Economic Agreement thus gives rise to a maximum level of accountability and responsibility for the Basque provinces, which is consistent with the recommendations of the theory and the experience of the most advanced federations.

Since the Basque Country assumes all the collection risks, the Economic Agreement implies unilateral risk for the Basque Country. Simply, if the tax collection in the Basque Country grows faster than in the rest of Spain, the Basque Country keeps all the additional revenue. Conversely, if the tax collection grows more slowly than in the rest of Spain, the Basque Country bears all the cost. The resources of the central government in the Basque Country, the Quota, are independent of the tax collection in the Basque Country: However, the resources of the Basque Country change exactly as its tax collection does. This means that the Basque Country assumes all the collection risks associated with changes in the economic conjuncture, and the financial consequences of any tax change.

The results deriving from the management of the tax capacities pursuant to the Economic Agreement correspond only to the Basque Country. Just as the central government does not participate in the raising of the revenues made by the Basque tax provincial administrations, neither does it provide a minimum revenue guarantee for regional public expenditure as in other regions in Spain. The Basque Country runs all the risk itself.

The principle of unilateral risk also encourages efficiency in tax administration. The unilateral risk implies that the Basque Country keeps the additional tax revenue it collects and loses every euro it does not collect. In practice, the principle of unilateral

risk encourages efficiency in both, the level and the administration of taxes. With unilateral risk, the Basque Country bears all costs deriving from weak governance, which induces to increase efficiency in tax administration. If the risk, instead of being unilateral, were shared with the State, part of the cost of the revenue lost would be borne by the State. The opportunity cost of bad administration would then decrease, and the Basque provinces would have incentives for not making tax administration more efficient. This distinctive feature of the Basque financial system is a direct consequence of the fact that the Quota is independent of the tax collection of the Basque Country.

A similar reasoning applies to the level of taxes. If the State received, via higher Quota, a share of a tax increase or bore the cost of any tax cut, the Basque Country would have incentives to establish inefficiently low taxes. Since what happens is that the Basque Country keeps all tax increase and bears the cost of any tax reduction, the unilateral risk induces efficient tax levels.

*Legal ref:* BSA art.40 and 41; EA Part II

*See also:* Accountability; Efficiency; Federal State; Financial autonomy; Quota

*Compare:* Shared Risk: intra-regional financial system

*Spanish:* Riesgo unilateral

*Basque:* Alde bakarreko arrisku

## **UPDATING INDEX**

The Economic Agreement stipulates that the Quota should be ruled by five-yearly Quota laws negotiated and agreed bilaterally in the Joint Committee on the Economic Agreement. Under this system, the net quota is not calculated from scratch each year but rather for the first year or base-year of each five-year period. The net quota payable in the following four years is calculated by applying an updating index to the net quota of the base year and then deducting the relevant compensations, in accordance with article 56 of the Economic Agreement.

The updating index of any year is equal to the ratio between that year's State collection of taxes that have been agreed with the Basque Country, excluding the tax revenues of fully ceded taxes to other regions by the State, and that same collection in the first base-year.

Since the State General Budget is the reference to calculate the non-assumed charges for the base year, the quota is based on the projected cost of competences for five years, in contrast to the common financing system where financing levels are calculated on the basis of the real cost of competences.

*Legal ref:* EA art. 50; QL art. 10

*See also:* Assumed-competence; Imputation index; Non-assumed competence; Quota: legal concept; Quota settlement



*Spanish:* Índice de actualización  
*Basque:* Eguneratze-indize

# V

## **VALUE ADDED TAX: TAX LEVY**

Under the Economic Agreement, the Value Added Tax is an agreed tax subject to State legislation, that is, its regulation in the Basque Country has to respect the same rules in terms of substance and form as those established by the State. The only regulatory scope in which the Basque *foral* Treasuries have some room for maneuver is concerning tax forms, with the restriction of having to include at least the same information as those of the State, and deadlines for payment and tax returns submission, which shall not be substantially different from those set by the tax administration of the State.

For the purposes of the Value Added Tax, the tax powers under distribution between the State and the Basque tax administrations are the levy and collection power, and the inspection power. These distribution of tax powers is made in accordance with three connecting factors; namely, fiscal domicile, business turnover and place of transactions.

In regard to the levying powers, the place of transactions is the main rule for the distribution of tax powers.

In particular, taxpayers who perform operations exclusively either in the Basque territory or in the common territory must only submit VAT tax returns either to the Basque provincial treasuries or to the State tax administration. Within the Basque Country, the fiscal domicile criterion applies. Therefore, the competent tax authority is that of the Basque provincial treasury where the taxpayer's fiscal domicile is located, regardless of the territory within the Basque Country in which the transactions are carried out.

In the case of operations in both the common and the Basque territory, taxpayers must submit VAT tax returns to every tax administration according to the proportion of business turnover performed in each territory according to the criteria to determine the place of transactions under the Economic Agreement.

Notwithstanding the aforementioned rule, taxpayers with fiscal domicile in the Basque Country and under a certain amount of business turnover are exclusively subject to the tax authority of the Basque Treasuries, regardless of the territory in which the operations are performed; and vice-versa, taxpayers with fiscal domicile in the common territory and under a certain amount of business turnover are exclusively subject to the tax authority of the State Treasury, regardless of the territory in which the operations are performed. The rationale behind this allocation of tax power is to diminish the tax compliance costs for the smallest taxpayers which are better off under the jurisdiction of just one tax authority. On the contrary, the Economic Agreement considers a bearable burden for bigger taxpayers to be involved with the different tax administrations wherein they operate and, thus, the joint taxation rule applies.

Since the 2018 modification of the Economic Agreement said figure of business turnover is updated from 7 to 10 million euros. Therefore, companies with fiscal domicile in the Basque Country and a total business turnover in the previous year under 10 million euros are exclusively subject to the tax levy power of the Basque provinces, regardless of where the company operates, unless they operate exclusively in the common territory; and, vice versa, companies with fiscal domicile in the common territory and with a total business turnover in the previous year under 10 million euros are exclusively subject to the tax levy power of the State; regardless of where the company operates, unless they operate just in the Basque territory.

Joint taxation is the levying rule for companies with a total business turnover in the previous year exceeding 10 million euros. Regardless of the territory where their fiscal domicile is, companies whose business turnover in the previous year exceeded 10 million euros must pay the Value Added Tax to each tax administration, that is, Araba, Bizkaia, Gipuzkoa, Navarre and the State, in accordance with the business turnover corresponding to the operations performed in each territory during the year. Article 28 of the Economic Agreement lays down the criteria to determine the place of transactions and, consequently, the proportion of business turnover performed in each territory.

Some exceptions to the above general rules refer to VAT tax on some intra-community acquisitions in which cases the fiscal domicile criterion applies.

Another exception is the one regarding OSS VAT. On 29 July 2021 the Joint Committee on the Economic Agreement agreed on the connecting factors in regard to the transposition of the special scheme for taxable persons, established in the European Union but not in the Member State of consumption, who supply services to non-taxable persons, make distance sales of goods within the European Union, and certain domestic supplies of goods by electronic interfaces, and of the special scheme for distance sales of goods imported from third territories or third countries (OSS VAT), based on the tax at destination principle and the one-stop-shop mechanism.

In these cases, when Spain is the identification Member State, the tax shall be levied by the Administration of the State or by the Provincial *Foral* Government, depending on which one is entitled for the tax inspection of the entrepreneurs or professionals, established in the spatial scope of the tax, who have opted to apply the abovementioned schemes. However, in the case of the special scheme for distance sales of goods imported from third territories or third countries, should the taxable person be represented by an intermediary, the tax shall be levied by the Administration of the State or by the Provincial *Foral* Government, depending on which one is entitled for the tax inspection of the appointed intermediaries.

*Legal ref:* EA art.27 and art.28

*See also:* Agreed tax subject to State legislation; Business turnover; Fiscal Domicile; Place of transactions; Value Added Tax: business turnover; Value Added Tax: tax inspection

*Spanish:* Impuesto sobre el Valor Añadido: exacción del impuesto

*Basque:* Balio Erantsiaren gaineko Zerga: zergaren ordainarazpen

### **VALUE ADDED TAX: BUSINESS TURNOVER**

Articles 14 and 27 of the Economic Agreement stipulate the same definition of business turnover for the purposes of both the Corporate Income Tax and the Value Added Tax. However, some specific rules are established exclusively for the purposes of the Value Added Tax in Article 29 the Economic Agreement.

In particular, the business turnover figure comprises not only the VAT taxable supplies of goods and services, net of Value Added Tax, performed in each territory during the calendar year but also exempt of VAT goods and services entitled to deduction.

