

Tax Procedures in Spain: Tax Litigation before the Spanish Supreme Court

Manuel Vicente Garzón Herrero

Justice of the Spanish Supreme Court

1. Organization, mission and task

1.1. Introduction

Article 1 of the Spanish Constitution of 1978 states that Spain is a social and democratic State, subject to the rule of law, which advocates liberty, justice, equality and political pluralism as the overriding values of its legal system.

Title VI of the Spanish Constitution concerns the judiciary (articles 117 through 127), with article 123 referring to the Supreme Court (*Tribunal Supremo*) as “*the highest judicial body in all branches of justice*”, with jurisdiction throughout

Spain, except with regard to the provisions concerning constitutional guarantees and fundamental rights, the competence for which resides with the Constitutional Court (*Tribunal Constitucional*).

Specifically, the Supreme Court, which was established in 1812 by the Cortes of Cádiz and is based in Madrid, is the pinnacle of the appeals system and is therefore ultimately responsible for the uniform interpretation of Spanish law. It is responsible for adjudicating appeals for reversal, reviews and extraordinary cases, as well as for the prosecution of wrongdoing by members of the upper echelon of the State and the process for outlawing political parties.

The Supreme Court must exercise its powers under the conditions and for the purposes provided for by the Constitution, as well as by the Organic Law on the Judiciary and the Judicial Organisation Act.

In order to fulfil its purposes, the Supreme Court is divided into five Chambers that hear cases in specific matters, as follows:

- First Chamber or Civil Chamber: hearing cases not only of a civil nature, but also cases not allocated to other jurisdictional divisions, such as those involving commercial matters.
- Second Chamber or Criminal Chamber: hearing cases of a criminal nature, except for those allocated to the Fifth Chamber (Military Chamber).
- Third Chamber or Contentious-Administrative Chamber: hearing cases related to (i) administrative decisions issued by public authorities subject to administrative law, (ii) legality of lower (than Statute law) level regulations, (iii) legislative decrees as provided for by article 82(6) of the Constitution, (iv) appeals against the inactivity of public authorities and (v) claims linked to the liability of public authorities and their staff.

- Fourth Chamber or Labour Chamber: hearing cases involving labour law, as well as claims regarding social security or against the State if labour law attributes responsibility to the latter. And
- Fifth Chamber or Military Chamber: hearing military cases. This Chamber is governed by its specific legislation, as well as by the Organic Law on the Judiciary and by the system common to the other four Chambers of the Supreme Court.

1.2. The Third Chamber or Contentious-Administrative Chamber

The Third Chamber (Contentious-Administrative Chamber) of the Supreme Court has general jurisdiction as a court of single instance and, under article 58 of the Organic Law on the Judiciary, it hears:

- in a single proceeding, contentious-administrative appeals brought against actions and administrative provisions of

the Council of Ministers, the Delegated Commissions of the Government and the General Council of the Judiciary and against actions and administrative provisions of the competent bodies of the Congress of Deputies and the Senate, the Constitutional Court, the Court of Exchequer and the Ombudsman, in accordance with the terms and issues established by law and such other appeals exceptionally provided by law. And

- appeals and review appeals under the terms established by law.

The Third Chamber of the Supreme Court consists of its President and thirty-seven Justices, and may sit in plenary or as one of seven specialized divisions.

1.3. The Second Division or Tax Division

Tax matters are dealt with by the Second Division, which actually consists of eleven Justices who are responsible for ensuring that the law is observed. Specifically, this Division is

responsible for deciding, within the restricted scope under the Act on the Jurisdiction for Judicial Review:

a) All administrative cassation appeals and questions of illegality.

b) Review appeals against final decisions rendered by contentious-administrative courts and judges.

c) Suits filed for judicial errors.

All of these appeals and suits must involve taxes, public prices or any other public law revenue collected by the public authorities, including autonomous bodies thereof. Furthermore, actions may be brought on grounds of infringement of a law, but only at the European Union level or at the State level (i.e. not at the level of the autonomous regions).

