
The Catalan law on the non-productive assets of entities

Legal Flash Financial and Tax Law Department

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The tax is charged on ownership of certain non-productive assets held by entities with tax domicile in Catalonia.

The Official Gazette of the Regional Government of Catalonia has published a **Decree Law** that establishes the obligation to self-assess, between October 1 and November 30, 2019, the tax on non-productive assets of legal persons accrued in 2017, 2018, and 2019.

Taxpayers that may be affected by this law are advised to examine its impact and consider the possibility of challenging some aspects of it in court, based on their specific situation.



The tax on the non-productive assets of entities was approved by Spanish Act 6/2017 of May 9, but payment had not been required until now because it was appealed before the Spanish Constitutional Court, which has recently declared it constitutional.

On the basis of the judgement establishing its constitutionality, the Catalanian Government has approved Decree Law 8/2019 (the "Decree Law") establishing that, for taxable events occurring in 2017, 2018, and 2019, taxpayers must submit their self-assessment and pay the tax between October 1 and November 30, 2019.

Under Spanish Act 6/2017, the assets that can be regarded as non-productive are:

- > Real estate
- > Motor vehicles with 200 horsepower or more
- > Leisure vessels
- > Aircraft
- > Art and antiques
- > Jewellery

These assets will be classified as non-productive if they meet any of the following criteria:

- > They are used by the shareholders or related persons free of charge and are given a private use, except when their use is reported as remuneration in kind in the personal income tax return.
- > They are used by the shareholders or related persons who pay a price for their private use, except when the shareholders or related persons (i) pay the market price, (ii) work for the company, and (iii) receive a higher remuneration than the rental price.

The rule does not apply to those assets that are leased at market price to the shareholders or related persons to carry out a business activity. The wording of this rule seems to classify assets as productive if the use given to them by a shareholder or related party is not private but for the performance of a business activity at market price.

- > They are not engaged in any business activity. The rule refers to the generic definition of assets used for a business activity. However, those assets whose purchase value does not exceed the profits earned by the company in its business activities are an exception to this rule and are not regarded as non-productive, with the limit of the amount of the profits earned in the year and in the ten previous years.



We highlight that this tax will only apply to taxpayers that have their tax domicile¹ in Catalonia, i.e., on non-productive real estate located in Catalonia owned by a company with tax domicile in Catalonia.

Movable property classified as non-productive (vehicles, leisure vessels, aircraft, art and antiques, and jewellery) does not have to be physically located in Catalonia, but it must belong to a company that has its tax domicile in Catalonia.

The taxable base is the total value of the non-productive assets. No real liens and encumbrances that decrease their value can be deducted, and there is a specific rule for the valuation of each asset. For example, in the case of real estate, the rule refers to the updated cadastral value under the provisions of the Spanish Budget Act. As for art, antiques, and jewellery, the rule establishes that their taxable base will be their market value on the accrual date. The market value of motor vehicles, vessels, and aircraft is also referred to, although the tables for valuation of second-hand vehicles can be used.

No tax-exempt minimum is established in the law, and the tax liability is that resulting from the application of a rate that corresponds to that applicable in Catalonia for the property tax (minimum 0.21% and maximum 2.75% for a net taxable income above €10.7 million).

The tax accrues on January 1 every year, and, in general, it must be paid in June of the same year. As an exception, for taxable events occurring in 2017, 2018, and 2019, the tax must be paid between October 1 and November 30, 2019.

Taxpayers that may be affected by this law are advised to examine its impact, and, if applicable, consider the possibility of challenging some aspects of it in court, based on their specific situation.

¹ According to article 48 of the General Tax Act and article 8.2 of the Corporate Income Tax Act, the tax domicile of legal persons must be considered to be "their corporate domicile, as long as it is where their business management is effectively carried out." Otherwise, the tax domicile will be the place where business management is carried out and, if this cannot be determined, "the place where the greatest value of its fixed assets is located."



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