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THE CADASTRE AND REAL ESTATE TAX *

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INTRODUCTION

When embarking upon the exercise of reviewing the evolution of local finance in the past twenty five years, focusing particularly on the role played by the land tax and the Cadastre, one can only begin by recognising the remarkable progress achieved in the consolidation of the system of financing of local authorities and of the constitutional principles upon which this system is based, despite the numerous difficulties experienced by local corporations and by the legislation that has provided the framework for their evolution, furthermore in a particularly complex historical context from the perspective both of economic and political conditions and of the major social trends that have formed the backdrop to this process of evolution.

Local corporations have effectively undergone a prolonged and intensive process of change. This process is part of the overall context of evolution in these first twenty five years of our democracy, whose principal cornerstones have been the development of the constitutional model of a State of Autonomies, on one hand, and convergence with and integration in European institutions on the other: in general terms, the change from centralism to globalisation.

THE 70S CRISIS AND TAX REFORM

The initial situation –the years of political transition– was characteristic for the fact that these transpired in an environment of economic crisis, mainly caused by the petrol scares throughout the 70s.

It was in these truly difficult economic conditions (unemployment of up to 22% of the active population, inflation of up to 30%, a new tax reform awaiting implementation and based on a tax burden of only 18.8% of the GNP in 1975, compared with more than double that figure in almost all other western European countries) that Spain's journey towards democracy began, and with it, that of its local institutions.

As a basic element of this process, Tax Reform represented a profound transformation of the model of distribution of public taxes used from 1845 to 1964 and its homologation with the model used in the most highly developed countries. But this intense transformation, which officially began with the Law of Urgent Measures of 14 November 1977 and continued up to enactment of the Law of Value Added Tax of 1 January 1986, in fact started before, and all the intellectual work that fed it was contained in the monumental Report prepared by the Tax Research Institute during 1972 and 1973 under the direction of Professor FUENTES QUINTANA. This extremely important document, at the time classified as *strictly confidential* and that came to be known as the *Green Paper*, took its direction, as described by Professor FUENTES QUINTANA in his prologue to the latest edition (1), from an absolutely urgent and crucial reflection: "looking at the time at the levels of public spending in E.C. countries and the potential revenue of Spanish taxation, a question arose that all of us who worked in the Tax Research Institute judged to be terrifying: was it not true that Spain, when it reached democracy, would experience a decisive jump in the level and structure of public spending? And would it be possible to finance that growth in public spending through the existing tax system and at the same time to maintain a balanced budget? (2).

The answers –affirmative to the first question and negative to the second– were not only implicit in the questions themselves, but were borne out by time and the advent of democracy with the elections of 15 June 1977. Our traditional latin and peculiar tax model, characterised by the prevalence of taxes on specific consumption rather than a general sales tax and moreover, multi-phased; the excessive weight of the tax on transmissions between living entities; and the predominance of product taxes in direct taxation, all bore witness to this. The degree of consensus and social demand in this respect was so great that something unique and unrepeatable occurred: each and every political party represented in the Parliament of 1977 embraced the program for tax reform as their own in their respective election campaigns. In October of that year the Moncloa Pacts unanimously incorporated the criteria and strategy of the reform designed in 1973, within the framework of the measures of economic policy designed to face the current economic crisis.

THE TRANSFER OF LAND TAXES TO LOCAL CORPORATIONS

That tax reform, and specifically Law 44/1978 of Personal Income Tax, established that as of 1979, former product taxes –including the fixed rate of the Rustic and Livestock Land Tax and the Urban Land Tax– would convert into local taxes. By 1971 these taxes had already lost virtually all significance as a source of national

(*) This paper is a revision, extended and updated, of the paper published by the author in issue 97 of CRÓNICA TRIBUTARIA under the title *Impuesto sobre Bienes Inmuebles y financiación municipal: esbozo de un balance (1990-1999)*.

(1) INSTITUTO DE ESTUDIOS FISCALES: *Informe sobre el Sistema Tributario Español*, Madrid, 2002.

(2) In those years, the tax rate in Spain was the lowest of all OCDE countries, at 11.8% of GNP p.m. (the OCDE average was 23%) in 1968-1970.

finance since they represented only 2.41% of total taxation, compared with 4.84% in 1960, 8.73% in 1950 and 21.65% in 1900 (3).

In fact, the *Green Paper* proposed the "complete disappearance of product taxes, all of which will be incorporated into the body of the general tax as mere sources of incomes for the purpose of determining and evaluating the total taxable income" (4).

Although it is true that the 1964 model of taxation "on account" had no place in modern personal taxation, it is also true, on the other hand, that real estate tax could fit perfectly into the context of local jurisdiction to which it was effectively assigned in 1979. In fact, the process of conversion of this particular tax into Local Tax had begun long before (5), when Law 85/1962 granted Local Authorities, through the National Fund of Local Treasuries, 90% of the net income from the Treasury's share of the Urban Land Tax and the associated 40% surcharge, a measure repeated for the Rustic and Livestock Land Tax through Law 41/1975, of Regulation of the Statute for the Local System and through Royal Decree 3250/1976.

A decade of failed reforms

The picture of the 1977 tax reform was not, however, a true reflection of the project. New developments at the state level, and of course, the new laws to regulate autonomic and local finance, were all still to come, successively and in that order. But in the meantime, this blooming of social demands forecast since 1972 for the arrival of democracy, had now materialized, and the sub-central democratic governments had no other choice but to responding to those demands by exporting deficit. Far from a battle among powers, rather this response originated from a single stimulus: the need to respond to the unanimous desire of the Spanish public for growth, progress and improvement, for which pre-democratic tax instruments lacked capacity. The unstoppable reality of local expenditure –in all case exiguous if compared to the needs, we must say– naturally provoked, in turn, different reactions from the State.

The first was the decision to back the deficits with aid in the form of privileged finance through Banco de Crédito Local (BCL), publicly announced by the then Minister of the Interior the day after the first democratic elections of 3 April 1979.

Months later, the General Budget Law for 1980 established that local corporations could take external loans with the guarantee of the Instituto de Crédito Oficial (ICO), and Law 42/1980 granted local corporations the authority to approve extraordinary loans to pay off the debts accumulated up to 31 December 1979, and established that the State would assume 50% of the financial cost of the loans granted by BCL in 1976, 1977 and 1978. Also, in 1979, Decree Law 11/1979 introduced an extensive package of measures for the reorganisation of local treasuries, ranging from doubling the base of the Urban Land Tax and the subsequent revision of all cadastral values, to granting local corporations a 2 pesetas/litre share in petrol tax, thus reaching a 7% share in the State's indirect tax revenues. In its preface, this law recognised the need to address, within the framework of the future general regulation of the Treasury, a "rational and operative distribution of the functions and tasks that correspond to the diverse Local and Territorial Entities and to the Central Administration in order to avoid duplication of services and to offer the necessary conditions of transparency in expenditure, precision in the preparation and execution of budgets, and responsability of public managers to the democratically elected representative bodies and the public opinion of the country". It is easy to see that all of these resolutions were entirely inspired by the political programme reflected in the Constitution.

Until this materialised, however, several unpostponable decisions had to be adopted. A first package of measures was provided in the decree law itself to address the "chronic situation of structural deficit of Local Corporations" that could only produce "a deficient attention to public services" and was likewise the reason why "the public tax burden for different locations should (end up) landing indiscriminately on the shoulders of all taxpayers, regardless of whether or not they benefit from the services covered by the general taxes (they contribute) to the Public Treasury."

With this perspective, the decree law of 1979 proposed to adjust the taxable bases of land taxes and fiscal licenses "to the economic reality that is subject to taxation", for which purpose coefficients were adopted to update the cadastral value of urban estates in order to recoup the loss of fiscal capacity since 1977. These coefficients were different for each local corporation depending on which year the "cadastral system" of Law 41/1964 had been implemented.

Another transitional measure, that did not lose sight of the fact that the goal was the revision of cadastral values –which the decree-law itself imposed every three years, thus shortening the five-year cycle scheduled by the Merged Text on Land Tax of 1966– established the increase in cadastral income of rented housing and premises, the elimination of certain hypotheses established in Land Tax law, the annulment of certain exemptions and rebates and the reduction in the amount of others.

Over and above these urgent transitional changes, the decree law established the creation of specific administrative structures (6) to perform the work of construction, maintenance and revision of the cadastres and for the administration of territorial revenues, thus initiating the long period that would last into the 90s, which would culminate –very late indeed– in the project for the revision of values and the effective assignment of the administrative competencies to the Local Corporations responsible for tax collection.

(3) The phenomenon of the decreasing falling of the tax is common throughout Europe: in France passen from 11.6% in1900 to 2.3% in 1975, in Great Britain from 30% to 13.5%, and in Germany from 8.3% to 1.7%, according to GUIGOU, J. L. y LEGRAND, J. M.: *Fiscalité foncière. Analyse comparée des pays de l'OCDE*, Económica, Paris, 1983.

(4) Tax Research Institute: *Informe sobre el Sistema Tributario Español*. Madrid, 2002, p. 338.

(5) ARNAL SURIA, S.: "*El Impuesto sobre Bienes Inmuebles*". El consultor de los Ayuntamientos y de los Juzgados. Madrid, 1991, p. 14 and following.

(6) The Consortia for the Administration and Inspection of Land Taxes, whose competencies and structure were regulated by Royal Decree 1365/1980, of 13 June, and whose effective creation was established by Royal Decree 1373/1980, of the same date.

The genesis of this far-reaching organizational change, was, once again, the *Green Paper*, which recommended a deep reform in tax administration in order to achieve –as other countries had– the maximum degree of generalisation of the tax system, which at that time was based on the classic rule of "one tax –one institution– one General Directorate", which in the opinion of the authors of the Report was the cause of the "high degree of tax evasion" existing in our country. The proposed institutional reinforcement, which in the context of the new system of national taxation was gradually developed up to the creation of the National Tax Administration Agency in 1991, was therefore a reality in our Institution much earlier, although due to the peculiarities of our field the structural tripod continued to exist, but allowed Local Corporations access to the Consortia at the executive level and in budgetary and personnel matters. Later, towards the end of the 80s, the organisation responsible for Cadastre and land taxes would also open up to cooperation with Local Corporations in the operative level, through instruments functionally oriented of improve administrative efficiency, by means of collaborative agreements.

However, in consideration of the enormity of the project for the revision of cadastral values –which had already been attempted, unsuccessfully, on various occasions throughout the century, both in Spain and the rest of Europe– the habit of increasing cadastral values through the more expeditious means of update coefficients was adopted very early on, and in practice has come to represent an efficient insurance against the risk of inflation. Thus, decree law 9/1980 established that, until such time as the revision established in article 3 of Royal Decree Law 11/1979 of 20 July were completed, the National Budget Law could update cadastral values of the Urban Land Tax. This measure was adopted by the Budget Law for 1981, which determined an increase of 35%, and was repeated in 1984 and annually since 1986, to the effect that the coefficients accumulated value increases of up to 340% and, in the period between 1979 and 2003, of up to 664%, which has proved to be more than enough to guarantee, in real terms, the financial capacity of the tax, given that accumulated inflation between 1979 and 2003 was 357.5%.

This however is not the end of the story, because land tax, within the tax structure of Local Corporations, has gained relevance over time through other additional mechanisms. Although notable delays have occurred at times, the first value revision was completed on 1 January 1994, values have been revised since then in successive cycles and the taxpayer base has grown significantly, with the result that Real Estate Tax revenues represented 0.67% of GNP in 2001, and 1.9% of total taxation in Spain, compared with 0.4% in 1975 (7).

But before going further into this analysis, allow me to return to the evolution of the regulation, without which it is practically impossible to understand the situation we are in today, 25 years after the Constitution.

To provide additional context, knowing as we now do that one of the most important aspirations of the law of 1979 would take a long time to be achieved, we should look back on other events that marked the evolution of local treasuries –each event serving to confirming their anaemia– and which occurred in succession against an economic backdrop of high inflation, extremely high unemployment and a growing, unsustainable public deficit (8).

Thus, the Budget Law for 1980 granted Local Authorities an additional 1.5% share in central indirect taxation and Royal Decree Law 9/1980 granted Local Corporations 1% of the net revenues from Personal Income Tax, increased to 3% in the Budget Law for the following year. That same law also approved increases in the Local Traffic Tax and Publicity Tax, and revitalised special taxes, establishing the municipal works and services subject to said tax, in coherence with the insistent doctrine of the legislator –denied equally insistently by many local corporations– regarding the need to re-establish the principle of benefit and adjust the subjective framework of the sources of finance to that of local spending policy, at least wherever there is no reason to introduce criteria of inter-territorial levelling or solidarity or where the external aspects of local public services do not require the participation of a superior jurisdictional level.

With regard to unconditional transfers, at that time integrated in the National Fund of Local Cooperation, the Budget Law for 1982 replaced all shares and compensation for abolished taxes with a single share of 7% of State taxes not subject to transfer to autonomous communities (increased to 8% in 1983), and introduced a new criterion for distribution, until then alien to the Fund –and which distorted its sense and purpose– consisting of fiscal endeavour, which proposed to favour those Local Corporations that demanded higher taxes from their citizens, partially questioning the levelling purpose of this financing mechanism, again in an attempt to generate incentives to achieve more transparency with regard to expenditure and higher accountability for the policies developed by Local Corporations.

In any event, Law 24/1983, on Measures for the Reorganisation and Regulation of Local Treasuries, arrived soon after, emphasising the scarce utility that the numerous legislative initiatives in the previous five years had had in practical terms. Effectively, in 1983 the legislator again recognises that the "chronic deficit of local corporations is one of the most worrying issues in the Spanish political panorama and the one for which most solutions have been attempted in recent years", in spite of which "the measures adopted … have proved to be insufficient over time", indicating in the Statement of Purpose of Law 24/1983 that "a definitive solution will require us to address the root of the problem, which is none other than a deficient system of local finance". In order to achieve this, a future Law of Finance of Local Entities was promised that materialized into the Law of Regulation of Local Treasuries of 1988, whose intent –which was carried out successfully– was to make good the constitutional principles of sufficient resources and autonomous administration of the interests corresponding

(7) In other terms, while the accumulated CPI between 1979 and 2003 shows a multiplication of prices by 4.575, Real Estate Tax has multiplied by more than 43 in the same period.

(8) Average annual growth of the PCI was 12.22% from 1981 to 1985; unemployment in 1985 reached nearly 3,000,000 people –over 20% of the active population– and the public deficit was close to 7%, with interest rates at around 16%.

to local corporations in financial matters. Until this was achieved, it was urgent to proceed to clear local debts through their liquidation and the absorption of the accumulated deficits, although warning that "in a de-centralised multiple financing model –towards which our Treasury tends– the financing of deficits is the exclusive responsibility of the respective local treasuries."