In light of the “long fight” taxpayers must suffer, as described by M^a Luisa and Raúl, together with the fact that the Spanish tax system changes all the time, the Second Division

is called upon to rule on laws or regulations no longer in force. Nevertheless, current laws are usually applied accordingly by the Tax Division in order to lend continuity to the jurisprudence.

When ruling on cassation appeals, the Tax Division – except where the law provides otherwise– will not reconsider or investigate the facts of the case; rather the Supreme Court considers only legal questions. Therefore, regardless of the case submitted to it, the Second Division will not allow any argument based on a new assessment of the facts or on a new examination of the evidence submitted.

1.4. Relation to and coordination with other persons, institutions and authorities

Article 118 of the Constitution imposes a general duty for all persons, institutions and authorities to cooperate with courts and judges, to pay them the assistance they may require during the course of trials and execution of judgments.

Relations between the Second Division on the one hand, and the legislative or executive powers or other public institutions on the other, are all channelled through the General Council of the Judiciary. The main function of this Council is the management of justice together with the protection or guarantee of independence of judges and courts, when these carry out their judicial function vis-à-vis the other two State powers (i.e. the legislative power, which is assigned by the Spanish Constitution to the Parliament, and the executive power, which is assigned to the national Government) and before all the other branches of government, even regarding other judicial bodies of the judiciary *per se*. The General Council of the Judiciary's competences extend to questions that affect the professional career of the judges: selection and appointment, promotions, administrative situations, leaves and work permits, prohibitions and incompatibilities... By assigning these decisions to an autonomous legal body as the General Council of the Judiciary, instead of assigning them to other State Government bodies, an important source of external

pressures on the activity of the judges that may affect their independence is eliminated.

There is no coordination with the other Chambers or Divisions of the Supreme Court, as they all act independently, without prejudice to the possible use of jurisprudential criteria laid down by any of the other Chambers or Divisions that might concern tax matters.

1.5. The Technical Cabinet for Information and Documentation

The Supreme Court, and therefore the Second Division of the Third Chamber as well, is assisted by the Technical Cabinet for Information and Documentation, which was created in 1985. Under the Organic Law on the Judiciary, the Technical Cabinet for Information and Documentation falls under, and is the direct responsibility of the Chief Justice of the Supreme Court. It is ultimately up to the Ministry of Justice to determine its composition and workforce, based on a report issued by the

General Council of the Judiciary, after consulting the Governing Chamber of the Supreme Court. This Chamber consists of the Chief Justice of the Supreme Court, the Chairs of the five Chambers and five Justices of the Supreme Court.

The staff of the Technical Cabinet for Information and Documentation consists of the Chief Justice of the Supreme Court and five Justices, one per Chamber, appointed by the Assembly of the General Council of the Judiciary, following a binding proposal by the Chief Justice of the Supreme Court. The Technical Cabinet for Information and Documentation also includes a Court Clerk and thirty-five lawyers.

The thirty-five lawyers, three of whom work for the Tax Division, are chosen by the Assembly of the General Council of the Judiciary. They all possess the qualifications required for appointment to the highest level of Spanish public administration, holding a degree in Law.

Functions carried out by the Technical Cabinet for Information and Documentation include the following, at both the stage of docketing as well as in the final settlement of appeals heard by the Court:

- assisting the Chief Justice of the Supreme Court, the Governing Chamber of the Supreme Court and the Chairs of the five Chambers within the scope of their authority and institutional relations.
- providing legal and technical assistance to the Supreme Court.
- publicly reporting on the jurisdictional or managerial activity of the Supreme Court.
- carrying out any other function specifically assigned by the Chief Justice of the Supreme Court, the Governing Chamber of the Supreme Court or the Chairs of the five Chambers, as well as those determined by law and any other tasks necessary for the proper functioning of the Supreme Court in all the vital aspects of judicial authority.

And

- performing any other task which may be considered necessary to enable the development of case law databases.