As a general rule, the provisionally applicable proportions for each calendar year shall be those determined on the basis of the previous year's transactions. For the first calendar year of the activity, the proportions shall be estimated by the taxable persons on the basis of their estimate of the transactions to be performed in each territory, without prejudice to the final adjustments.

Notwithstanding, upon prior notice to the Coordination and Legislative Evaluation Committee, a different proportion may be applied in the following cases: mergers, divisions, transfers of assets, or inception, termination, increase or reduction of activity in common or Basque territory which gives rise to a significant variation in the business turnover. The variation is considered significant when it entails a difference of 15 or more points in the proportion applicable to any of both territories.

In regard to taxpayers' obligations, they must submit tax returns to the competent tax administrations, stating therein the applicable proportions of business turnover and the tax debt or the refund corresponding to each of said administrations.

Final proportions of business turnover must be settled yearly with each tax administration in the last VAT tax returns of the calendar year by the taxpayer; consequently, adjustments to the previous settlements periods with each of the tax administrations have to be made.

In the event of refunds, they shall be made by the respective tax authority in the proportion that pertains to each of them.

*Legal ref:* EA art.14, art. 27 and art. 29

*See also:* Business turnover; Fiscal Domicile; Place of transactions; Value Added Tax: tax levy; Value Added Tax: tax inspection

*Spanish:* Impuesto sobre el Valor Añadido: volumen de operaciones

*Basque:* Balio Erantsiaren gaineko Zerga: eragiketen zenbateko

### **VALUE ADDED TAX: TAX INSPECTION**

The rules for the distribution of the tax inspection power concerning the Value Added Tax are mainly linked to the place of transactions and to the fiscal domicile of the taxpayer.

Taxpayers who perform operations exclusively either in the Basque territory or in the common territory – subject to the so-called exclusive taxation- must only submit VAT tax returns either to the Basque provincial treasuries or to the State tax administration. Within the Basque Country, the fiscal domicile criterion applies for the distribution of tax competence. Therefore, the competent tax authority is that of the Basque provincial treasury where the taxpayer's fiscal domicile is located, regardless of the territory within the Basque Country in which the transactions are carried out.

In regard to joint taxation, fiscal domicile is the main criterion for taxpayers subject to VAT joint taxation. In the case of taxpayers with a total business turnover in the previous year exceeding 10 million euros and operating in both territories, Basque and common, Article 29 (5) of the Economic Agreement states that the Basque tax inspection is applicable to taxpayers with fiscal domicile in the Basque Country, except for companies that performed 75 per cent or more of their total operations in the common territory in the previous calendar year, in which case, the tax inspection of the State is the competent authority, without prejudice to the collaboration of the Basque provincial treasuries. If tax adjustments are required as a result of the tax inspection activity, the competent tax administration for inspection shall make them with respect to all the involved tax authorities, including the proportion of the VAT tax that corresponds to each of the different Administrations. From 2018, the mirroring distribution of tax inspection powers is stated for companies with fiscal domicile in the common territory that performed 75 per cent or more of their total operations in the Basque territory in the previous calendar year, with an exception for VAT entities grouping.

When the tax inspection gives rise to a tax debt or to a tax refund corresponding to both Basque and State Administrations, said collection or payment shall be made by the administration with tax inspection powers, without prejudice to any due compensation between the involved tax administrations.

From 2018, following the criteria of the Board of Arbitration in several Resolutions of administrative tax conflicts, a new paragraph has been included in Article 29 of the Economic Agreement, to prevent the tax inspection authority from imposing adjustments unilaterally when they have an effect on the tax levy power of the other Administrations. To this end, the new provision entitles the tax administrations with no tax power for inspection to verify all the operations which have an effect on the determination of the business turnover for the purposes of informing the competent tax administration for inspection.

*Legal ref:* EA art.14, art. 27 and art. 29

*See also:* Fiscal Domicile; Place of transactions; Value Added Tax: tax levy; Value Added Tax: business turnover; Value Added Tax: VAT grouping

*Spanish:* Impuesto sobre el Valor Añadido: competencia inspectora

*Basque:* Balio Erantsiaren gaineko Zerga: ikuskatzeko eskumen

## **VALUE ADDED TAX: VAT GROUPING**

As a general principle, the special system for VAT entities groupings by no means alters the VAT rules under the Economic Agreement and, in particular, those applicable to determine the business turnover corresponding to different territories.

However, entities benefiting from the special system for VAT entity groupings apply some special rules. The most relevant one relates to the formation and composition of the groups. In particular, dependent companies whose tax administration for inspection purposes differs from that of the dominant entity are excluded from the VAT group of entities. As a consequence, pursuant to the Economic Agreement, all entities comprising a VAT entities grouping must be subject to the same tax administration for inspection purposes. Diverging from the general rule in VAT for individual companies, from 2018, companies with fiscal domicile in the common territory that wish to enter into a Basque VAT group must perform 100 per cent of their total operations in the Basque territory in the previous calendar year to be under the tax inspection authority of the Basque *foral* Treasuries.

Each entity comprising the VAT grouping must submit tax returns under the rules for individual taxation, with the amounts resulting from the individual application of the rules regulating the tax. In addition, each entity in the group must individually calculate the proportion of business turnover corresponding to each Administration according to the criteria laid down in the Economic Agreement.

The amounts included in the consolidated VAT tax returns of the entity grouping shall consist of the sum of the VAT tax returns individually calculated corresponding to either the State or the Basque Administrations, without the aggregation of the amounts corresponding to the different tax administrations.

The specific tax obligations of the dominant entities must be fulfilled with all the tax administrations of the territories in which the VAT entities grouping performs operations.

*Legal ref:* EA art.27, art 28 and art.29

*See also:* Agreed tax subject to State legislation; Value Added Tax: tax levy; Value Added Tax: business turnover; Value Added Tax: tax inspection

*Spanish:* Impuesto sobre el Valor Añadido: grupo de entidades

*Basque:* Balio Erantsiaren gaineko Zerga: talde fiskal

## **VALUE ADDED TAX: REGULARIZATION**

From 2018, following the criteria of the Board of Arbitration in several Resolutions of administrative tax conflicts, a new last paragraph has been included in Article 29 of the Economic Agreement, to guarantee that the input VAT borne by the taxpayer before the start of the economic activity is refunded by the same tax administration to which

it was paid, even if after starting the economic activity a change in the competent tax authority over the taxpayer has occurred, e.g., after a change of the fiscal domicile.

In particular, two are the qualifying situations for regularization. On the one hand, taxpayers under the Basque or the State tax administration for VAT levying purposes before the beginning of the economic activity who, once they start said activity, change to be subject to the other tax administration. On the other, when there is a significant variation in the amount of business turnover corresponding to each tax administration after starting the economic activity. For the purpose of this regularization, the variation is considered significant when it entails a difference of 40 or more points in the proportion applicable to any of the tax administrations.

In the aforementioned cases, taxpayers must regularize the proportion of business turnover corresponding to each involved tax administration in those settlement periods previous to the start of the provision of goods and services. This regularization must be carried out in accordance with the percentage of business turnover of the first full calendar year after the start of the economic activity attributed to each of the tax administrations involved. In order to regularize, taxpayers must submit a specific tax return to all the tax administrations involved in the same deadline for the submission of the last VAT tax return of the first full calendar year subsequent to the start of the economic activity.

Through this procedure, tax administrations must bear the VAT refund corresponding to the tax settlement periods previous to the start of the activity in accordance with the stated proportion of business turnover. As a result, compensations between administrations may take place, without said compensation having any economic effect on taxpayers.

*Legal ref:* EA art.27, art 28 and art.29

*See also:* Agreed tax subject to State legislation; Fiscal domicile; Value Added Tax: tax levy; Value Added Tax: business turnover; Value Added Tax: tax inspection

*Spanish:* Impuesto sobre el Valor Añadido: regularización

*Basque:* Balio Erantsiaren gaineko Zerga: erregularizazio

## **VERTICAL COEFFICIENT**

In the scope of the intra-regional financial relations in the Basque Country, once the annual Quota has been paid to the central government, the remaining income raised by the Basque provinces provide the common resources to be shared between the different levels of government in the Basque region to cover general competences. The common resources are distributed, vertically and horizontally, according to some coefficients with some final adjustments. Once the resources are vertically distributed between the regional and provincial level and horizontally among the three Historical Territories, a proportion of the common resources, which remain under the control of the provinces, also goes to the municipalities or local governments.