Thus, the State assumed the debts of the Local Corporations (real budgetary debt at 31 December 1982) against its own deficit on condition that that the local authorities should not again incur said debts, these amounts now joining, among other financial burdens, the 50% of the financial cost of the loans subscribed by Local Corporations with BCL between 1975 and 1979, already provided for in the Budget Law for 1983.

Law 24/1983 also contained a package of measures of a more structural nature, designed to reinforce the capacity of local self-finance, authorising local authorities to establish a surcharge on Personal Income Tax. The surcharge was effectively applied, amidst fierce debate, by 528 local corporations that year, and was later overturned by sentence of the Constitutional Court on 19 December 1985.

This law also granted local authorities the option to determine the Land Tax rate, in order to find a way around "the difficulties hindering the desirable revision of cadastral values" (9) and to "move forward in coherence with the principle of financial autonomy that must govern the future Law of Finance of Local Entities" in accordance with the law's own Statement of Purpose. However, this measure was also shown to be sterile as a result of the sentence of the Constitutional Court of 17 February 1987 that, as in the first case, overruled the corresponding regulation because it failed to respect the principle of legal reserve.

Therefore, the only decision of the Law of Reorganisation that effectively materialised was the afore-mentioned assumption of local debt at 31 December 1982, thus frustrating the stated purpose of the legislator for "Local Corporations to bear the psychological and political cost that any increase in taxes represents." This was a repetition, in a modified and extended version, of the experience of Law 42/1980 and it was clear that the issue of local finance was not only urgent and required the provision of greater resources, but also that it had to seek a solution in a more complete concept of local autonomy. Autonomy is not sovereignty - as stated by the Constitutional Court in its sentences 1/198 and 221/1992, and it was not and still is not possible to resolve the insufficiency of the system of local resources with exclusively financial formulas, precisely because it is the responsibility of the State both to regulate –even if only in part– local taxation, and to provide sufficiency within the framework of general economic policy and by virtue of the competencies exclusive to the General Treasury per art. 149.1.14 E (sentence of the Constitutional Court 179/85) (10).

However, after saying this seven days after the approval of Law 24/1983, the Budget Law for 1984 proceeded to increase cadastral values by 36% as mentioned previously. This, while coherent with the repeatedly sought-after principle of accountability of local authorities, in practice only increased the problem of the devolutions that the Cadastre had to face to execute the Constitutional sentence overruling the freedom to establish tax rates.

To continue with our story –first mentioning the change brought about as of 1984 by the replacement of the percentage system to determine the amount of the National Fund for Local Corporations (NFLC) for a fixed amount, and the introduction of a new criterion for distribution of the Fund (that of school units)– again representing a relative departure from the goals of sufficiency and levelling of the transfer system through the extension, now casuistic, of its purpose– in 1987 a new law (Law 26/1987) was passed to comply with the restrictions imposed by the Constitutional Court, maintaining the purpose of reinforcement of local treasuries.

The reader will remember that this law acted as a bridge between the old and seriouslly ill local financing model contained in the dispositions mentioned above (and also in the Law of Local System of 1955 and fundamentally, in Royal Decree 3250/1976) and what one year later would become the Law of Regulation of Local Treasuries of 1988, still in force today after numerous reforms and modifications, whose merged text was recently approved by Legislative Royal Decree 2/2004 of 5 March.

In effect, Law 26/1987 regulated the faculty of Local Corporations to increase the rate of land taxes, which from then on could vary between 20 and 40 percent for urban and between 10 and 20 percent for rustic and livestock, also permitting, as an additional element of diversification, that the condition of capital city or the effective provision of urban public transport justify new and increased tax rates.

In this way, a regulation was provided for the rules established by the Constitutional Court based on its interpretation of the Constitution, and incorporated soon after and in a single act into the Law of Regulation of Local Treasuries.

LAW OF LOCAL TREASURIES OF 1988: AUTONOMY, SUFFICIENCY AND STABILITY OF THE MODEL

As reflected in its Statement of Purpose, the goal of this law is the effective realisation of the principles of autonomy and sufficiency. For this purpose, the law addressed the substantial restructuring of the sources of local finance, simplifying and modernising taxes and improving the stability of the transfer system.

For the transfer system, explicitly recognised as a constitutional right of Local Corporations, a five-year

(9) In fact, more than a new value revision it was a matter of achieving a genuine re-implementation of the Cadastre, as emphasised by FERNÁNDEZ PIRLA in his collaboration on the book AA.V.V.: *El Catastro en España*, vol. II., Ministry of Economy and Finance, Madrid, 1989, p. 161.

(10) The mentioned Constitutional Court sentence 19/1987 states, in this regard, that the "initial freedom to configure" taxes corresponds to the State legislator as established by art. 133 of the Basic Rule, but that this does not prevent, within the framework of the principle of legal reserve, local authorities from enjoying a wide scope of decision from which can stem a tax diversity ultimately justified by the need to adjust taxes to the particular expenditure of each local authority.

projection was regulated and an arithmetical formula provided to pre-determine its amount, seeking not only to allow Local Corporations to forecast future income from this source, but also to guarantee growth throughout the given five-year period. For this purpose, an annual revision of the Share in State Revenues was established based on the indicator known as the rate of prevalent evolution, whose value could not exceed GNP growth but neither could be less than the equivalent State expenditure (11).

With regard to local taxes –the other piece of the plan– the law addressed their regulation from a twin perspective: on one hand, to ensure the sufficiency of the system through declaration of unavailability of the three principle taxation figures (Real Estate Tax, Economic Activity and Motor Vehicles) whose administration would be shared –to a greater or lesser degree– with the State (through the General Directorate of Cadastre, the Tax Agency and the General Directorate of Traffic); and on the other hand, to reinforce autonomy by authorising Local Corporations to establish two additional taxes (Tax on the Increase in Value of Urban Land and a Tax on Construction, Installations and Works) as well as special taxes, prices and rates, and the principal elements of quantification of mandatory taxes.

Was the Law sufficient?

Obviously, appraisal of the Law of Regulation of Local Treasuries can be approached from various directions. From a largely global perspective, CARPIO (12) has said that the "distribution of competencies provided by the (Law of Basic Regulations of the Local System) is largely sympathetic to the theoretic distribution of musgravian functions of assignment, distribution and stabilisation", which recommends that the latter two be reserved to the central government while the first –whose principal function is the supply of public services– should be shared among all territorial levels of the public treasury depending on the degree of diffusion of the external factors involved in said supply of services; while MONASTERIO (13) states that the Law of Regulation of Local Treasuries "faithfully aligns with the demands of the theory of tax federalism".

Although we agree with these conclusions at the theoretic level, we must nevertheless analyse, as scientific doctrine has done profusely in recent years, the ulterior evolution of the law, its efficiency and its practical scope.

In terms of quantity, and again from the global standpoint, we can evaluate the degree to which the goal of de-centralisation has been achieved by using diverse parameters. The first and most widely used refers to the institutional distribution of total public spending. However, certain precautions –that tend to be ignored in the pursuit of simplification– should be observed when considering this indicator. As COMÍN (14) rightly indicates, "The de-centralisation of services depends on the country's political configuration. In federal countries, the weight of local treasuries is less than in centralist countries where regional governments do not exist". Something similar has occurred in Spain where, despite the fact that in 1988 the Central Administration administered 91% of total consolidated public spending in the public sector and in 2003 that percentage had fallen to 53.5% (15), local corporations during this period have moved between 9% and 14%, not always maintaining a growth trend. This is the paradox of Spain's de-centralisation, otherwise so intensive that today only 23.4% of public sector employees work for the State (16), less than for local administrations.

If we use the paradigm of the comparative situation of countries with a much longer tradition, and particularly that of federal states, the need for a second de-centralisation is obvious, observing that while Spanish Autonomous Communities administer 33.4% of consolidated spending, the overall average in federal countries is 29'8% (17). Moreover, if as PÉREZ GARCÍA (18) says, "the economic dimension of local corporations must be addressed, for the future, bearing in mind that the size of the public sector is not going to continue growing faster than the GNP", but rather the opposite, a second de-centralisation is the only possible way to improve the relative position of local corporations.

But although de-centralisation from the autonomous communities is a reasonable political aspiration –as long as it is based on the quantity and quality of the services whose supply is better suited to the local level and to public demand, two aspects that theory is unable to address and which depend, essentially, on social preferences at any given time in history– the purpose of the Law of Regulation of Local Treasuries was not

(11) For the five-year period 94-98, evolution was based, in minimum terms, on the CPI, and in maximum terms, on the nominal GNP. Further, the SSR was completed with two new Funds: one for environmental infrastructure, financed initially with 30,000 million pesetas provided by F.E.D.E.R., and the other for other types of local infrastructure, with an initial assignment of 20,000 million pesetas partially finance by the Cohesion Fund. For the new five-year period initiated in 1999, SSR evolution was referenced to the COP and GNP_{PM}.

(12) CARPIO, M.: *El objetivo constitucional de la suficiencia financiera de los Ayuntamientos: situación y perspectivas*. Revista de Estudios Locales (CUNAL). Special edition. Madrid, July 2000.

(13) MONASTERIO ESCUDERO, C.: *La Financiación subcentral en España. Principios y desarrollo*. Papeles de Economía Española, n.º 83. Madrid, 2000.

(14) COMÍN, F: *Historia de la Hacienda Pública, II. España (1808-1995)*. Crítica, 1996, p. 238.

(15) MINISTRY OF FINANCE: *Presentación del Proyecto de Presupuestos Generales del Estado 2004 (libro amarillo)* Madrid, 2003, p. 45. According to these data, Spanish sub-central treasuries administer 46.5% of public spending, much higher than Germany (37,5%), Austria (31,1%) and Australia 44.4%). Only Canada (58,6%) and the U.S. (51,5%) exceed the level of de-centralisation of the Spanish public sector.

(16) The distribution of personnel employed by Spanish public Administrations at 1 January 2003 is, according to the Boletín Estadístico published by the Central Employee Register of the Ministry of Public Administrations, the following:

Scope	Percentage
State	23'4
Autonomous Comm.	48'9
Local Corporations	23'7
Universities	4'0

(17) The percentage of public expenditure at the intermediate levels of Government is 23'7% in Germany, 29'7% in the U.S., 15'7% in Austria and 28% in Switzerland.

(18) PÉREZ GARCÍA, F.: *Haciendas locales: dimensión, competencias y recursos*, Economistas n.º 65, p. 14.

Table 1
Analysis of non-financial budget deficit of local corporations. Years 1990 to 2001
(Data from liquidated budgets, in millions of euros)

Concept	1990	1991	1992	1993	
Ordinary income (1)	11.000,46	11.721,02	14.076,88	15.027,27	
Ordinary spending (2)	9.174,50	10.399,90	12.349,22	13.073,68	
Gross savings (3) = (1)-(2)	**1.825,96**	**1.321,12**	**1.727,66**	**1.953,59**	
Capital income (4)	1.541,06	1.466,96	1.648,76	1.789,09	
Capital expenditure (5)	3.971,99	3.450,17	3.675,38	3.827,55	
Net investment (6) = (4)-(5)	**–2.430,93**	**–1.983,21**	**–2.026,62**	**–2.038,46**	
Budget balance (7) = (3)+(6)	**–604,97**	**–662,09**	**–298,96**	**–84,87**	
Gross saving ratio = (3) / (1)	***16,6***	***11,3***	***12,3***	***13,0***	
Investment coverage net = (3) / |(6)|	***75,1***	***66,6***	***85,2***	***95,8***	

Source: S.G.P.F.T.C. and author.

de-centralisation itself, but to provide for the de-centralisation established by the Constitution and, in particular, as defined (albeit in very wide, or ambiguous, terms) by the 1985 Law of Basic Regulations of the Local System.

Budget performance

One way of approaching the evaluation of this objective is to observe the budget performance of local corporations, such that if we were to find deficits of the type usual in the 80s we could reach a negative conclusion, and in the opposite case, we could at least affirm that the income provided by the Law has been sufficient for the level of service supply and investment effectively achieved, this latter without taking into account that the margins –both regulatory and administrative– for improvement of the level of local tax collection are by no means exhausted, as we shall see.

In this regard, it is significant that during the years that the Law of Regulation of Local Treasuries has been in force, local corporations have obtained positive gross savings between 11.3% and 20.4% of their ordinary income, savings that have provided coverage for the entire amount of local net investment uninterruptedly from 1994 to 1999, although in the last two years for which figures are available, the huge increase in capital costs (19% in 2000 vs. 1999) has generated the highest budget deficits since 1990. However, these negative balances between 2001 and 2001 represent less than 4% of ordinary income in these years and can not diminish the global results of the Law, which over the twelve years between 1990 and 2001, have represented a positive budget balance of 1,318 million euros, as shown in table 1.

Fiscal responsability

These results however, are not accidental, nor are they the fruit of other's efforts. On the contrary, local corporations have shown a high degree of the fiscal responsability so insistently demanded of them by the legislator in the 1980s, and during the time that the Law of Regulation of Local Treasuries has been in force, they have achieved a 6.5% increase in the contribution of local taxes to their financial structure, at the same time reducing relative debt from 22.4% of local revenues in 1990 to 8.9% in 2001.

In effect, if we observe the data contained in table 2, in 2001 taxes and public prices provided 47.7% of local resources, transfers a further 35.9%, and the remaining 16.4% was provided by patrimonial revenues and financial operations, giving a clear idea of the degree of responsibility achieved by the local corporations. If we go on to compare these figures with 1990 data, we can observe strong progress in the relative weight on non-financial income –which has gone from sustaining 77.6% of expenditure to cover 91.1%– with important advances in local taxation and, to a lesser degree, in transfers.

In spite of this, the theoretic capacity of local corporations to increase their income is still very large, even more now that the margins for tax rates have been increased for all townships following the elimination of former restrictions based on population size.

