



RENEWABLE ENERGY FACILITIES AS REAL STATE

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1. RENEWABLE ENERGY PLANTS

Wind turbines and solar panels

In Spain: Movable property or real estate?

2. Effects in:

Income taxes

Property taxes

Transfer taxes

3. No tax advantages

INCOME TAXES



1. CORPORATION TAX

No distinction of profit by origin

Specific amortization percentage

2. INCOME TAX OF NATURAL PERSONS

Profit of economic activities

Not of real estate or movable property

1. WEALTH TAX

Exemption for economic activities assets

2. REAL ESTATE TAX (IBI)

**Long legal controversy about ownership
of renewable energy facilities**

RENEWABLE ENERGY FACILITIES CONTROVERSY:

- Classification as real estate
- Classification as real estate with special characteristics (BICES)
- Elements of the taxed object

- **Real estate: ground and constructions.**
- **Constructions: buildings or facilities.**
- **Machinery: independent or incorporated to a building:**
 - **Serve the same building: part of the real estate**
 - **Places on a real estate: not part of real estate**

Autonomous wind and photovoltaic structures, CAN BE CONSTRUCTIONS?

- Buildings? Capable of housing people.

Not buildings (Supreme Court Judgments)

- Industrial facilities (Superior Court of Justice Judgments)

IBI does not tax machinery located inside the building

But if it serve the same building: part of the real estate. Such as elevators, heating, air conditioning.

If it don't serve the building: a new real estate.

REASONS:

Certain complex properties

Valuation problems

Taxation

CADASTRAL TRIPARTITE CLASSIFICATION:

Urban

Rustic

Real estate with special characteristics (BICES)

TWO MEANS

- Definition:

descriptive concept, as a complex set

- Taxative enumeration. Among others:

“a) those intended for production of electrical energy, gas, oil refineries and nuclear power plants.”

BICES regulatory development:

Energy production in the ordinary regime

**Special regime: capacity does not exceed
50 MW**

Appealed by the Municipalities

Supreme Court Judgment May, 2007: nullity

No restriction by capacity

**Technical standards of cadastral valuation:
not for renewable energy facilities**

**Tax management, the municipalities including
them in the BICES category.**

A complex set of specialized use:

- 1. Ground: land adaptation.**
- 2. Buildings: conventional buildings.**
- 3. Facilities: the technical devices (wind turbines and plates), are facilities.**
- 4. Urbanization: access, roads and, security elements.**

Wind power plant as BICES:

1. Several of Superior Courts of Justice Judgments
2. Two hundred National Court Judgments (2010-2012)

**The machinery installed is included in the
BICES valuation**

National Court and the Supreme Court:

**It is not possible the existence of facilities
without machines or tools.**

Conclusions about BICES:

- The renewable energy facilities are BICES.
- The machinery is included in its valuation.
- Renewable energy facilities: higher tax than other real estate, rustic and urban.

ONEROUS TRANSMISSIONS

VAT. Facilities as real estate. Consequences:

- Second transmission: VAT exemption**
- Transmission of all assets of a company: VAT exemption**

But solar panels or wind turbines: It needs the transmission of a sufficient technical-administrative support (Tax Administration to taxpayer inquiries: 2009 and 2017)

ONEROUS TRANSMISSIONS

ITP:

- Real estate second transmission: VAT exemption not waived.
- Exemption to the entire corporate assets transmission, but no real estate assets.
- Exemption to stocks transmission. But if 50% of company assets are real estate, taxed by ITP.

GRATUITOUS TRANSMISSIONS

Heritage Tax

- Real estate: Autonomous Community where they are located.
- Movable property, donator or legator residence.