Also integrated into the Technical Cabinet for Information and Documentation are a number of instrumental departments which facilitate or enable the exercise of the above-mentioned functions and contribute to the overall general functioning of the Supreme Court. These departments are: the General Registry, the Translation Office, the Communication Office, the Department of Archives, the Department of Computer Science, the Reprographics Department and the Department of Library and Documentation.

1.6. The CENDOJ

With regard to access to case law, the Organic Law on the Judiciary states as one of the tasks of the General Council of the Judiciary *“the official publication of rulings and other*

decisions handed down by the Supreme Court and the remaining judicial bodies”.

To this end, the General Council of the Judiciary, after receiving appropriate advice from the relevant public authorities, sets out regulations regarding the manner in which the electronic records of rulings are to be drawn up, as well as how rulings are to be reported, handled, announced and certified, in order to ensure the integrity and authenticity thereof and access thereto, as well as to ensure compliance with legislation on the protection of personal data.

In 1997 the General Council of the Judiciary created a legal documentation centre, the *Centro de Documentación Judicial* (CENDOJ), which is based in San Sebastián, Guipuzcoa. As regards Supreme Court case law, the CENDOJ has created an electronic platform that is structured around a navigation system based on tabs. The searcher is able to quickly and securely access all Supreme Court decisions by

way of key words that identify or classify such decisions and/or by means of search fields. The platform also offers the option of directly accessing the last fifty decisions of each Chamber.

All decisions of the Supreme Court are published in full, in Spanish, online and free of charge for everyone to read. Any concurring, separate or dissenting opinions are recorded in the judgement and also published in full. The full texts are available, with personal data removed and with an efficient search engine that covers the texts of all decisions.

Finally, on the activities of the Supreme Court a report is published every year: the Annual Operating Report (*Tribunal Supremo - Memoria Anual*), which is presented each September at the formal ceremony for the Opening of Courts.

2. Access to judicial review and judicial review procedure

2.1. Access to judicial review

Various steps have been taken in the Supreme Court to monitor the progress of cases and to reduce the backlog. In this regard, the jurisdiction for judicial review has been recently and thoroughly modified by the Organic Law 7/2015 of 21 July 2015.

A Division of the Contentious-Administrative Chamber, made up of the President of this Chamber and at least one Justice from each one of its remaining Divisions, has been created to decide, with the aid of the Technical Cabinet for Information and Documentation, on the admissibility or non-admissibility of cassation appeals.

Admission orders will specify the matter or matters which are understood to be of objective interest for judicial review and

will identify the laws which are subject to interpretation.

Every six months the Third Chamber of the Supreme Court will publish the list of cassation appeals admitted to proceedings on the Supreme Court's web site, as well as in the Official State Gazette with a brief note of the legislation or laws which will be subject to interpretation and the programme for their resolution.

Orders for non-admission will solely indicate if one of the following circumstances exists in the cassation appeal:

a) absence of the requirements governing deadline, legitimacy or ability to appeal the challenged decision.

b) breach of any of the requirements imposed by for the notice of appeal.

c) none of the claimed infringements are relevant or deciding factors to the judgement.

d) the appeal lacks objective interest in judicial review to

create jurisprudence.

No appeal can be made against orders and reasoned orders for admission or non-admission.

Non-admission to proceedings will entail an award for costs against the appellant.

2.2. Cassation appeals

According to the new Organic Law 7/2015, to file a cassation appeal, the appellants must prepare, within thirty days from the day following the notification of the challenged decision, a notice of appeal containing a statement of the intention to appeal, with a brief explanation of how the admissibility requirements are met. That is, the notice of appeal must:

a) Show compliance with the requirements for form in the time for filing, legitimacy and the fact that the challenged

decision can be appealed.

b) Identify the legislation or jurisprudence considered to be infringed precisely, justifying that they were referred to in the proceedings or taken into consideration or that they must have been observed even though they were not referred to by the challenged decision.

c) If the infringement is in relation to legislation or jurisprudence relating to procedural acts or guarantees that occurred without a defence, proof that rectification of the Court's misdemeanour or transgression was requested on time, if there was an appropriate procedural time for this.

d) Justify that the alleged infringements were relevant and determining factors in the decision taken in the ruling being appealed.

e) Justify, in the event that this was passed by the Tax Division of the Supreme Court, that the allegedly infringed legislation falls within Spanish or European Union Law.

f) In particular, grounds, with sole reference to the case, that one or any of the cases exist that provide an insight into

the objective interest in judicial review and the suitability of a ruling from the Tax Division of the Supreme Court.