The general expenditure of the Basque Government is financed with its share in the common resources. The distribution of the common resources between the Basque government and the provincial governments is based on the relative importance of the expenditure in the provision of public services of each level of government. To this end, it is estimated how much each level of government needs to spend on its competences, and each of the tiers of administration receives a share on the common resources equal to its relative needs. The resulting shares are called vertical coefficients.

Therefore, vertical coefficients determine how much the Basque government and the provincial governments receive, respectively, of the common resources in order to fulfil their general spending competences. The result of multiplying the vertical coefficient of the Basque Country by the common resources is called “general contribution” from the Basque provinces to the Basque Government. In addition, the provinces have to finance directly some common competences and expenditures as well. The resources to finance them are called “specific contributions”.

The vertical coefficients are fixed in the Contributions Laws and, therefore, are modified only every five years. Under the 2007-2011 Contributions Law, the coefficients were set at 70.04 per cent for the Basque government and at 29.96 per cent for the three provinces and, not having been passed by a new Contributions Law, were subsequently rolled over from 2012 onwards. Said coefficients are still in force in 2018. In other words, the Basque government is entitled to 70.04 per cent of the common resources for general spending competences in the Basque region, while the remaining 29.96 per cent is kept by the three provincial governments. The tendency to date has been a gradual increase in the share of the Basque government in the common resources, rising from 64.25 percent under the first Contributions Law in force in the period 1986-1988 to the current share of approximately 70 per cent.

*See also:* Intra-regional relations: framework; Intra-regional financial relations; Contributions Law; Horizontal coefficient; Shared risk: intra-regional financial system

*Spanish:* Coeficiente vertical

*Basque:* Koefiziente bertikal

## **VOLUME OF OPERATIONS**

Direct translation of the Spanish term “volumen de operaciones” frequently used by native Spanish speakers in legal texts and in literature about the Basque tax and financial system in English.

*See:* Business turnover

*Spanish:* Volumen de operaciones

*Basque:* Eragiketen zenbateko



# W

## WEALTH TAX

Under the Economic Agreement, the Wealth Tax is an agreed tax subject to autonomous legislation. It is a direct tax and, as such, few restrictions for the tax powers of the Basque *foral* provinces are imposed by the Economic Agreement. In particular, just the respect for the general principles and the harmonization and cooperation principles under the Economic Agreement restrict the tax decisions of the Basque provinces concerning said tax.

In regard to taxpayers with fiscal residence in Spain, the Basque provinces have regulatory, levying and inspection power when the taxpayer has his or her fiscal residence in the Basque Country, regardless of the territory, common or Basque, wherein the assets liable to taxation are located.

Regarding non-resident taxpayers subject to the Wealth Tax on the basis of the source principle of taxation, Article 24 of the Economic Agreement establishes that the Wealth Tax *foral* norms of Araba, Gipuzkoa and Bizkaia are applicable when the greatest value of all the assets and rights in the Spanish territory lies in the Basque Country. For these purposes, assets and rights shall be deemed to lie in the Basque territory when they are located, may be exercised, or must be fulfilled in said territory.

When, under the required legal conditions, non-resident Spanish nationals whose last residence was in the Basque Country opt to submit their tax returns in compliance with the Personal Income Tax, they may opt as well to submit the the Wealth Tax tax returns of in accordance with the tax regulations for residents.

*Legal ref:* EA art.24

*See also:* Personal Income Tax; Residence principle of taxation; Source principle of taxation; Temporary Solidarity Tax on Large Fortunes.

*Spanish:* Impuesto sobre el Patrimonio

*Basque:* Ondarearen gaineko Zerga

## WITHHOLDING TAX ON INCOME FROM EMPLOYMENT

Article 7 of the Economic Agreement stipulates the criteria to determine the tax authority competent for the regulation, levying and inspection of withholding taxes on remuneration in cash and in kind from employment.

Two different rules for income from employment are set: one for active income and the other for passive income. For active income, the general rule is that the Basque provinces have the power to regulate, levy and inspect withholding taxes on wages

and salaries when the work or service is performed in the Basque Country, regardless of the tax administration responsible for the final tax.

In the event of the work or service performed in both the common territory and the Basque territory, or of unknown places of work performance, the work or service is regarded to be performed in the Basque Country when the place of work wherein the worker is affiliated for Social Security purposes is in the Basque territory. Since 2018, the aforementioned criterion is also applicable to the following situations: teleworking, work or services performed abroad and work performed on board of vessels, seagoing structures or fixed offshore platforms.

In regard to passive income from employment, that is, public pensions, pension funds and private passive income from companies and other entities, the Basque provinces are the competent tax authorities when the recipient of the passive income, that is, the taxpayer, has the fiscal residence in the Basque Country.

Notwithstanding the two aforementioned rules, the tax administration of the State retains the authority for levying withholding taxes on active or passive remunerations, including pensions generated by a person other than the payee, paid by the State to civil servants and public employees, except for civil servants and public employees of some public entities, such as self-government bodies, public business entities, State foundations or Port Authorities of the ports in the Basque region.

Diverging for the general rules, a very specific criterion is established for withholding taxes on remunerations of any kind received by chairpersons and members of boards of directors of companies. In this case, the tax authority competent for the regulation, levy and inspection of the company where the individual is working is also the competent authority for the withholding tax of the payments received by said persons.

Consequently, the Basque provinces are entitled to said withholding taxes when the fiscal domicile of the paying entity is located in the Basque Country. In the event of joint taxation to the State Treasury and to the Basque provincial Treasuries, the withholding taxes are levied by each tax administrations according to the relative business turnover generated in each territory in the last fiscal year. The legislation and inspection for the levying of the withholding taxes depend on whether the paying entity is under the State or the Basque Corporate Income Tax legislation.

*Legal ref:* EA art. 7

*See also:* Payment on account; Withholding tax on income from capital; Withholding tax on income from certain capital gains

*Spanish:* Retención sobre rendimientos de trabajo

*Basque:* Laneko etekinen gainean egindako atxikipen

## **WITHHOLDING TAX ON INCOME FROM CAPITAL**

In regard to withholding taxes on capital, on the one hand, Article 9 of the Economic Agreement stipulates the criteria for the regulation, levying and inspection of

withholding taxes on income in cash and in kind from movable capital; on the other hand, Article 11 of the Economic Agreement stipulates the criteria for the regulation, levying and inspection of withholding taxes on income in cash and in kind from immovable capital. Although articles 9 and 11 are under the Personal Income Tax section of Part I of the Economic Agreement, the rules established therein are also applicable for the purposes of the Corporate Income Tax and of the Non-Residents Income Tax operating through permanent establishments.

Criteria to distribute the tax levying and inspection power vary depending on the different sort of income. As the regulatory power of withholding taxes on movable capital is concerned, the Basque provinces have a restriction as they have to establish the same rates as the ones in the State legislation. However, in the case of immovable capital the Basque provinces have full capacity to regulate the rates of the withholding taxes. Main connecting factors are summarized below.

First, in regard to income from equity, bonds and securities, the Basque *foral* Treasuries are the competent authorities when such earnings are paid by entities subject exclusively to the Basque Corporate Income Tax *foral* norms.

However, in the event of entities that are liable to joint taxation for the purposes of the Corporate Income Tax, the levying of the withholding taxes corresponds to both the Basque and the State administrations in proportion to the business turnover of the previous fiscal year performed in each territory. The tax inspection power corresponds to the tax administration whose regulation of the Corporate Income Tax is applicable to the paying entity.

Second, concerning income and interest from public debt securities issued by the Basque Autonomous Community, the Basque Historical Territories and the Basque municipalities, the levying and inspection of the withholding taxes correspond to the Basque Country, regardless of where the said income is paid; and, vice versa, in the case of income and interest from public debt securities issued by the State, other Autonomous Communities, and municipalities in the common territory, even when paid in the Basque territory, the withholdings taxes are to be levied and inspected by the State.

Third, in the event of interest and other revenues from deposits at banks and at any other credit or financial institutions, as well as of income from capitalization and insurance transactions, the Basque Treasuries have the power for levying and inspection when the recipient or beneficiary has the fiscal residence or fiscal domicile in the Basque Country.

Fourth, in respect of income from intellectual property, from industrial property, and from rendering technical assistance, when the person or entity paying the income, that is the withholder, has fiscal domicile in the Basque Country, the competent authorities are the Basque tax administrations.

Fifth, as regards income from the lease of goods, rights, businesses or mining sites, when the leased items are located in the Basque territory, the competence is for the Basque *foral* Treasuries.

Finally, about interest from loans guaranteed by chattel mortgages, the competent tax administration for the levying and tax inspection is that of the territory where the mortgage must be registered; if the loans are guaranteed by mortgage on real estate, the competent tax administration is that of the territory where the mortgaged assets are located; and, in the case of interest on simple loans, deferred payment in purchase and income from capital placement, the withholding taxes are to be levied by the tax administration of the territory wherein the fiscal residence or domicile of the withholder is.