To verify this, although the analysis does not include 2003 data, which at the time of writing are not yet available and are key to knowing the existing margin today, an estimate has been made of the fiscal capacity of Local Corporations based on the data provided by the *"Tax Ranking of Spanish Local Corporations in 2002"*, published by the Madrid Local Authority which analyses the figures for provincial capitals. Leaving Real Estate Tax to one side for the moment, the conclusions of the study for the remaining taxes are the following:

a) With regard to the Tax on Economic Activities, the maximum increase coefficient permitted by the Law is only applied in Barcelona and Cuenca. The average of the maximum effective coefficient is 1.467, equivalent to 76.8% of the maximum.
b) Regarding the Motor Vehicle Tax, the maximum possible average fee, for vehicles between 8 and 11.99 hp, is 67.1 euros, while the established average is 49.86 euros, 74.3% of the maximum. The only capital that demands the top rate is Barcelona.
c) The maximum average established for the Tax on Construction, Installations and Works is 3.773, while the effective average is 3.363, 89.1% of the maximum rate. In this case, in which application of the regulation

Table 1
Analysis of non-financial budget deficit of local corporations. Years 1990 to 2001
(Data from liquidated budgets, in millions of euros)

Continued

	1994	1995	1996	1997	1998	1999	2000	2001
	15.860,15	16.981,49	18.339,78	19.660,98	20.783,98	22.152,29	23.194,22	24.846,38
	13.306,25	14.294,10	15.424,56	15.982,37	16.731,70	17.638,79	19.532,72	21.218,70
	2.553,90	**2.687,39**	**2.915,22**	**3.678,61**	**4.052,28**	**4.513,50**	**3661,5**	**3.627,68**
	1.964,50	1.908,12	1.923,45	2.320,60	3.094,08	3.157,95	3.782,16	4.595,24
	4.059,87	4.185,32	3.961,31	4.606,63	6.139,86	6.951,73	8.273,05	9.289,42
	–2.095,37	**–2.277,20**	**–2.037,86**	**–2.286,03**	**–3.045,78**	**–3.793,78**	**–4.491**	**–4.694,18**
	458,53	**410,19**	**877,36**	**1.392,58**	**1.006,50**	**719,72**	**–829**	**–1.066,50**
	16,1	***15,8***	***15,9***	***18,7***	***19,5***	***20,4***	***15,8***	***14,6***
	121,9	***118,0***	***143,1***	***160,9***	***133,0***	***119,0***	***81,5***	***77,3***

Table 2
Summarised structure of income and expenditure (1990 and 2001)

Income	1990	2001	Expenditure	1990	2001
Taxes and prices	41,2	47,7	Operating expenses	47,3	56,3
Transfers	32,4	35,9	Financial expenses	5,0	3,4
Patrimonial income	4,0	7,5	Transfers	9,6	8,2
Financial operations	22,4	8,9	Investment	23,1	26,9
			Financial operations	15,0	5,2
Total	**100,0**	**100,0**	**Total**	**100,0**	**100,0**

Source: S.G.Política Fiscal, Territorial y Comunitaria and author.

is among the highest, 22 capitals have applied the maximum permitted by the Law.

d) Lastly, application of the Tax on Increase in Urban Land Value is at 85.6% of capacity (effective average rate 24.9% vs. 29.5% maximum). Of 52 capitals, 22 have established the maximum rate (19).

With regard to Real Estate Tax on urban property, and based in this case on exhaustive data (20), the General Directorate of Cadastre has estimated that gross income –which in 2002 amounted to 4,687 million euros– could grow, through application of top rates, to 7,621 million, 62.6% more than current revenues from this tax, and would provide local corporations 8.4% more total net income, based on the last year of available data (2002).

Effectively, as observed in table 3, the gross income from urban Real Estate Tax for all towns included in the common system has maintained a level over the thirteen years analysed of between 56% and 63.5% of the legal top rate, meaning that the average rate applied was between 0.588% and 0.654% when the maximum rate is 1.051% and 1.046%.

Nevertheless, observing the data by population tier we see that it is in the towns with a population of over 100,000 that have the greatest potential for growth (the degree of application of capacity was, in 2002, 57.2%), although the other tiers also show a wide capacity for growth, since all used its fiscal capacity between 62% and 66% of the maximum allowen.

TAX RATES AND CADASTRAL REVISIONS

Year on year analysis shows that application by Local Corporations of the margins established by the Law with regard to Real Estate Tax rates has been strongly influenced by the evolution of cadastral revisions in the same period.

Thus, between 1991 and 1993 local corporations showed a high level of activity, increasing rates annually from 0.588 in 1990 to 0.664 in 1993. This activity is largely attributable to the absence of value revisions in this three-year period, although it should be remembered that, although no revisions were performed, values were

(19) This analysis confirms, four years later, the analysis performed by SUÁREZ PANDIELLO for 1998 reflected in edition 83 of *Papeles de Economía Española*, although in general a tendency to a reduction in the available margin is observed, which for both dates was that of the Law of Regulation of Local Treasuries prior to the reform of 2002.

(20) The simulation has been performed applying the maximum possible rate of urban Real Estate Tax to each and every town in the common system, but does not take into consideration the possible increases due to the specific circumstances of each town authorised in section 3 of Art. 73 of the L.R.L.T.

Table 3
Comparative analysis between quotas and average tax rates respecting their maximum values, by municipalities and population rages. Years 1990 to 2002

Concepts	1990	1991	1992	1993	1994	
Municipalities up to 5.000 inhabitants						
Full quota (millions of euros)	192	202	233	273	307	
Maximum quota (millions of euros)	327	346	374	426	496	
Full quota / Maximum quota (%)	58,5	58,4	62,3	64,2	62,0	
Avg tax rate applied (%)	0,498	0,496	0,529	0,545	0,527	
Avg maximum tax rate (%)	0,850	0,850	0,850	0,850	0,850	
Municipalities between 5.001 to 20.000 inhabitants						
Full quota (millions of euros)	293	304	361	418	476	
Maximum quota (millions of euros)	516	533	580	644	779	
Full quota / Maximum quota (%)	56,7	57,1	62,2	64,9	61,1	
Avg tax rate applied (%)	0,539	0,542	0,591	0,617	0,581	
Avg maximum tax rate (%)	0,950	0,950	0,950	0,950	0,950	
Municipalities between 20.001 to 50.000 inhabitants						
Full quota (millions of euros)	234	263	310	354	395	
Maximum quota (millions of euros)	405	442	476	522	598	
Full quota / Maximum quota (%)	57,9	59,5	65,0	67,9	66,0	
Avg tax rate applied (%)	0,580	0,596	0,652	0,680	0,662	
Avg maximum tax rate (%)	1,002	1,002	1,002	1,002	1,002	
Municipalities between 50.001 to 100.000 inhabitants						
Full quota (millions of euros)	168	168	196	219	245	
Maximum quota (millions of euros)	284	281	308	339	370	
Full quota / Maximum quota (%)	59,1	59,9	63,8	64,6	66,2	
Avg tax rate applied (%)	0,630	0,638	0,679	0,689	0,706	
Avg maximum tax rate (%)	1,006	1,065	1,065	1,066	1,065	
Municipalities from more than 100.000 inhabitants						
Full quota (millions of euros)	856	866	1.007	1.131	1.230	
Maximum quota (millions of euros)	1.580	1.574	1.712	1.845	1.956	
Full quota / Maximum quota (%)	54,2	55,0	58,8	61,3	62,9	
Avg tax rate applied (%)	0,628	0,637	0,682	0,710	0,729	
Avg maximum tax rate (%)	1,159	1,159	1,159	1,159	1,159	
All municipalities						
Full quota (millions of euros)	1.743	1.803	2.106	2.396	2.654	
Maximum quota (millions of euros)	3.113	3.176	3.450	3.775	4.199	
Full quota / Maximum quota (%)	56,0	56,8	61,1	63,5	63,2	
Avg tax rate applied (%)	0,588	0,595	0,640	0,664	0,658	
Avg maximum tax rate (%)	1,051	1,048	1,048	1,046	1,041	

Source: D.G.C. and the author.

Table 3
Comparative analysis between quotas and average tax rates respecting their maximum values, by municipalities and population rages. Years 1990 to 2002 *Continued*

	1995	1996	1997	1998	1999	2000	2001	2002
	332	365	393	372	394	419	444	454
	541	598	633	602	631	656	681	691
	61,5	61,0	62,0	61,9	62,3	63,9	65,2	65,6
	0,523	0,519	0,527	0,518	0,530	0,543	0,554	0,558
	0,850	0,850	0,850	0,850	0,850	0,850	0,850	0,850
	515	569	620	662	695	769	794	842
	854	949	1.015	1.076	1.124	1.208	1.209	1.273
	60,3	60,0	61,1	61,6	61,8	63,7	65,7	66,1
	0,573	0,570	0,580	0,570	0,587	0,605	0,624	0,628
	0,950	0,950	0,950	0,950	0,950	0,950	0,950	0,950
	422	462	507	499	522	583	695	736
	657	734	813	794	830	889	1.066	1.105
	64,2	62,9	62,4	62,9	62,9	65,6	65,2	66,6
	0,644	0,631	0,626	0,595	0,631	0,656	0,652	0,666
	1,002	1,002	1,003	1,003	1,003	1,000	1,000	1,000
	263	286	313	417	440	449	494	566
	406	463	547	704	740	737	789	901
	64,7	61,8	57,2	59,3	59,4	60,9	62,7	62,8
	0,690	0,660	0,612	0,607	0,632	0,640	0,658	0,660
	1,066	1,068	1,068	1,065	1,064	1,050	1,050	1,050
	1.300	1.406	1.476	1.601	1.643	1.755	1.919	2.090
	2.111	2.418	2.834	2.982	3.114	3.121	3.327	3.651
	61,6	58,2	52,1	53,7	52,8	56,2	57,7	57,2
	0,714	0,674	0,603	0,601	0,611	0,618	0,635	0,630
	1,159	1,159	1,158	1,158	1,158	1,099	1,101	1,100
	2.833	3.088	3.309	3.552	3.693	3.976	4.347	4.687
	4.569	5.161	5.843	6.156	6.440	6.611	7.072	7.621
	62,0	59,8	56,6	57,7	57,3	60,1	61,5	61,5
	0,645	0,623	0,593	0,585	0,602	0,614	0,628	0,630
	1,04	1,042	1,046	1,049	1,049	1,021	1,022	1,025

Table 4
Average tax rates, of towns revised each year, in the revision year and the previous year

Year	Average tax rate in:			
	(1) Revision year	(2) Year before revision	(1) / (2) in %	All towns
1994	0,441	0,755	–41,6	0,658
1995	0,513	0,791	–35,1	0,645
1996	0,519	0,778	–33,3	0,623
1997	0,468	0,722	–35,1	0,593
1998	0,789	0,802	–1,6	0,605
1999	0,713	0,722	–1,2	0,602
2000	0,734	0,731	0,3	0,614
2001	0,756	0,764	–1,0	0,628
2002	0,646	0,676	–4,5	0,630

Source: General Directorate of Cadastre.

effectively updated in that period through application of the coefficients established by the Budget Laws each year. When revisions were resumed effective 1 January 1994, we observe that the average rate went down that year to 0.658, and continued a downward trend that was only interrupted when, upon application of Law 53/1997 –to introduce the criterion of gradation in the application of new cadastral values– the impact of the revisions on tax collection was significantly softened.

Effectively, as illustrated in the following table, while between 1994 and 1997 the towns revised in those years reduced their rates by between 33% and 41% in order to soften or minimise the impact on the tax bill of the increase in cadastral values, between 1998 and 2002 rates remained practically unchanged when the value revision became effective, descending by a little over 1% in three of the five years, increasing 0.3% in one year and descending 4.5% in the last, which was also the last year of local government legislature initiated after the 1999 local elections.

However, because of that rate policy is closely related to the evolution of the tax base, and that the volume of resources provided by the tax is equally dependent on the total amount of local expenditure, we should analyse the variations that have occurred in these figures in recent years.

The following table provides a breakdown of the factors that have determined the evolution of the tax rate between 1994 and 2002.

The rate has increased by over 7% every year, with the exception of the election years reflected in the table (1995 and 1999).

The principal factors affecting these increases are not, however, always the same, and their analysis shows three different stages. In the first stage, from 1994 to 1997, the principal cause for the tax increase was the application of the update coefficient approved in the Budget Law, which contributed between 2.22% and 3.37% to the total increase, which on average was 8.4%. Moreover, in this period the factors associated with cadastral administration (value revision and the incorporation of new property into the Cadastre, both of which contributed similar amounts) and the rate policy were also significant.

From 1998 to 2001, a slower rhythm of cadastral revision and a smaller update coefficient –together with lack of application in revised towns during this period– meant that the principal causes for the tax increase –an average of 6.9%– were cadastral updating tasks –which contributed an average of 2.7% per year, vs. 2.1% in the previous period– and discretionary rate decisions at the local level.

In the third and last period (2002), which was atypical due to the cadastral revision of Madrid and Barcelona, the major factor was the incorporation of properties into the Cadastre, although the impact of revision also regained relevance, up to 2%. Also that year the decreasing influence of value updates, a trend

Table 5
Rate increases (in %) and their imputation to various effects. Years 1994 to 2002

	1994	1995	1996	1997	1998	1999	2000	2001	2002
Effect of Revision	2,28	0,81	2,19	1,52	0,81	0,32	0,53	0,83	1,99
Slowdown in Reduction	0,00	0,00	0,00	0,00	0,00	0,30	0,65	0,96	1,60
Increase and alteration of invoices	2,75	1,99	2,03	1,65	2,78	1,76	2,54	3,72	2,20
Variation in tax rate	2,37	0,65	1,71	1,76	2,08	–0,02	1,84	2,29	0,86
Budget Law Update	3,37	3,30	3,09	2,22	1,66	1,61	1,55	1,53	1,17
Total Quota Increase	10,77	6,75	9,02	7,16	7,34	3,97	7,10	9,34	7,83

Source: General Directorate of Cadastre.

Table 6
Increase of cadastral value and tax quota

Year	Increases attributable to:			Total increase in CV	Total increase in Full Quota
	Updating coeficient	New Real Estates	Revision of towns		
1994	3,4	2,7	5,8	11,9	10,8
1995	3,3	2,6	3,5	9,4	6,7
1996	3,2	2,2	7,5	12,9	9,0
1997	2,3	2,3	8,8	13,3	7,2
1998	1,7	2,6	4,2	8,5	7,3
1999	1,6	2,2	1,7	5,5	4,0
2000	1,7	2,7	3,3	7,7	7,1
2001	1,5	2,6	5,0	9,1	9,3
2002	1,2	2,8	19,3	23,3	7,8
Cumulative average annual	2,2	2,5	6,5	11,2	7,7

Source: General Directorate of Cadastre.

uninterrupted since 1994, was again confirmed, and we saw the introduction, in compensation, of the *slowdown in reduction* established by Law 543/1997, a factor that will gain weight in the future as the one-tenth reduction of the tax base, applied to towns revised after 1998, gradually disappears.

Another viewpoint can be adopted in this analysis if we make a direct comparison of the increase in total cadastral value and the increase in the total tax quota, once again emphasising the cushioning effect of Law 53/1997 implying that the payable base of the tax constitutes a function of the cadastral value, but not the cadastral value itself.

As illustrated in Table 6, the tax grows less than its taxable income every year except for 2001.

If we remove 1994 from the calculation (due to the fact that the cadastral revisions that became effective that year mainly correspond to a uniform group of small towns that are not representative of the total), the average annual rate increase is 7.7%, of which 61% (4.7 percentage points) is explained by the update coefficient (2.2%) and by the incorporation of new properties into the Cadastre (2.5%); the remainder is due to other causes but, in any event, is less than the additional margin provided by the increase in cadastral values, which averaged 6.5%. In other words, although values increased by 6.5% per year as a result of the revision, only 3 percentage points (40%) of the increase were applied to the tax.

