New interpretation by the Supreme Court of the concept of "industrial activity"

(excise duty on electricity)

Tax Alert

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The Supreme Court Judgment of 17 April 2024 established new case law in cassation appeal proceedings on the interpretation of the concept of "industrial activity" for the purposes of the 85% reduction in the excise duty on electricity ("IEE", per its Spanish acronym).

This re-interpretation broadens its scope in terms of the companies eligible for this reduction, with the Court distancing itself from the administrative authorities' interpretation of this concept for the purposes of the tax on economic activities, and adopting a definition that is aligned with both EU Law and the Industry Law. This rationale not only affects the reduction for IEE purposes but may also have repercussions for other taxes in respect of which the interpretation of the concept of industrial activity determines the taxation of the relevant transaction.

In its Judgment in cassation of 17 April 2024 (appeal 8984/2022) the Supreme Court (the "SC") established important new case law regarding the interpretation of the 85% reduction in the tax base for the excise duty on electricity. This reduction is provided for in article 98.1.f) of Excise Duties Law 38/1992 of 28 December 1992 ("LIE", per its Spanish acronym) and is available to taxpayers engaging in "industrial activities", whose electricity consumption accounts for at least 5% of the value of their production.

Context and dispute

The substantive issue in dispute in this case is the interpretation of the term "industrial activity" appearing in article 98.1.f) of the LIE, for the purposes of application of the IEE reduction. Both the Directorate-General for Taxes (inter alia, in CV3005-21) and the economic-administrative tribunals (CEAT, on 18.05.2022, Decision 0551/2022) had traditionally held that the term should be interpreted in accordance with the legislation governing the Tax on Economic Activities ("IAE", per its Spanish acronym"). This meant that the IEE reduction was restricted to activities classed as "industrial" in Section 1, divisions 1 to 4, of the IAE rates, excluding certain companies from the tax benefit.

Against this backdrop, the appellant, engaged in waste water treatment activities and registered under heading 921.4 of the IAE rates ("sewerage, evacuation and treatment of waste water"), was initially excluded from the tax benefit due to this restrictive interpretation by the administrative authorities.

The Supreme Court decision

The Supreme Court disagrees with this interpretation, on the basis of Council Directive 2003/96/EC of 27 October 2003, restructuring the Community framework for the taxation of energy products and electricity, and the term "industrial activity" as used in the Industry Law.

In short, the SC stresses that, where the Spanish lawmaker restricts the 85% reduction of the tax base for IEE purposes to industrial activity, this should be construed according to the definition of this term set out in article 3 of the Industry Law and the Council Directive applicable to this tax, rather than to the relevant classifications for IAE purposes. It therefore considers it inappropriate to apply the definition of industrial activities for IAE purposes to the IEE.

Practical implications

The SC judgment has major practical implications. Firstly, all entities with significant electricity consumption levels that are classed as engaging in an "industrial activity", as defined in the Industry Law, irrespective of the heading under which they are registered for IAE purposes, may request application of the benefits provided for vis-à-vis the excise duty on electricity, provided the other requirements are met. This means that many companies that were formerly excluded from the tax benefit due to the restrictive interpretation applied for IAE purposes may now request the 85% reduction of their tax base for IEE purposes.

This review is crucial as it may allow affected entities to recover any tax unduly paid over the last four years.

The effects of this ruling may also transcend the IEE, as the tax authorities have attempted to extend the restrictive interpretation of “industrial activity” applied to the activities listed in IAE headings 1 to 4 to other excise duties on production such as the excise duty on hydrocarbons, e.g. in cases of purchases of natural gas for professional use, with respect to which the DGT expressly limits application of heading 1.10 of rate 1 of the hydrocarbons tax to IAE divisions 1 to 4.

Contacts

Juan José Blanco
Partner
KPMG Abogados
Tel. 91 456 34 61
jblanco@kpmg.es

Antonio Fernández de Bujan
Senior Manager
KPMG Abogados
Tel. 91 456 60 01
afernandezdebujan@kpmg.es

KPMG offices in Spain

A Coruña
Calle de la Fama, 1
15001 A Coruña
Tel.: 981 21 82 41
Fax: 981 20 02 03

Alicante
Edificio Oficentro
Avda. Maisonnave, 19
03003 Alicante
Tel.: 965 92 07 22
Fax: 965 22 75 00

Barcelona
Torre Realia
Plaça de Europa, 41
08908 L'Hospitalet de Llobregat
Barcelona
Tel.: 932 53 29 00
Fax: 932 80 49 16

Bilbao
Torre Iberdrola
Plaza Euskadi, 5
48009 Bilbao
Tel.: 944 79 73 00
Fax: 944 15 29 67

Girona
Edifici Sèquia
Sèquia, 11
17001 Girona
Tel.: 972 22 01 20
Fax: 972 22 22 45

Las Palmas de Gran Canaria
Edificio Saphir
C/Triana, 116 – 2º
35002 Las Palmas de Gran Canaria
Tel.: 928 33 23 04
Fax: 928 31 91 92

Madrid
Torre de Cristal
Paseo de la Castellana, 259 C
28046 Madrid
Tel.: 91 456 34 00
Fax: 91 456 59 39

Malaga
Marqués de Larios, 3
29005 Málaga
Tel.: 952 61 14 60
Fax: 952 30 53 42

Oviedo
Ventura Rodríguez, 2
33004 Oviedo
Tel.: 985 27 69 28
Fax: 985 27 49 54

Palma de Mallorca
Edificio Reina Constanza
Calle de Porto Pi, 8
07015 Palma de Mallorca
Tel.: 971 72 16 01
Fax: 971 72 58 09

Pamplona
Edificio Iruña Park
Arcadio M. Larraona, 1
31008 Pamplona
Tel.: 948 17 14 08
Fax: 948 17 35 31

San Sebastián
Avenida de la Libertad, 17-19
20004 San Sebastián
Tel.: 943 42 22 50
Fax: 943 42 42 62

Seville
Avda. de la Palmera, 28
41012 Sevilla
Tel.: 954 93 46 46
Fax: 954 64 70 78

Valencia
Edificio Mapfre
Paseo de la Almeda, 35, planta 2
46023 Valencia
Tel: 963 53 40 92
Fax: 963 51 27 29

Vigo
Arenal, 18
36201 Vigo
Tel.: 986 22 85 05
Fax: 986 43 85 65

Zaragoza
Centro Empresarial de Aragón
Avda. Gómez Laguna, 25
50009 Zaragoza
Tel.: 976 45 81 33
Fax: 976 75 48 96