If the notice of appeal is submitted correctly, complying with the requirements above mentioned, the appeal will be deemed to be initiated. The parties will be required to appear and file the full appeal within thirty days and the case record will be forwarded to the Tax Division. At this stage, the Tax Division might consider appropriate to issue a succinct, grounded opinion on the objective interest of the appeal in creating jurisprudence.

The defendant might not lodge any kind of appeal against the order declaring the cassation appeal as prepared, but may contest its admission when appearing before the Supreme Court.

If the notice of appeal is not submitted, the challenged decision will be final and it will be declared as such in a decree from the Court Clerk. The only remedy against this decision is a

direct appeal for review.

But if, although submitted on time, the notice of appeal does not comply with the requirements just mentioned, the cassation appeal will be considered as if it had not been prepared, so the parties will not be required to appear nor the case record shall be forwarded to the Tax Division. The only remedy against this order is to lodge a complaint.

Cassation appeals may be admitted to proceedings when, after being invoked by the parties a specific infringement of legislation or of jurisprudence, the Tax Division deems that the appeal is of objective interest for judicial review to enter into case law.

When will there be an objective interest for judicial review?

According to the law, there will be an objective interest in judicial review when, amongst other circumstances, the

challenged decision:

- sets out, given matters which are substantially the same, an interpretation of Spanish or European Union Law in which a contradictory decision is given to that established by other Courts.
- lays down a doctrine on such legislation which could be seriously damaging to general interests.
- affects a large number of situations, either in itself or due to transcending the case which is the subject of proceedings.
- settles a debate that took place about the constitutional validity of a regulation with the force of law, without the impropriety of posing the pertinent question on unconstitutionality being sufficiently clarified.
- interprets and apparently applies a constitutional doctrine erroneously and as grounds for its decision.
- interprets and applies European Union Law in apparent contradiction of Court of Justice jurisprudence or in cases

where the intervention of the latter may be required for a preliminary ruling.

- settles proceedings where an agreement entered into between Public authorities was contested. And
- ruled in special proceedings protecting fundamental rights.

But the Tax Division will also assume that there is an objective interest in judicial review when, amongst other circumstances:

1. The challenged decision applied rules sustaining the reason for the judgement on which there is no jurisprudence.
2. The challenged decision deliberately deviates from the existing jurisprudence considering it to be erroneous.
3. The challenged decision declared a general legal provision void, unless this, with full proof, lacks sufficient transcendence.
4. Appeals are ruled on against acts or provisions of

regulatory, supervisory or governmental bodies which should be heard by the Tax Division.

5. Appeals are ruled on against acts or provisions of the Autonomous Communities' Governments or governing Councils.

Appellants must lodge their well-reasoned cassation appeals within a period of thirty days from the date of notification.

If no appeal is deemed to be submitted, the Court Clerk will declare the appeal lapsed and he will order the return of the proceedings to the Court from which they originally came.

Cassation appeals shall not exceed 25 pages or 50.000 characters (spaces included) and they must necessarily:

1. Contain a reasoned statement as to why the legislation or jurisprudence, as identified in the notice of appeal, have

been infringed. It is important to note that the Tax Division will not take into consideration other legislation or jurisprudence than the one referred to in the notice of appeal.

2. Analyze the Supreme Court judgements which, in the opinion of the appellant, express such jurisprudence, justifying its applicability to the case.
3. Specify the purpose of the claims made and of the rulings requested.

If the cassation appeals do not comply with these requirements, the Tax Division will agree to hear the appellants regarding the non-compliance detected and, without further proceedings, will pass a ruling refusing to admit it if, after the hearing, it is understood that the non-compliance was certain. This will impose the costs arising on the party.