The above can be interpreted either in the sense that although a legal margin exists for rate policy and margin is also available to increase cadastral values, the level achieved by Real Estate Tax related to local financial needs is sufficient; or, alternatively, in the sense that political or social restraints with regard to the real estate tax bill precludes full application of the margins. If we take into account that the net income from the tax has multiplied between 1990 and 2001 by 2.70 and that local public spending has increased by 2.08, we might well conclude that although this tax has gained relevance in the financial structure of Local Corporations, from 16.13% of ordinary income to 19.08% between 1992 and 2001, it is this restraint that explains its apparent and relative lack of exploitation. If this hypothesis were true, as it seems to be, and it were extensive, as it also seems to be, to other local taxes, we must necessarily conclude that, rather than referring to lack of resources of the local corporations, we should refer to social preferences: if a deficit were to exist it would therefore be due to an underlying problem of transparency or visibility … of financial illusion, in summary.

THE REAL ESTATE TAX: CONDITIONS AND EVOLUTION

Overall, Real Estate Tax plays a fundamental role in the financing of Spanish local corporations, contributing one fifth of ordinary income and almost half of their tax revenues, as shown in table 7, and together with other taxes related to real estate or real estate activity (Land Value Increase and Constructions, Installations and Works), represents 27.5% of income and 57.3% of tax revenues.

But in order to proceed to a more detailed analysis on the evolution of the Real Estate Tax and cadastral values in these thirteen years, we must also consider the initial situation and its influence on the subsequent development of the tax, characterised from two different angles: on one hand, the demographic structure of Spanish towns, and on the other, the situation inherited from the Land Taxes, one of whose most far-reaching consequences has been the prolongation of the transitional period that has meant that the rustic cadastre is still today valued with the criteria and modules used in the early 80s for purposes of the Rustic Land Tax.

Let us first take a look at the demography and structure of Spanish towns, the most visible features being their fragmentation –almost 84% have fewer than 5000 inhabitants and 57%, under 1000– and in comparison, the large concentration of population and taxable wealth in the few cities with populations over 100,000 –0.7% of towns–, in which 42% of the total population live.

Table 7
Structure (in %) of income liquidated by local authorities
(in percentage of the total of taxes recognised as ordinary revenues)

Concepts	1990	1991	1992	1993
I. Direct Taxes	**31,11**	**30,74**	**33,38**	**34,99**
I.1. Real Estate tax			16,13	17,65
I.2. Motor Vehicle tax			5,48	5,75
I.3. Tax on increase in value of urban land			2,27	2,11
I.4. Economic activity tax			8,53	8,88
I.5. Surcharges on direct taxes			0,00	0,06
I.6. Other direct taxes			0,00	0,00
I.7. Extinguised direct taxes			0,96	0,53
II. Indirect Taxes	**3,76**	**4,15**	**4,15**	**3,95**
II.1. Surcharges on indirect taxes			0,00	0,03
II.2. Tax on Construction, Intallations and Works			3,62	3,46
II.3. Other indirect taxes			0,40	0,38
II.4. Extinguished indirect taxes			0,12	0,06
III. Fees and other income	**19,96**	**20,02**	**21,82**	**21,85**
IV. Ordinary Transfers	**41,95**	**41,02**	**38,10**	**36,20**
V. Patrimonial income	**3,20**	**3,24**	**2,53**	**3,00**
Ordinary income	**100,00**	**100,00**	**100,00**	**100,00**

Source: DGCHT and SGPFTC.

As illustrated in table 8, this last group of towns concentrate, every year in the period between 1990 and 2002, between 42% and 50% of cadastral value and between 44% and 49% of revenue, while towns with less than 5,000 inhabitants obtain between 10% and 11%, with a taxable income of between 10% and 14%.

Although in overall terms we can say that over the years the variation in the position of each group of towns relative to the others has been slow, a definite trend can been identified of the increasing relevance of the medium and small towns, to the detriment of the largest cities: while towns with more than 100,000 inhabitants lost 4.5% between 1999 and 2002, all other groups advanced in their position, with the sole exception of the group of less than 5000 inhabitants.

In line with the urban development model of recent years, which has seen the growth of medium towns offering both relatively lower housing prices and a better quality habitat, Real Estate Tax shows significant progress in towns with populations between 50,000 and 100,000, which have increased their cadastral value by 285% and their share by 234% in that period, far above the average figures which, for the total of local corporations, were 222% and 169%, respectively.

Secondly, Real Estate Tax, as inheritor of the former Land Taxes, was born with all the advantages and disadvantages the latter left behind: in the urban field, a value revision ordered by Royal Decree Law 11/1979 that had been executed only partially, and in the rustic area, a taxable income calculated based on economic studies carried out in the early 90s with a seriously outdated Cadastre.

To condense the reality of this inheritance into a few figures, the following are sufficiently illustrative: in 1989, urban Real Estate tax produced 1,258 million euros of revenues, in clear contrast to the scarce 43 million provided by the rural Real Estate Tax, which in average terms translated into an urban tax bill of 64 euros and a little under 1 euro (0,94) per rustic hectare; urban cadastral value, estimated at 250,000 million euros, was a little over 610 times the taxable income of rural real estate; towns whose urban cadastre had been revised represented 51% of the total existing at that time, while only 17.8% of the rural cadastre had been renovated; by number of taxpayers, in the urban field a little over 19.5 million bills were issued, while the rustic area featured 1.2 million non-exempt subjects and more than 6.1 million exempt subjects, meaning that the tax burden was shouldered by only 16.7% of property owners, a figure only barely higher than that registered in 1965 (21), for example.

What happened next? A brief consideration of the eloquent figures provided above give us a clear answer: for urban real estate, with half of the journey already completed, a plan for the unilateral and accelerated completion of the remaining locations was drawn up, in order to reach a situation of horizontal equity that materialised into a decision that all townships must be valued uniformly at approximately 70% of the corresponding market value, such that all taxpayers, regardless of their place of residence, could be considered equally to these effects. In effect, in 1990 the

(21) Vid. MOYA RODRÍGUEZ, M.: *El Catastro de Rústica presente y futuro*, en AA.VV.: *El Catastro en España, vol. II*, Ministerio de Economía y Hacienda, Madrid, 1989. pág. 148.

Table 7
Structure (in %) of income liquidated by local authorities
(in percentage of the total of taxes recognised as ordinary revenues) *Continued*

1994	1995	1996	1997	1998	1999	2000	2001
35,57	**36,74**	**36,28**	**38,59**	**35,34**	**34,57**	**34,34**	**35,64**
18,64	19,47	19,18	20,59	18,98	18,30	18,45	19,08
5,94	6,01	5,92	6,35	5,90	5,98	6,07	6,09
2,27	2,46	2,49	2,99	3,10	3,24	2,93	3,26
8,30	8,56	8,60	8,62	7,20	7,02	6,84	7,16
0,03	0,04	0,00	0,00	0,00	0,00	0,00	0,00
0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
0,37	0,21	0,10	0,04	0,02	0,02	0,04	0,03
3,94	**4,03**	**3,59**	**3,90**	**4,58**	**4,97**	**5,08**	**5,23**
0,00	0,03	0,00	0,00	0,00	0,00	0,00	0,00
3,48	3,89	3,54	4,12	4,56	4,90	4,87	5,15
0,43	0,09	0,03	0,02	0,00	0,05	0,16	0,05
0,02	0,02	0,02	0,03	0,00	0,01	0,04	0,03
21,77	**20,08**	**20,60**	**22,31**	**18,93**	**18,58**	**18,60**	**21,18**
35,93	**36,47**	**36,62**	**38,53**	**38,52**	**39,68**	**39,26**	**34,99**
2,77	**2,68**	**2,91**	**3,59**	**2,60**	**2,19**	**2,70**	**2,94**
100,00	**100,00**	**100,00**	**107,20**	**100,00**	**100,00**	**100,00**	**100,00**

cadastral revision of 2,447 locations came into effect –representing cadastral registration of more than 22% of all urban units in the territories comprised in the common system– and it was forecast that the process would be completed in the remaining locations the following year, at which time its was also planned to decisively advance in what was called the *second value revision* in a large part of Spain.

However, as a result of the serious conflicts that arose with regard to the second revision of Madrid and other major cities –scheduled to become effective on 1 January 1991– the State Budget Law for that year effectively spoiled the projected operation. This not only cut short the proposition, but also suspended for three years –and seriously endangered for the future– any initiative directed at updating urban values, a process that was only resumed in 1994 with a little over 1,200 small towns whose revision had been pending since the 70s, not without first having established new measures which, like the 50% *market reference coefficient* (22), attempted to enable the reactivation of the project.

Activity has continued from that point, although the conditions for the performance of cadastral revisions –today, the general collective appraisal procedure– have changed significantly: the initial period of validity of the revision was increased from eight to ten years and, with the Law of Cadastre of 2002, was increased still further; in general the agreement or solicitation of the affected towns is required, which furthermore must necessarily report value proposals before these are approved and participate in the expenses deriving from the process of notification and customer service (23), and, as of 1998, as mentioned previously, the value increases deriving from revision are only incorporated into the tax base by

(22) Relationship between revised cadastral values and market values, in the terms regulated in the first instance by Presidential Resolution of the General Constitutional Council and Constitutional Court of 15 January 1993 and afterwards by ministerial orders dated 14-10-1998 and 18-12-2000.

(23) This participation has, on the other hand, been traditional, since Art. 23 of the Merged Text of the Urban Land Tax, approved by Decree 1251/1966, established the obligation of Local Corporations to collaborate with the Central Administration on diverse aspects of tax administration, including individual notification of cadastral values, bases and income, aid in the verification of statements and their preparation in the event of failure to do so by the passive subject ("without detriment", said the rule, of the "right" of the Local Authority to "claim from the owners the payment of expenses and fees deriving from this motive"). Later, Royal Decree Law 11/1979, of 20 July, ruled that investment and operating expenses of the Consortia for Land Tax Administration and Inspection would be shared equally by the State and Local Corporations, a rule kept valid by Royal Decree 1.279/1985 regulating the Tax Administration and Cooperation Centre created by Law 50/1984, and later developed by Order of 24 April 1986. In 1989, the State Budget Law finally eliminated local participation in the general expenses of the Cadastre, although the Law of Regulation of Local Treasuries, following modification of its art. 70.4 by Law 13/1996, proceeded to recover it, albeit in a limited and partial form. In the recently approved Law 48/2002 of 23 December, of Real Estate Cadastre (art. 11.1) – currently art. 29.1 of Legislative Royal Decree 1/2004 of the Merged Text of the Law of Real Estate Cadastre, it is again contemplated by the indication that "the collaboration of Local Corporations or other public Administrations and entities may be obtained".

Table 8
Urban Real Estate Tax (1990-2002)
(Cadastral Value in thousands of millions of euros and Full Quota in millions of euros)

Range	1990				1991				1992				1993			
	VC	%	C.	%	VC	%	C.	%	VC	%	C.	%	VC	%	C.	%
Up to 5.000 inhabitants	40	13,0	192	11,0	43	13,4	202	11,2	46	13,4	233,1	11,1	52,2	13,8	273,1	11,4
Between 5.001 to 20.000 inhabitants	56	18,5	293	16,8	59	18,2	304	16,9	64	18,3	360,6	17,1	69,8	18,5	418,1	17,5
Between 20.001 to 50.000 inhabitants	42	13,7	234	13,4	46	14,3	263	14,6	49	14,2	309,7	14,7	53,7	14,2	354,0	14,8
Between 50.001 to 100.000 inhabitants	27	9,0	168	9,6	28	8,8	168	9,3	31	8,8	196,2	9,3	33,2	8,8	219,4	9,2
More than 100.000 inhabitants	139	45,8	856	49,1	146	45,3	866	48,0	157	45,3	1.006,8	47,8	168,4	44,6	1.130,9	47,2
Total	**304**	**100,0**	**1.743**	**100,0**	**323**	**100,0**	**1.803**	**100,0**	**347**	**100,0**	**2.106,4**	**100,0**	**377,3**	**100,0**	**2.395,5**	**100,0**

Range	1994				1995				1996			
	VC	%	C.	%	VC	%	C.	%	VC	%	C.	%
Up to 5.000 inhabitants	60,9	14,4	307,5	11,6	67	14,4	332	11,7	74	14,2	365	11,8
Between 5.001 to 20.000 inhabitants	84,9	20,1	476,2	17,9	93	20,2	515	18,2	105	20,1	569	18,4
Between 20.001 to 50.000 inhabitants	62,0	14,7	394,8	14,9	68	14,8	422	14,9	76	14,6	462	15,0
Between 50.001 to 100.000 inhabitants	36,5	8,6	245,0	9,2	40	8,7	263	9,3	46	8,8	286	9,3
More than 100.000 inhabitants	177,9	42,1	1.230,1	46,4	193	41,9	1.300	45,9	221	42,4	1.406	45,5
Total	**422,1**	**100,0**	**2.653,5**	**100,0**	**462**	**100,0**	**2.833**	**100,0**	**521**	**100,0**	**3.088**	**100,0**

Range	1997				1998				1999			
	VC	%	C.	%	VC	%	C.	%	VC	%	C.	%
Up to 5.000 inhabitants	78	13,2	393	11,9	76	11,8	372	10,5	81	12,0	394	10,7
Between 5.001 to 20.000 inhabitants	112	18,9	620	18,7	121	18,9	662	18,6	130	19,3	695	18,8
Between 20.001 to 50.000 inhabitants	84	14,3	507	15,3	88	13,7	499	14,1	94	13,8	522	14,1
Between 50.001 to 100.000 inhabitants	54	9,2	313	9,5	73	11,3	417	11,7	78	11,6	440	11,9
More than 100.000 inhabitants	262	44,4	1.476	44,6	283	44,2	1.601	45,1	293	43,3	1.643	44,5
Total	**590**	**100,0**	**3.309**	**100,0**	**641**	**100,0**	**3.552**	**100,0**	**676**	**100,0**	**3.693**	**100,0**

Range	2000				2001				2002			
	VC	%	C.	%	VC	%	C.	%	VC	%	C.	%
Up to 5.000 inhabitants	85	11,7	419	10,5	90	11,3	444	10,2	94	9,6	454	9,7
Between 5.001 to 20.000 inhabitants	144	19,8	769	19,4	145	18,2	794	18,3	161	16,4	842	18,0
Between 20.001 to 50.000 inhabitants	100	13,8	583	14,7	125	15,7	695	16,0	131	13,4	736	15,7
Between 50.001 to 100.000 inhabitants	82	11,2	449	11,3	91	11,5	494	11,4	104	10,6	566	12,1
More than 100.000 inhabitants	316	43,4	1.755	44,1	344	43,3	1.919	44,2	489	49,9	2.090	44,6
Total	**728**	**100,0**	**3.975**	**100,0**	**795**	**100,0**	**4.347**	**100,0**	**979**	**100,0**	**4.687**	**100,0**

Note: C.: Cuota.
Source: D.G.C. and the author.

tenths during each of the ten following years, and in the case of towns revised between 1998 and 2003, are not updated by the coefficients contemplated in the Budget Laws.

