



The CJEU declares the Spanish excise duty on hydrocarbons infringes the EU Directive for the taxation of energy products and electricity

May 30, 2024

The Court of Justice of the European Union has today handed down its [judgment in respect of reference for a preliminary ruling C-743/22](#) (DISA), which analyzed the compatibility of the regional tranche of the excise duty on hydrocarbons in force in Spain between 2013 and 2018 with harmonized legislation on excise duties, in particular, with the principle of a single level of taxation arising from Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, as amended by Council Directive 2004/74/EC of 29 April 2004 and by Council Directive 2004/75/EC of 29 April 2004, in particular, article 5 thereof.

The matter at issue was essentially whether the Directive allows differentiated rates of taxation to coexist within the territory of the same Member State for the same product subject to the excise duty on hydrocarbons (IEH, per its Spanish acronym) and the same use, depending on the part of the national territory in which that product is intended to be consumed.

Specifically, in recent years in Spain the state-wide rate of IEH, common to all territories, has been coexisting with an additional regional tranche upon which each autonomous region was free to decide.

The CJEU has now forthrightly declared that the Directive, and specifically article 5 thereof, precludes the existence of this regional differentiation in the tax, even where the minimum taxation thresholds required under the Directive are exceeded.

This judgment ratifies the stance held since 2013 by KPMG, which has not only been DISA's lawyer in these proceedings but may in fact be considered the "intellectual author" of the idea expressed in these proceedings, and which over the years has advised and continues to advise the majority of the hydrocarbon distribution companies in their claims against the Spanish Tax Agency (nine of the leading Spanish distribution companies), from the filing of the administrative claim through to this ruling by the Court of Justice.

The team that worked on this case consists of Julio César García Muñoz, Juan José Blanco, José Manuel Carro and Paula Bamba.



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