Otherwise, the notice of appeal will be sent to the party or parties appealed against or in person, so that they may oppose

the appeal within the common deadline of thirty days.

Once the deadline has passed, whether or not statements of opposition are submitted, the Tax Division, will agree a public hearing, unless the nature of the matter makes this unnecessary, in which case it will declare that the appeal is concluded and awaiting voting and ruling.

The Tax Division will pass judgement within ten days after deliberation on voting and ruling.

The ruling will set the interpretation for the Spanish legislation or that which is established or clarified for that of the European Union on which a pronouncement from the Supreme Court was considered necessary. It will also resolve the matters and claims arising in the proceedings, annulling the challenged decision, in whole or in part, or upholding it.

Furthermore, where the need is justified, it may order that

the acts be retroactive to a particular time in the original proceedings so that the proper course of law may be followed to its culmination.

2.3. Review appeals

On the other hand, review appeals against final decisions may be lodged in the following cases:

a) If, after pronouncement, decisive documents appear which were not provided before due to "force majeure" or because of the party in whose favour the ruling was found.

b) If the ruling was given due to documents which, at the time it was given, one of the parties was unaware that they had been declared to be false or the falseness of which was acknowledged and declared afterwards.

c) If, having ruled by virtue of witness evidence, the witnesses were found guilty of giving false evidence in the declarations which formed the basis for the ruling.

d) If the ruling was given by virtue of bribery, breach of official duty, violence or other fraudulent machination.

e) When the European Court of Human Rights has declared that the ruling was passed in violation of any of the rights recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols as long as the violation has a persistent effect and cannot cease in any other way than by this review.

There will only be a public hearing where this is requested by all the parties or the Tax Division deems it necessary.

It is the Civil Procedure Act, and not the Act regulating the Jurisdiction for Judicial Review, the one that governs the legitimacy, deadlines, procedures and effects of the rulings passed in these review proceedings.

2.4. Suits filed for judicial errors

Finally, damages caused to property or to rights due to judicial errors (as well as those arising from an abnormal functioning of the administration of justice) will entitle the aggrieved parties to claim compensation from the State, except on force majeure grounds. In all cases the loss sustained must be real, ascertained in financial terms and sustained effectively by a person or a group.

Compensation claimed due to a judicial error must be supported by a prior judicial decision which acknowledges such loss. The prior decision may arise directly from a ruling given on review appeal. In any other case, the following rules apply:

a) Legal action for acknowledgment of a judicial error must be filed within the term of three months as from the day in which such action could have been filed. This term may not be extended.

b) The procedure to substantiate such claim is the same

one as for a civil suit review appeal and in any case the State Prosecutor and the State Administration will be parties to these proceedings.

c) The Court will enter a final decision not subject to further appeal within the term of fifteen days once it has received the corresponding report from the judicial body who allegedly incurred in that error.

d) If the claim for a judicial error is dismissed, court costs will be awarded to the petitioner.

e) A declaration of judicial error will not be possible against a judgment which is still subject to further appeal according to the legal system.

f) An appeal for judicial error shall not stay enforcement proceedings of the judgment given.

2.5. The parties: representation and defence

The parties must be represented by qualified legal counsel. A barrister and solicitor are compulsory. Nevertheless, the representation and defence of public administrations and

constitutional bodies, whose internal rules do not establish its own special scheme, shall be carried out by the Legal Representatives of the State. The Legal Representatives of the State may also represent and defend the autonomous regions and the local entities under the terms contained in the law.

2.6. Locus standi

All persons and entities having the right or a legitimate interest have legal standing as regards contentious-administrative jurisdiction. Moreover, the right to appeal is accorded to affected corporations, associations, trade unions, groups and entities legally entitled to protect legitimate rights and collective interests. This right to appeal is also extended to any citizen, in a public interest claim, whenever the law expressly establishes this possibility. Regarding public entities, the State may, if it has the right or a legitimate interest, dispute acts and provisions enacted by authorities of the autonomous regions and by local authorities, and *vice versa*. Finally, entities organized under public law and having legal personality have

the right to pursue action against acts or provisions affecting their goal and functioning.