As far as immovable capital, the legislation, levying and tax inspection of the withholding taxes on the income from the leasing and subleasing of real estate corresponds to the Basque *foral* Treasuries provided that the fiscal residence or domicile of the withholder, that is the payer of the rent, is in the Basque Country.

*Legal ref:* EA art. 9 and art.11

*See also:* Payment on account; Payment on account: particular rules; Payment on account: income from economic activities of individuals; Withholding tax on income from employment; Withholding tax on income from certain capital gains

*Spanish:* Retención sobre rendimientos de capital

*Basque:* Kapitaleko etekinen gainean egindako atxikipen

#### **WITHHOLDING TAXES ON INCOME FROM CERTAIN CAPITAL GAINS**

Article 10 of the Economic Agreement stipulates the criteria for the regulation, levying and inspection of withholding taxes on income in cash and in kind from three different sorts of capital gains. Although Article 10 is under the Personal Income Tax section of Part I of the Economic Agreement, the rules established therein are also applicable for the purposes of the Corporate Income Tax and of the Non-Residents Income Tax operating through permanent establishments. The connecting factors for the withholding taxes on account of the Special Levy on lottery prizes and bets are also established in Article 10.

Concerning withholding taxes on capital gains from the transfer or redemption of shares in Collective Investment Undertakings, the Basque provinces have the power for the regulation, levying and inspection of the withholding tax provided that the shareholders have their fiscal residence or domicile in the Basque Country. Since 2018, the same criterion is applicable to capital gains from transfers of preemptive subscription rights.

In regard to the withholding taxes on capital gains from prizes, except for the ones subject to the Special Levy on lottery prizes and bets, won in the participation in games, contests, raffles or random combinations, whether linked or not to the offer, promotion or sale of certain goods, products or services, the Basque *foral* Treasuries have the levy and inspection power provided that the withholder, that is, the payer of said prizes, has the fiscal domicile in the Basque territory. Restrictions affect the regulation power of the Basque provinces regarding the aforesaid withholding taxes

and, thus, they must establish the same withholding tax rates as the ones in the common territory.

Prizes subject to the Special Levy on lottery prizes and bets have specific rules for the purposes of withholding taxes. *Foral* provinces have also restrictions on the regulatory power and, thus, they must establish the same withholding tax rates as the ones in the common territory. Concerning the levying power, said provinces are the competent authorities whenever the winner of the prize has the fiscal domicile in the Basque territory. Since 2018, the Basque provinces are also the competent authority in regard to non-residents winners of the aforementioned prizes provided that the sales point where the lottery is purchased is located in the Basque Country.

*Legal ref:* EA art. 10 and art.23 (4)

*See also:* Payment on account; Payment on account: particular rules; Payment on account: income from economic activities of individuals; Withholding tax on income from employment; Withholding tax on capital

*Spanish:* Retención sobre determinadas ganancias patrimoniales

*Basque:* Zenbait ondare-irabaziren gainean egindako atxikipen

## APPENDIX I

### LEGISLATION

**Law 12/2002, May 23, approving the Economic Agreement with the Autonomous Community of the Basque Country (Consolidated text)**

*Spanish:* Ley 12/2002, de 23 de mayo, por la que se aprueba el Concierto Económico con la Comunidad Autónoma del País Vasco (Texto consolidado)

*Basque:* 12/2002 Legea, maiatzaren 23koa, Euskal Autonomia Erkidegoarekiko Ekonomia Ituna onartzen duena (Testu kontsolidatua)

**Law 10/2023, April 3, approving the methodology to determine the Quota of the Basque Country for the five-year period 2022-2026**

*Spanish:* Ley 10/2023, de 3 de abril, por la que se aprueba la metodología de señalamiento del cupo del País Vasco para el quinquenio 2022-2026

*Basque:* 10/2023 Legea, apirilaren 3koa, EAEko kupoa 2022-2026 bosturtekoan zehazteko metodologia onartzen duena

## APPENDIX II

### CASE-LAW

#### European Union (English version available in <http://curia.europa.eu>)

- Judgment 6 September 2006 of the Court of Justice in Case C-88/03 *Portuguese Republic v. Commission of the European Communities*.
- Judgment 11 September 2008 of the Court of Justice in Joined Cases C-428/06 to C-434/06 *Union General de Trabajadores de La Rioja UGT-La Rioja versus Juntas Generales del Territorio Histórico de Vizcaya and Others*.

#### Spanish Constitutional Court (OV Spanish)

- Judgment of the Constitutional Court 1987, 1 July
- Judgment of the Constitutional Court 1988, April 26
- Judgement of the Constitutional Court 1989, 20 February
- Judgement of the Constitutional Court 2000, 17 February
- Judgement of the Constitutional Court 2016, 26 June

#### Spanish Courts (OV Spanish)

- Judgment of the Supreme Court 1990, 5 October
- Judgment of the Supreme Court 1991, 19 July
- Judgments of the Supreme Court 1995, 19 July
- Judgment of the Supreme Court 1997, 8 March
- Judgment of the Supreme Court 1998, 14 May
- Judgment of the Supreme Court 1998, 13 October
- Judgment of the Supreme Court 1999, 30 October
- Judgment of the Supreme Court 1999, 14 December
- Judgment of the Supreme Court 2002, 8 April
- Judgment of the Supreme Court 2002, 26 April
- Judgment of the Supreme Court 2002, 5 October
- Judgment of the Supreme Court 2009, 26 May
- Judgment of the Supreme Court 2009, 22 January
- Judgment of the Supreme Court 2012, 22 July

- Judgment of the Supreme Court 2014, 28 march
- Judgment of the Supreme Court 2014, 23 June
- Judgment of the Supreme Court 2014, 28 November
- Judgment of the Supreme Court 2014, 14 November
- Judgement of the Supreme Court 2014, 17 November

#### **Basque High Court (OV Spanish)**

- Judgment of the Basque Country High Court 1994, 15 July
- Judgment of the Basque Country High Court 1995, 9 November
- Judgment of the Basque Country High Court 1997, 5 December
- Judgment of the Basque Country High Court 1999, 5 May
- Judgment of the Basque Country High Court 2012, 29 June
- Judgment of the Basque Country High Court 2012, 5 July
- Judgment of the Basque Country High Court 2012, 26 November
- Judgment of the Basque Country High Court 2012, 30 November



## **APPENDIX III**

### **ABBREVIATIONS**

AN: Author's note

BCL: Basque Contributions Law

BP: Basque Parliament

BSA: Statute of Autonomy of the Basque Country

BTHL: Basque Tax Harmonization Law

EA: Economic Agreement

EU: European Union

GDP: Gross Domestic Product

HTL: Historical Territories Law

*LOFCA: Ley Orgánica de Financiación de las Comunidades Autónomas*

NSA: Statute of Autonomy of Navarre

OV: Original Version

QL: Quota Law

SC: Spanish Constitution

SP: Spanish Parliament

SG: Spanish Government

TFUE: Treaty of Functioning of the European Union

VAT: Value Added Tax

**APPENDIX IV**  
**TRILINGUAL INDEX**

# A

## **ACCOUNTABILITY**

*Spanish:* Responsabilidad

*Basque:* Erantzukizun

## **ADJUSTMENT TO CONSUMPTION FOR MANUFACTURING EXCISE DUTIES**

*Spanish:* Ajuste a consumo por los Impuestos Especiales de Fabricación

*Basque:* Fabrikazioaren gaineko Zerga Berezetan kontsumoaren doikuntza

## **ADJUSTMENT TO CONSUMPTION FOR EXCISE DUTY ON NON-REUSABLE PLASTIC PACKAGING.**

*Spanish:* Ajuste a consumo por el Impuesto Especial sobre los envases de plástico no reutilizables.

*Basque:* Berrerabili ezin diren Plastikozko Ontzien gaineko Zerga Berezia kontsumoaren doikuntza.

## **ADJUSTMENT TO CONSUMPTION FOR THE TAX ON FLUORINATED GREENHOUSE GASES.**

*Spanish:* Ajuste a consumo por el Impuesto sobre los Gases Fluorados de Efecto Invernadero.

*Basque:* Berotegi-efektuko Gas Fluordunen gaineko Zergan kontsumoaren doikuntza.