In summary, during the first thirteen years of existence of the urban real estate tax, the volume of receipts has grown by 39.9%, the net has increased by 155%, and net revenues have increased by 187.6%; on the other hand, tax allowances, which have tended to diminish throughout the period, now represent a little under 8% of gross revenue, equivalent to more than 364 million euros and double the revenue from rustic real estate tax; the average net quota in 2002 was a little over 167 euros, although this varies widely throughout the territory, since while in Ceuta it is a little over 70 euros, in Cataluña it is more than 240 as shown in the table 9.

As for rural Real Estate tax, the original text of the Law of Regulation of Local Treasuries provided for a substantial increase in the number of non-exempt subjects through the equivalent reduction in the cadastral value threshold below which the exemption benefit could be obtained, although this proposition

Table 9
Principal volumes of urban real estate tax, by Autonomous Communities. Year 2002

Autonomous Communities	Average Rate	Average Tax Base (Euros)		Average Net Quota (Euros)	
		Per Receipt	Per Inhabitant	Per Receipt	Per Inhabitant
01 Andalucía	0,685	29.532	17.991	172,7	105,2
02 Aragón	0,479	27.343	21.792	124,3	99,0
03 Illes Balears	0,596	38.704	31.178	212,6	171,3
04 Canarias	0,543	39.345	22.899	174,3	101,4
05 Cantabria	0,558	29.426	25.167	144,9	123,9
06 Castilla-La Mancha	0,550	21.970	17.399	111,6	88,4
07 Castilla y León	0,524	22.042	21.408	105,4	102,4
08 Cantalunya	0,754	44.998	30.694	240,6	164,1
09 Extremadura	0,610	19.177	13.284	107,6	74,5
10 Galicia	0,512	25.016	16.696	116,8	77,9
11 Madrid (Comunidad de)	0,531	68.228	37.324	186,3	101,9
12 Murcia (Región de)	0,682	26.603	19.383	123,1	89,7
13 Asturias (Principado de)	0,536	26.598	17.376	129,3	84,5
14 Rioja (La)	0,486	29.933	25.286	131,2	110,8
15 Valenciana (Comunidad)	0,758	27.130	21.602	179,7	143,1
16 Ceuta	0,350	23.135	7.927	70,5	24,2
17 Melilla	1,000	35.021	11.249	128,2	41,2
National total	**0,630**	**34.840**	**24.092**	**167,2**	**115,6**

Source: D.G.C.

never materialised since Royal Decree Law 7/1989 overturned it by doubling the minimum exempt contained in article 64. Nevertheless, in what constituted an alternative route to a similar destination, Law 31/1990 established the update of rural cadastral values by 50%, which brought the number of non exempt taxpayers in 1991 to increase by 500,000, 39% more than the previous year, despite which and due to the fact that the revision of cadastral values proceeding from the net base of Land Tax have still not been revised (24), in 2002 less than 29% of rural property owners contributed the total amount of revenues from this tax.

From the viewpoint of its contribution to local treasuries, rural real estate tax has increased from 43 million euros in 1989 –the last valid year of the Land Tax– to 145.5 million euros in 2002, in other words, revenues (net income) have increased in these thirteen years by 191%, three percent more than urban Real Estate Tax, that for the same period showed an increase of 187.6%. However, in other terms, rustic has represented only 3.5% of the value of urban income in this period, meaning that its financial significance is today practically irrelevant (25).

Globally and lastly, real estate tax overall has gone from representing 25.7% to 30.7% of local income from the three primary budget chapters between 1990 and 2002 (26).

REAL ESTATE TAX LAW: PERMANENT AND UNFINISHED CHANGE

From the viewpoint of the regulation, the evolution of Real Estate Tax has been profuse and continuous during its thirteen years of existence and its principal changes have always been related to different processes of negotiation with the Spanish Federation of Local Corporations and Provinces, mostly for the purpose of extending the scope of decision authority –or participation in decisions– of local corporations and to achieve technical improvements in the administration of the tax, although there are also cases of reactive legislation in response to court decisions, and even a certain degree of improvisation clearly visible in rules that are modified time after time without producing results.

Before entering into consideration of the changes introduced by the Law of Real Estate Cadastre of 2002

(24) Lo que no ha impedido que el valor catastral total del ámbito rústico haya crecido un 164,1% entre 1990 y 2002.

(25) Table 10 shows the average tax quota for 2002 by Autonomous Community.

(26) In terms of liquidated tax, local public taxes and fees provided 6,661 million euros in 1990, a figure that increased to 15,241 million in 2002. Non-financial income has evolved from 12,542 million euros in 1990 to 29,442 million in 2002. Real Estate Tax represents 13.7% of the first figure and 16.1% of the second.

Table 10
Rural Real Estate Tax (2002)
Distribution by Autonomous Communities and Average Quotas

Autonomous Community	Total Title Holders					
	Taxpayers		Exempt		Total	
	Number	%	Number	%	Number	
Andalucía	357.994	40,0	37.759	60,0	895.753	
Aragón	172.025	40,4	54.012	59,6	426.037	
Asturias (Principado de)	74.831	24,7	28.740	75,3	303.571	
Canarias	24.750	10,4	13.220	89,6	237.970	
Cantabria	43.415	37,3	72.877	62,7	116.292	
Castilla y León	482.479	28,1	1.235.530	71,9	1.718.009	
Castilla-La Mancha	256.175	29,4	14.269	70,6	870.444	
Catalunya	169.103	45,4	3.764	54,6	372.867	
Extremadura	88.625	27,9	28.881	72,1	317.506	
Galicia	199.686	11,5	1.540.943	88,5	1.740.629	
Illes Balears	23.687	19,1	107	80,9	123.794	
Madrid (Comunidad de)	25.358	24,9	76.344	75,1	101.702	
Murcia (Región de)	88.841	52,0	82.143	48,0	170.984	
Rioja (La)	47.539	35,0	88.298	65,0	135.837	
Valenciana (Comunidad)	346.290	47,1	88.623	52,9	734.913	
Total	**2.400.798**	**29,0**	**5.865.510**	**71,0**	**8.266.308**	

Source: D.G.C.

and the Reform Law of the Law of Regulation of Local Treasuries the same year, we can say that, of the eighteen articles that the Law of Regulation of Local Treasuries dedicates to real estate tax, only six remained in 2002 in their original form; article 61 describing the nature of the tax and the taxable object; 63 on real estate classified as rustic; 66, defining the tax base; 67 and 68, dedicated to general criteria for determination of cadastral value; and 76, regulating the right to claim in the event of non-payment of the tax. However, Law 51/2002, of 27 December, of Reform of Law 39/1988 of 28 December, Regulation of Local Treasuries, has provided a new text and introduced profound modifications in the eighteen articles regulating the tax. In summary, all of these articles have been modified in these years between one and nine times each (27).

Of all these reforms and modifications, the most important is that of the 2002 Law, since it not only thoroughly changes the articulation of the tax, but also places itself within the framework of the global reform of the local financing system and has allowed the removal of the cadastral content from the scope of the tax and the complete renovation of the Cadastre, thus providing it with an identity of its own, lost after the Law of Topographic Parcellary Cadastre of 1906, the last regulation of this rank to regulate the cadastral institution which thereafter was gradually absorbed by land tax regulations throughout the 20th century, and particularly following the Civil War.

The general guidelines of the 2002 reform of the Real Estate Tax and a large part of the ideas that explain or feed its precepts derive, as we shall now see, from the Report (28) prepared by the *Commission for the Review and Proposal of Measures for the Reform of Local Treasury Financing*, constituted by Resolution of the Secretary of State of the Treasury dated 11 July 2001 which ordered an "analysis of the current situation of Local Corporation finance" and preparation of a "report on a new system of financing".

As general criteria for reform of the tax, the Commission proposed three principal measures: firstly, the "development and reinforcement of local autonomy", for which it proposes to "grant local corporations a higher degree of autonomy in relation to Central Administration" in matters of cadastre, and also to "reinforce tax by-laws as a means to regulate the tax, increasing the scope of local authority in matters of the impact of cadastral revision on the tax bill, quotas and policy relative to housing and the use of land and buildings and, in general, allowing

(27) Thus, article 61 has been re-written in 2002; 62 has been modified in 1996, 1998 and 2002; 63 in 2002; 64 has been changed seven times (1990, 1992, 1993, 1996, 1999, 2000 and 2002); 65 was written in 2000 and again in 2002; 66, 67 and 68 were modified in 2002; 69 was modified in 1997 and 2002; 70 was modified nine times (1990, 1991, 1992, 1994, 1996, 1997, 1998, 2000 and 2002); 71 on four occasions (1994, 1997, 1998 and 2002); 72, in 1997 and 2002; 73 was altered eight times (1990, 1992, 1994, 1996, 1997, 1998, 2000 and 2002); 74, three (1999, 2000 and 2002); 75, in 1998 and 2002; 76 once in 2002; 77 varied six times (1990, 1994, 1996, 1997, 1998 and 2002) and lastly, 78 was modified in 1998 and 2002.

(28) TAX RESEARCH INSTITUTE: *Informe para la Reforma de la financiación de las haciendas locales*. Madrid., 2002.

Table 10
Rural Real Estate Tax (2002)
Distribution by Autonomous Communities and Average Quotas *Continued*

Surface Area					Quota	Avg Quota by	
Non exempt		Exempt		Total	Thousands of euros	Receipt	Hectare
Hectare	%	Hectare	%	Hectare		Euros	Euros
7.285.937	83,9	1.399.533	16,1	85.470	43.605	121,80	5,98
4.179.995	88,9	524.346	11,1	4.341	10.993	63,90	2,63
713.387	68,1	334.042	31,9	47.429	1.892	25,28	2,65
380.934	52,5	345.005	47,5	725.939	1.934	78,14	5,08
186.315	35,4	339.967	64,6	526.282	1.075	24,76	5,77
7.258.929	78,0	2.052.810	22,0	11.739	17.491	36,25	2,41
6.448.625	81,7	1.448.390	18,3	97.015	15.159	59,17	2,35
2.295.566	74,1	802.899	25,9	98.465	10.961	64,82	4,77
3.589.375	87,4	519.690	12,6	9.065	9.133	103,05	2,54
1.661.583	57,2	1.243.880	42,8	5.463	3.429	17,17	2,06
332.117	68,2	154.873	31,8	486.990	788	33,27	2,37
538.688	72,6	202.812	27,4	741.500	1.366	53,87	2,54
962.399	86,5	149.839	13,5	12.238	6.061	68,22	6,30
240.617	49,5	245.213	50,5	485.830	1.933	40,66	8,03
1.740.442	77,2	513.959	22,8	54.401	19.729	56,97	11,34
37.814.909	**78,6**	**10.277.258**	**21,4**	**48.092.167**	**145.548**	**60,62**	**3,85**

increased capacity for the participation of local entities in cadastral maintenance operations"; the second criterion recommends to "establish procedures to allow the solution of disputes"; and the third and last proposes the creation of a new category of real estate for property that, due to its special characteristics, should be subject to a different cadastral tax regime.

Based on these criteria, the Commission's report formulated a total of fifty-three proposals relative to the taxable object, cases for exclusion, exemptions, tax subjects, taxable income and net base, quotas, allowances, formal obligations and tax and cadastral administration. Of these proposals, the reform has incorporated forty-four in their full form, rejected eight and partially adopted one. Of the proposals rejected, four were considered unnecessary (29) because their purpose was already addressed by the existing regulation, two because their regulation corresponded to the law (30), and the other two were considered unacceptable (31).

It can therefore be said that the new version of the Real Estate Tax is the result of the intense work performed by the Commission. The rules of Law 51/2002 relative to the tax constitute, in my opinion, a well-proportioned and feasible response to the overall objectives of the reform, essentially the clear and decisive reinforcement of the sufficiency and autonomy of Local Treasuries, to the extent that, in view of the historical antecedents mentioned previously, local corporations have never before enjoyed greater freedom

(29) These proposals recommended "establishment of a specific system for time share property" already included in the relevant Law, which is fully compatible with the regulation of tax subjects for Real Estate Tax; "specific regulation of the validity of private documents as proof of change in ownership", unnecessary by virtue of civil regulations; "to legally allow interested parties to communicate discrepancies observed between cadastral data and the reality of the estate", which they can do under the provisions of the Law of Right to Petition and the Law of the Legal System of Public Administrations and Common Administrative Procedure; and lastly, to "include the cadastral reference in administrative documents related with real estate", already covered by Law 13/1996.

(30) The first of these proposed "enabling administration by Local Corporations of the cadastral value procedure by means of specific modules", which would not require any legal reform and could be developed either through a future regulation of the Law of Cadastre or through the collaboration agreements; the second indicated that "the system of delegation of competencies in matters of cadastral administration should be expressly regulated, based on the size and/or characteristics of the local entity, such that different types of collaboration agreement would exist in which the administrative capacity of the local entity would determine the level of competency delegated", a question that likewise does not require regulation by Law.

(31) "Eliminate the subjective exemption applied under the current regulation to the Red Cross and replace it for another in which the tax allowance is limited to the real estate owned by said Entity that is directly related to its founding purpose"; and "Authorise Local Corporations to modify the quota not only through reductions, but also through increases to permit the correction of mismatching cadastral values in the period between approval of the urban development plan and the definitive approval of the new value proposal".

to design their own real estate tax model. This is emphasised in the Statement of Purpose of the Reform Law, which indicates that the innovations introduced attempt to "provide local authorities with a wide variety of instruments to conjugate the revenue potential (of the tax) with the possibilities that the tax offers as an instrument at the service of local tax policy" which implies, as an unavoidable counterpoint, emphasising the responsibility of local governments to their voters, whose preferences in any direction can be met by adapting the tax programme of each local government to the new law.

However, let us now view –by reviewing the evolution of the tax law since its birth in 1988– the road that has brought us to where we are today, since the study of these antecedents is the best way to understand the progress achieved and also of course, the residues, archaisms, and sometimes surprising architectonic and conceptual limitations that the tax continues to maintain.

Article 61 has been modified for the first time in the text of Law 51/2002, limiting its content exclusively to the definition of the nature of the tax, and leaving the description of the tax object for article 62. This represents a technical reform, and is not truly substantive in scope.

With regard to the material element of the tax object, article 62 was reformed by Law 13/1996, in the first instance, to adapt it to Royal Decree Law 5/1996 regarding land measures, and was further clarified or detailed in Law 6/1998. In both cases the intention was to address the new classification deriving from the competencies assigned to the Autonomous Communities (cfr. Constitutional Court Sentence of 20 March 1997), and therefore can also be considered as a merely technical modification.