2.7. Fees

Those wishing to appeal before the Contentious-Administrative Chamber of the Supreme Court (with the exception on individuals) must pay a fee which cannot be deferred, nor paid in instalments or compensated. The fee consists of a fixed rate portion, as well as a variable rate portion, depending on the economic value of the claim. If the fee is not duly paid, the Court Clerk will not grant leave to proceed to the requested judicial action. Once paid, the fee may be cancelled only by means of a previously obtained authorization from the Spanish Tax Agency. The Ministry of Finance and Public Administration is legally responsible for administering this levy.

The requirement to pay this fee is currently governed by the Law governing certain fees in the area of administration of

justice and the National Institute of Toxicology and Forensic Science. This Law has been modified twice, first by Royal Decree 3/2013, of 22 February, amending the fees payable in the area of the administration of justice and the free legal aid system, and, second, by Royal Decree-Law 1/2015, of 27 February, on the second-chance mechanism, the reduction of the financial burden and other employment measures, which exempt individuals from paying the fees, among other significant measures.

3. Judicial Policy Issues

3.1. OECD Model Convention and Commentary

In general terms, it can be said that there are no special rules different from those applicable in domestic situations that apply whenever international tax law is at issue.

Even though the Justices of the Tax Division do not regard

the Commentary on the OECD Model Convention as binding, the Justices often include some paragraphs of the Commentary in their rulings with regard to the interpretation and application of tax treaties when it is expressly relied on by the appellants.

3.2. Mutual agreements

In Spain, sources of law are specified by the Civil Code, namely statutes, custom and general principles of law.

The Spanish Constitution establishes the status of international treaties within the Spanish legal system. Article 95(1) states that "*the conclusion of any international treaty containing stipulations contrary to the Constitution shall require prior Constitutional amendment*". Accordingly, the Spanish Constitution takes precedence over international treaties. And article 96(1) of the Constitution deals with the general reception of international treaties in Spanish law, providing that validly concluded international treaties, once officially published in the Official State Gazette, become part of national law. Therefore,

they become national law and are binding upon national courts and administrative authorities once they have been signed, ratified and published. The same is true of EU law, which becomes national law if it is directly applicable, even if it has not been implemented into national law yet. Directly effective EU law takes priority over national law in case of conflict.

3.3. Arbitration awards

Arbitration and other alternative tax dispute resolution mechanisms are not yet possible in Spain.

3.4. Judgments of foreign Supreme Courts

In general terms, the Second Division never considers judgements of the highest courts of other countries when rendering its own decision. Nevertheless, the Tax Division carefully studies, whenever possible, foreign Supreme Court decisions involving tax treaty interpretation. Although these foreign decisions are never binding, they provide very useful guidance as to how other Supreme Courts have understood the

same provisions, and thus help to harmonize criteria used in tax treaty interpretation.

3.5. Stare decisis

Precedents or jurisprudence create certainty and stability for parties before the Courts. In Spain, the Civil Code does not list precedents or jurisprudence as a source of law.

However, article 1(7) of the Civil Code recognizes that:

“case law shall complement the legal system by means of the doctrine repeatedly upheld by the Supreme Court in its interpretation and application of statutes, customs and general legal principles”.

Precedent, therefore, is not a formal source of law, but nevertheless has a recognized value.

Although the Tax Division has great respect for prior decisions, it may adopt a different position on a legal issue. It

will in that case provide an adequate explanation of the reasons for revoking the previous decisions.

3.6. Foreign tax law

Broadly speaking, the Tax Division never considers foreign tax law when ruling in a case, although foreign tax law is taken into account as an indispensable tool of interpretation when it is expressly indicated or invoked by the appellants. There are no means of ensuring that the proper text of a law is considered, other than public and official sources.