## **ADJUSTMENT TO CONSUMPTION FOR VALUE ADDED TAX**

*Spanish:* Ajuste a consumo por el Impuesto sobre el Valor Añadido

*Basque:* Balio Erantsiaren gaineko Zerga kontsumoaren doikuntza

## **ADJUSTMENT TO DIRECT TAXATION**

*Spanish:* Ajuste a la imposición directa

*Basque:* Zuzeneko zergen doikuntza

## **ADJUSTMENT TO THE HORIZONTAL DISTRIBUTION SYSTEM OF RESOURCES**

*Spanish:* Ajuste al sistema de distribución horizontal de recursos

*Basque:* Baliabideen banaketa horizontal-sistemaren doikuntza

#### **AGREED TAX**

*Spanish:* Impuesto concertado

*Basque:* Itundutako tributu

#### **AGREED TAX SUBJECT TO AUTONOMOUS LEGISLATION**

*Spanish:* Impuesto concertado de normativa autónoma

*Basque:* Araugintza autonomoko itundutako tributu

#### **AGREED TAX SUBJECT TO STATE LEGISLATION**

*Spanish:* Impuesto concertados de normativa común

*Basque:* Araugintza erkideko itundutako tributu

#### **ALLOCATING CRITERION**

*Spanish:* Punto de conexión

*Basque:* Lotura-gune

#### **ANTI-AVOIDANCE CLAUSE: FISCAL RESIDENCE**

*Spanish:* Clausula anti-elusión: residencia fiscal

*Basque:* Sahieste fiskalaren aurkako klausula: egoliartasun fiskal

#### **ARABA-ÁLAVA**

*Spanish:* Álava

*Basque:* Araba

#### **ARBITRATION BOARD**

*Spanish:* Junta Arbitral

*Basque:* Arbitraje Batzordea

#### **ASSUMED CHARGE**

*Spanish:* Carga asumida

*Basque:* Bereganatutako zama

#### **ASSUMED COMPETENCE**

*Spanish:* Competencia asumida

*Basque:* Bereganatutako eskumen

### **ASSYMMETRICAL FEDERALISM**

*Spanish:* Federalismo asimétrico

*Basque:* Federalismo asimetriko

### **ATTRIBUTION RATE**

*Spanish:* Índice de imputación

*Basque:* Egozpen-indize

### **AUTONOMOUS COMMUNITY OF THE BASQUE COUNTRY**

*Spanish:* Comunidad Autónoma del País Vasco

*Basque:* Euskal Autonomia Erkidegoa

### **AZORES CASE (EU)**

*Spanish:* Caso Azores (UE)

*Basque:* Azores Kasu (EB)

## **B**

### **BASQUE AUTONOMOUS COMMUNITY**

*Spanish:* Comunidad Autónoma del País Vasco

*Basque:* Euskal Autonomia Erkidegoa

### **BASQUE COUNCIL OF PUBLIC FINANCES**

*Spanish:* Consejo Vasco de Finanzas Publicas

*Basque:* Herri Dirubideen Euskal Kontseilua

### **BASQUE COUNTRY**

*Spanish:* País Vasco

*Basque:* Euskadi

### **BASQUE PARLIAMENT**

*Spanish:* Parlamento Vasco

*Basque:* Eusko Legebiltzarra

## **BASQUE PROVINCE**

*Spanish:* Provincia vasca

*Basque:* Euskal probintzia

## **BASQUE REGION**

*Spanish:* Region vasca

*Basque:* Euskal erregio

## **BASQUE TAX COORDINATION COMMITTEE**

*Spanish:* Órgano de Coordinación Tributaria de Euskadi

*Basque:* Euskadiko Zerga Koordinaziorako Organoa

## **BILATERALITY**

*Spanish:* Bilateralidad

*Basque:* Aldebikotasun

## **BISCAY**

*Spanish:* Vizcaya

*Basque:* Bizkaia

## **BIZKAIA**

*Spanish:* Vizcaya

*Basque:* Bizkaia

## **BUSINESS TURNOVER**

*Spanish:* Volumen de operaciones

*Basque:* Eragiketen zenbateko

# **C**

## **CAPITAL TRANSFER TAX**

*Spanish:* Impuesto sobre Transmisiones Patrimoniales

*Basque:* Ondare Eskualdaketan gaineko Zerga

#### **CHANGE OF FISCAL DOMICILE**

*Spanish:* Cambio de domicilio fiscal

*Basque:* Egoitza fiskalaren aldaketa

#### **CHARTER**

*Spanish:* Fuero

*Basque:* Foru

#### **CENTRAL GOVERNMENT**

*Spanish:* Gobierno central

*Basque:* Gobernu zentral

#### **COMMITTEE**

*Spanish:* Comité

*Basque:* Batzorde

#### **COMMON FINANCIAL SYSTEM**

*Spanish:* Regimen común de financiación

*Basque:* Lurralde erkideko finantza-sistema

#### **COMMON TERRITORY**

*Spanish:* Territorio común

*Basque:* Lurralde erkide

#### **COMPETENCE EXCLUSIVE TO THE STATE**

*Spanish:* Competencia exclusiva del estado

*Basque:* Estatuaren eskumen eskusibo

#### **CONNECTING FACTOR**

*Spanish:* Punto de conexión

*Basque:* Lotura-gune

#### **CONSTITUTIONAL PRINCIPLE**

*Spanish:* Principio constitucional

*Basque:* Konstituzio-printzipio

#### **CONTRIBUTION**

*Spanish:* Aportación

*Basque:* Ekarpen

## **CONTRIBUTIONS LAW**

*Spanish:* Ley de aportaciones

*Basque:* Ekarpen Lege

## **COOPERATION ON TAX ACTIVITY**

*Spanish:* Colaboración en la actuación tributaria

*Basque:* Tributu-jardunean lankidetzta

## **COOPERATION PRINCIPLE**

*Spanish:* Principio de colaboración

*Basque:* Lankidetzta-printzipio

## **COORDINATION AND LEGISLATIVE EVALUATION COMMITTEE**

*Spanish:* Comisión de Coordinación y Evaluación Normativa

*Basque:* Araugintza Koordinatu eta Ebaluatzeko Batzordea

## **COORDINATION ON TAX LEVY AND INSPECTION**

*Spanish:* Coordinación en la exacción e inspección tributaria

*Basque:* Tributuen ordaintzeko eta ikuskatzeko koordinazio

## **COORDINATION PRINCIPLE**

*Spanish:* Principio de coordinación

*Basque:* Koordinazio-printzipio

## **CORPORATE INCOME TAX**

*Spanish:* Impuesto sobre Sociedades

*Basque:* Sozietateen gaineko Zerga

## **CORPORATE INCOME TAX: ECONOMIC INTEREST GROUPING AND UTE**

*Spanish:* Impuesto sobre Sociedades: Agrupación de Interés Económico y UTE

*Basque:* Sozietateen gaineko Zerga: Interes Ekonomikoko Elkartea eta ABEE

## **CORPORATE INCOME TAX: GROUP OF ENTITIES**

*Spanish:* Impuesto sobre Sociedades: grupo fiscal

*Basque:* Sozietateen gaineko Zerga: talde fiskal

## **CORPORATE INCOME TAX: JOINT TAXATION**

*Spanish:* Impuesto sobre Sociedades: tributación en volumen de operaciones

*Basque:* Sozietateen gaineko Zerga: eragiketen zenbatekoaren arabera zerga ordaintze

# D

## DEPUTATION

*Spanish:* Diputación

*Basque:* Aldundi

## DEPUTY

*Spanish:* Diputado

*Basque:* Diputatu

# E

## ECONOMIC ACTIVITIES CLASSIFICATION

*Spanish:* Clasificación de actividades económicas

*Basque:* Jarduera ekonomikoen sailkapen

## ECONOMIC AGREEMENT (1876-1936)

*Spanish:* Concierto Económico (1876-1936)

*Basque:* Ekonomia Ituna; Kontzertu Ekonomikoa (1876-1936)

## ECONOMIC AGREEMENT (1981-2002)

*Spanish:* Concierto Económico (1981-2002)

*Basque:* Ekonomia Ituna; Kontzertu Ekonomikoa (1981-2002)