Article 62 was again modified (with didactic intent) by means of Law 50/1998, to explicitly include what was already previously implicit, but negatively interpreted by High Court Sentence of 15 January 1998 and by Sentence of the National Court of 13 May of the same year: that the basins of reservoirs form part of the tax object, whereby the legislator understands that they are not subject to exclusion, as both sentences ordered after a long dispute by the owners of these properties in an attempt to preserve the privilege of exemption granted under the old Urban Land Tax. As for the rest, this modification –that was systematically incorporated into the paragraph dedicated to urban buildings of article 62– did not signify that irrigation dams and reservoirs were excluded from the scope of the tax, as sometimes mistakenly interpreted, since the Statement of Purpose of the reform law made certain to avoid this by saying that "a new text is provided to (...) article 62 (...) to expressly include (...) the basin of (reservoirs), criteria that must also be applied to this type of properties (rural) when their nature conforms to the indications of article 63" (of the Law of Regulation of Local Treasuries in its original version).

Additionally, the new text of article 62, incorporated into article 61 of the Merged Text of the Law of Real Estate Cadastre, technically improves the definition of the taxable object, and also introduces, as recommended by the *Expert Committee*, substantial changes such as the creation of a new category of property, that of *special real estate*, and the explicit regulation of cases for exclusion, not covered by the tax before then.

According to SUÁREZ PANDIELLO (32) "this new regulation (the creation of special real estate) addresses the old argument between the State and local authorities on how to tax certain properties, such as motorways and reservoirs, whose nature is at least debatable. The creation of this new category will most probably prevent litigation and therefore improve administration of the tax". Certainly, the argument about whether these properties are urban or rural has been emptied of content, since now that they are neither one nor the other, they have been transferred to a specific class of their own. However, in addition to this effect, and following the recommendation of the *Expert Committee*, the new law has attempted to exclude this type of properties from the ordinary system of taxation and cadastral revision (33), because in the majority of cases, if not all, these large infrastructures are off the market, and are in no way comparable to housing or farm land for which the ordinary rules of cadastral appraisal and tax structure are intended, especially with regard to tax benefits and rates.

With regard to exemptions, grouped under article 63 of the reformed law (art. 62 of the Merged Text of the Law of Real Estate Cadastre), their configuration has been systemised, distinguishing between those that require an application and those that do not; restrictions have been applied to some examples, and local corporations have been granted authority to establish a new technical exemption based on criteria of efficiency and economy in local tax administration, for the purpose of avoiding the expense of administering tax bills whose amount does not cover the cost of administration.

The exemption system is one aspect of the tax that has been subject to a larger number of modifications in the last thirteen years, restrictive measures and extensions taking an equal share. Effectively, article 64.a of the original version of the Law of Regulation of Local Treasuries was amended by Law 13/1996 in an effort to solve the situation created by the doctrine contained in several High Court sentences (v.gr. HCS Baleares of 26 October 1994 and HCS Cantabria of 3 February 1993) which interpreted –departing from the original intention of the legislator, as reflected in the Statement of Purpose of the current law– that the condition of public and free use was not required for maritime-land and hydraulic property to be eligible for exemption. In this regard, Law 51/2002 considers that public maritime-land and hydraulic properties are not subject to taxation exclusively if they are for public, free use, removing the equivalent reference to exemption.

Article 64 was also modified by Law 14/2000 as a result of High Court sentence of 25 September 2000 that granted exemption to underground parking lots operated

(32) SUÁREZ PANDIELLO, J.: *Financiación Local y Corresponsabilidad Fiscal Local: ¿Ganamos con el nuevo modelo?* Revista de Estudios Regionales. Nr. 66, 2003.

(33) TAX RESEARCH INSTITUTE, op. cit., p. 54. The *Expert Report* says in this respect: "the creation of a new class of real estate will represent, for the properties so classified, not only a more appropriate evaluation based on their specific nature, but also the application of differentiated tax rates, a more suitable frequency of cadastral revisions, which will not necessarily coincide with that of other real estate, and a special system of reduction of the tax base or non-application of the same." In effect, all of these proposals have been incorporated into the Law.

under administrative license. In this regard, effective 1 January 2001 the only properties granted exemption under this paragraph are municipal properties in the public domain that are directly operated by the local authority, while if they are operated indirectly they are subject to tax and non-exempt, regardless of the identity of the tax subject. The innovation introduced by Law 51/2002 with regard to properties in the public domain managed directly by local authorities resides in the fact that it considers them not subject to real estate tax, rather than classifying them as exempt, a measure justified by reasons of economic capacity and addressing the absurdity of being the subject and collector of the same tax, not to mention the distortion that this could produce in quantifying tax endeavour in terms of the distribution of unconditional transfers.

Article 64.c) was modified by Law 31/1990 and by Law 19/1995 to clarify, by restricting the original text, the scope of the exemption established in favour of mountain land planted with slow-growing species. The restriction consisted of requiring, as a condition for the tax benefit, that the principal product of this type of land be timber or cork, and that the density of planting be "appropriate to the given species", both conditions absent from the 1988 text, and which have been included, retaining the original text, in article 63.1.f) of the Law of Regulation of Local Treasuries in the text of Law 51/2002 (art. 62.1.f of the Merged Text of the Law of Real Estate Cadastre).

The fourth modification to the exemption system of the Real Estate Tax is a consequence of the effective application of the provisions of letter e) of former article 64: through laws 24, 25 and 26 of 1992, exemption was granted to non-Catholic religious associations with which the State had signed Cooperation Agreements, these being the Spanish Federation of Religious Entities, the Spanish Confederation of Israelite Communities, and the Spanish Islamic Commission. The new text of 2002 features a merely formal change, consisting of uniting in a single paragraph of article 63 (now art. 62 of the Merged Text of the Law of Real Estate Cadastre) the reference to this exemption and that granted to Catholic Church properties, that in the previous version of the Law of Regulation of Local Treasuries occupied different paragraphs.

Letter k) of article 64, regulating technical exemption of properties with minimal value, was first modified, as stated previously, by Royal Decree Law 7/1989 to double the minimum value eligible for exemption established for rustic real estate by the original text of the Law of Regulation of Local Treasuries, this being the first amendment to the Law of Regulation of Local Treasuries, even before its effective application, to increase tax benefits, thus refuting the express programmatic declaration to the contrary contained in its Statement of Purpose. Law 51/2002 has modified the limits of the exemption established in the Law of Regulation of Local Treasuries, which were based on the cadastral value of the properties in the form of a single amount whose application was mandatory for all Local Authorities, by giving Local Corporations the option to grant exemption to those estates whose tax does not exceed the amount that each Corporation determines as the minimum necessary to cover administration costs. In this way, an exemption originally created to avoid taxation of manifestations of minimal economic capacity –which in any case is inconsistent with a purely real tax– has become an instrument to prevent wasting public resources to collect insignificant amounts, something that in the area of rustic estates, due to the degree of outdating of their cadastral values, is not infrequent.

Equally contrary to the restrictive direction was the exemption introduced by Law 22/1993 in favour of private education establishments linked to the education agreement system, although this was nothing new, since already under the system of Urban Land Tax the properties dedicated to education, in the terms established in article 264 of Legislative Royal Decree 781/1986, enjoyed partial exemption of 95% of the quota. The fact is that, with public education centres already exempt since the original Law of Regulation of Local Treasuries (article 64, paragraph a), and the end in 1993 of the tax benefits inherited from the Urban Land Tax that lacked an express date of validity, application of the ending date would have aggravated the relative position of compulsory education serviced by the private sector –but financed by the State– and therefore, in the absence of the exemption, it would have been necessary to revise the economic modules of the education agreement and, in summary, to increase public spending for a neutral financial result. In consequence, the legislator decided on the most simple solution: to recognise the exemption of the established included in the education agreement and simultaneously compensate Local Authorities for the loss in revenues (34), for which Law 22/1993 was developed by Royal Decree 2187/1995 (35). This exemption is still in force, although it now requires the establishments to apply specifically.

The last amendment to the Law of Regulation of Local Treasuries before the reform of 2002 in matters of exemption was introduced by Law 55/1999, which followed the same logic supporting paragraph a) of the former article 64: properties dedicated to health services were declared exempt (thus joining those related to defence, security, prisons and education), although this amendment, in line with the new treatment of local tax benefits introduced by Law 50/1998 –characterised by the references to availability and non-compensation– established that it would be the Local Authorities that would assume the cost of the measure, if they were to

(34) It might be concluded that all this mess was caused by an error of the legislator: Law 39/1988 intended to reinforce sufficiency of Local Treasuries, for which purpose it eliminated tax benefits and committed the State to indemnify Local Corporations if in future it decided to create new exemptions. What happened is that the exemption of concerted centres was eliminated, and it was only realised *after the fact* that these centres would have to be compensated for the patrimonial imbalance this caused, at which time the decision was made to reintroduce the exemption and, necessarily, to compensate the Local Authorities, which *had already consolidated their right* as provided in article 9 of the Law of Regulation of Local Treasuries. In summary, this return trip ended up becoming, at the end, an *unexpected* subsidy, moreover complex to administer, in favour of local corporations.

(35) Nevertheless, since Law 22/1993 became valid on 1 January 1994, the tax year of 1993 was excluded from the exemption, for which reason Law 13/1996 had to retroactively establish that said tax year would also be eligible for application of the tax benefit, although in this case the legislator excluded the possibility of compensating local corporations.

decide to apply it (36). The new legislative text maintains this optional character for this case of exemption, which should be readdressed if it is considered that the purpose of the benefit is none other than the public interest in terms of the health service, which is at least as important as national defence or education and therefore deserving of the same treatment as these other services (37).

Article 65 of the Law of Regulation of Local Treasuries was first amended by Law 14/2002, essentially to provide a clearer delimitation of the different examples of tax subjects it contained, as well as to improve its coordination with the reformed article 64 relative to the previously described non-exemption of municipal property operated by third parties. Specifically, this new text of article 64 prioritised as subjects of the tax the holders of the restrictive real rights –thus defining the tax, more clearly than in the original regulation, as a tax on the effective use of the property, although it maintained the real right as the only doorway to the subjective field; secondly, this article recognised, merely for purposes of clarification and in line with the idea of taxing the subject who effectively uses the property, the possibility of accruing the tax per the rules of common law; and lastly, it authorized local corporations to accrue real estate tax to those indirectly managing their public property or the public services related to said domain, thus improving the neutrality of the tax and increasing its performance.

The second modification to this article was introduced by Law 51/2002, and is contained in the new letter of article 64 of the Law of Regulation of Local Treasuries (now art. 63 of the Merged Text). Its text is substantially improved by defining as tax subjects those registered as holders of the rights that constitute the object of taxation, defined in article 62 of the Law (art. 61 of the Merged Text). Its principal innovation was to establish as obligatory the accrual mentioned previously, which in the 2000 version was optional for the Local Corporations.

Article 66 (now art. 65 of the Merged Text), wherein taxable income continues to be defined as the cadastral value, was first modified, for technical purposes, by Law 51/2002, reflecting that regulation of the determination of taxable income, and notification and contestation of the same, had transferred to Law 48/2002 dated 23 December of Real Estate Cadastre.

Article 69 of the Law of Regulation of Local Treasuries, as established by Law 53/1997, featured two modifications to the original text: firstly, it incorporated the authorisation for the State Budget Law to update cadastral values, previously contained in article 72; and secondly, and more far-reaching in scope, it established the prohibition to update the values of towns revised after 1 January 1998 (38). This latter has been modified in the 2002 reform, by allowing compatibility of the application of the one-tenth reduction with the updating of cadastral values through application of the coefficients established in the annual State Budget Laws, although, in order to respect the expectations created by Law 53/1997, the revised value of towns in which cadastral revisions took place between 1998 and 2003 will remain frozen through to the end of the valid period of the reduction, as established by the 3rd transitory disposition of Law 51/2002. Further, unlike the previous regulation, the scope of application of the reduction has been extended to both urban and rustic estates, and only excludes special real estate that, when before classified as urban, was previously also a beneficiary.

Article 70 of the Law of Regulation of Local Treasuries has been the object of the largest number of modifications by the legislator. Leaving to one side a few modifications of style, we will address only the substantial changes, which were the following: in 1992, the V.A.T. Law introduced a complete and singular regulation of the procedure for notification of revised cadastral values (39) and increased the period for contestation to one month (40); this modification was later altered by Law 13/1996, eliminating the requirement for a second attempt at notification after failure of the first and introducing the collaboration of local entities in the process (41); Law 42/1994 modified the article for two purposes: firstly to allow Local

(36) In addition to the innovations included in the text, we should also mention the exemption recognised by Law 30/1994, of Foundations and Tax Incentives on Private Participation in Activities of General Interest which, although new at that time relative to the original text of the Law of Regulation of Local Treasuries, already had an antecedent in article 259 of the Merged Text of Local Regime of 1986. We should also note that Law 49/2002, of 23 December on Taxation of Non-Profit Entities and Tax Incentives on Patronage provided in article 14, section 1, the exemption of these entities from Real Estate Tax, subject to fulfilment of the required conditions.

(37) Without a doubt, the fact that this exemption is optional is intended to prevent the State from having to assume its cost, since in the absence of this restriction it would have been logical to establish it as compulsory, which in fact the new Law has done, without compensation, by extending the exemption of defence property which as of 1 January 2003 is no longer required to be *directly related*, but only *related* to said service.

(38) The reason for this paradox can be found, in my opinion, not so much in the Statement of Purpose of Royal Decree Law 5/1997 ("values should not be updated for reasons of equity"), which although it does not lack foundation would contradict the simultaneous decision of the legislator to maintain –albeit temporarily– the mechanism of annual updating of cadastral values for other real estate, but rather in the complexity of simultaneously applying two types of increase in the payable base of the tax deriving from widely different purposes: the Budget Law coefficient, and that deriving from the annual shrinkage of the reduction introduced by Law 53/1997. This difficulty, however, has been ignored by the legislator in 2002, who in order to prevent cadastral values from becoming even more outdated, has recovered the coefficients for towns in which the one-tenth reduction will be applicable as of 2004.

(39) Previously, new values were notified in accordance with the Law of Administrative Procedure of 1958. The V.A.T. Law introduced the double attempt at notification and the possibility that the parties might be notified through personal appearance in the territorial Cadastre office even after notification by edict, an anomaly eliminated by Law 42/1994 replacing this effect of late and duplicate true notification with one merely establishing the possibility that, following publication of the edict of notification to unknown or absent taxpayers, these might "obtain a copy" of the administrative act by visiting the administrative office.

(40) Before this reform, the period was the standard fifteen-day period established in the regulation of claims procedure (R.D. 2244/79) and, for economic-administrative claims, in Legislative Royal Decree 2795/80.

(41) This new collaboration refers to the material delivery of notifications or payment of the corresponding cost (*vid. supra* footnote 23).