3.7. Hearing of experts, parties and third parties

Where the Tax Division is to rule on a particularly technical or intricate matter, it may seek the opinion of the Technical Cabinet for Information and Documentation, which will provide the legal and technical assistance required.

The Tax Division will not hear experts or third parties, nor may the appellant request that an expert opinion be obtained.

3.8. Matters concerning IFRS

Finally, Spain has already adopted, through the Law establishing Tax, Administrative and Social Measures, IFRS for the consolidated financial statements of all companies the securities of which are trade on a regulated market starting in 2005. The Justices of the Tax Division do not take IFRS into account unless indicated or expressly relied on by the appellants.

4. Selection of Judges, Independence and Relation to the Rest of the World

4.1. Judges in Spain

Article 117(1) and (2) of the Spanish Constitution provides as follows:

“Justice emanates from the people and is administered on behalf of the King by Judges and Magistrates of the Judiciary who shall be independent, irremovable and liable

and subject only to the rule of law.

Judges and Magistrates may only be dismissed, suspended, transferred or retired on the grounds and subject to the guarantees provided by law”.

The Organic Law on the Judiciary provides that jurisdictional functions may be exercised only by professional Judges and Magistrates, who make up the judicial profession. The profession comprises three categories, namely Justice of the Supreme Court, Magistrate and Judge.

Entry to the judicial profession is based on the principles of equality, merit and ability. Judicial appointments are subject to (i) passing a public examination before a selection board made up of Magistrates or Public Prosecutors and other legal practitioners, who are appointed by the General Council of the Judiciary, and (ii) completion of a theoretical and practical selection course. Candidates must be Spanish, over eighteen

years of age and hold a law degree.

Judges and Magistrates are subject to a statutory regime on conflicts of interest designed to ensure that they are wholly independent. When in active service, Judges and Magistrates may not hold any other public office, nor may they be solicitors, barristers or members of any political party or trade union. They are not allowed to exercise any civil, commercial or salaried profession or activity, nor engage in business or in any type of consultation. Teaching, scientific activities, lecturing and legal writings, publications and media appearances are possible under strict conditions.

4.2. Justices of the Supreme Court

The Justices of the Supreme Court are appointed by the General Council of the Judiciary, through Royal Decree ratified by the Ministry of Justice.

Candidates must comply with the requirements applicable

to the judicial position, meet the necessary merit and professional capacity criteria and complete the process of selection established at the General Council of the Judiciary. In order to ensure the application of the principles of transparency, merit and capacity, a public interview system has been introduced.

In particular, candidates must belong to the judiciary, and have fifteen years of judicial experience. However, one of every five posts is expressly allocated for lawyers and other jurists who are non-members of the judiciary, of acknowledged competence and with over fifteen years of professional experience.

In the appointment of Justices of the Supreme Court, neither political ideology nor religious preferences are taken into account. Nevertheless, the General Council of the Judiciary is responsible for such appointments, and this collegial body is composed of (i) twenty members, appointed by the King of

Spain following nominations by both the Congress of Deputies and the Senate and (ii) a Chairman, appointed by the Plenary of the Council during its constitutive sitting.

Justices of the Supreme Court are subject to a mandatory retirement age of seventy. Nevertheless, they may retire at the age of sixty-five if they have been in effective State service for fifteen years. This type of voluntary retirement must be requested six months before the retirement date. However, retirement may be postponed to seventy-two at the express request of the Justice involved. The decision to postpone retirement is also voluntary and must be requested two months before the retirement date.

4.3. Gender quota

Equality between men and women has become an institutional objective, and consequently several actions have been undertaken to improve the equality parameters within the judicial profession. The Organic Law on Effective Equality

between Women and Men establishes the legal basis for moving towards this effective equality in all areas of social, economic, cultural and political life in Spain.

To respond to the requirements of the Law, Additional Provision 3 amended the Organic Law on the Judiciary by establishing different mechanisms to ensure the effectiveness of the principle of equality between men and women, gender perspective and the prevention of any discrimination in the judicial system.

Currently, of the eighty-one Justices of the Supreme Court, only ten are women, none of whom are in the Tax Division.