## ECONOMIC AGREEMENT (NAVARRRE)

*Spanish:* Convenio Económico

*Basque:* Ekonomia Hitzarmen

## EFFICIENCY



*Spanish:* Eficiencia

*Basque:* Efizientzia

#### **EQUALIZATION FUND**

*Spanish:* Fondo de nivelación

*Basque:* Parekatze-funts

#### **EXCHANGE OF TAX REGULATIONS**

*Spanish:* Intercambio de proyectos normativos

*Basque:* Araugintza-proiektuak trukatzte

#### **EXCHANGE OF TAX INFORMATION**

*Spanish:* Intercambio de información tributaria

*Basque:* Tributuen informazioa trukatzte

#### **EXCISE DUTIES**

*Spanish:* Impuestos Especiales

*Basque:* Zerga Bereziak

#### **EXCISE DUTY ON CERTAIN MEANS OF TRANSPORT**

*Spanish:* Impuesto Especial sobre Ciertos Medios de Transporte

*Basque:* Zenbait Garraio bideren gaineko Zerga Berezia

#### **EXCISE DUTY ON ELECTRICITY**

*Spanish:* Impuesto Especial sobre la Electricidad

*Basque:* Elektrizitatearen gaineko Zerga Berezia

#### **EXCISE DUTY ON NON-REUSABLE PLASTIC PACKAGING**

*Spanish:* Impuesto Especial sobre los Envases de Plástico no Reutilizables

*Basque:* Berrerabili ezin diren Plastikozko Ontzien gaineko Zerga Berezia

#### **EXCLUSIVE TAXATION**

*Spanish:* Tributación exclusiva

*Basque:* Tributazio eskusibo

# F

## **FAMILY UNIT: FISCAL RESIDENCE**

*Spanish:* Unidad familiar: residencia fiscal

*Basque:* Familia-unitate: egoiliartasun fiskal

## **FEDERAL STATE**

*Spanish:* Estado Federal

*Basque:* Estatu Federal

## **FEE**

*Spanish:* Tasa

*Basque:* Tasa

## **FINANCIAL AUTONOMY (BASQUE COUNTRY)**

*Spanish:* Autonomía financiera (País Vasco)

*Basque:* Finantza-autonomia (Euskadi)

## **FINANCIAL AUTONOMY (EU)**

*Spanish:* Autonomía financiera (UE)

*Basque:* Finantza-autonomia (EB)

## **FINANCIAL CAPACITY OF THE COMMON SYSTEM**

*Spanish:* Autonomía financiera del régimen común

*Basque:* Araubide erkideko finantza-autonomia

## **FINANCIAL SUPERVISION OF MUNICIPALITIES**

*Spanish:* Tutela financiera municipal

*Basque:* Udalen gaineko finantza-zaintza

## **FINANCIAL SYSTEM OF THE BASQUE COUNTRY**

*Spanish:* Sistema financiero del País Vasco

*Basque:* Euskadiko finantza-sistema

## **FINANCIAL FLOW: BASQUE COUNTRY-CENTRAL GOVERNMENT**

*Spanish:* Flujo financiero: País Vasco-gobierno central

*Basque:* Finantzaketa fluxu: Euskadi-gobernu zentral

### **FIRST ADDITIONAL PROVISION (1978 SC)**

*Spanish:* Disposición adicional primera (CE 1978)

*Basque:* Lehen xedapen gehigarri (1978ko EK)

### **FISCAL AUTONOMY**

*Spanish:* Autonomía fiscal

*Basque:* Autonomia fiskal

### **FISCAL DOMICILE**

*Spanish:* Domicilio fiscal

*Basque:* Egoitza fiskal

### **“FISCAL PEACE”**

*Spanish:* “Paz fiscal”

*Basque:* “Pake fiskal”

### **FISCAL PRESSURE**

*Spanish:* Presión Fiscal

*Basque:* Presio fiskal

### **FISCAL RESIDENCE**

*Spanish:* Residencia fiscal

*Basque:* Egoiliartasun fiskal

### **FISCAL SOVEREIGNTY**

*Spanish:* Soberanía fiscal

*Basque:* Subiranotasun fiskal

### **FORAL**

*Spanish:* Foral

*Basque:* Foru

### **FORAL FINANCIAL SYSTEM**

*Spanish:* Regimen foral de financiación

*Basque:* Foru finantza-sistema

### **FORAL TAX NORM**

*Spanish:* Norma Foral fiscal

*Basque:* Foru Arau fiskal

#### **FORAL TERRITORIES**

*Spanish:* Territorios forales

*Basque:* Foru lurraldeak

#### **FORAL TERRITORY**

*Spanish:* Territorio foral

*Basque:* Foru lurralde

#### **FORAL TREASURY**

*Spanish:* Hacienda foral

*Basque:* Foru ogasun

#### **FUERO**

*Spanish:* Fuero

*Basque:* Foru

## **G**

#### **GAMING ACTIVITIES TAX**

*Spanish:* Impuesto sobre las Actividades de Juego

*Basque:* Joko Jardueren gaineko Zerga

#### **GAMING DUTIES**

*Spanish:* Tributos sobre el Juego

*Basque:* Jokoaren gaineko Tributuak

#### **GENERAL ASSEMBLIES (BASQUE COUNTRY)**

*Spanish:* Juntas Generales

*Basque:* Batzar Nagusiak

#### **GENERAL PRINCIPLES**

*Spanish:* Principios generales

*Basque:* Printzipio orokorrak

#### **GENERAL TAX LAW**

*Spanish:* Ley General Tributaria

*Basque:* Tributuen Lege Orokorra

#### **GIFT TAX**

*Spanish:* Impuesto sobre las Donaciones

*Basque:* Dohaintzen gaineko Zerga

#### **GIPUZKOA**

*Spanish:* Guipúzcoa

*Basque:* Gipuzkoa

## **H**

#### **HISTORICAL BACKGROUND (1200-1812)**

*Spanish:* Antecedentes históricos (1200-1812)

*Basque:* Aurrekari historikoak (1200-1812)

#### **HISTORICAL BACKGROUND (1812-1876)**

*Spanish:* Antecedentes históricos (1812-1876)

*Basque:* Aurrekari historikoak (1812-1876)

#### **HISTORICAL RIGHT**

*Spanish:* Derecho histórico

*Basque:* Eskubide historiko

#### **HISTORICAL TERRITORY**

*Spanish:* Territorio Histórico

*Basque:* Lurralde Historiko

#### **HISTORICAL TERRITORIES LAW**

*Spanish:* Ley de Territorios Históricos

*Basque:* Lurralde Historikoen Lege

## **HORIZONTAL COEFFICIENT**

*Spanish:* Coeficiente horizontal

*Basque:* Koefiziente horizontal



## **IMPUTATION INDEX**

*Spanish:* Índice de imputación

*Basque:* Egozpen-indize

## **INFORMATION OBLIGATIONS FOR TAXPAYERS**

*Spanish:* Obligaciones de información de los contribuyentes

*Basque:* Zergadunen informazio-betebeharrak

## **INHERITANCE AND GIFT TAX**

*Spanish:* Impuesto sobre Sucesiones y Donaciones

*Basque:* Oinordetza eta Dohaintzen gaineko Zerga

## **INSTITUTIONAL AUTONOMY (EU)**

*Spanish:* Autonomía institucional (UE)

*Basque:* Erakunde-autonomia (EB)

## **INSTITUTIONS OF THE BASQUE COUNTRY**

*Spanish:* Instituciones del País Vasco

*Basque:* Euskadiko erakundeak

## **INSTITUTIONS OF THE HISTORICAL TERRITORIES**

*Spanish:* Instituciones de los Territorios Históricos

*Basque:* Lurralde Historikoen erakundeak

## **INTERNATIONAL AGREEMENT**

*Spanish:* Tratado Internacional

*Basque:* Nazioarteko Itun

## **INTERNATIONAL COOPERATION**

*Spanish:* Colaboración internacional

*Basque:* Nazioarteko Lankidetzta

## **INTRA-REGIONAL RELATIONS: FRAMEWORK**

*Spanish:* Relaciones intrarregionales: marco general

*Basque:* Erregio barneko harremanak: esparru orokor

## **INTRA-REGIONAL FINANCIAL RELATIONS**

*Spanish:* Relaciones financieras intrarregionales

*Basque:* Erregio barneko finantza-harremanak

## **“IRONCLAD” OF THE FORAL TAX NORMS**

*Spanish:* Blindaje de las Normas forales fiscales

*Basque:* Foru arau fiskalen “Blindajea”

# **J**

## **JOINT COMMITTEE ON THE ECONOMIC AGREEMENT**

*Spanish:* Comisión Mixta del Concierto Económico

*Basque:* Ekonomia Itunaren Batzorde Mistoia

## **JOINT TAXATION**

*Spanish:* Tributación en volumen de operaciones

*Basque:* Eragiketa kopuruaren arabera zergak ordaintze

# **M**

## **MANUFACTURING EXCISE DUTIES**

*Spanish:* Impuestos Especiales de Fabricación.  
*Basque:* Fabrikazioaren gaineko Zerga Bereziak

#### **MUNICIPALITIES: FINANCIAL PRINCIPLES**

*Spanish:* Municipios: principios financieros  
*Basque:* Udalak: finantza-printzipioak