Corporations a greater degree of participation in the procedure –and in the decision itself– to revise cadastral values, establishing for this purpose as mandatory, although not entailing, a prior report by the Local Authority on the Value Proposal under review, and secondly, to simplify the revision process by eliminating the traditional figure of the independent administrative procedure for delimitation of urban land for purposes of the tax and including it within the Value Proposal as one of its component parts; Law 53/1997 increased the period between revisions from 8 to 10 years to make the one-tenth reduction introduced by the Law compatible with the normal validity of a value revision; and lastly (42), Law 14/2000 reinforced the legal security of the taxpayer –in line with the provisions of article 13.2 of Law 1/1998 and article 54.1 of Law 30/1992 (43)– by providing an exact determination of the content of notification of revised values, additionally providing a legal definition of what until then had been an indeterminate legal concept (44).

Today, however, the cadastral appraisal procedure is regulated by the Merged Text of the Law of Real Estate Cadastre, which has included important innovations introduced by Law 48/2002: firstly, it establishes a minimum period of five years from the effective date of the cadastral value deriving from the previous collective appraisal, such that no new appraisal procedure of this type can be initiated before the end of this period; secondly, from the sixth to the tenth year of validity of the collective appraisal, a new process can be initiated only if the existence of *substantial differences* between valid values *and one-half* (45) *of the market values* is demonstrated; and thirdly and lastly, it is no longer obligatory to perform a new collective appraisal every ten years –in the majority of towns, this is completely unnecessary, given the stability– and even the inexistence –of its market– rather, the new appraisal can be performed, if necessary, *without the requirement to prove* the existence of *substantial differences*; the reason for appraisal merely being the *passage of time*.

Article 71 has also undergone substantial modifications in 1994, 1997 and 1998. Both the first, a result of Law 42/1994, and the last, established by Law 50/1998, have sought to make more flexible the rigid model of accommodation of cadastral values to the reality of the real estate market, inherited by the Real Estate Tax from the Urban Land Tax, while the 1997 amendment was directed at reiterating the principle of value coordination –representative of the principle of equity– which must be respected when the previously existing values are altered through a "Proposal modification".

In its original text, which nevertheless represented a step forward on the road to flexibility, the Law of Regulation of Local Treasuries established the revision of cadastral values every eight years, and a new *revision* –technically, a "value modification"– could only be performed in the event of *substantial differences between cadastral values and market values* in at least *one area* of the town; it did not consider the mere change in the nature of the land as sufficient cause for modification of its value, requiring in all cases the preparation of a new Value Proposal for their modification where feasible based on the presence of the afore-mentioned objective conditions.

The evolution of the regulation has therefore consisted of the successive elimination of conceptual and formal barriers that made it inflexible (46), and to this effect the 1994 Law established that the *modification of values* could be applied to stretches of land inferior in size to an *area* –it mentions *discontinuous polygons* or *estates*– and at the same time eliminated the requirement for a *new Value Proposal*, admitting the sufficiency of a simple modification of the valid value in the town in question for the purpose of adapting values to an unexpected market fluctuation. This same law also recognized the figure of *Proposal modification* to enable rustic estates losing this latter consideration to be appraised as urban property (47), and with regard to the territorial scope of the Proposals, it established the figure of the *special and unique proposal*, also known as *complementary* proposal, to value estates with land in two or more municipal boundaries at the same time (48), and even provided that a Proposal might affect a group towns integrated in a conurbation (49). All these modifications to the text of the Law of Regulation of Local Treasuries have been incorporated into the new Law of Cadastre, changing the adjectives used to describe the various proposals, which are now divided into *total, partial and special proposals*, depending on their territorial scope (in the first two cases) or the type

(42) Another two modifications, smaller in scope, were those introduced by Law 13/96 to establish a special period for the notification of values in Madrid and Barcelona, and Law 50/98, to extend the period of notification of the revisions that became valid on 1 January 2000. Law 51/2002 extended to 31 October 2003 the period to approve the value proposals of those towns affected by collective appraisal procedures due to become effective on 1 January 2004, and to 1 March 2004 the period for individual notification of the cadastral values resulting from said procedure.

(43) And also in numerous pronouncements by different High Courts, although doctrine is not unanimous in this regard, as shown by comparison of H.C.S. Cantabria 4.12.97, sentence of the National Audience of 18.1.99 and H.C.S. Andalucía 16.11.98, among others.

(44) As of 1 January 2001, notifications of revised cadastral values contain the following data: proposal generating the new value, basic models of land and buildings used in the appraisal, value in polygon, street, plot, area, or place, typical value of buildings, identification by their initials of the corrective coefficients applied in each case, cadastral surface area of the property, payable bases of the year before validity of the new value and of the new value itself, and the amount of applicable reduction.

(45) This eliminates the incoherence of previous legislation whereby, despite the fact that a 50% *market reference coefficient* had been applied since 1993, i.e., despite the fact that recently revised cadastral values were intended to represent 50% of the market value and not 100%, a new value *revision* (modification) was allowed if substantial differences were observed between cadastral value and market value, that is, at all times, even the day following completion of the original revision.

(46) In effect, between 1990 and 1994 no "value modifications" were performed by application of article 71 of the Law of Regulation of Local Treasuries.

(47) This modification also proved to be ineffective in practice due to the difficulty of application, and was replaced by the new formula of "specific valuation models" created by Law 50/1998.

(48) An atypical case of reservoirs and toll roads.

(49) Nevertheless this possibility has never been used, basically due to the difficulty of simultaneously reconciling the different interests of the affected towns.

of property involved (special proposals). Further, the Law regulates different procedures for collective appraisal (*general, partial or simplified*), based on whether or not the approval of any of the aforementioned value proposals is required.

Along the path opened in 1994, the 1998 modification increased the flexibility of the model and substantially restructured article 71, to make it more systematic: section 1 was reserved for *value modifications* affecting all real estate in a given town (50); section 2 was dedicated to *Proposal modifications* seeking to adjust the cadastral values of only part of the municipal area and which were characteristic because they were not open to appeal regardless of the individual cadastral values emanating from the modification and because they could be approved at any time during the tax year; section 3 introduced the fiction of the "Proposal modification" *ope legis* for cases of changes in planning exclusively affecting urban use of estates, with the singularity that in these cases, the new values were applied with full retroactive effect (51), and likewise for the cadastral values resulting from the procedure for appraisal by "specific modules", introduced in the second paragraph of section 3 of article 71 by the same Law 50/1998 to provide a temporary solution for the appraisal of new urban land until development planning established the construction capacity of each parcel, which is especially relevant for the purposes of the Tax on the Increase in Value of Urban Land. All these mechanisms and advantages have been maintained, in general terms, by the Law of Cadastre of 2002, although the terminology and the system provided to regulate them have changed significantly.

Article 73 has also undergone repeated changes. Leaving to one side the technical modifications of section 1 (52), the first significant change was to add new lower rates to the options available for application by Local Corporations during a limited period following the effective date of a cadastral value revision. This modification, allowing the decrease to a quarter in the rates that, by default and in overall terms were and are established by the Law (0.4% for urban and 0.3% for rustic), was designed to more thoroughly neutralise the increase in quota that, in absence of a measure of this type, a cadastral revision would represent. This was later complemented by Law 42/1994, extending the maximum period of validity of the reduced rates that, for the same purpose, was increased from three to six years. This extended period is included in the new text of article 73, section 5 (today art. 72.5 of the Merged Text of the Law of Real Estate Cadastre).

With regard to section 7 of former article 73, initially added *ex novo* by Law 37/1992, its purpose stems from the need of the General Directorate of Cadastre to know, with sufficient notice, the rate that will be applied in the first effective year of the cadastral revision, to be able to inform the taxpayer –in the individual notification of the new value attributed to his/her property– of the quota they will be required to pay in that tax year (53).

Under Law 51/2002 the contents of article 73 of the Law of Regulation of Local Treasuries were transferred to articles 72 and 73 (art. 71 and 72 of the Merged Text), which have introduced important innovations affecting the regulation of tax rates and allowances. With regard to the former, specific rates have been established for special real estate, the limitation based on the size of the town has been eliminated –all Local Corporations can now apply up to 1.1% for urban, 0.9% for rustic, and 1.3% for special real estate, with no additional requirements, and the option has been granted to establish different rates depending on the type of use of urban estates and the various groups of special real estate. Furthermore, Law 51/2002 introduces the option of applying a surcharge of up to 50% of the net quota on permanently unoccupied residential real estate, although this surcharge can not be effectively applied until approval by the Government of the regulation defining the conditions required to classify an estate as unoccupied.

In addition to the numerous changes to article 74 in matters of full exemptions, partial exemptions or allowances on the Real Estate Tax quota have also varied since the original version of the Law of Regulation of Local Treasuries. Article 74, which regulated these exemptions up until 2002, initially only contained the partial exemption, of 90%, applicable to construction companies (54), and was later joined by two types of rebate available to Local Corporations that are free to

(50) This example –since it is not significantly different from the purpose and scope of a "value revision"– requires preparation of a new and complete Proposal, which was otherwise regulated directly by article 70 of the Law of Regulation of Local Treasuries. In any case, "all real estate" should be interpreted to mean *all real estate of the same type*, per the expression introduced later by Law 14/2000.

(51) Except for the limit imposed by the effective date of Law 50/1998.

(52) Consisting of replacement of taxable income for the net base for calculation of the quota (Law 53/1997) and of introduction of the concepts of full quota and net quota (Law 14/2000).

(53) Although the Law of Regulation of Local Treasuries did not require the General Directorate of Cadastre to communicate anything other than the decisions within its competency, in view of reactivation of the cadastral revision process interrupted in 1990 the institution chose to "inform", in cadastral notifications, regarding the impact that the revision would have on the tax quota, thus making this addition essential, although it was later modified for the particular cases of Madrid and Barcelona by Law 13/1996 and rewritten by Law 14/2000 in order to improve the text and make the regulation more flexible: since 2001, communication of tax rates is only obligatory if a value revision or modification is scheduled affecting "all real estate of the same nature" in the town and on condition that the local corporation decides to modify the current rate; the rate that should be communicated to the Cadastre is the rate provisionally approved by the corporation –it is here implicit that the definitive rate should not vary from the provisional figure, since this would contravene the purpose of the rule– and the maximum date for approval must be no later than 30 June of the year of notification of the values, although it can be prior to the 1st of January of the same year, contrary to the provisions of the Law up until 2000.

(54) Specifically applicable to urban development companies, construction companies and promoters, for 90% of the quota and a maximum duration of 3 years. This rebate was already addressed in the Urban Land Tax (Decree 1251/1966) with 80% of the quota, for a minimum period of 10 years and a maximum of 25.

decide whether or not to apply them, as well as their amount, duration and objective scope (55).

The first of these, first available for application in the 2001 tax year, since it was authorised by Law 55/1999, was established in favour of populations in which the predominant activity was farming, livestock, forestry, fishing or similar, on condition that they also fulfilled the requirement of a low level of public services or infrastructure provided by the local government and deserve, because of their economic conditions, special protection in the opinion of the Local Corporation (56).

The second rebate, contrary to the first, has only been applicable up until 2002 in the cities of Madrid and Barcelona, and was designed as a new measure to cushion or neutralise the impact of the cadastral revision of these two cities that followed on from the four revisions already previously performed (57) on all towns included in the common system. Briefly, this rebate is simply the technical instrument with which Local Corporations can articulate the limitation in the growth of the net quota of the real estate tax, a limit that will operate regardless of the tax rate and the increase in the net base of the estates, thus guaranteeing a significant degree of independence between the decision to revise cadastral values, which is the competency of the State in the terms established by the Law –and should not be conditioned to the local tax policy, nor either condition said policy– and the decision relative to expected revenues following the revision, a matter exclusively the concern of the local corporation.

In the new regulatory text deriving from the 2002 Reform, the system of rebates has also undergone substantial changes, all directed at increasing the scope of possible decisions on tax policy in the hands of the Local Corporations, for which purpose the Law has authorized in general terms the local by-laws to specify the principal aspects of its regulation. Remarkable among the innovations is the introduction of new examples for application of these benefits, such as those relative to the heads of large families or groups of special real estate, and also the new configuration of the allowance applicable to construction companies, which in general has become stricter; on one hand, the rebate will not necessarily reach 90% and can go as low as 50%; and on the other, it requires effective activity by the company on the given estate and not, as was the case up until 2002, merely formal. Thus, the intent of the regulation is not so much to tax an estate which, until construction is completed, is unable to produce results –logical in terms of the Urban Land Tax but foreign to Real Estate Tax– but rather to favour construction activity. For this reason the scope of application of the rebate has expressly included, in addition to construction, promotion and urban development, the rehabilitation of buildings, so badly needed in our cities.

Law 50/1998 also modified article 75 of the Law of Regulation of Local Treasuries, from whose original text the High Court (sentence of 19 November 1997) had concluded that the validity of physical, legal and economic modifications to an estate was subject to prior registration of the corresponding cadastral administrative act (58), and limited by the date of said act, such that said modifications would only take effect in terms of the Real Estate Tax at 1 January of the tax year following said registration. Given the loss of revenues that this interpretation represented, which in practice exempted the very holders of the economic capacity at whom the tax is directed, the legislator in 1998 provided that the validity of cadastral variations would invariably occur "in the tax year following the year in which said variations take place", and "will not be subject to prior notification of the corresponding administrative acts". The content of this rule is included in the new version of the Law in article 76 (art. 75 of the Merged Text), adding that the validity of cadastral registration resulting from collective appraisal processes and from the determination of the cadastral value of special real estate will be that established by the regulations governing the Real Estate Cadastre, meaning, in summary, that modifications to real estate will invariably be effective *ex nunc* in terms of the cadastre, and that for the purposes of the Real Estate Tax they will be effective, regardless of the date of registration in the Cadastre, as of the date they occur, thus closing the door to any de facto exemption of the type established by judicial doctrine.

(55) In addition to these allowances, regulated in sections 4 and 5 of art. 74 of the Law of Regulation of Local Treasuries, Law 37/1992 recovered the allowance in favour of Protected Housing which, like that of educational centres, was due to expire at the end of 1992. This allowance was extended by the 12th Transitional Disposition of Law 13/1995 to housing subject to public protection as defined in the regulation itself. Further, the Law of Taxation of Cooperatives (20/1990) created a new allowance for certain rustic properties (vid. art. 33 of said Law). This allowance was also included in the system of reductions of Decree 1251/1966, approving the Merged Text of the Urban Land Tax, applying a reduction of 90% of the quota during a period of 20 years following the date of completion of construction. This was later modified by R.D. Law 11/1979, to 50% for a 3 year period.

(56) As we can see, the benefit grants a wide margin to local corporations to favour certain areas of traditional population with insufficient coverage of public services, giving it a dual character: on one hand, it seeks the settlement of population in these areas, and on the other, it attempts to compensate the deficit in public infrastructure, for which purpose its duration and dimension can be applied freely to the specific circumstances in each case through the tax by-law.