#### **MUNICIPALITIES: TAX PRINCIPLES**

*Spanish:* Municipios: principios tributarios  
*Basque:* Udalak: tributu-printzipioak

#### **MUNICIPAL LAW**

*Spanish:* Ley Municipal  
*Basque:* Udal Lege

#### **MUNICIPAL TAXES**

*Spanish:* Impuestos municipales  
*Basque:* Udal zergak

#### **MUNICIPAL TREASURIES**

*Spanish:* Haciendas municipales  
*Basque:* Udal ogasunak

#### **MUNICIPAL SHARE IN AGREED TAXES**

*Spanish:* Participación municipal en tributos concertados.  
*Basque:* Udalen parte-hartzea itundutako tributuetan

#### **MUNICIPAL SHARE IN NON-AGREED TAXES**

*Spanish:* Participación municipal en tributos no concertados.  
*Basque:* Udalen parte-hartzea itundu gabeko tributuetan

## **N**

### **NAVARRRE**



*Spanish:* Navarra  
*Basque:* Nafarroa

### **NEW FUERO**

*Spanish:* Fuero Nuevo  
*Basque:* Foru Berri

### **NON-AGREED TAX**

*Spanish:* Impuesto no concertado  
*Basque:* Itundu gabeko tributu

### **NON-ASSUMED CHARGE**

*Spanish:* Carga no asumida  
*Basque:* Bereganatu gabeko zama

### **NON-ASSUMED COMPETENCE**

*Spanish:* Competencias no asumida  
*Basque:* Bereganatu gabeko eskumen

### **NON- DISTORTION PRINCIPLE**

*Spanish:* Principio de no distorsión  
*Basque:* Distortsiorik ezaren printzipio

### **NON-RESIDENTS INCOME TAX**

*Spanish:* Impuesto sobre la Renta de No Residentes  
*Basque:* Ez-egoiliarren Errentaren gaineko Zerga

## **O**

### **OLD FUERO**

*Spanish:* Fuero Viejo  
*Basque:* Foru Zahar

# P

## **PARTICIPATION IN TAX PARTIES (EU)**

*Spanish:* Participación en grupos de fiscalidad (UE)

*Basque:* Zergei buruzko taldeetan parte hartze (EB)

## **PAYMENT ON ACCOUNT**

*Spanish:* Pago a cuenta

*Basque:* Konturako ordainketa

## **PAYMENT ON ACCOUNT: ECONOMIC ACTIVITY OF INDIVIDUALS**

*Spanish:* Pagos a cuenta: actividad económica de personas físicas

*Basque:* Konturako ordainketa: pertsona fisikoen ekonomia-jarduera

## **PAYMENT ON ACCOUNT: PARTICULAR RULES**

*Spanish:* Pago a cuenta: reglas específicas

*Basque:* Konturako ordainketa: arau berezi

## **PERMANENT ESTABLISHMENT**

*Spanish:* Establecimiento permanente

*Basque:* Establezimendu iraunkor

## **PERSONAL INCOME TAX**

*Spanish:* Impuesto sobre la Renta de las Personas Físicas

*Basque:* Pertsona Fisikoen Errentaren gaineko Zerga

## **PLACE OF TRANSACTIONS**

*Spanish:* Lugar de realización de las operaciones

*Basque:* Eragiketen leku

## **POINT OF CONNECTION**

*Spanish:* Punto de conexión

*Basque:* Lotura-gune

## **POLITICAL STATUS OF BASQUE**

*Spanish:* Condición política de vasco  
*Basque:* Euskaldunen kondizio politiko

### **PROCEDURAL AUTONOMY (EU)**

*Spanish:* Autonomía procedimental  
*Basque:* Prozedura-autonomia

### **PROVINCIAL ASSEMBLY (BASQUE COUNTRY)**

*Spanish:* Juntas Generales  
*Basque:* Batzar Nagusiak

### **PROVINCIAL COUNCIL (COMMON TERRITORY)**

*Spanish:* Diputación provincial  
*Basque:* Probintzial diputazio

### **PROVINCIAL GOVERNMENT (BASQUE COUNTRY)**

*Spanish:* Diputación Foral  
*Basque:* Foru Aldundi

### **PROVINCIAL PARLIAMENT (BASQUE COUNTRY)**

*Spanish:* Juntas Generales  
*Basque:* Batzar Nagusiak

### **PROVINCIAL TAX NORM (BASQUE COUNTRY)**

*Spanish:* Norma Foral fiscal  
*Basque:* Foru Arau fiskal

### **PUBLIC SECTOR (BASQUE COUNTRY)**

*Spanish:* Sector público (País Vasco)  
*Basque:* Sektore publiko (Euskadi)

## **Q**

### **QUOTA**

*Spanish:* Cupo

*Basque:* Kupo

#### **QUOTA: LEGAL CONCEPT**

*Spanish:* Cupo: definición legal

*Basque:* Kupo: legezko definizio

#### **QUOTA COMPENSATION: ARABA**

*Spanish:* Compensación de cupo: Álava

*Basque:* Kupoaren Konpentsazio: Araba

#### **QUOTA COMPENSATION: DEFICIT**

*Spanish:* Compensación de cupo: déficit

*Basque:* Kupoaren Konpentsazio: defizit

#### **QUOTA COMPENSATION: NON-AGREED INCOME**

*Spanish:* Compensación de cupo: ingresos no concertados

*Basque:* Kupoaren Konpentsazio: itundu gabeko diru-sarrerak

#### **QUOTA LAW**

*Spanish:* Ley de Cupo

*Basque:* Kupoaren Lege

#### **QUOTA METHODOLOGY**

*Spanish:* Metodología de cupo

*Basque:* Kupoaren metodologia

#### **QUOTA SETTLEMENT**

*Spanish:* Liquidación de cupo

*Basque:* Kupoaren likidazio

## **R**

#### **REGIONAL TAX STATE AID**

*Spanish:* Ayuda de estado fiscal regional  
*Basque:* Erregio-helburuko estatu-laguntza fiscal

#### **RESIDENCE PRINCIPLE OF TAXATION**

*Spanish:* Principio de imposición en función de la residencia  
*Basque:* Egoiliartasunaren arabera zergak ordaintzeko printzipio

## **S**

#### **SHARED RISK: INTRA-REGIONAL FINANCIAL SYSTEM**

*Spanish:* Riesgo compartido: sistema intrarregional  
*Basque:* Partekatutako arrisku: erregio barneko sistema

#### **SOLIDARITY PRINCIPLE**

*Spanish:* Principio de solidaridad  
*Basque:* Elkartasun-printzipio

#### **SOURCE PRINCIPLE OF TAXATION**

*Spanish:* Principio de imposición en la fuente  
*Basque:* Iturriaren arabera zergak ordaintzeko printzipio

#### **SPANISH STATE**

*Spanish:* Estado español  
*Basque:* Estatu espainiar

#### **STAMP DUTY**

*Spanish:* Impuesto sobre Actos Jurídicos Documentados  
*Basque:* Egintza Juridiko Dokumentatuen gaineko Zerga

#### **STATE**

*Spanish:* Estado  
*Basque:* Estatu

#### **STATE TAX STRUCTURE**

*Spanish:* Estructura impositiva estatal

*Basque:* Estatuaren zerga-egitura

## **STATUTE OF AUTONOMY OF THE BASQUE COUNTRY**

*Spanish:* Estatuto de Autonomía del País Vasco

*Basque:* Euskadiko Autonomi Estatutu

## **SYMMETRICAL FEDERALISM**

*Spanish:* Federalismo simétrico

*Basque:* Federalismo simetriko

# **T**

## **TAX AUTONOMY**

*Spanish:* Autonomía fiscal

*Basque:* Autonomia fiskal

## **TAX CAPACITY OF THE COMMON SYSTEM**

*Spanish:* Capacidad impositiva del sistema común

*Basque:* Sistema erkidearen zerga-ahalmen

## **TAX CRIME**

*Spanish:* Delito fiscal

*Basque:* Delitu fiskal

## **TAX HARMONIZATION**

*Spanish:* Armonización fiscal

*Basque:* Harmonizazio fiskal

## **TAX HARMONIZATION LAW**

*Spanish:* Ley de armonización fiscal

*Basque:* Harmonizazio fiskalaren lege

#### **TAX IDENTIFICATION NUMBER**

*Spanish:* Número de Identificación Fiscal

*Basque:* Identifikazio Fiskaleko Zenbaki

#### **TAX NEXUS**

*Spanish:* Punto de conexión

*Basque:* Lotura-gune

#### **TAX ON CERTAIN DIGITAL SERVICES**

*Spanish:* Impuesto sobre Determinados Servicios Digitales

*Basque:* Zerbitzu Digital Zehatzen gaineko Zerga

#### **TAX ON DEPOSITS IN CREDIT INSTITUTIONS**

*Spanish:* Impuesto sobre los Depósitos en las Entidades de Crédito

*Basque:* Kreditu-erakundeetako Gordailuen gaineko Zerga

#### **TAX ON ECONOMIC ACTIVITIES**

*Spanish:* Impuesto sobre Actividades Económicas

*Basque:* Ekonomia-jarduaren gaineko Zerga

#### **TAX ON FINANCIAL TRANSACTIONS**

*Spanish:* Impuesto sobre Transacciones Financieras

*Basque:* Transakzio Finantzarioen gaineko Zerga

#### **TAX ON FLUORINATED GREENHOUSE GASES**

*Spanish:* Impuesto sobre los Gases Fluorados de Efecto Invernadero

*Basque:* Berotegi-efektuko Gas Fluordunen gaineko Zerga.

#### **TAX ON IMMOVABLE PROPERTY**

*Spanish:* Impuesto sobre Bienes Inmuebles

*Basque:* Ondasun Higiezinaren gaineko Zerga

#### **TAX ON INSURANCE PREMIUMS**

*Spanish:* Impuesto sobre las Primas de Seguro

*Basque:* Aseguru-sarien gaineko Zerga

#### **TAX ON MOTOR VEHICLES**

*Spanish:* Impuesto sobre Vehículos de Tracción Mecánica  
*Basque:* Trakzio Mekanikoko Ibilgailuen gaineko Zerga

#### **TAX ON THE DEPOSIT OF WASTE IN LANDFILLS, INCINERATION AND CO-INCINERATION OF WASTE**

*Spanish:* Impuesto sobre el Depósito de Residuos en Vertederos, la Incineración y la Coincineración de Residuos  
*Basque:* Hondakinak Zabortegietan Uztearen, Erraustearen eta Hondakinen baterako Errausketaren gaineko Zerga

#### **TAX ON THE PRODUCTION OF SPENT NUCLEAR FUEL AND RADIOACTIVE WASTE FROM THE GENERATION OF NUCLEAR ELECTRIC POWER**

*Spanish:* Impuesto sobre la Producción de Combustible Nuclear Gastado y Residuos Radiactivos Resultantes de la Generación de Energía Nucleoeléctrica  
*Basque:* Energia Nukleoelektrikoa Ekoiztetik Sortutako Erregai Nuklear Agortua eta Hondakin Erradioaktiboak Egitearen gaineko Zerga

#### **TAX ON THE STORAGE OF SPENT NUCLEAR FUEL AND RADIOACTIVE WASTE IN CENTRALIZED FACILITIES**

*Spanish:* Impuesto sobre el Almacenamiento de Combustible Nuclear Gastado y Residuos Radiactivos en Instalaciones Centralizadas  
*Basque:* Erregai Nuklear Agortua eta Hondakin Erradioaktiboak Instalazio Zentralizatuetan Biltegitratzearen gaineko Zerga

#### **TAX ON THE VALUE OF ELECTRICITY GENERATION**

*Spanish:* Impuesto sobre el Valor de la Producción de la Energía Eléctrica  
*Basque:* Energia Elektrikoa Ekoizte Balioaren gaineko Zerga

#### **TAX ON THE VALUE OF EXTRACTION OF GAS, OIL AND CONDENSATES**

*Spanish:* Impuesto sobre el Valor de la Extracción de Gas, Petróleo y Condensados  
*Basque:* Gas, Petrolio eta Kondentsatuak Erauzte Balioaren gaineko Zerga

#### **TAX RELATIONS**

*Spanish:* Relaciones tributarias  
*Basque:* Tributu-harremanak

#### **TEMPORARY SOLIDARITY TAX ON LARGE FORTUNES**

*Spanish:* Impuesto Temporal de Solidaridad de las Grandes Fortunas  
*Basque:* Fortuna Handien aldi baterako Elkartasun-Zerga



## **TERRITORIAL GOVERNMENT**

*Spanish:* Gobierno del territorio

*Basque:* Lurraldeko gobernu

## **TRANSFER TAX AND STAMP DUTY**

*Spanish:* Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados

*Basque:* Ondare Eskualdaketen eta Egintza Juridiko Dokumentatuen gaineko Zerga

## **TURNOVER FIGURE**

*Spanish:* Cifra de operaciones

*Basque:* Eragiketen zenbateko

# **U**

## **UGT-LA RIOJA CASE (“BASQUE ECONOMIC AGREEMENT” CASE-EU)**

*Spanish:* Caso UGT-La Rioja (Caso UE “Concierto Económico Vasco”)

*Basque:* UGT-La Rioja Kasu (“Euskal Ekonomia Ituna” EB Kasu)

## **UNILATERAL EXTENSION**

*Spanish:* Prórroga unilateral

*Basque:* Alde bakarreko luzapen

## **UNILATERAL RISK**

*Spanish:* Riesgo unilateral

*Basque:* Alde bakarreko arrisku

## **UPDATING INDEX**

*Spanish:* Índice de actualización

*Basque:* Eguneratze-indize

# V

## **VALUE ADDED TAX: TAX LEVY**

*Spanish:* Impuesto sobre el Valor Añadido: exacción del impuesto

*Basque:* Balio Erantsiaren gaineko Zerga: zergaren ordainarazpen

## **VALUE ADDED TAX: BUSINESS TURNOVER**

*Spanish:* Impuesto sobre el Valor Añadido: volumen de operaciones

*Basque:* Balio Erantsiaren gaineko Zerga: eragiketen zenbateko

## **VALUE ADDED TAX: TAX INSPECTION**

*Spanish:* Impuesto sobre el Valor Añadido: competencia inspectora

*Basque:* Balio Erantsiaren gaineko Zerga: ikuskatzeko eskumen

## **VALUE ADDED TAX: VAT GROUPING**

*Spanish:* Impuesto sobre el Valor Añadido: grupo de entidades

*Basque:* Balio Erantsiaren gaineko Zerga: talde fiskal

## **VALUE ADDED TAX: REGULARIZATION**

*Spanish:* Impuesto sobre el Valor Añadido: regularización

*Basque:* Balio Erantsiaren gaineko Zerga: erregularizazio

## **VERTICAL COEFFICIENT**

*Spanish:* Coeficiente vertical

*Basque:* Koefiziente bertikal

## **VOLUME OF OPERATIONS**

*Spanish:* Volumen de operaciones

*Basque:* Eragiketen zenbateko

# W

## **WEALTH TAX**

*Spanish:* Impuesto sobre el Patrimonio

*Basque:* Ondarearen gaineko Zerga

## **WITHHOLDING TAX ON INCOME FROM EMPLOYMENT**

*Spanish:* Retención por rendimientos de trabajo

*Basque:* Laneko etekinen gainean egindako atxikipen

## **WITHHOLDING TAX ON INCOME FROM CAPITAL**

*Spanish:* Retención sobre rendimientos de capital

*Basque:* Kapitaleko etekinen gainean egindako atxikipen

## **WITHHOLDING TAX ON INCOME FROM CERTAIN CAPITAL GAINS**

*Spanish:* Retención sobre determinadas ganancias patrimoniales

*Basque:* Zenbait ondare-irabaziren gainean egindako atxikipen

## APPENDIX V

### BIBLIOGRAPHIC REFERENCES

Auñamendi Eusko Entziklopedia

<http://aunamendi.eusko-ikaskuntza.eus/eu/>

*Finantza eta Tributu Zuzenbidea (Zati orokorra), Hiztegia*, pp. 357-362, Atxabal Rada, A., Deustuko Unibertsitatea, Bilbao (2008)

*Diccionario de Fiscalidad Internacional y Aduanas*, Castro Calvin, J., Ariel (2009)

*Dictionary of Taxation Terms*, Tacis; European Commission (1996)

*English Law Dictionary*, Peter Collin Publishing (1987)

*Herri-ogasuna Hiztegia*, Eusko Jaularitza-Gobierno Vasco (2015)

[http://www.euskadi.eus/contenidos/informacion/6503/eu\\_2415/adjuntos/Herri-ogasuna.pdf](http://www.euskadi.eus/contenidos/informacion/6503/eu_2415/adjuntos/Herri-ogasuna.pdf)

*IBFD International Tax Glossary*, 7th Edition, Rogers-Glabus, J., (2015)

*Model Tax Convention on Income and on Capital: Condensed Version*, OECD Publishing, Paris (2017).