(57) The first of these is the previously mentioned option of reducing the tax rate, when a revision becomes effective, down to a minimum of 0.1%; the second consists of the application of the RM coefficient (0.5) to the values resulting from the Proposal; the third consists of reduction, such that the value increase is gradually introduced into the payable base over ten years; and the fourth and last consists of not updating the cadastral value by the Budget Law, a measure that has been modified by the new Law 51, allowing compatibility of the application of the reduction with value updates through Budget coefficients. In addition to these measures, basically dedicated to the Real Estate Tax, we should not forget the reduction of between 40% and 60% applicable to the Tax on Value Increase of Urban Land during the first five years of validity of the revised value; elimination of the accrual of assumed income from the principal residence from Personal Income Tax; the reduction from 2% to 1.1% of the tax rate on other properties available to their owners (not rented or used for economic activity;) and the exemption of the primary residence in the Patrimonial Tax (up to a maximum amount of 150.253,03 euros).

(58) In the same sense there are numerous resolutions of High Courts, although their doctrine is not unanimous -vid. HCS Extremadura (25.7.97), Valencia (2.2.98), Cataluña (3.10.97 and 17.2.92 and, in the opposite direction, 26.11.96 y 9.10.97).

With regard to the aspects related to the administration of the tax, various modifications have occurred since 1990, in some cases driven by the interest in achieving better coordination between the State and Local Corporations (59), in others by the intention to eliminate formal obligations of declaration (60), and in others, by the need to redefine some cadastral infractions –the case of the last paragraph of article 77.2, added by Law 50/1998– or directed at improving and expediting procedures or the internal coherence of the Law –second paragraph of section 3 (61), and sections 4 and 5 (62) of Article 77 of the Law of Regulation of Local Treasuries.

The new legislative text of 2002 also incorporates changes directed at reinforcing the principle of collaboration between public Administrations in order to reduce the indirect costs of taxation and to facilitate the administration of the tax for the benefit of the taxpayer. In this regard, the new regulation has introduced the exemption of the subject from the obligation to declare, in those towns applying, via local tax by-laws, the procedure of *communication* established in article 14 of the Merged Text of the Law of Real Estate Cadastre –which, nevertheless, is subject to development of the regulation, still pending– when the modifications subject to registration already appear in the corresponding municipal license or authorization. Another important novelty is the dismantling of the maze in which the taxpayer frequently found himself lost when, in spite of having fulfilled his obligation to declare the change in ownership of the estate he had acquired, either by completing the required form or by including the cadastral reference on the purchase agreement –the receipt continued to be issued in the name of the previous owner. For these cases, article 77.7 of the Merged Text of the Law of Real Estate Cadastre specifies that the matter can be handled directly by the agency responsible for administration of the tax, by issuing a new liquidation featuring the correct data, leaving correction of the cadastre for later, after the administrator issues the certificate to the cadastral management, which must be done in the terms defined by the regulations of the Law of Cadastre.

Lastly, article 78 of the Law of Regulation of Local Treasuries was modified by Law 50/1998 to eliminate the obligatory previous report by the Cadastre on the concession of tax benefits by Local Corporations, thus eliminating a trace of state intervention in a matter that was the exclusive competency and interest of the Local sphere. Further, in accordance with the new text that the same law provided for the Fourth Additional Disposition of the Law of Regulation of Local Treasuries, section 3 gave access to regions and other local entities recognised by state and autonomic laws to the possibility of signing agreements with the General Directorate of Cadastre (63).

The new text of article 78, provided by Law 51/2002 (now art. 77 of the Merged Text), reiterates the exclusive competency of Local Corporations for the liquidation, collection and revision of the acts dictated in terms of the administration of Real Estate Tax, and to accept or reject exemptions and rebates. It also establishes new measures, authorising Local Corporations to consolidate in a single invoice all tax quotas payable by the same subject when related to rustic estates located in a single town, assigns to these Corporations the competency to qualify residential real estate as unoccupied for the purpose of administration of the corresponding surcharge, and lastly, transfers to Local Corporations, as recommended by the *Expert Committee*, the competency to determine the net base of the tax.

The first new feature –the consolidation of rustic real estate in a single tax receipt for all the properties of the subject in each town– is a logical decision considering that the minimum exempt for reasons of collection efficiency can be established not only for individual properties –estate by estate– but also with reference to consolidated property. This prevents the exemption of individuals owning numerous estates each with a low cadastral value, an exemption that could constitute an undesirable privilege relative to the subject who, for the same total value, owns just one property in the town. Also, however, the technique of consolidating rustic receipts serves to simplify the administration of the tax and, although it contradicts the classic principal of independence of tax debts, is justified if we observe

(59) As in the second paragraph of article 77.1 (77.6 of the Merged Text) added by Law 53/1997, requiring the Cadastre to include the cadastral reference and the net base in the tax Census, and Local Corporations or tax administrators to include all data contained in the tax Census in Real Estate Tax receipts to enable, among other things, compliance with the obligation established in article 50 of Law 13/1996 (now art. 38 of the Merged Text of the Law of Real Estate Cadastre) by the individual (registration of the cadastral reference in deeds documenting acts or dealings of a real nature, and in the Property Register upon registration of said acts or dealings).

(60) This was first established by Law 31/1990, which was later contradicted by Law 42/1994 that re-introduced the previously annulled requirement. Today, the exemption from the duty to declare the change in ownership is conditioned by Law 50/1998 to compliance with the duty to include the cadastral reference in the deed or in the Property Register (vid. art. 13.2 and 14.a of the Merged Text of the Law of Real Estate Cadastre).

(61) Modified successively by Law 13/1996 and Law 50/1998 to indicate that, except for the special provisions for massive notifications resulting from cadastral revisions, other notifications should be performed in accordance with the general system provided by Law 30/1992, not requiring application in these cases of the restrictions imposed by section 4 of article 70 o the Law of Regulation of Local Treasuries which, due to the different nature of the procedure involved, was only applicable to massive cadastral revisions and not to the modifications deriving from the simple maintenance of registrations and cancellations. This provided a solution to judicial interpretation whereby the possible delay in notification of cadastral registration was affecting local revenues in the form of loss of income due to preclusion of the right to obtain said income.

(62) Section 4, created by Law 13/1996, introduced a special and contradictory procedure to resolve discrepancies between the reality of real estate and cadastral data, which, although firm, were proved to be erroneous; section 5, modified by Law 50/1998 (today included in art. 11.4 of the Merged Text of the Law of Real Estate Cadastre), merely indicated that an economic-administrative claim against the cadastral acts quoted in article 77 does not suspend their execution.

(63) With the Law of Real Estate Cadastre, collaboration is now open to any public "Administration, entity or Corporation", as established in art. 4 of the Merged Text. On the subject of collaboration policy of the General Directorate of Cadastre see MIRANDA HITA, J.: "El Catastro en España: situación y perspectivas". *Análisis Local,* n.º 30. Madrid, 2000, and also FUENTES VALENCIA M. del P.: "Convenios de colaboración en materia de gestión catastral". *CT/CATASTRO,* n.º 38 Madrid, 2000.

the minimal average amount, which furthermore is a tradition of this tax, since the former exemption provided by article 64.k) of the Law of Regulation of Local Treasuries –now replaced by the same law that has provided for the creation of this technique– already mandated the consolidation of the properties of a single owner for application of the tax, from which, by habit more than by right, it followed that each subject should receive just one tax receipt per town.

The second novelty –local competency for the qualification of unoccupied real estate– stems from the requirement, in accordance with the new article 73 of the Law of Regulation of Local Treasuries (art. 72 of the Merged Text), for Local Corporations to declare properties unoccupied prior to or in conjunction with the liquidation of the corresponding surcharge; and the third innovation, attributing to Local Corporations the competency to determine the net base of the Real Estate Tax, addresses the fact that said base is only applied (64) in this tax, and is therefore exclusively local in scope. Nevertheless, given that, as mentioned previously, cadastral notifications of decisions resulting from collective appraisal procedures include information relative to the Real Estate Tax quota deriving from the new cadastral value, State competency to establish the reduction and the net base has been maintained in these cases to facilitate local administration, as proposed by the *Expert Committee*.

CONCLUSION

In these twenty-five years of democracy, local treasuries have gone from a feeble position of dependency to a situation in which the constitutional principles of autonomy and sufficiency have been recognised as the cornerstones of their development.

After a first decade full of successive legislative initiatives, most of which proved to be insufficient and sometimes counter-productive, the Law of Regulation of Local Treasuries stabilised the financing model of local treasuries within a framework of evolution in which the reforms successively introduced have responded more to the need to adapt to a permanently changing context, to social preferences and the development of the institutions, than to the series of critical situations –typical of the preceding decade– that were definitively left behind with the new model of 1988.

The strong decentralisation of public expenditure that has also characterised this constitutional period has barely reached Local Corporations, Autonomous Communities having been the real beneficiaries of this historic process. A second decentralisation from the Communities to local entities is the only feasible solution to the demand for greater participation in public spending formulated by the representatives of these entities, inasmuch that it is not probable that the public sector as a whole will increase its presence and participation in the economy of the future.

The Real Estate Tax, which today is the star in the cast of municipal tax resources, has contributed significantly to the achievement of the aspiration for autonomy and sufficiency and also, to the programmatic objectives forecast by the legislator since the end of the 70s consisting of a greater transparency in public spending, budgetary precision and the accountability of local administrators to their voters, such that the burden of local public spending –in the part where no other justification is possible– does not fall indiscriminately on all citizens, but only on those benefiting from their services.

The real estate tax, with a sustained annual growth of nearly 8%, has gradually gained relevance in local financing structure, going from 16% to 20% of local ordinary income between 1992 and 2001. Further, its accumulated growth has exceeded municipal spending by 62% in the same period, which has resulted in a positive balance for the global budget results from 1990 to 2001, and a significant improvement in the degree of self-financing of the towns, with a strong fall in debt operations in the period, which in 2001 did not exceed 9% of municipal income.

Despite this, real estate tax is far below is theoretic capacity. Political and social restraints have driven moderation over time, both in matters of tax rates –at 62% of maximum capacity in 2002– and in taxable income. Not only has it been impossible to revise cadastral values every three years as intended by the legislator in 1979, but that *first revision* took fifteen years to complete, during which period the Government was forced to suspend the *second revision* planned for many cities due to the social conflict that the revision process provoked (65). This experience, some of whose effects still remain today, has brought us to the orientation currently in force, involving a longer interim between value revisions, the limitations to their amount relative to market values, and the way in which they are incorporated into the tax base –gradual or phased since 1998– and also, with the reform of 2002, the faculty granted to Local Corporations to lower the ceiling as much as they want of the original quota increase deriving from cadastral revision.

These factors have all signified that maintenance of the cadastral database has become more and more important for improvement of the efficiency of the tax, and has also represented the growth of the taxpayer base, with the subsequent improvement in horizontal equity of the tax. Effectively, between 1993 and 2003, the results of the General Directorate of Cadastre in terms of incorporation of new properties, changes of ownership and in general, of declarations of cadastral alteration, have grown by 46% and, for example, from processing 380,000 changes of ownership and 500,000 new properties in 1993 we have gone to 1,700,000 changes of ownership and 740,000 new registrations in 2002.

These results have been achieved in part due to the huge technological changes and the permanent process

(64) If we exclude the minor question of accrual of income from time share property for the purpose of Personal Income Tax, regulated by Law 40/1998.

(65) See M.ª JOSÉ LLOMBART BOCH: "Catastro y equidad fiscal", CT/Catastro, nº 25-26, July-October 1995, for a reflection on the ultimate goals of the cadastral revision, a presentation of the new regulatory framework adopted to eliminate the risk of an excessive increase in the tax burden as a result of the Real Estate Tax, and an analysis of the results of the first two years of the new revision cycle initiated in 1993.

of improvement in the professional qualification of Cadastre employees, and also thanks to the collaboration agreements signed with Local Corporations and other institutions such as the Colleges of Notaries and Property Registrars.

The agreements with Local Entities, in particular, affecting nearly 3,000 local authorities, have been decisive in the processing of nearly 29% of the declarations registered in 2003 by bodies of the Finance Ministry, and the information submitted to these agencies by certifying authorities has allowed processing of 763,000 changes of ownership in the same period without the intervention of the parties to the change.

The elimination of formal obligations has in effect become one of the cornerstones of the successive reforms to the Cadastre and the Tax, and likewise, for the former, the reinforcement of its public and private exploitation as a grand infrastructure of land information that it is.

In matters of diffusion of cadastral information, the legislator has progressed in this period from a position we might qualify in retrospect as cautious or restrictive, to one that is more coherent with the concept of the Cadastre as a public service, clearly linked to the process of restructuring of competencies initiated in 1978 and reinforced in 1988, and to the facilities provided by the technological revolution in which we are immersed.

The change brought about through the transition from Land Taxes to the Real Estate Tax, and from the original version of the latter to its most recent reform in 2002, has occurred within the context of tax reforms and of numerous and varied other reforms that have occurred successively over the last twenty-five years. In particular during this period we have seen the growing public rejection of one of the most characteristic elements of the tax, that of its real character, whereas personal taxation is perceived as fairer and more equitable. This has demonstrated that, although the Real Estate Tax enjoys a high level of compliance by the taxpayer, it is permanently faced with strong opposition to any measure that might represent a truly significant change in the short term of its weight in overall local financial resources. The evolution of the real estate markets, as an exogenous factor, and the way the tax affects the principal residence and the family, as endogenous problems, are probably the principal causes of this perception, and it is therefore safe to say that, in the future, the tax must become more personalised at least with regard to these factors. A first step has been taken in this direction in the reform of 2002, through the differentiation of tax rates depending on the use of property, and the benefit in favour of large families.

This pending evolution, in which the Tax must continue to leave behind the archaisms it still has, should not however cloud the progress achieved in all these years, during which the tax has increasingly adopted new concepts of equity and improved its capacity to accept the formulation of different tax models in response to the political preferences of local governments. Nonetheless, these diverse formulations do not necessarily involve a global increase in the tax, but rather a re-ordering of the tax burden both between subjects and territories or sectors, since more than an increase, what citizens are demanding is a fairer distribution of the tax and, in general, more efficiency and efficacy in the way in which tax money is spent.

In summary, in its thirteen years of existence the Real Estate Tax has experienced the growth of its taxpayer base by over 40%, and of its quota by nearly 190%, despite which the tax burden cannot be considered excessive, since on average it is below 170 per property per year, equal to 0.67% of the GNP, and lower than in Italy, Holland, Denmark, France and the United Kingdom, according to OECD data (66).

The diversification of what until 1988 was a uniform tax model, and that since then, and especially since 2002, has become a mould adaptable to the preferences of each jurisdiction in numerous substantive and procedural aspects, together with the intensification of cooperation between administrations mandated by article 103 of the Constitution and further advanced by technological progress, as well as the debate on the role of rustic real estate in the body of the Real Estate Tax –today almost insignificant– are, in conclusion, the tasks to be performed in the short and medium term, without forgetting the strategy for personalisation that society is demanding at least in part and which failure to address would lead to an increasingly more distant public perception of the tax than is desirable in democracy. ■

(66) OECD: *Revenue Statistics 1965-2001/Statistiques des recettes publiques 1965-2001,* Brussels, 2002.